

Uttar Pradesh Trade Tax Act, 1948

15 of 1948

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SCHEDULE 1 :- FIRST SCHEDULE

SCHEDULE 2 :- SECOND SCHEDULE

Uttar Pradesh Trade Tax Act, 1948

15 of 1948

An Act to provide for the levy of a tax on the sales or purchase of goods in Uttar Pradesh Whereas, it is expedient to provide for the levy of a tax on the sales or purchase of goods in Uttar Pradesh; It is hereby enacted as follows:

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Uttar Pradesh Trade Tax Act, 1948.
- (2) It extends to the whole of Uttar Pradesh.
- (3) It shall be deemed to have come into force from April 1, 1948.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context:--

(a) assessing authority means any person appointed by the State Government or the Commissioner to perform all or any of the functions of assessing authority under this Act.

(a-1) appellate authority means the authority to whom an appeal lies under Section 9.

(aa) business, in relation to business of buying or selling goods, includes--

(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern ;

(ii) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period) ; and

(iii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials,

empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever, which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure, or concern or works contract or lease,

but does not include any activity in the nature or mere service of profession, which does not involve the purchase or sale of goods;

(b) Commissioner means the Commissioner of Trade Tax appointed by the State Government and includes an Additional Commissioner [or a Joint Commissioner] of Trade Tax appointed by the State Government;

(bb) Trade Tax means a tax payable under this Act on sales or purchases of goods, as the case may be;

(c) Dealer means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes--

(i) a local authority, body corporate, company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, arhati, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not;

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal;

(iv) a Government which, whether in the course of business or otherwise buys, sells, supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration;

(v) every person who acts within the State, as an agent of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as--

(A) a mercantile agent as defined in the Sale of Goods Act, 1930; or

(B) an agent for handling of goods or documents of title relating to

goods; or

(C) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment;

(vi) a firm or a company or other body corporate, the principal office or headquarter whereof is outside the State, having a branch or office in the State, in respect of purchases or sales, supplies or distribution of goods through such branch or office;

Provided that a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner, usufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him, shall not, in respect of such goods, be treated as a dealer.

(vii) every person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(viii) every person who carries on business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;

(c-1) Place of business means any place where a dealer carries on business and includes--

(i) any shop, ware-house, godown or other place where a dealer stores his goods;

(ii) any place where a dealer produces or manufactures goods;

(iii) any place where a dealer keeps his books of account;

(iv) any place where a dealer executes the works contract or where the right to use goods is exercised;

(v) in any case where a dealer carries on business through an "" agent (by whatever name called), the place of business of such agent;

(d) Goods means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed but does not include actionable claims, stocks, shares, securities or postal stationery sold by the Postal Department;

(d-1) Declared goods means goods declared by Section 14 of the Central Sales Tax Act, 1956 to be of special importance in inter-State trade or commerce ;

(e) Importer in relation to any goods means the dealer who makes

the first sale of such goods after their import into the State.

(e-1) Manufacture means producing, making, mining, collecting, extracting, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed ;

(ee) Manufacturer in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes:--

(i) a dealer who sells bicycles in completely knocked down form;

(ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted under Sections 4, 4-A and 4-AAA.

(f) Prescribed means prescribed by Rules made under this Act;

(g) State Government means the Government of Uttar Pradesh;

(gg) Purchase price means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed by the seller as cash discount according to trade practice and shall include any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged ;

(ggg) Registered dealer means a dealer registered under Section 8-A ;

(h) Sale, with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration, and includes--

(i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods, or in some other form) involved in the execution of a works contract;

(iii) the delivery of goods on hire purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) the supply, by way of or as part of any service or in any other

manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash or deferred payment or other valuable consideration ;

Explanation I.--A sale or purchase shall be deemed to have taken place in the State,--

(i) in a case falling under sub-clause (ii) if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of the works contract, notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State;

(ii) in a case falling under sub-clause (iv), if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State.

Explanation II.--Notwithstanding anything contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place--

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser,

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found, in either of the cases aforesaid,--

(i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or

(ii) to have purchased the goods at one rate and passed them on to his principal at another rate; or

(iii) not to have accounted to his principal for the entire collection or deductions made by him, in the sales or purchases effected by him on behalf of his principal; or

(iv) to have acted for a fictitious or non-existent principal;

(h-1) Tribunal means the Trade Tax Tribunal constituted by Section 10 ;

(i) Turnover means the aggregate amount for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration:

Explanation I.--2(* * *)

Explanation II.--Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:--

(i) the amount for which goods are-sold or purchased shall include the price of the packing material in which they are packed, and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than, cost of freight or delivery or cost of installation or the amount realised as trade tax on sale or purchase of goods, when such cost or amount is separately charged ;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sales in respect of such goods shall be included in the turnover of the latter dealer alone;

(ii) Turnover of Purchases with its cognate expressions means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of purchases of goods made by or through him after deducting the amount, if any, refunded to the dealer by the seller in respect of any goods returned to such seller within such period as may be prescribed.

(j) (i) assessment year means the twelve months ending on March 31;

(ii) 3 [* * *].

(k) Vehicle includes a bicycle, a bullock-cart, a vessel or an animal carrying load.

(l) Officer-in-charge of a check post or barrier includes an officer not below the rank of a Trade Tax Officer, Grade II posted at such check-post or barrier.

(m) Works contract includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

(n) Tax includes an additional tax and the composition money accepted under Section 7-D;

(o) "lease" means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalments;

(p) "lessee" means any person to whom the right to use any goods for any purpose is transferred under a lease;

(q) "lessor" means any person by whom the right to use any goods "for any purpose is transferred under a lease.

1 . Subs, by U.P. Act No. 11 of 2003, for the words "a Joint Commissioner or a Deputy Commissioner", dated 17.12.2003 (w.e.f. 18.10.2002).

2. Omitted by U.P. Act 12 of 1979 (w.e.f. 1.6.1975).

3.Omitted by U.P. Act 19 of 1965

3. Liability To Tax Under The Act :-

(1) Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rates provided by or under Section 3-A or Section 3-D on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed.

(2) No dealer shall, except as otherwise provided in Section 18, be liable to tax under sub-section (1) if, during the assessment year, the aggregate of his turnover of--

(a) purchases of goods notified under Section 3-D;

(b) purchases liable to tax under any other provisions of this Act;

(c) sale of goods notified under Section 3-D, where such goods have not been purchased within the State;

(d) sale of all goods (except those notified under Section 3-D), whether such sale is made by the dealer directly or through his branch, depot or agent inside the State, in the course of inter-State trade or commerce or outside the State, is less than one lakh rupees in the case of manufacturers and one lakh fifty thousand rupees in the case of other dealers, or such larger amount as the State Government may, by notification in the Gazette, specify in that behalf either in respect of all dealers in any goods or in respect of a particular class of such dealers.

(3) Nothing in sub-section (2) shall apply in respect of--

(a) the sale by a dealer of goods imported by him from outside Uttar Pradesh, the turnover whereof is liable to tax under sub-section (1) of Section 3-A, or

(b) the sale by a dealer of--

(i) goods imported by him from outside Uttar Pradesh after furnishing to the selling dealer a declaration under subsection (4) of Section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956); or as the case may be;

(ii) goods purchased or imported by furnishing any declaration or certificate prescribed under any provision of this Act;

(iii) goods manufactured by him by using the goods referred to in sub-clause (i) or sub-clause (ii).

(4) Where the amount specified in, or notified under sub-section (2) is altered during an assessment year, the tax payable by a dealer under this section shall be computed as follows:--

(a) on the turnover relatable to the period prior to such alteration, as though the amount specified in or notified under subsection (2) had not been altered; and

(b) on the remainder, as though the altered amount had been in force on all materials dates.

(5) Where tax is payable, and has been so paid, by a commission agent on any "turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

1[(6) Notwithstanding anything to the contrary contained in any other provision of this Act, where the State Government consider it expedient in public interest so to do, it may, by notification, permit a dealer selling any goods specified in the notification to another dealer, hereinafter in this sub-section referred to as the purchaser, to own the liability of tax or composition money, as the case may be, payable by the purchaser in the event of re-sale of such goods or sale of any other commodity manufactured from such goods and if such dealer owns such liability, he shall be liable in place of the purchaser, to pay the tax or composition money in respect of the turnover of such re-sale of such goods or sale of such commodity.]

1. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

3A. Rates Of Tax :-

(1) Except as provided in Section 3-D, the tax payable by a dealer under this Act shall be levied:--

(a) on the turnover in respect of "declared goods", at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, or where the State Government, by notification, declares any other single point or a lesser rate, at such other point or at such lesser rate ;

1[(b)2[on the turnover in respect of such goods], other than the goods referred to in clause (a), at such point and at such rate, not exceeding fifty per cent, as the State Government may, by notification, declare, and different points and different I rates may be declared in respect of different goods.

(c) on the turnover in respect of goods, other than those referred to in clause (a) or clause (b), at the point of sale by manufacturer or importer at the rate of ten percent.]

(2) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

3[(3) Where the State Government has declared any point or rate at which the tax payable by a dealer under the Act be levied under clause (b), clause (c), clause (c-1), clause (d) or clause (e) of sub-section (1) as it existed immediately before the commencement of the Uttar Pradesh Trade Tax (Second Amendment) Act, 2000 and such declaration is in force on such commencement, such rate or point of tax shall continue to be in force after such commencement, until modified or rescinded.]

1. Substituted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

2. Substituted by U.P. Act No. 11 of 2003, for the words "on the thrunover in respect of goods", dated 17.12.2003 (w.e.f. 18.10.2002).

3. Inserted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

3AA. Levy Of Tax On All Points Of Sale Or Purchase :-

Notwithstanding anything contained in Sections 3, 3-A and 3-D, the State Government may, by notification, and subject to such restrictions and conditions as may be specified therein, levy tax at all points of sale or purchase within the State of any goods or class of goods, other than declared goods, at the rates specified in the notifications issued under Section 3-A or Section 3-D and if no such notification has been issued in respect of rate of tax, then at the rate of 1[ten percent as specified in clause (e) of sub-section (1) of Section 3-A]:

Provided that no tax shall be payable on the part of the turnover on which tax has already been paid on the preceding sales or purchases within the State or on the turnover of preceding sales or purchases as has been exempted under any other provisions of the Act.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

3AB. Rate Of Tax On Packing Material Sold With Goods :-

Notwithstanding anything to the contrary in this Act, where goods are sold or purchased together with packing material, the sale or purchase of the packing material shall--

- (a) be liable to tax at the rate applicable to the sale or purchase of the goods sold or purchased together with such packing material;
- (b) not be liable to any tax, if the sale or purchase of such goods is exempt from tax at the hands of the dealer.

3AAA. Presumption Regarding Certain Sales :-

Where goods are liable to tax under this Act only at the point of sale to the consumer, every sale by a dealer--

- (a) to a registered dealer who does not purchase them for resale within the State or in the course of inter-State trade of commerce, in the same form and condition in which he has purchased them, or
- (b) to any person other than a registered dealer, shall be deemed to a sale to the consumer, unless the dealer proves otherwise to the satisfaction of the assessing authority and for that purpose also furnishes to the assessing authority such declaration, obtained from the purchasing dealer, in such form and manner and within such period, as may be prescribed.

3AAAA. Liability To Tax On Purchase Of Goods In Certain Circumstances :-

Subject to the provision of Section 3, every dealer who purchases any goods liable to tax under this Act:--

- (a) from any registered dealer in circumstances in which no tax is payable by such registered dealer, shall be liable to pay tax on the purchase price of such goods at the same rate at which, but for such circumstances, tax would have been payable on the sale of such goods;

(b) from any person other than a registered dealer whether or not tax is payable by such person, shall be liable to pay tax on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods:

Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in clauses (a) and (b), if--

(i) such goods purchased from a registered dealer have already been subjected to tax or may be subjected to tax under this Act;

(ii) tax has already been paid in respect of such goods purchased from any person other than a registered dealer;

(iii) the purchasing dealer resells such goods within the State or in the course of inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them;

(iv) such goods are liable to be exempted under Section 4-A of the Act.

Explanation.--For the purpose of this section and of Section 3-AAA, the sale of--

(i) ginned cotton after ginning raw cotton purchased as aforesaid, or

(ii) dressed hides and skins or tanned leather, after dressing or tanning raw hides and skins purchased as aforesaid, or

(iii) rice during the period commencing on September 2, 1976 and ending with April 30, 1977 after hulling paddy purchased as aforesaid, shall be deemed to be in the same form and condition.

3B. Liability On Issuing False Certificate, Etc :-

Notwithstanding anything to the contrary contained elsewhere in this Act and without prejudice to the provisions of Sections 14 and 15-A, a person who issues a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules framed thereunder to another person, by reason of which a tax leviable under this Act on the transaction of purchase or sale made with or by such other person ceases to be leviable or becomes leviable at a concessional rate shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction, had such certificate or declaration not been issued:

Provided that before taking any action under this section, the person concerned shall be given an opportunity of being heard.

Explanation.--Where a person issuing a certificate or declaration

discloses therein his intention to use the goods purchased by him for such purpose, as will make the tax not leviable or leviable at a concessional rate, but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong.

3C. Liability To Tax Of A Dissolved Firm, Etc. :-

(1) Where a dealer is a firm, or association of persons or a joint Hindu family, and such firm, association or family has discontinued business,--

(a) tax, including penalty, if any, payable under this Act by such firm, association or family upto the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place ; and

(b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or family shall, notwithstanding such discontinuance, be liable severally and jointly for the payment of tax assessed and penalty imposed and payable by such firm, association or family whether such assessment is made or penalty is imposed prior to or after such discontinuance, and, subject as aforesaid, the provisions of this Act shall apply as if every such person or partner were himself as a dealer:

Provided that where it is found that a change has occurred in the constitution of the firm or association, the firm or association as reconstituted as well as partners or members of the firm or association, as it existed before re-constitution, shall jointly and severally be liable to pay tax including penalty, if any, due from such firm or association for any period before its reconstitution.

(2) Liability to tax of transferee.--Where the ownership of the business of any dealer liable to pay tax is transferred, the transferor and the transferee shall jointly and severally be liable to pay the tax including penalty, if any, payable in respect of such business till the time of such transfer, whether the assessment is made or the penalty is imposed prior to or after such transfer.

(3) Where a tax including penalty, if any, is recovered from a reconstituted firm or association under the proviso to sub-section (1) or from a transferee under sub-section (2), such firm or association or a transferee shall be entitled to recover the same from the person who was originally liable to pay the tax.

Explanation.--The dissolution or reconstitution of a firm or

association of persons, or transfer by a dealer of his business or partition of a joint Hindu family shall be deemed to be discontinuance of business within the meaning of this section.

3D. Levy Of Trade Tax On Purchase Of Sales Of Certain Goods :-

(1) Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in the prescribed manner:--

(a) of first purchases of opium, at such rate not exceeding 1thirty-five percent ;

(b) of first purchases of such other goods at such rate not exceeding--

(i) the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956 in respect of goods declared by Section 14 of the Act to be of special importance in inter-State trade or commerce, and

(ii) 2twenty percent, in respect of other goods.

and with effect from such date, as the State Government may, by notification in the Gazette, specify in relation to purchases made within Uttar Pradesh by a dealer (whether on his own account or on account of any one else), or through a dealer acting as a purchasing agent:

3Provided that the State Government may, by notification, modify the point of tax on the turnover in respect of any of such goods.

Explanation I.--For determining, the turnover liable to tax under this sub-section the amount for which goods are purchased by one registered dealer from another registered dealer shall be deducted from his gross turnover only if the purchase in question is proved not to be the first purchase.

Explanation II.--For the purposes of this sub-section, in relation to purchases of foodgrains in pursuance of any order made under Section 3 of the Essential Commodities Act, 1955including any purchase in excess of the levy share, the purchase first made by a dealer from the State Government or its purchasing agent shall be the first purchase of such foodgrains and the tax shall accordingly be levied at that point on such dealer.

(2) Where in respect of any goods notified under sub-section (1), the purchaser whether on his own account or on account of any one else, is a person other than a registered dealer, there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in the prescribed manner, of sale of

such goods by the dealer who sells the goods or through whom the goods are sold to such purchaser, and the rate of tax shall be the same as notified under sub-section (1).

(3) Where tax is payable, and has been so paid, under sub-section (1) or sub-section (2), as the case may be, by a commission agent, on any turnover of sales or of purchases on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

(4) 4[* * *]

(5) The provisions of sub-section (4) of Section 3, and of Section 18 shall mutatis mutandis apply in relation to the tax payable under this section.

(6) Where any goods, in respect of which tax is levied under any other section, are notified under this section, or where any goods notified under this section are denotified and tax in respect thereof is levied under any other section, during the course of an assessment year, the tax payable by a dealer shall be computed as follows, that is to say-

(a) for the period the goods are subject to liability to tax under this section, on the turnover or purchases of sales, thereof as the case may be; and

(b) for the period the goods are subject to the liability to tax under any other section, on the turnover of sales thereof.

(7) (a) Every purchase within Uttar Pradesh by a dealer, either directly or through another, whether on his own account or on account of any one else, shall, for the purposes of sub-section (1), be deemed to be the first purchase, unless the dealer proves otherwise, to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the selling dealer, in such form and manner and within such period, as may be prescribed.

(b) Every sale within Uttar Pradesh by a dealer, either directly or through another, whether on his own account or on account of any one else, shall, for the purposes of sub-section (2), be deemed to be a sale to a person other than a registered dealer, unless the dealer selling the goods proves otherwise, to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the purchaser of such goods, in such form and manner and within such period, as may be prescribed.

(8) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than

fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette, subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make so, however, that any such modification

or annulments shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

Explanation I.--For the purposes of this Act, the following goods shall be deemed to be different from each other, namely--

(a) Khandsari molasses, including sheera-sayar, sheera-galawat and sheera-salawat ;

(b) Rab, including rab-sayar, rab-galawat and rab-salawat ;

(c) Gur-lauta andgur-raskat ;

and accordingly, nothing in this section shall be construed to prevent the imposition, levy or collection of tax under Section 3-A in respect of any one of the said goods merely because tax has been imposed, levied or collected under this section in respect of any other of them, or vice versa.

Explanation II.--For the purposes of assessment relating to any period commencing on October 1, 1964 and ending with November 14, 1971, split or processed foodgrains, cereals or pulses shall be deemed to be different from unsplit or unprocessed foodgrains, cereals or pulses and, accordingly, nothing in this section shall be construed to prevent imposition, levy or collection of tax in respect of the first purchase relating to such" period, of split or processed foodgrains, cereals or pulses merely because tax has been imposed, levied or collected earlier in respect of such foodgrains, cereals or pulses in their unsplit or unprocessed form.

1. Substituted for the words twenty six per cent by U.P. Act No. 26 of 1998 (w.e.f. 1.12.1998).

2. Substituted for the words fifteen per cent by UP. Act No. 26 of 1998 (w.e.f. 1.12.1998).

3. Substituted by U.P. Act no. 26 of 1998 (w.e.f. 1..12.1998).

4. Omitted by U.P. Act No. 26 of 1998 (w.e.f. 1.12.1998).

3E. Section 3E :-

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1. Omitted by U.P. Act No. 26 of 1998 (w.e.f. 1.12.1998).

3F. Tax On The Right To Use Any Goods Or Goods Involved In The Execution Of Works Contract :-

(1) Notwithstanding anything contained in Section 3-A or Section 3-AAA or Section 3-D but subject to the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall, for each assessment year, pay a tax on the net turnover of--

(a) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; or

(b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

at such rate not exceeding twenty percent as the State Government may, by notification, declare and different rates may be declared for different goods or different classes of dealers.

(2) For the purposes of determining the net turnover referred to in sub-section (1), the following amounts shall be deducted from the total amount received or receivable by a dealer in respect of a--

(a) transfer referred to in clause (a) of sub-section (1), whether such transfer was agreed to during that assessment year or earlier,--

(i) the amount representing the sales value of the goods covered by Sections 3, 4 and 5 of the Central Sales Tax Act, 1956;

(ii) the amount representing the value of the goods exempted under Section 4;

(iii) the amount received as penalty for default in payment or as damages for any loss or damage caused to the goods by the person to whom such transfer was made,--

(b) transfer referred to in clause (b) of sub-section (1),--

(i) the amount representing the sales value of the goods covered by Sections 3, 4 and 5 of the Central Sales Tax Act, 1956;

(ii) the amount representing the value of the goods exempted under Section 4;

(iii) the amount representing the value of the goods, on the sale or purchase whereof tax has been levied or is leviable under this Act at some earlier stage;

(iv) the amount representing the value of the goods manufactured in a new unit exempted under Section 4-A or Section 4-AAA;

(v) the amount representing the value of the goods supplied to the contractor by the contractee:

Provided that the ownership of such goods remains with the contractee under the terms of the contract;

- (vi) the amount representing the labour charges for the execution of the works contract;
 - (vii) all amounts paid to the sub-contractor as the consideration for execution of the works contract, whether wholly or in part:
Provided that no deduction under this sub-clause shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a registered dealer liable to tax under this Act and that such amount is included in the return of turnover filed by such sub-contractor under the provisions of this Act;
 - (viii) the amount representing the charges for planning, designing and architects fees;
 - (ix) the amount representing the charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract;
 - (x) the amount representing the cost of consumables used in the execution of the works contract, the property in which is not transferred in the execution of the works contract;
 - (xi) the amount representing the cost of establishment and other similar expenses of the contractor to the extent it is relatable to supply of labour and services;
 - (xii) the amount representing the profit earned by the contractor to the extent it is relatable to the supply of labour and services.
- (3) Where in respect of transfer referred to in clause (b) of subsection (1), the contractor does not maintain proper accounts or the accounts maintained by him are not found by the assessing authority to be worthy of credence and the amount actually incurred towards charges for labour and other services and profit relating to supply of labour and services are not ascertainable, such charges for labour and other services and such profit may, for the purposes of deductions under clause (b) of sub-section (2), be determined on the basis of such percentage of the value of the works contract as may be prescribed and different percentages may be prescribed for different types of works contract.

3G. Special Rates Of Tax On Certain Sales :-

(1) Notwithstanding anything contained in Section 3-A or Section 3-D or Section 3-P\ and subject to the provisions of sub-section (2), and such conditions and restrictions, if any, as may be specified by the State Government by notification, tax on the turnover of sales of goods to a Department of the Central Government or of a State Government or to a Corporation or

Undertaking, established or constituted by or under a Central Act or an Uttar Pradesh Act, or to a Government company as defined in Section 617 of the Companies Act, 1956 (not being a Nagar Nigam, Nagar Palika Parishad, Zila Panchayat, Nagar Panchayat, Cantonment Board, a University or an educational institution or an institution managed for the time being by an authorised controller) shall, if the dealer furnishes to the assessing authority a certificate obtained from such Department or declaration obtained from such Corporation, Undertaking or Company in such form and manner and within such period as may be prescribed, be levied and paid at the rate for the time being specified in sub-section (1) of Section 8 of the Central Sales Tax Act, 1956, or at such rate as the State Government may, by notification, specify in relation to any sales, unless the goods are taxable under any other section of this Act at a rate lower than the said rate:

1[Provided that in case of sale to a Corporation, Undertaking or Company of the Central or the State Government, the dealer shall not be required to furnish declaration under this sub-section, if he furnishes to the assessing authority copy of the order for supply of goods, proof of delivery of goods to such Corporation, Undertaking or Company and the proof of payment having been received through crossed cheque or Bank draft.]

(2) The provisions of sub-section (1) shall not apply to sale of any goods which are purchased by such Department, Corporation, Undertaking or Company for resale or for use in the manufacture or packing of any goods, other than electrical energy and Railway Diesel Locomotive Engine, for sale, or if such Department, Corporation, Undertaking or Company has no office or establishment situated in Uttar Pradesh.

(3) If after purchasing the goods against the certificate or declaration referred to in sub-section (1), any such Department, Corporation, Undertaking or Company uses or disposes of the same in the manner mentioned in sub-section (2), such Department, Corporation, Undertaking or Company shall without prejudice to any other action, including the imposition of penalty that may be taken under this Act, be liable to pay an amount equal to the difference of tax calculated at the rate otherwise applicable to the purchase or sale of such goods under this Act and that the rate applicable under sub-section (1).

Explanation.--For the removal of doubt, it is clarified that the provisions of this section as it stood on May 13, 1994, shall not apply during the period between May 14, 1994 and September 27,

1994.

1. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

4. Exemption From Tax.--No Tax Under This Act Shall Be Payable On :-

(a) the sale or purchase of water, milk, salt excluding processed and branded salt, newspapers, or any other goods which the State Government may, by notification, exempt; or

(b) the sale or purchase of any goods by the All India Spinners Association or Gandhi Ashram, Meerut and their branches; or

(c) the sale or purchase of such goods by such other person or class of persons as the State Government may, by notification, in the Gazette, exempt:

Provided that while granting any exemption under Clause (a) or Clause (b) or Clause (c), the State Government may impose such conditions including the condition of payment of such fees, if any, not exceeding eight thousand rupees annually as may be specified by the State Government by notification in the Gazette.

Explanation.--In this section, the expression--

(a) Water does not include mineral water, aerated water, tonic water, distilled water or scented water or manufactured or processed water sold in container sealed with a cork or otherwise or in capsule;

1[(b) Milk includes reconstituted or recombined milk prepared from skimmed milk powder, butter or butter oil but does not include condensed milk powder or baby milk].

1. Substituted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

4A. Exemption From Trade Tax In Certain Cases :-

(1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or in any district or parts of district in particular, it may on application or otherwise, in any particular cases or generally, by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding fifteen years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may

be the date of the notification or a date prior or subsequent to the date of such notification, and where no date is so specified from the date of first sale by such manufacturer, if such sale takes place within six months from the date of starting production, and in any other case from the date following the expiration of six months from the date of starting production, and subject to such conditions as may be specified, be exempt from trade tax on sale of goods whether wholly or partly or be liable to tax at such reduced rate as it may fix:

1 Provided that in respect of goods manufactured in a new unit having a fixed capital investment of five crore rupees or more or in an existing unit which may make fixed capital investment of five crore rupees or more in expansion, diversification, modernisation and backward integration or in any one of them, within such period not exceeding five years as may be specified in the notification, the exemption from or reduction in the rate of tax may be granted.]

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or reduction in the rate of tax, shall be admissible--

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

(b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October, 1982; or

(bb) in respect of those finished goods which are manufactured in a unit which has undertaken backward integration; or

(c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification or modernisation on or after April 1, 1990, and which in the case of diversification, are different from the goods manufactured before such diversification, and in the case of expansion or modernisation are additional production as a result of such expansion or modernisation; and

(d) only if the manufacturer furnishes to the assessing authority an Eligibility Certificate granted by such officer, in accordance with such procedure, as may be specified ;

(e) with effect from a date prior to the date of the notification.

(2-A) Notwithstanding anything to the contrary contained in subsection (2) or any notification issued in pursuance thereof, the State Government may grant exemption, under this section, to a new unit which has obtained power connection, if it has, after the date of starting production and before the twenty ninth day of

January, 1985, consumed at least 25 percent of the total sanctioned electricity load in the manufacture of goods as distinct from the consumption in connection with the establishment of the factory or workshop.

(2-B) If there is discontinuation of business, within the meaning of sub-section (1) of Section 18, of the manufacturer who was eligible for exemption from or reduction in the rate of tax under sub-section (1), whether such exemption from or reduction in rate of tax was already granted or not, and if he is succeeded by another manufacturer, by means of sale, licence, contract, lease, managing agency or in any other manner such successor manufacturer may, subject to the provisions of sub-section (3), apply to the officer competent to grant eligibility certificate under Clause (d) of sub-section (2), within sixty days of such succession, for the grant, under this section, of exemption from or reduction in rate of tax for the unexpired portion of the period for which exemption from or reduction in the rate of tax was or could be granted to the former manufacturer:

Provided that the aforesaid officer may, in its discretion and for adequate and sufficient reasons to be recorded in writing, entertain an application moved within six months of the date of the expiration of the period specified in this sub-section.

Provided further that such manufacturer and successor manufacturer for the purpose of liability of tax shall be treated as the transferor and the transferee under Section 3-C.

Provided also that in computing the unexpired portion of the period, the period during which the production of successor manufacturer remains closed on account of an order passed by any Court or Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction shall be excluded.

(3) Where the Commissioner is of the opinion that the facility of exemption from, or reduction in the rate of tax obtained on the basis of an eligibility certificate referred to in Clause (d) of sub-section (2) or on the basis of any eligibility certificate issued under any executive orders of the Government issued before or after September 13, 1985 has been misused in any manner whatsoever or there is any legal or factual error in issuing such eligibility certificate or that the new unit has committed breach of any of the conditions, subject to which the facility of exemption from, or reduction in the rate of tax was granted or that the new unit to which the eligibility certificate has been granted in accordance with

the provisions of this Act, is not entitled to facility under this section or is entitled to such facility for a lesser period or from a different date, he may, by order in writing passed before or after the expiration of the period of exemption or reduction, cancel or amend the eligibility certificate from a date specified in the order and such date may be prior to the date of such order, so however, that in cases of misuse or breach, the cancellation of eligibility certificate shall have effect not before the date of such misuse or breach:

Provided that no order under this sub-section shall be passed without giving the dealer a reasonable opportunity of being heard.

(4) For the removal of doubts, it is hereby declared that where an eligibility certificate has been cancelled or amended under subsection (3), the dealer shall be liable to pay tax on his turnover of the period during which the facility of exemption or reduction under this section is not admissible to him.

(5) A manufacturer shall be entitled to the facility of exemption from, or reduction in the rate of tax, notified under sub-section (1),--

(a) if he applies for such facility within six months from the relevant date of commencement of the period of facility referred to in that sub-section or within six months from the date of notification issued under that sub-section or by September 30, 1992, whichever expires later, for the entire period notified under that sub-section;

(b) if he applies for such facility later than the date specified in Clause (a) only for part of the period notified under subsection (1); which shall be computed from the date of the application and not from the relevant date of commencement of the period of facility referred to in sub-section (1) till the end of the period of facility;

(c) in relation to a new unit referred to in Explanation (1), where the conditions specified in Clauses (a) to (d) of the said Explanation (1) are fulfilled on a date later than the date of commencement of the period of facility notified under subsection (1), then subject to the provisions of Clause (b), only for part of the period, notified under sub-section (1), which shall be computed from the date on which all the conditions referred to in the said Clauses (a) to (d), have been fulfilled or July 20, 1992 whichever is later, till the end of the period of such facility, so however, that a manufacturer who was eligible for such facility under Clause (c) as it stood prior to July 20, 1992 and had applied for the facility prior to the said date, shall be entitled to the facility in accordance with the said Clause (c).

(d) in relation to a new unit manufacturing same goods established on or adjacent to the site of an existing factory or workshop by a person who has interest in the existing factory or workshop as proprietor or partner or agent or managing director or promoter director or as holding company or subsidiary company, if the production of the existing factory or workshop is not less than the base production:

Provided that if the production of the existing factory or workshop falls short of the base production, the turnover of sale of the new unit to the extent of the quantity covered by such short fall from base production shall be liable to tax.

Explanation.--For the removal of doubts it is hereby clarified that the facility of exemption from or reduction in rate of tax under this Clause shall not be admissible from a date prior to July 20, 1992.

(6) Where the State Government is of the opinion that the purpose, for which the facility of exemption from or reduction in the rate of tax was granted under this section has been fulfilled or that the continuation of such facility is no longer in public interest or is against the public interest, it may, by notification, withdraw such facility granted to any industry, dealer or class of dealers:

Provided that no such facility shall be withdrawn with retrospective effect.

Explanation.--For the purposes of this section:--

(1) New Unif during the period ending with March 31, 1990, means an industrial undertaking set-up by a dealer on or after October 1, 1982 but not later than March 31, 1990:--

(a) which is licensed or in respect whereof a letter of intent has been issued or which is registered, permanently or otherwise by the appropriate authority in accordance with any law for the time being in force relating to licensing or registration of industrial undertakings;

(b) (i) which is registered under the Factories Act, 1948, or

(ii) an application for registration in respect whereof has been made under that Act, or

(iii) after making an application for a Term Loan from any Financial Corporation or Company owned or controlled by the Central or the State Government or any Bank, whether such Term Loan is sanctioned and disbursed before or after the undertaking is set up (where the capital investment in the undertaking does not exceed three lakh rupees) ;

(c) on land or building or both owned or taken on lease for a period of not less than seven years by such dealer or allotted to such

dealer by any Government company or any corporation owned or controlled by the Central or the State Government;

(d) using machinery, accessories or components not already used, or acquired for use, in any other factory or workshop in India;

(e) fulfilling all the conditions specified in this Act or rules or notifications made thereunder in regard to grant of facility under this section on the date from which such facility may be granted to him ;

and includes an industrial undertaking, fulfilling the conditions laid down in Clauses (a) to (e), set up by a dealer--

(i) already having an industrial undertaking manufacturing the same goods at any other place in the State, or

(ii) on or adjacent to the site of an existing factory or workshop manufacturing any other goods,

but does not include:--

(i) 2any factory or workshop manufacturing the same goods established by a person on or adjacent to the site of an existing factory or workshop wherein such person has interest as proprietor or partner or agent or managing director or promoter director or as holding company or subsidiary company, if such existing factory or workshop is closed, so however, that where the date of starting production of such factory or workshop falls before January 19, 1985, this clause shall be construed as if the words "or adjacent to" were omitted; or

(ii) any addition to or extension of an existing factory or workshop:
Provided that--

(i) in relation to a new unit whose date of starting production falls before March 24, 1984, in Clause (d) for the words "in India" the words "in Uttar Pradesh" shall be deemed to have been substituted;

(ii) in relation to a new unit whose date of starting production falls before August 27, 1984 and the capital investment wherein is not less than three lakh rupees, the condition of registration or application for registration under the Factories Act, 1948, shall not apply;

(iii) in relation to a new unit whose date of starting production falls before March 6, 1986, the condition regarding lease for a period of not less than seven years shall not apply ;

(iv) the unit which has fulfilled all or any of the conditions specified in Clauses (a) to (d) of Explanation (1) on a date later than the date of commencement of the period of facility notified under sub-section (1), shall be deemed to be new unit for entitlement to the

facility of exemption from tax only for part of period, notified under sub-section (1), to be computed from the date on which all the conditions specified in Clauses (a) to (d) of the said Explanation (1) are fulfilled or July 20, 1992, whichever be later, till the end of the period of such facility.

(2) New Unit, after March 31, 1990, means a factory or workshop set up by a dealer after such date and satisfying the conditions laid down under this Act or Rules or Notifications made thereunder with regard to such factory or workshop and includes an industrial unit manufacturing the same goods at any other place in the State or an industrial unit manufacturing any other goods on, or adjacent to the site of an existing factory or workshop, but does not include--

(a) any factory or workshop using machinery, plant, equipment, apparatus or components already used 3[* * *] in other factory or workshop in India other than boilers, generators, moulds and dyes, and other than any machinery, plant, equipment, apparatus or components sold to it by any Government Company or any Corporation owned or controlled by the Central or State Government:

4[Provided that the onus of proving that such machinery, plant, equipment, apparatus or components have not been used in or the value thereof have not been included in fixed capital investment for obtaining benefit under this section by any other factory or workshop in India, shall be on the new unit; or]

(b) any factory or workshop manufacturing the same goods established by a person on or adjacent to the site of an existing factory or workshop manufacturing the same goods wherein such dealer has interest as proprietor or partner or agent or managing director or promoter-director or as holding company or subsidiary company, if such existing factory or workshop is closed; or

(c) any addition to or extension of an existing factory or workshop not being an extension, diversification or modernisation within the meaning of Clause (5) of this Explanation.

(3) Date of starting production means, the later of the following dates, namely:--

(a) the date of which any raw material (which term includes accessories, components, parts and packing material) required for use in the manufacturing (whether on trial or commercial basis) or as the case may be, packing of the goods, is purchased for the first time; or

(b) where the manufacture of goods is not possible without power, the first date on which power supply for manufacturing (whether on

trial or commercial basis) from whatever source is obtained by the Unit:

Provided that in respect of such raw material or packing material purchased on or after April 1, 1990 from outside India, the date of clearance by the Customs Authorities under the Customs Act, 1962 shall be reckoned as the date of its purchase for the purposes of Clause (a):

Provided further that where any stage of manufacture is commenced before any of the dates referred to above, the date of such commencement shall be the date of starting production ;

(4)"Fixed capital investment" means value of land and building and such plants including captive power plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures, as have not been used [* * *] in any other factory or workshop in India:

Provided that--

(a) for the purposes of determining value of land and building only the following shall be taken into account,--

(i) value of only such portion of land and building as is necessary for the establishment or running of the factory or workshop of the unit;

(ii) expenses incurred in registration of land and building under the provisions of the Registration Act, 1908, and in development of land as development charges payable to any statutory body;

(iii) the value of land or building already owned and given by the proprietor, partner, managing director, promoter director or holding company as his or its share in the capital, in case the unit is established in such land or building ;

(iv) the amount or proportionate amount paid or payable as premium during the period for which exemption under Section 4-A is granted on account of lease and the expenses incurred on registration of the lease deed under the Registration Act, 1908, in case the unit is established in land or building taken on lease;

(v) the value of land or building which is necessary for establishing or running the unit under some statutory obligation.

(b) for the purposes of determining value of plants including captive power plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures only the following shall be taken into account:--

(i) investment, whether by means of purchase, hire or lease in such plant, equipment, apparatus, components and machinery, as is necessary for the establishment or running of the factory or workshop;

(ii) investment as is necessary under some statutory obligation; and

(iii) expenses incurred in erection and installation of such plant and machinery and bringing it to the site.

(c) the State Government may, by notified order, specify the procedure for determining fixed capital investment.

10[(d) if a unit has made fixed capital investment under two or more heads of expansion, diversification, modernisation and backward integration but fixed capital investment made under each such head is not as certainable, then the breakup of fixed capital investment as furnished by the unit will be accepted].

11[(e) the facility of exemption from or reduction in the rate of tax on the basis of fixed capital investment in a captive power plant will be available when the unit does not sell the power which is in excess of its consumption to any person other than the Uttar Pradesh State Electricity Board and in case the unit sells such excess power to person other than the said Board, the unit will be liable to pay the tax on the sale of its manufactured goods on pro-rata basis alongwith the interest in accordance with the provisions of sub-section (1) of Section 8.]

(5)"Unit which has undertaken expansion, diversification or modernisation" means an industrial undertaking--

(a) of a dealer who is not a defaulter in payment of any dues under this Act or the Central Sales Tax Act, 1956 or under any loan scheme, administered by the Pradeshिया Industrial and Investment Corporation of Uttar Pradesh regarding trade tax on sale or purchase of goods;

(b) whose first date of production of goods,--

(i) of a nature different from those manufactured earlier by such undertaking, in case of units undertaking diversification, and

(ii) manufactured in excess of base production in such undertaking, in case of units undertaking expansion or modernisation, falls at any time after March 31, 1990;

(c) the production capacity whereof except as provided in the proviso to sub-section (1) has increased by atleast twenty-five percent as a result of expansion or modernisation, or wherein goods of a nature different from those manufactured earlier are manufactured after diversification;

(d) wherein an additional fixed capital investment of atleast twenty-five percent of such original fixed capital investment (without providing for depreciation) is made;

(e) which has been established within the same district in which the

existing industrial unit is established.

(6) for the purposes of this section the expression "base production" means,--

(a) eighty percent of the installed annual production capacity; or

(b) maximum production achieved during anyone of the preceding five consecutive assessment years or if the unit were in production for less than five years, the maximum production achieved during any one of the proceeding assessment years, whichever is higher:

Provided that where a unit manufacturing more than one goods has not undertaken expansion or modernisation in respect of all such goods, its base production will be determined on the basis of production of goods in respect of which expansion or modernisation has been undertaken:

Provided further that where investment made during certain period is clubbed together for the purpose of determining the fixed capital investment, the production immediately prior to the date on which such investment was first started to be made in respect of expansion or modernisation, shall be taken into account for determining the base production.

(7) Unit which has undertaken backward integration means an industrial undertaking--

(i) which imported from outside the State atleast fifty percentum of the total amount of purchases of raw-material, parts, intermediates or components of the finished goods being manufactured by it in each of the three preceding assessment years;

(ii) which makes an additional fixed capital investment of atleast twenty-five percent of the original fixed capital investment (without providing for depreciation); and

(iii) which starts manufacturing such raw-material, parts, intermediates or components as were imported from outside the State.

12[(8) "Captive power plant" means a power plant established in the State by a unit which consumes not less than seventy five percent of the installed capacity of power generated by such plant in a financial year:

Provided that the State Government may relax in any financial year, the requirement of consumption of power of this explanation with respect to any unit, on the recommendation of the committee comprising:--

(a) Principal Secretary or Secretary, as the case may be, to the State Government in the Oorja Department.

(b) Principal Secretary to the State Government in the Finance

Department.

(c) Secretary to the State Government in the Public Enterprises Department.

(d) Managing Director, Pradeshiya Industrial Investment Corporation of Uttar Pradesh.

(e) Chairman, Uttar Pradesh State Electricity Board.]

1.Subs, by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 6 of 2000), dated 12.1.2000 (w.e.f. 21.10.1999).

2. Words or acquired for use omitted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

3. Proviso inserted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

4. Subs, by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

5. Subs, by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 6 of 2000), dated 12.1.2000 (w.e.f. 21.10.1999).

6.Words "or acquired for use" omitted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

7. Subs, by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

8. Subs, by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 6 of 2000), dated 12.1.2000 (w.e.f. 21.10.1999).

9. Inserted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

10.Inserted by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 6 of 2000), dated 12.1.2000 (w.e.f. 21.10.1999).

11. Inserted by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 6 of 2000), dated 12-1-2000 (w.e.f. 21.10.1999).

12. Substituted for the words by notification by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

4B. Specific Relief To Certain Manufacturers :-

(1) Notwithstanding anything contained in Sections 3, 3-A, 3-AAAA and 3-D--

(a) Where any goods liable to tax under sub-section (1) of Section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases under that sub-section or where any goods are purchased by any dealer in circumstances in which such dealer is liable to trade tax on purchase of such goods under Section 3-AAAA, and the dealer holds a recognition certificate issued under sub-section (2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf ;

(a-1) Where any declared goods liable to tax under sub-section (1) of Section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate under sub-section (2), in respect thereof, the State Government may, subject to such conditions and restrictions as may be specified by a notification in that behalf, grant the same relief as mentioned in clause (a) to such first purchaser:

Provided that any notification under this clause or clause (a) in respect of paddy may be made effective from a date not earlier than the first day of May, 1977:

Provided further that the rules to carry out the objects of this clause or clause (a) may also be made effective from a date not earlier than the first day of May, 1977;

(b) Where any goods liable to tax under any other provision of this Act are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer in the prescribed form and manner a certificate to the effect that he holds a recognition certificate issued under sub-section (2) in respect thereof, the selling dealer shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf.

Explanation.--For the purpose of this sub-section, the conditions and restrictions that may be specified for the, grant of concession in respect of, or exemption from tax, may include the requirement that the notified goods referred to in subsection (2), shall be manufactured in a "new unit" as defined in Section 4-A, which goes into production after the date, whether before or after the date of the notification under this sub-section, and within such period as may be specified.

(2) Where a dealer requires any goods, referred to in sub-section (1) for use in the manufacture by him in the State, of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee, and conditions as may be prescribed, the assessing authority shall grant

to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

1[(2-A) Where any recognition certificate issued under this section in respect of any notified goods is in force on the commencement of the Uttar Pradesh Trade Tax (Second Amendment) Act, 2000 and the notification by which such goods has been notified is made effective from a date prior to the date of such notification, the recognition certificate in respect of such goods shall be deemed to be valid with effect from the date such notification has been made effective.]

Explanation.--For the purposes of this sub-section--

(a) goods required for use in the manufacture shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, subassemblies, fuels or lubricants; and

(b) notified goods means such goods as may, from time to time, be notified by the State Government in that behalf.

(3) 2[* * *]

(4) (i) Where the assessing authority is satisfied that the dealer, in whose favour the recognition certificate in respect of any goods was granted under sub-section (2)--

(a) has discontinued the manufacturing business for the purpose whereof the recognition certificate was granted; or

(b) has made a breach of any condition of the recognition certificate; or

(bb) has failed to pay any tax, penalty or other dues payable under this Act within a period of three months from the date such tax, penalty or other dues became payable; or

(c) has failed to furnish the security required under Section 8-C; or

(d) is a firm, association or a joint Hindu family which, within the meaning of the explanation to sub-section (1) of Section 18, is deemed to have discontinued its business,

such authority may, either of its own motion or on the application of the dealer, cancel the recognition certificate with effect from such date as it may specify.

(ii) The assessing authority may amend a recognition certificate granted under sub-section (2), either of its own motion or on the application of the dealer, where the dealer has changed the name or place of his business or has closed down any branch or has opened a branch or for any other sufficient reason:

Provided that no recognition certificate shall be cancelled or amended by Assessing Authority of its own motion except after

reasonable opportunity of being heard has been given to the dealer.

3[(iii) The 4[Joint Commissioner] may, on the application of the dealer, and after satisfying himself that the goods referred to in subsection (1) were actually used in the manufacture of the notified goods, or in the packing of such notified goods manufactured or processed by the dealer in the State, amend, retrospectively but not from a date earlier than March 5, 2001, any recognition certificate granted under sub-section (2).]

(5) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased the goods after payment of tax at concessional rate under this section or, as the case may be, without payment of tax and has used such goods for a purpose other than that for which the recognition certificate was granted or has otherwise disposed of the said goods, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix, which shall not be less than the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax payable under any other provisions of this Act but not exceeding three times the amount of such difference.

(6) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased any goods after payment of tax at concessional rate under this section, or as the case may be, without payment of tax and the goods manufactured out of such raw materials or processing materials or manufactured goods after being packed with such packing material are sold or disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, such dealer shall be liable to pay an amount equal to the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax calculated at the rate of four percent, on the sale or purchase of such goods.

(7) For determining whether a sale or purchase is in the course of inter-State trade or commerce, within the State, or in the course of export out of India, the provisions of Sections 3, 4 and 5 of the Central Sales Tax Act, 1956, shall respectively apply.

(8) No penalty under this Section, shall be imposed unless the dealer has been given a reasonable opportunity of being heard.

(9) No prosecution under Section 14, shall be instituted, and no penalty under Section 15-A shall be imposed in respect of the same

facts on which a penalty has been imposed under this Section.

1. Inserted by U.P. Trade Tax (Second Amendment) Act, 2000-(Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

2. Omitted by U.P. Act No. 1 of 1973.

3. Inserted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

4. Subs, by U.P. Act No. 11 of 2003, for the words "Deputy Commissioner", dated 17.12.2003 (w.e.f. 18.10.2002).

4BB. Set-Off Of Tax Paid On Raw Material And Packing Material In Certain Cases :-

Where tax has been paid on the purchase or sale of raw material or packing material inside the State and such raw material or packing material has been used in manufacture or packing of such goods as are notified by the State Government in this behalf and such goods are sold in the State or in the course of inter-State trade or commerce, the amount of tax paid on the purchase or sale of the raw material or packing material shall, subject to such conditions and restrictions as may be specified in the said notification, be deducted from the tax payable on the sale of such goods--

(a) inside the State, to the extent the tax has been paid on the purchase or sale of raw material or packing material from which the goods sold inside the State were manufactured or packed;

(b) in the course of inter-State trade or commerce, to the extent the tax has been paid on the purchase or sale of raw material or packing material, from which the goods sold in the course of inter-State trade or commerce were manufactured or packed:

Provided that the amount of tax to be deducted under clause (a) or clause (b) shall not exceed the amount of tax payable separately under this Act or the Central Sales Tax Act, 1956.

4C. Special Relief To Manufacturers Exporting Finished Goods Outside India :-

Notwithstanding anything contained in Section 4-B, the State Government may, by notification, and subject to such conditions and restrictions as may be specified therein, grant exemption or concession from payment of tax on the purchase of such raw material or packing material or both, as are used in the manufacture or packing of the goods meant for export as defined under Section 5 of the Central Sales Tax Act, 1956.

5. Rebate Of Tax On Certain Purchases Or Sales :-

(1) Where the State Government is satisfied that it is expedient in the public interest so to do, it may by notification, and subject to such conditions and restrictions as may be specified therein, allow a rebate upto the full amount of tax levied on any specified point on,--

(a) the sale or purchase of any goods, or

(b) the sale or purchase of such goods, by such person or class of persons as may be specified in the said notification.

(2) The rebate under sub-section (1) may be allowed with effect from a date prior to the date of the notification.

6. Objections To Jurisdiction :-

(1) No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal, unless such objection was taken before the Assessing Authority at the earliest possible opportunity and unless, in the opinion of the Appellate or Revising Authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby.

(2) Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the Assessing Authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him, shall not be refundable to him, in consequence of the assessment being so set aside or quashed.

7. Determination Of Turnover And Assessment Of Tax :-

(1) Every dealer, who is liable to pay tax under this Act, shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed; but the Assessing Authority may in its discretion, for reasons to be recorded, extend the date for the submission of the return by any person or class of persons.

(1-A) Before submitting the return under sub-section (1) or along with such return, the dealer shall deposit, in such manner as may be prescribed, the amount of tax due on the turnover shown in

such return.

(1-B) Where as a consequence of the date for the submission of return being extended under sub-section (1) on the application of any person, the deposit of tax under sub-section (1-A) is deferred, there shall be payable interest at the rate of two percent per mensem on such deposit from the date immediately following the last date prescribed for the submission of the return.

(1-C) If any dealer discovers any omission or other error in any return submitted by him, he may, at any time, before the time prescribed for submitting the next return, submit a revised return. If the revised return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable under sub-section (1-B), as if the time for submitting the original return had been extended on the application of the dealer to the date of submission of the revised return. If, however, the revised return shows lesser amount of tax to be due than was shown in the original return, the dealer may adjust the excess amount towards the tax due for the subsequent periods.

(1-D) If the goods sold or purchased by a dealer are returned within six months of the date of sale or purchase and assessment for the year, to which such sale or purchase relates, is as yet to be made, he may within thirty days of the expiry of the month in which such goods are returned submit for that purpose only a revised return for the period during which such sale or purchase was made.

(2) If the Assessing Authority, after such inquiry as he considers necessary, is satisfied that any returns submitted under sub-section (1) are correct and complete, he shall assess the tax on the basis thereof.

(3) If no return is submitted by the dealer under sub-section (1) within the period prescribed in that behalf or if the return submitted by him appears to the Assessing Authority to be incorrect or incomplete, the Assessing Authority shall, after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof:

Provided that before taking action under this Section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Explanation.--In this section and in Sections 7-A, 7-B, 7-C, 7-D, 7-E, 8-A, 14, 15-A, 18, 21 and 24, the expression turnover means

the turnover of sales or of purchases or both, as the case may be.

(4) Every person to whom Section 28-B applies and for whom a presumption under the said section exists that the goods have been sold within the State by such person, shall, in the manner prescribed, be assessed to tax at the check-post on the goods covered by each authorisation for the transit of goods separately.

(5) The provisions of sub-section (4) shall apply to all the cases for assessment, whether arising before or after the date of the commencement of the Uttar Pradesh Sales Tax (Amendment) Act, 1995.

(6) No order of assessment under sub-sections (4) and (5) shall be passed until the owner or person-in-charge of the vehicle, as the case may be, is given a reasonable opportunity of being heard.

7A. Return Of Turnover For Portion Of The Assessment Year :-

(1) The State Government may require any dealer to submit a return for his turnover of a portion of the assessment year, and the Assessing Authority may, without prejudice to the provisions of Section 7, make provisional assessment in respect of such portion of the assessment year in accordance with the provisions of this Act, in so far as they may be made applicable, if the turnover of the dealer as determined by the Assessing Authority for such portion of the assessment year is not less than such portion of the amount, if any, specified in or notified under sub-section (2) of Section 3 as the period under assessment years to twelve months.

(2) Where the Assessing Authority has made a provisional assessment under sub-section (1), it shall not, by reason of such assessment, be precluded from re-determining the turnover and making the assessment, for the whole year.

7B. Assessment Of Tax Where Rate Is Varied During The Assessment Year :-

Where during the course of an assessment year the rate of tax on the turnover of any goods or class of goods is varied or an exemption in respect thereof is granted or cancelled, the assessment, so far as it relates to the portion of such turnover for the period after the date of the variation, exemption or cancellation, shall be made on the basis of the rate so varied or the exemption so granted or cancelled.

7C. Tax Due From Deceased Person Payable By His Representatives

:-

(1) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of said deceased dealer:

Provided that--

(i) in respect of any liability of the deceased, his executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hand;

(ii) any proceedings including the proceeding for recovery, may be continued from the stage at which it was pending at the time of the death of the dealer.

(2) The provisions of sub-section (1) shall mutatis mutandis, apply to a dealer being a partnership firm which may stand dissolved in consequence of the death of any partner.

7D. Composition Of Tax Liability :-

Notwithstanding anything contained in this Act, but subject to directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

Provided that any change in the rate of tax, which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

Explanation.--For the purposes of this section the assessing authority includes an officer not below the rank of Trade Tax Officer Grade-II posted at a check-post.

7E. Rounding Off Of Turnover, Tax Etc. :-

(1) The amount of turnover, determined in the prescribed manner, shall, if such amount is not in the multiple of ten, be rounded off to the nearest multiple of ten rupees, that is to say, a part of ten rupees which is less than five rupees shall be ignored and any other part shall be counted as ten rupees. The amount so rounded off shall be deemed to be the turnover of the assessee for the purposes of assessment of tax under this Act.

(2) The amount of tax, fee, interest, penalty or any other sum payable or the amount of refund due under the provisions of this Act shall, where such amount contains part of a rupee, be rounded off to the nearest rupee, that is to say, a part of a rupee which is less than fifty paise, shall be ignored and any other part shall be counted as one rupee.

7F. Recovery Or Refund Of Petty Amounts To Be Ignored :-

Notwithstanding anything contained in this Act, no tax, fee, interest or penalty under this Act shall be recovered and no refund shall be allowed, if the amount involved for any assessment year is less than five rupees.

8. Payment And Recovery Of Tax :-

(1) The tax admittedly payable shall be deposited within the time prescribed or by 31st day of August, 1975, whichever is later, failing which simple interest at the rate of two percent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount whichever is later, and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such interest.

Explanation.--For the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, the turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding under this Act, whichever is greater, or, if no accounts are maintained, then according to the estimate of the dealer, and includes the amount payable under Section 3-B or subsection (6) of Section 4-B.

(1-A) The tax assessed under this Act shall be deposited in the manner specified in, and within thirty days of the service of,, the notice of assessment and demand.

1[(1-B) If the tax, other than the tax referred to in sub-section (1), assessed by any Assessing Authority is not paid within the period specified in the notice of assessment and demand referred to in subsection (1-A), simple interest at the rate of one and half percent per mensem on the unpaid amount calculated from the date of expiration of the period specified in such notice shall become due

and be payable.

(1-BB) If the tax, assessed under this Act is enhanced in reassessment or otherwise by any authority, Tribunal or Court the dealer shall also be liable to pay simple interest at the rate specified in sub-section (1-B) on the unpaid amount of the enhanced tax from the date of expiration of the period specified in such notice of assessment and demand already served on the dealer under sub-section (1-A) and it shall not be necessary to give afresh notice of assessment and demand with respect to the enhanced tax and it shall be deemed that the tax so enhanced was assessed in the order of assessment made for the first time.]

(1-C) The amount of interest payable under¹[sub-sections (1), (1-B), (1-BB) and (2)] shall be without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, and shall be added to the amount of tax and be also deemed for all purposes to be part of the tax.]

(2) Where realization of any tax remained stayed by any order of any Court or authority and such order of stay is subsequently vacated, the interest referred to in sub-section (1-B) shall be payable also for any period during which such order remained in operation.

(2-A) Notwithstanding anything contained in¹[sub-sections (1), (1-A), (1-B), (1-BB), (1-C) or (2)]^J, the Commissioner may, on the application of a manufacturer within such time and in such manner as may be prescribed grant in lieu of exemption under Section 4-A, moratorium for payment of the admitted tax subject to such conditions as may be prescribed. The Commissioner may withdraw any such moratorium in the circumstances in which it could have withdrawn the exemption Under Section 4-A, but no such withdrawal shall be made with retrospective effect.

Provided that on and after the commencement of the Uttar Pradesh Trade Tax (Amendment) Ordinance, 1997, the Commissioner may on the application of a manufacturer having a small scale industry, the date of starting production of which falls on or after April 1, 1990, grant, in lieu of exemption under Section 4-A, moratorium for payment of the admitted tax and the provision of Rule 43 of the Uttar Pradesh Trade Tax Rules, 1948 as amended by the Uttar Pradesh Trade Tax (Second Amendment) Rules, 1993, shall apply for granting such moratorium.

(3) Notwithstanding anything contained in any law of contract to the contrary, the Assessing Authority may, at any time or from time

to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Assessing Authority, require--

(a) any person from whom any amount is due or may become due to the dealer, or

(b) any person who holds or may subsequently hold money for or on account of the dealer,

to pay to the Assessing Authority--

(i) forthwith upon the money becoming due or being held, or

(ii) at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or other dues under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.--For the purpose of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be legally subsisting.

(4) The assessing authority may at any time or from time to time amend or revoke any such notice.

(5) Any person making any payment in compliance with notice under sub-section (3) shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount referred to in the receipt.

(6) Any person discharging any liability to the dealer after receipt of the notice referred to in sub-section (3) shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the amount mentioned in such notice, whichever is less.

(7) Where a person, to whom a notice under sub-section (3) is sent, proves to the satisfaction of the assessing authority that sum demanded or any part thereof is not due by him to the dealer, or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, as the case may be, to the assessing authority.

(8) Any tax or other dues payable to the State Government under this Act, or any amount of money which a person is required to pay to the assessing authority under sub-section (3) or for which he is

personally liable to the assessing authority under sub-section (6) shall, notwithstanding anything contained in any other law for the time being in force and subject to any special or general order of the State Government, be recoverable as arrears of land revenue, or in the prescribed manner by the assessing authority or any other officer authorised by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery--

(i) have all the powers which a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree;

(ii) have the power to require the assessing authority or such authorised officer, having jurisdiction in any other area to make such recovery if the defaulter is or has property, within the area of such other Assessing Authority or officer, and thereupon such other Assessing Authority or officer shall proceed to make recovery in the prescribed manner.

(9) Notwithstanding anything contained in sub-sections (1) and (1-A) and notwithstanding any judgment, decree or order of any Court, Tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act, is served upon a dealer by an assessing authority and an appeal, revision or other proceedings is filed in respect of such tax or dues, then--

(a) where as a result of such appeal, revision or other proceedings, the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice only in respect of the amount by which such tax or other dues are enhanced, and any proceeding, in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceedings may be continued from the stage at which it stood immediately before such disposal;

(b) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced--

(i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realised;

(ii) if any recovery proceedings are pending before any officer or authority other than the assessing authority, the assessing authority shall intimate such reduction to such officer or authority;

(iii) any proceeding initiated on the basis of the notice or notices served upon the dealer before the disposal of such appeal, revision or other proceedings, including any recovery proceedings, may be continued in relation to the amount so reduced from the stage at

which it stood immediately before such disposal;

(c) No fresh notice shall be necessary in any case where the amount of the tax or other dues is not enhanced (with reference to the amount assessed by the assessing authority) as a result of such appeal, revision or other proceedings.

(10) Any amount paid or deposited by, or recovered from, or refundable to a dealer under the provisions of this Act, shall first be adjusted towards the principal amount of tax, fee, penalty or other dues outstanding against him and the excess, if any, shall then be adjusted towards the interest, if any, due from him.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

2. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

8A. Registration Of Dealers And Realisation Of Tax By Dealers :-

(1) Every dealer--

(a) who sells any goods imported by him from outside Uttar Pradesh, the turnover whereof is liable to tax under sub-section (1) of Section 3-A; or

(b) who is liable to pay tax under any other provisions of this Act; or

(c) who would, but for any exemption made or granted under this Act, be liable to pay tax thereunder, provided his actual or estimated turnover for the assessment year is not less than the amount specified in or notified under sub-section (2) of Section 3; or

(d) who commences business during the course of an assessment year whose average monthly estimated turnover for the remainder of such year, or whose actual turnover in any month during the aforesaid period, is not less than one-twelfth of the amount specified in or notified under sub-section (2) of Section 3, shall apply for registration to the assessing authority in such form, in such manner and within such period as may be prescribed, and furnish alongwith such application satisfactory proof of deposit of a fee of 1[two hundred rupees]:

Provided that it shall not be necessary for a dealer, who deals exclusively in goods exempted from tax under Section 4 otherwise than under any condition imposed under the proviso thereto, to obtain registration under this Act.

Explanation.--For the purpose of clause (c) or clause (d), the turnover shall be the aggregate of the turnover of--

- (i) purchases or of sales, whichever is higher, of goods notified under sub-section (1) of Section 3-D;
- (ii) purchases liable to tax under any other provisions of the Act; and
- (iii) sales of all other goods.

(1-A) (a) (i) The assessing authority may, after such enquiry, as it considers necessary and subject to the provisions of Section 8-C and such other conditions, as may be prescribed in this behalf, allow the application and cause the dealer to be registered.

(ii) The registration shall, subject to the provisions of this Act and the Rules made thereunder, take effect from the date on which the dealer becomes liable to registration in case he applies for registration within the period prescribed under sub-section (1), and, in any other case, from the date on which he applies for registration:

Provided that if the dealer makes an application for registration after the expiration of the period prescribed and deposits in addition to the fee specified in sub-section (1), a late fee of 2[fifty rupees] for every month of the delay or part thereof, the assessing authority may, on being satisfied that there were sufficient reasons for the delay in applying for registration and after recording reasons therefore in writing, direct that the certificate of registration, if issued, shall take effect from the date on which the dealer became liable to registration under sub-section (1).

(b) The registration granted to a dealer shall remain in force so long as the dealer continues to be liable to registration under this Act and deposits a fee of 3[one hundred rupees] in the prescribed manner and before the commencement of the assessment year to which the fee relates, failing which the certificate of registration shall cease to remain in force:

Provided that if the dealer deposits such fee after the commencement of the assessment year to which the fee relates, together with a late fee of 1[fifty rupees] for every month of delay or part thereof, the assessing authority may, on being satisfied that there were sufficient reasons for the delay in depositing the fee in time and after recording his reasons therefor in writing direct that the certificate of registration shall be deemed to have remained in force as if no delay had occurred in depositing the fee:

Provided further that the registration granted to a dealer shall remain in force so long as the dealer continues to be liable to registration under the Act, if the dealer deposits an amount of 1[one thousand rupees] in lump sum as renewal fee in the prescribed

manner, before the renewal of registration becomes due; and the provisions of the preceding proviso shall apply, mutatis mutandis, to such lump sum deposit as it applies to deposit for annual renewal.

(1-B) A certificate of registration, granted under this section to a dealer, may be cancelled by the authority empowered to grant it, either on the application of the dealer or on its own motion, where such authority is satisfied that the dealer to whom it was granted has ceased to carry on business or has ceased to be subject to registration or has failed to pay the tax, penalty or other dues within three months of the date such tax, penalty or other dues became payable or where for any other sufficient reasons such authority considers it proper so to do.

Explanation.--The dissolution of a firm or association of persons or partition of Joint Hindu Family or transfer by a dealer of his business shall be deemed to be cessation of business within the meaning of this sub-section.

(1-C) The Assessing Authority empowered to grant a certificate of registration to a dealer may, after considering any information furnished under this Act or otherwise received and after making such inquiry as he may deem fit, amend from time to time any certificate of registration; and such amendment of the certificate of registration shall take effect:

(a) in the case of a change in the name, ownership or place of business, or opening of a new place of business, from the date of the event necessitating the amendment, whether or not information in that behalf is furnished within the time prescribed under Section 8-BB;

(b) in the case of any addition or modification in the description of any goods or class of goods in the certificate of registration, from the date of the event necessitating the amendment if information in that behalf is furnished within the time prescribed under Section 8-BB, and in any other case, from the date of receipt of request for such addition or modification by the Assessing Authority;

(c) in the case of deletion of any goods or class of goods, from the date of order of deletion:

Provided that where in consequence of a change in the ownership of a business, the liability to pay tax of a dealer ceases, the amendment of the certificate of registration shall take effect from the date on which information in respect of such change is furnished under Section 8-BB.

Explanation I.--Any amendment of a certificate of registration

under this sub-section shall be without prejudice to any liability for tax or penalty imposable, or for any prosecution for an offence under this Act.

Explanation II.--For the removal of doubts, it is hereby declared that where a registered dealer--

(a) affects a change in the name of his business; or
(b) is a firm and there is change in the constitution of the firm without dissolution thereof; or
(c) is a trustee of a trust and there is a change in the trustees thereof; or

(d) is a guardian of a ward and there is a change in the guardian; or

(e) is a "joint Hindu family" and the business of such family is converted into a partnership business with all or any of the coparceners as partners thereof,

then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the dealer or the firm, the constitution whereof is changed, or the new trustees, or the new guardian or, as the case may be, the partners of such partnership business, to apply for a fresh certificate of registration, and on information being furnished in the manner required by Section 8-BB, the certificate of registration shall be amended.

(1-D) A certificate of registration shall not be cancelled or amended by such authority as is mentioned in sub-section (1-B) and (1-C) on its own motion without the dealer being given a reasonable opportunity of being heard;

(2) (a) No person who is not a dealer registered under this Act, shall, in respect of any sale or purchase made by or through him, realise from any person any amount by way of trade tax on sale or purchase of goods or any amount in lieu of trade tax on sale or purchase of goods by giving it a different name or colour; and no dealer registered under this Act, shall, in respect of any sale or purchase made by or through him, realise from any person, other than a person to whom goods are sold by him, any amount by way of trade tax on sale or purchase of goods or any amount in lieu of trade tax on sale or purchase of goods by giving it a different name or colour.

(b) Where trade tax on sale of goods is payable on any turnover by a dealer (including a commission agent or any of the persons mentioned in the Explanation to clause (c) of Section 2), registered under this Act, such a dealer may recover an amount, equivalent to the amount of trade tax on sale of goods payable, from the person

to whom the goods are sold by him, whether on his own behalf or on behalf of his principal:

Provided that no dealer, from whom the assessing authority agrees to accept under Section 7-D a composition money in lieu of the amount of tax payable by him, shall realise from any person any amount by way of trade tax on sale of goods or an amount in lieu thereof by giving it a different name or colour.

(3) For the purposes of realisation of the tax by a registered dealer from a purchaser under sub-section (2), the price of goods sold by the dealer shall be rounded off to the nearest of rupee, that is to say, a fraction of fifty paise or over shall be counted as one rupee and any other fraction shall be ignored. Where the amount of tax to be so realised works out to a fraction of a rupee which is not a multiple of five paise, it shall be rounded off to the nearest multiple of five paise, that is to say, a fraction of more than two and a half paise shall be rounded off to the next multiple of five paise and any other fraction shall be ignored.

(4) (i) Without prejudice to the provisions of Section 12, any dealer, whether registered or not, to whom the provisions of sub-section (1) of this section or sub-section (1) of Section 18 are applicable, shall issue to the purchaser a cash memo of bill or challan, as the case may be, [with serial number, name, address, registration number and the date from which the registration number is effective, branches or godowns of the firm, printed from a printing press, which shall be duly filled, signed] and dated by himself or by his servant, manager or agent, in a case where the price of goods sold is more than fifty rupees and shall preserve its carbon copy for such period as may be prescribed;

(ii) Where a registered dealer realises trade tax on sale of goods from the purchaser, the cash memo or bill shall separately show the price of the goods sold and the amount realised as tax.

4[(5) Where any dealer transports any goods liable to tax, by a vehicle, he shall furnish to the transporter or driver or any other person-in-charge of the vehicle, a duly filled goods transport memo in the prescribed form and the transporter or the driver or the person-in-charge of the vehicle carrying such goods shall, on demand by an officer authorised under sub-section (2) of Section 13, produce such memo for his inspection. If the transporter or the driver or the person-in-charge of the vehicle fails to produce such memo on such demand it shall be presumed that:--

(a) the dealer has not accounted for such goods with a view to evade payment of tax; or

(b) if the dealer of such goods is not ascertainable, the transporter, and if the transporter is also not ascertainable, the owner or the person-in-charge of the vehicle, as the case may be, is transporting such goods in his own account;

and such dealer, transporter, owner or person-in-charge of the vehicle, as the case may be, shall be assessed, and be also liable to penalty in accordance with the provisions of this Act.]

1. Substituted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

2. Substituted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

3. Substituted by U.P. Act No. 11 of 2003, for the words "with printed serial number, signed", dated 17.12.2003 (w.e.f. 18.10.2002).

4. Inserted by U.P. Trade Tax (Amendment) Act, 2000 (Act No. 20 of 2000), dated 5.5.2000 (w.e.f. 6.3.2000).

8B. Provisional Registration In Certain Cases :-

1(1) Any person intending to establish a business in Uttar Pradesh, for the purpose of manufacturing goods for sale of a value exceeding one lakh rupees, or any person, as may be specified by the State Government by notification, intending to establish a business in Uttar Pradesh for the purpose of selling goods of a value exceeding one and half lakh rupees in a year, may, notwithstanding that he is not required to apply for registration under Section 8-A, make an application to the Assessing Authority in such form and manner as may be prescribed, for provisional registration.

(2) The application for provisional registration shall be verified in the prescribed manner, and shall be accompanied by satisfactory proof of the payment of a fee of one hundred rupees for the first assessment year or part thereof, and fifty rupees for every subsequent assessment year or part thereof, for which it has been made.

(3) If the Assessing Authority, after making such inquiry as it may consider necessary, is satisfied as to the bona fide intention of the person making the application, it may grant a provisional certificate of registration in the prescribed form, on such person furnishing such security as the Assessing Authority may consider necessary. The provisions of Section 8-C shall, mutatis mutandis, apply to the security or additional security demanded under this sub-section.

(4) A provisional certificate of registration granted under this section shall be in force for such period as may be specified therein, and the provisions of Section 8-A shall, so far as may be, apply in respect thereof:

Provided that the Assessing Authority may, for reasons to be recorded in writing and on payment of the fee specified in sub-section (2), extend the period specified in the certificate of registration.

(5) Every person who has been granted a provisional certificate of registration under this section shall, for the purposes of this Act, be deemed to be a registered dealer and be liable to pay tax under this Act, anything regarding the minimum turnover contained in sub section (2) of Section 3 or Section 18 notwithstanding.

(6) If a person who has been granted a provisional certificate of registration under this section fails to start selling goods manufactured by him within the period specified in the certificate, or within the period extended by the Assessing Authority, as the case may be, he shall, if he has purchased raw materials on payment of tax at concessional rate or without payment of tax in accordance with sub-section (1) of Section 4-B, be liable to pay as penalty an amount equivalent to the difference between the amount of tax, on the sale or purchase of such raw materials at the full rate applicable thereto under Section 3-A or Section 3-D, as the case may be, and the amount of tax, if any, paid in accordance with sub-section (1) of Section 4-B:

Provided that no penalty shall be imposed by the Assessing Authority under this sub-section except after a reasonable opportunity of being heard has been given to such person.

1. Substituted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

8BB. Information To Be Furnished Regarding Change Of Business :-

If any dealer, to whom the provisions of Section 8-A or Section 8-B apply:--

(a) transfers his business or any part thereof by sale, lease, leave, licence, hire or in any other manner whatsoever, or otherwise disposes of his business or any part, thereof; or

(b) acquires any business, whether by purchase or otherwise; or

(c) effects or comes to know of any other change in the ownership or constitution of his business; or

(d) discontinues his business or changes his place of business or

warehouse or opens a new place of business or warehouse; or
(e) changes the name, style or nature of his business or effects any change in the class or description of goods in which he carries on his business, as specified in his certificate of registration; or
(f) enters into partnership or other association in regard to his business; or
(g) starts a new business or joins another business either singly or jointly with other persons; or
(h) in the case of a company incorporated under a statute effects any change in the constitution of Board of Directors; or
(i) effects any change in the particulars furnished in application for the grant of any certificate under Section 4-A or Section 4-B or Section 8-A or Section 8-B.
he shall, within thirty days of the occurring of any of the events aforesaid, inform the Assessing Authority in the form and manner as may be prescribed.

8C. Security In The Interest Of Revenue :-

1[(1) Omitted]

1[(1-A) Omitted]

2[(2) Where it appears necessary to the Assessing Authority so to do--

(a) for the proper realisation of any tax, penalty or other sums due or payable under this Act; or

(b) for the proper custody or use of forms prescribed under this Act or the Rules framed thereunder; or

(c) as a condition for the grant or, as the case may be, renewal or the continuance in effect of a recognition certificate or certificate of registration or provisional registration,

it may, by an order in writing and for reasons to be recorded therein, direct, before the grant or, as the case may be, renewal of such certificate or at any time while such certificate is in force, that the dealer or the person concerned shall, furnish, in the prescribed manner and within such time, as may be specified in the order, such security or, if the dealer or the person concerned has already furnished such security, such additional security of any nature, as may be specified, for all or any of the aforesaid purposes:]

(3) No dealer or the person concerned shall be required to furnish any security or additional security under sub-section (2) by the Assessing Authority unless he has been given an opportunity of being heard, and the amount of such security or additional security,

that may be required to be furnished by any dealer shall also in no case exceed the tax payable, in accordance with the estimate of the Assessing Authority, on the turnover of the dealer for the assessment year in which such security is required to be furnished.

(3-A) Notwithstanding anything contained in sub-section (2) or subsection (3), the Commissioner may, in respect of any goods notified by the State Government in this behalf, by a general order in writing, direct that a cash security of such amount, as may be specified in such order, shall be required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.

(4) Where the security furnished by a dealer or the person concerned under sub-section (2) is in the form of a surety bond and any surety dies or becomes insolvent, the dealer or the person concerned shall, within thirty days of the occurrence of any of the aforesaid events, inform the Assessing Authority granting the certificate under Section 4-B or Section 8-A, or Section 8-B or issuing the forms referred to in clause (b) of sub-section (2), as the case may be, and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(5) The Assessing Authority may, by order and for good and sufficient cause, forfeit the whole or any part of the security furnished by a dealer or the person concerned--

(a) for realising any amount of tax, penalty or other amount payable by the dealer or the person concerned ; or

(b) if the dealer or the person concerned is found to have misused any of the forms referred to in sub-section (2) or to have failed to keep them in proper custody:

Provided that no order shall be passed under this sub-section without giving the dealer or the person concerned an opportunity of being heard.

(6) Where by reason of an order under sub-section (5) the security furnished by any dealer or the person concerned is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be directed by assessing authority.

(7) The Assessing Authority may--

(a) refuse to grant or, as the case may be, renew the recognition certificate or the certificate of registration or provisional registration ; or

(b) suspend any such certificate already issued ; or

(c) refuse to issue any of the forms referred to in sub-section (2) or

sub-section (3-A) ;

to any dealer or the person concerned, who has failed to comply1[* *] with an order under sub-section (2) or sub-section (3-A), or with the provisions of sub-sections (4) or sub-section (6), until the dealer or the person concerned has complied with such order or such provisions, as the case may be:

Provided that no order under Clause (a) or Clause (b) above shall be passed without giving the dealer or the person concerned an opportunity of being heard.

(8) The assessing authority may, on application by the dealer or the person concerned, order the return of the surety bond or refund any amount or part thereof deposited by way of security by the dealer or the person concerned under this section or under Section 10, if it is not required for the purposes of this Act.

(9) An appeal under Section 9 shall lie against an order passed under this section.

(10) Any person aggrieved by an order of the appellate authority may, within ninety days of the service of the order on him but after furnishing the security, file an appeal under Section 10.

(11) The provisions of this section shall mutatis mutandis, apply in relation to the security required to be furnished under the order of any authority under this Act or the Court.

1 . Omitted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

2. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

3. The words "with the provisions of sub-section (1) or" omitted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

8D. Tax Deduction From The Amount Payable To Works Contractor :-

(1) Notwithstanding anything contained in sub-section (2) of Section 8-A, every person responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in any other form) in pursuance, of a works contract, not being a building contract of such class or value as may be notified by the State Government in public interest in this behalf, shall, at the time of making such payment to the contractor, either in cash or in any

other manner, deduct an amount equal to four per centum of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract:

Provided that the 1[Assessing Authority] may, if satisfied, that it is expedient in the public interest so to do and for reasons to be recorded in writing order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at lesser rate:

Provided further that where any deduction has been made by a contractor from the payments made to his sub-contractor in accordance with sub-section (2), the amount of such payments shall be deducted from the amount on which deduction is to be made under this sub-section:

2[Provided also that where the goods referred in this sub-section are covered by Sections 3, 4 or 5 of the Central Sales Tax Act, 1956, no amount shall be deducted under this sub-section in respect of such goods.]

(2) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, for the transfer of property in goods, whether as goods or in some other form, involved in the execution, whether wholly or in part, of the, work undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or by any other mode, deduct an amount equal to four percent of such payment or discharge, purporting to be a part of full amount of the tax payable under this Act on such transfer from the bills or invoices raised by the sub-contractor as payable by the contractor:

Provided that no deduction under this sub-section shall be made on the amount on which deduction has already been made under subsection (1).

(3) The amount deducted under sub-section (1) or sub-section (2) shall be deposited into the Government Treasury by the person making such deduction before the expiry of the month following that in which deduction is made.

3[(4) The person making such deductions under sub-section (1) or sub-section (2) shall, at the time of payment or discharge furnish to the person, from whose bills or invoice such deduction is made, a certificate in such form and manner and within such period as may be prescribed.]

4[(4-A) The person responsible for making the payment to the contractor or sub-contractor shall submit such return of such

payments at such intervals, within such period, in such form and verified in such manner, as may be prescribed, but the assessing authority may in its discretion for reasons to be recorded, extend the date for the submission of the return by such person.]

(5) Any deduction made in accordance with the provisions of this section and credited into the Government Treasury shall be treated as a payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and credit shall be given to him for the amount so deducted on the production of the certificate, referred to in sub-section (4), in the assessment made for the relevant assessment year.

(6) If any such person, as is referred to in sub-section (1) or subsection (2), fails to make the deduction or, after deducting, fails to deposit the amount so deducted, as required by sub-section (3), the Assessing Authority may, after giving to such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section but not so deducted and, if deducted, not so deposited into the Government Treasury.

(7) Without prejudice to the provisions of sub-section (6), if any such person fails to make the deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of eighteen percent per annum on the amount deductible under this section but not so deducted and, if deducted, not so deposited, from the date on which such amount was deductible to the date on which such amount is actually deposited.

(8) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (7) shall be a charge upon all the assets of the person concerned.

(9) Payment by way of deduction in accordance with sub-section (1) or sub-section (2) shall be without prejudice to any other mode of recovery of tax due under this Act from the contractor or sub-contractor, as the case may be.

Explanation.--For the purposes of this section, Assessing Authority means the officer having jurisdiction over the place where the place of business or residence of the person is located.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 29.1.2001).

2. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

3. Substituted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

4. Inserted by U.P. Act No. 26 of 1998 (w.e.f. 27.7.1998).

8E. Deduction By Agent :-

1[Every agent referred to in sub-clause (v) of clause (c) of Section 2 who, for the dealer residing outside the State, is responsible for making payment to a person who is not treated as a dealer under the proviso to clause (c) of the said section, for discharge of any liability on account of the valuable consideration payable for the sale of agricultural or horticultural produce grown by that person or grown on any land in which such person has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, or for the sale of poultry or dairy products from fowls or animals kept by him, shall at the time of making such payment deduct an amount equal to four per cent or at such lower rate notified under Section 3-D and the provisions of sub-sections (3) to (9) of Section 8-D shall mutatis mutandis apply in respect thereof.]

1. Inserted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 30.4.2001).

9. Appeal :-

(1) Any dealer or other person aggrieved by an order made by the Assessing Authority, other than an order mentioned in Section 10-A or sub-section (6) of Section 13-A may, within thirty days from the date of service of the copy of the order, appeal to such authority as may be prescribed:

Provided that where the disputed amount of tax, fee or penalty does not exceed one thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the Appellate Authority may decide the appeal accordingly.

(1-A) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

(1-B) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sales or purchase, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceedings under this Act, whichever is greater.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The Appellate Authority may, after calling for and examining the relevant records and after giving the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (1-A),--

(a) in the case of an order of assessment or penalty,--

(i) confirm or annul such order; or

(ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or

(iii) set aside the order and direct the Assessing Authority to pass a fresh order after such inquiry as may be specified; or

(iv) direct the Assessing Authority to make such inquiry and to submit its report within such time as may be specified in the direction, or within such extended time as it may allow from time to time, and on the expiration of such time the Appellate Authority may, whether the report has been submitted or not, decide the appeal in accordance with the provisions of the preceding sub clauses; or

(b) in the case of any other order confirm, cancel or vary such order:

Provided that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit, where the appellant applies for withdrawal of the same and no request for enhancement of the assessment or penalty has been made:

1[Provided further that the appellate authority shall have no power to stay the operation of an order made under sub-section (1-B) or subsection (1-C) of Section 8-A.]

(3-A) The Appellate Authority:

(a) shall, in a case where the appellant makes a request under the proviso to sub-section (1); and

(b) may, in any other case, on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard,

stay the realisation of the amount of tax, fee or penalty payable by the appellant till the disposal of the appeal:

Provided that--

(i) no application under clause (b) of this sub-section shall be

entertained unless it is filed alongwith the memorandum of appeal under sub-section (1);

(ii) 2[* * *]

(iii) no stay order under this sub-section shall remain in force for more than thirty days, unless the appellant, has, before the expiry of the said period, furnished security to the satisfaction of the Assessing Authority for payment of the amount; the realisation whereof has been stayed.

Explanation.--Rejection of a similar application for stay by any authority for want of jurisdiction shall not by itself preclude the Appellate Authority from entertaining such application.

(4) An order passed under this section shall, subject to the provisions of this Act, be final.

(4-A) No appeal or revision shall lie against an order passed in appeal which has been disposed of summarily.

(5) If the amount of tax assessed, fee levied or penalty imposed is reduced by the Appellate Authority under sub-section (3), he shall order the excess amount of tax, fee or penalty, if realised, to be refunded.

(6) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

(7) The Appellate Authority shall be under the superintendence and control of the Commissioner:

Provided that in the exercise of such superintendence and control, no orders, instructions or directions shall be given by the Commissioner so as to interfere with the discretion of the Appellate Authority in the exercise of its appellate functions.

Explanation.-- 3[* * *]

1. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

2. Omitted by U.P. Act 11 of 1997.

3. Omitted by U.P. Act 11 of 1997.

10. Tribunal :-

(1) There shall be a Tribunal consisting of such members including a President, as the State Government may, from time to time, deem it necessary to appoint from amongst:

(a) the persons who are qualified to be Judges of the High Court, and

(b) the persons belonging to the Uttar Pradesh Trade Tax Service, who hold or have held a post not below the rank of 1 [Joint

Commissioner]:

Provided that--

(i) Where the Tribunal consists of one or more persons, who is or are member or members of the U.P. Higher Judicial Service, then he or the senior most amongst them, shall be appointed as the President.

(ii) No person shall be appointed from amongst advocates unless he has paid income tax on income from such profession (exclusive of all other incomes) in each of the five consecutive years preceding such appointment.

(1-A) The State Government may prescribe such other qualifications or conditions for the appointment of the President and other members of the Tribunal, as it may deem fit.

(1-B) The provisions of Rule 56 of the Uttar Pradesh Fundamental Rules shall continue to apply to every member of the Tribunal including the President, whether appointed before or after the commencement of the Uttar Pradesh Sales Tax (Second Amendment and Validation) Act, 1983, as they apply to any other Government servant:

Provided that a member of the Tribunal including the President appointed before the commencement of the Uttar Pradesh Sales Tax (Second Amendment and Validation) Act, 1983, may continue as such till he attains the age of sixty years.

(2) Any person aggrieved by an order passed under Section 9 (other than an order referred to in sub-section (4-A) of that section), Section 10-B, sub-section (2-B) or sub-section (3) of Section 4-A, a decision under Section 35, a direction under the proviso to sub-section (6) of Section 13-A, or an order granting or refusing to grant an eligibility certificate within the meaning of clause (d) of sub-section (2) of Section 4-A, may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:

Provided that where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly.

Explanation.--For the purposes of this sub-section, the expression any person in relation to any order passed by an authority other than the Commissioner, includes the Commissioner and, in relation to any order passed by the Commissioner, includes the State Government ;

(2-A) The manner and procedure of summary disposal of appeals shall be such as may be prescribed.

(3) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

(4) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.

(5) The Tribunal may, if it has not already dismissed the appeal under sub-section (4), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (2-A):

(a) confirm, cancel or vary such order, or

(b) set aside the order and direct the Assessing or Appellate or Revising Authority or the Commissioner or the officer granting the eligibility certificate, as the case may be, to pass a fresh order, after such further enquiry, if any, as may be specified, or

(c) order such amount of tax, fee or penalty or other money, as may have been realised in excess of the due amount to be refunded according to the provisions of this Act.

Explanation.--The power to vary an order referred to in Clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty.

(6) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved alongwith the memorandum of such appeal, after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceedings for re-assessment under the order appealed against, till the disposal of the appeal:

Provided that--

(i) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount in addition to the amount required to be deposited under sub-section (1-B) of Section 9.

(ii) the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of Clause (i) regarding payment of the one-third of such disputed amount.

2[(iii) the Tribunal shall have no power to stay the operation of an order of the assessing authority or appellate authority made under sub-section (1-B) or sub-section (1-C) of Section 8-A]

(7) 3[* * *]

(8) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the Assessing Authority concerned for the payment of the outstanding amount.

(9) The members of the Tribunal shall sit in such benches of one, two or more members, as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (10) and the rules, be allotted to them, by order, or in accordance with the directions of the President of the Tribunal.

(10) (a) An appeal against the order of Appellate Authority under Section 9 shall be heard and disposed of--

(i) by a bench of two members, where such order is passed by an Additional Commissioner (Appeals) or the amount of tax, fee or penalty in dispute exceeds 4[two lakh rupees] ;

5[(ii) by a single member bench, in any other case, or in a case where an appeal not being an appeal against the order of an Additional Commissioner (Appeal), preferred before July 9, 1997 was 6[pending on May 1, 2003 and the amount of tax, fee or penalty in dispute does not exceed rupees two lakh;]

(b) An appeal against an order passed under Section 10-B or against a direction given under the proviso to sub-section (6) of Section 13-A shall be heard and disposed of by a bench of two members.

(c) An appeal against an order under sub-section (2-B) or sub-section (3) of Section 4-A or a decision given under Section 35, or an order granting or refusing to grant an eligibility certificate within the meaning of clause (d) of sub-section (2) of Section 4-A, shall be filed before the President and shall be heard and disposed of by a bench of three members.

(d) The President may, if he so thinks fit,--

(i) direct an appeal to be heard and decided by a larger bench;

(ii) transfer an appeal from one bench to another bench.

(e) In a case before a Bench consisting of two or more members, any order other than an order finally disposing of the case, may be passed by any one of the members constituting the bench.

(10-A) All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where anyone or more of such appeals have been heard and decided earlier, if the Bench hearing the remaining appeals considers that such decision may be a legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given--

(a) by a smaller Bench or a Bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;

(b) by a larger Bench, refer such remaining appeals to such larger Bench having jurisdiction, and thereafter such larger Bench may recall such earlier decision and proceed to decide all the appeals together.

(11) The place of sitting and procedure of, and the manner of presenting appeals and other documents to the Tribunal shall, subject to the rules, be such as the Tribunal may deem fit to adopt.

(12) The decision of case heard by bench, shall be in accordance with the opinion of the majority. Where the members are equally divided, the President of the Tribunal may:

(a) if he was not a member of such bench, given his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinions; or

(b) form a larger bench.

1. Substituted by U.P. Act No. 11 of 2003, for the words "Deputy Commissioner", dated 17.12.2003(w.e.f. 18.10.2002).

2. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

3. Omitted by U.P. Act No. 2 of 1980.

4. Substituted by U.P. Act No. 11 of 2003, for the words "fifty thousand rupees", dated 17.12.2003 (w.e.f. 6.5.2003).

5. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

6. Substituted by U.P. Act No. 11 of 2003, for the words and figures, "pending on March 5, 2001 and the amount of tax, fee or penalty in dispute does not exceed rupees fifty thousand", dated 17.12.2003 (w.e.f. 6.5.2003).

10A. Orders Against Which No Appeal Or Revision Shall Lie :-

No appeal and no application for revision shall lie against--

(a) an order or notice under Section 7 or Section 21 initiating an inquiry for assessment or re-assessment;

(b) any order or action under Section 13 or under sub-section (1) or sub-section (1-A) of Section 13-A or under sub-section (6) of Section 28-A.

10B. Revision By Commissioner :-

(1) The Commissioner or such other officer not below the rank of 1[Joint Commissioner], as may be authorised in this behalf by the State Government by notification, may call for and examine the record relating to any order (other than an order mentioned in Section 10-A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety such order, and may pass such order with respect thereto, as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed--

(a) to revise an order, which is or has been the subject-matter of an appeal under Section 9, or an order passed by the Appellate Authority under that section;

Explanation.--Where the appeal against any order is withdrawn or is dismissed for non-payment of the fee payable under Section 32 or for non-compliance of sub-section (1) of Section 9, the order shall not be deemed to have been the subject-matter of an appeal under Section 9;

(b) before the expiration of sixty days from the date of the order in question;

(c) after the expiration of four years from the date of the order in question or after the expiration of two years from the date of commencement of Section 19 of the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1978 whichever is later.

1. Substituted by U.P. Act No. 11 of 2003, for the words "Deputy Commissioner", dated 17.12.2003 (w.e.f. 18.10.2002).

11. Revision By High Court In Special Cases :-

(1) Any person aggrieved by an order made under sub-section (4) or sub-section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

(2) Any person aggrieved by an order made by the Revising

Authority or an Additional Revising Authority refusing to state the case under this section, as it stood immediately before April 27, 1978, hereinafter referred to as the said date, may, where the limitation for making an application to the High Court under sub-section (4), as it stood immediately before the said date, has not expired, likewise apply for revision to the High Court within a period of ninety days from the said date.

(3) Where an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, was rejected by the Revising Authority or an Additional Revising Authority on the sole ground that the period of one hundred and twenty days for making the reference, as specified in the said sub-section (1), has expired, such applicant may apply for revision of the order made under sub-section (2) of Section 10, to the High Court within sixty days from the said date on the ground that the case involves any question of law.

(4) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.

(5) Every application for making a reference to the High Court under sub-section (1) or sub-section (3), as they stood immediately before the said date, pending before the Revising Authority or an Additional Revising Authority on the said date, shall stand transferred to the High Court. Every such application upon being so transferred and every application under sub-section (4), as it stood immediately before the said date, pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6) Where the High Court has before the said date, required the Revising Authority or an Additional Revising Authority to state the case and refer it to the High Court under sub-section (4), as it stood immediately before the said date, such authority shall, as soon as may be, make reference accordingly. Every reference so made, and every reference made by such authority before the said date in compliance with the requirement of the High Court under sub-section (4), as it stood before the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6-A) Where the Revising Authority or an Additional Revising Authority has, before the said date, allowed an application under sub-section (1) or sub-section (3), as they stood immediately

before the said date, and such authority has not made reference before the said date, it shall, as soon as may be, make reference, to the High Court. Every such reference, and every reference already made by such authority before the said date and pending before the High Court on the said date, shall be deemed to be an application for revision under this section and dispose of accordingly.

(7) Where an application under this section is pending, the High Court may, on an application in that behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due, under the order sought to be revised:

Provided that no order for the stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(8) The High Court shall, after hearing the parties to the revision, decide the question of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(8-A) All applications for revision or orders passed under Section 10 in appeals arising out of the same cause of action in respect of the same assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining application, it may recall such earlier decisions and may thereafter proceed to hear and decide all the applications together.

(9) The provisions of Section 5 of the Limitation Act, 1963, shall, mutatis mutandis, apply to every application, for revision under this section.

Explanation.--For the purpose of this section, the expression "any person" includes the Commissioner and the State Government.

11A. Section 11A :-

1[* * *]

1. Omitted by U.P. Act No. 11 of 1978.

11B. Section 11B :-

1[* * *]

1. Omitted by U.P. Act No. 7 of 1959.

12. Accounts To Be Maintained By Dealers :-

(1) Every dealer including a dealer exempted from tax on payment of fee under any provision of the Act, shall keep and maintain a true and correct account showing the value of the goods sold and bought by him, and in case the accounts maintained in the ordinary course do not show the same in an intelligible form, he shall maintain true and correct account in such form, as may be prescribed in this behalf:

Provided that this section shall not apply to such dealers as are not liable to taxation under this Act.

(2) A manufacturer liable to pay tax under this Act shall, in addition to the accounts referred to in sub-section (1), maintain stock books in respect of raw materials as well as the products obtained at every stage of production:

Provided that in the case of any class of manufacturers, the aggregate of whose turnover, as referred to in Clauses (a) to (d) of sub-section

(2) of Section 3, in an assessment year does not exceed five lakh rupees, the Commissioner, and in any other case the State Government, may relax the requirements of this sub-section subject to such conditions and restrictions as he or it may deem fit to specify.

(3) The accounts and the stock books required to be maintained under sub-section (1) or sub-section (2) shall be preserved by the dealer or, as the case may be, by the manufacturer for such period as may be prescribed.

12A. Burden Of Proof :-

(1) In any assessment proceedings, when any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of circumstances bringing the case within any of the exceptions, exemptions or reliefs mentioned in Section 3-A, Section 3-D, Section 4, Section 4-A, Section 4-B or Section 7-D shall lie upon him and the assessing authority shall presume the absence of such circumstances.

(2) Where any dealer claims that he is not liable to tax under

Section 3-D in respect of any transaction of purchases:--

- (a) any declaration made or certificate issued, by him admitting to be the first purchaser and accepting the liability to pay trade tax on purchase of goods, shall be conclusive evidence of his liability to pay the trade tax on purchase of goods in respect of the transaction specified in such declaration or certificate;
- (b) the burden of proving the existence of facts and circumstances on the basis of which he claims such exemption from liability shall lie upon him, and in particular, the dealer shall also be liable to disclose full particulars of the person from whom he has purchased the goods in such transaction of purchase; and
- (c) no such claim shall be accepted unless reasonable opportunity of being heard has been given to the person, whose particulars are disclosed by such dealer.

12B. Additional Evidence On Appeal :-

The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the Appellate Authority or the Tribunal except where the evidence sought to be adduced is evidence, which the Assessing Authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the 1[Assessing Authority].

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

13. Power To Order Production Of Accounts And Powers Of Entry And Inspection :-

(1) Any officer empowered by the State Government in this behalf may, for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy, the same and make such enquiries from the dealer relating to his business, as may be necessary:

Provided that books, documents and accounts of a period more than four years prior to the assessment year shall not be so required, unless in any special case, for reasons to be recorded,

such officer considers it necessary.

(2) All books, documents and accounts maintained by any dealer in the ordinary course of his business, the goods in his possession, and his place of business or vehicle shall be open to search and inspection at all reasonable times by such officers, as may be authorised by the State Government in this behalf.

(3) If the officer authorized under sub-section (2) has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or documents, he may seize such account, register or document, as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be considered necessary; provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him, the number of places where the signature and seal of such officer have been affixed on each account, register or document.

(3-A) Notwithstanding anything contained in sub-section (3), the officer seizing any account, register or other document under that subsection may for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the years for which they are relevant, as he deems necessary.

(4) For the purposes of this section, the officer authorised thereunder may enter and search any place of business or vehicle, or any other building or place where he has reason to believe that the dealer keeps or is, for the time being, keeping, any books, registers, documents, accounts or goods relating to his business: Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner in writing.

(4-A) An officer authorised to act under sub-section (2)--

(i) shall have the power to seal the place of business or vehicle, or any box, almirah or other receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or the person in occupation or incharge of such place of business or vehicle or box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so;

(ii) where the owner or other person in occupation or incharge of the place of business or vehicle or of the box, almirah or other receptacle found on the place of business or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such place of business or vehicle or box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.

(4-B) 1[* * *]

(4-C) No person shall tamper with any seal put under sub-section (4-A).

(5) Any officer empowered under sub-section (1) may require any person,--

(a) who transports or holds in custody, for delivery to or on behalf of any dealer, any goods, to give any information likely to be in his possession in respect of such goods or to permit inspection thereof, as the case may be,

(b) who maintains or has in his possession any account, book or document relating to the business of a dealer, to produce such account, book or document for inspection.

(6) Every person transporting goods by any public service motor vehicle or by any vessel and every forwarding agent shall submit to the assessing authority of the area from which the goods are despatched, such returns, as may be prescribed, of all goods transported or forwarded by him. The Assessing Authority concerned shall have the power to call for and examine the books of account or other documents in the possession of such transporter or agent with a view to verify the correctness of the returns submitted, and that transporter or agent shall be bound to furnish the books of account or other documents, when so called for.

(7) The provisions of Sections 100 and 165 of the Code of Criminal Procedure, 1973 shall, as far as may be, apply in relation to any entry, or search or inspection under this section, as they apply in relation to any inspection or search under the said Code.

Explanation.--In calculating the period specified in sub-section (3), the period during which proceedings under this Act remain stayed under the orders of any Court or authority shall be excluded.

1. Omitted.

Section 13-A - Power to seize

(1) An officer authorised under sub-section (2) of Section 13 shall have the powers to seize any goods--

(i) which are found in a dealer's place of business or vehicle or any other building or place; or

(ii) which, such officer has reason to believe to belong to the dealer and which are found in any place of business, or vehicle or building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in the course of his business:

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two respectable witnesses.

(1-A) Where any officer empowered by the State Government in this behalf has reason to believe that the goods found in any vehicle, building or place are not traced to any bona-fide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.

(2) An officer seizing the goods under sub-section (1) shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso to sub-section (1), along with other documents relating to the seizure to the Assessing Authority concerned, who shall take action for the assessment of tax and imposition of penalty and for the recovery thereof in accordance with the provisions of this Act.

(3) The said assessing authority shall serve on the dealer or, as the case may be, the person in charge of the goods at the time of seizure (hereinafter in this section referred to as the "person in charge") a notice in writing requiring him to show cause, why a penalty should not be imposed.

(4) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in sub-section

(1), it shall pass an order imposing a penalty not exceeding forty percent of the value of such goods, as he deems fit.

(5) A copy of the order imposing penalty under sub-section (4) shall be served on the dealer or, as the case may be, the person-in-charge.

(6) The officer seizing the goods shall serve on the dealer or, as the case may be, the person-in-charge an order in writing mentioning the facts of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on deposit whereof in cash, the goods so seized may be released in favour of the dealer or, as the case may be, the person-in-charge:

Provided that the Commissioner or such other officer, not below the rank of an 1 [Deputy Commissioner], as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or furnishing security in such nature other than cash, as he may deem fit.

(7) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (6) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the Assessing Authority shall cause the goods to be sold in such manner as may be prescribed and apply the sale proceeds thereof, towards the penalty and, subject to the provisions of Section 29, refund the balance, if any, to the dealer or, as the case may be, to the person-in-charge.

(8) Where the officer seizing the goods, before forwarding the list and other documents referred to in sub-section (2), or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in the prescribed manner. The sale proceeds of such goods shall be adjusted towards the expenses of sales tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, to the person-in-charge in accordance with the provisions of sub-section (7).

(9) 1[***]

(10) If the amount deposited under sub-section (6) is more than the amount of penalty imposed under sub-section (4), the excess amount so deposited shall be refunded to the dealer or, as the case may be, the person-in-charge by the authority with whom it was so deposited, in accordance with the provisions of Section 29.

1. Substituted by U.P. Act No. 11 of 2003, for the words "Assistant Commissioner", dated 17.12.2003(w.e.f. 18.10.2002).

Section 13-AA - Power to acquire goods in case of under valuation

1[(1) Where the assessing authority or an officer empowered under Section 13-A, is satisfied that any dealer bringing, importing or otherwise receiving into the State from any place outside the State, any goods has, with a view to evade payment of tax, shown the estimated sale value of such goods in the declaration form for import accompanying such goods less than the fair price of such goods or has not shown the estimated sale value in such form and the presumed sale value of such goods is less than the fair price of such goods, such authority or officer may acquire such goods on payment of 105 per centum of such estimated sale value or presumed sale value, as the case may be, to the dealer.

(2) The power under sub-section (1) shall not be exercised unless the dealer is afforded an opportunity of being heard.

(3) The notice printed on the declaration form shall be deemed to be a notice for the purpose of sub-section (2) and no fresh notice shall be required to be given for hearing to the dealer.

(4) The goods acquired under sub-section (1) shall be disposed of in such manner as may be specified by the Commissioner.

Explanation.--For the purposes of this section,--

(i) "fair price" shall mean the value, determined in such manner as may be specified by the Commissioner.

(ii) "presumed sale value" shall be equal to 110 per centum of the purchase price shown in the declaration form.]

1. Inserted by U.P. Trade Tax (Amendment) Act, 2000 (U.P. Act No. 20 of 2000) dated 5.5.2000 (w.e.f. 6.3.2000).

Section 13-B - Power to seek assistance from police, etc.

An officer exercising power under the provisions of Section 13, Section 13-A or Section 28-A, may take the assistance of police or other officer or officers of the State.

14. Offences And Penalties :-

(1) Any person who--

(a) fails to pay without reasonable cause within the time allowed the tax assessed on him under this Act ; or

(b) 1[* * *]

(c) being liable to pay the tax under this Act, carries on business as a dealer without applying for registration under and in accordance with Section 8-A ; or

(d) refuses to permit or refuses or neglects to produce for inspection or examination any book, document or account, or refuses to allow copies to be taken in accordance with the provisions of Section 13 ; or

(e) acts in contravention of the provisions of this Act or the rules made thereunder ;

shall, without prejudice to his liability under any other law for the time being in force, and in addition to the recovery of tax or any other dues payable by him under this Act, on conviction, be punishable with fine which may extend to two thousand rupees, and where the default is a continuing one, to a further fine which may extend to Rs. 50 for every day after the first day during which the default continues:

Provided that, in the event of a second or subsequent conviction under clause (a) of this sub-section, the minimum punishment to be awarded shall be a fine of five hundred rupees or the amount of tax involved in the offence, whichever is less.

(2) Notwithstanding anything contained in sub-section (1), any person who wilfully--

(a) submits a false return of turnover under this Act; or

(aa) uses arty goods purchased after payment of the tax at concessional rate, or without payment of any tax, under Section 4-B for a purpose other than that for which a recognition certificate was granted under that section, or otherwise disposes of such goods; or

(aaa) being liable to pay the tax under this Act, fails to submit, without reasonable cause, return of his turnover under the provisions of this Act or the rules made thereunder or fails to deposit the tax before or alongwith the return as provided in sub-section (1-A) of Section 7; or

(b) maintains or produces false accounts, registers or documents; or

(bb) 2[* * *]

(c) issues or furnishes a false certificate or declaration, by reason of which a tax on sale or purchase ceases to be leviable under this Act or the rules made thereunder; or

- (d) makes a false verification or declaration on an application for registration or in connection with any other proceeding under this Act; or
 - (e) evades payment of the tax which he is liable to pay under this Act; or
 - (f) obstructs or prevents an officer empowered under Section 13 from performing any of the functions specified in subsections (2), (3), (4), (4-A) and clause (a) of sub-section (5) of Section 13 and in sub-section (1) of Section 13-A ; or
 - (ff) tampers with any seal put under sub-section (4-A) of Section 13; or
 - (g) demands or charges on the sale or purchase of any goods any tax, not due under the provisions of this Act; or
 - (gg) obstructs or prevents the officer-in-charge of a check-post or barrier established under Section 28 from performing any of his functions under this Act ; or
 - (h) refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnishes information which is false in any material particulars; or
 - (i) carries on or continues to carry on business as a dealer without furnishing the security demanded under Section 8-C,
- shall without prejudice to his liability under any other law for the time being in force, and in addition to the recovery of tax or any other dues payable by him under this Act, on conviction, be punishable with simple imprisonment which may extend to one year or with fine, or both, and where the default is a continuing one, to a further fine which may extend to Rs. 100 for every day after the first day during which the default continues:

Provided that in the event of a second or subsequent conviction, the minimum punishment to be awarded shall be simple imprisonment for a term of three months.

(3) No Court shall take cognizance of any offence under this Act or under the rules made thereunder except with the previous sanction of the Commissioner, and no Court inferior to that of a Magistrate of the first class shall try any such offence.

1.Deleted by U.P. Act 22 of 1964.

2 Omitted by U.P. Act 1 of 1973.

14A. Section 14A :-

14B. Offence By Companies :-

(1) If the person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to the company for the conduct of its business at the time of commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that this offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be "proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

15. Composition Of Offences :-

The assessing authority may accept from any person, who has committed or is reasonably suspected of having committed an offence under this Act by way of composition of such offence--

(a) where the offence consists of a failure to pay any tax recoverable under this Act, a sum of money not exceeding double the amount of tax in addition to the tax so recoverable ;

(b) where the offence consists of an evasion of any tax recoverable under this Act, a sum of money not exceeding Rs. 500 or double the amount of tax recoverable, whichever is greater, in addition to the amount of the tax recoverable ;

(bb) where the offence consists of import or transport or abetment to import or transport of any goods in contravention of the provisions of Section 28-A, a sum of money not less than the amount of tax involved under any of the provisions of this Act, but not more than three times of the amount of such tax or forty

percent of the value of goods involved, whichever is higher ;

(c) in other cases, a sum not exceeding five thousand rupees.

Explanation.--For the purposes of this section the assessing authority includes an officer not below the rank of Trade Tax Officer, Grade II posted at a check-post.

15A. Penalties In Certain Cases :-

(1) If the Assessing Authority is satisfied that any dealer or other person--

(a) has, without reasonable cause, failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed, or to deposit the tax due under this Act, before furnishing the return or alongwith the return as required under the provisions of this Act; or

(b) has submitted a false return of turnover under this Act; or

(c) has concealed the particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or

(d) has maintained or produced false accounts, registers or documents; or

(e) has without reasonable cause, failed to pay, within the time allowed, the tax due from him; or

(f) fails to issue a bill or cash-memo in accordance with the provisions of sub-section (4) of Section 8-A; or

(g) being liable for registration under this Act, carries on or continues to carry on business without obtaining registration or without furnishing the security demanded under Section 8-C; or

(h) makes a false verification or declaration on an application for registration or in connection with any other proceeding under this Act; or

(i) refuses to permit or refuses or neglects to produce for inspection or examination any book, document or account or refuses to allow copies to be taken in accordance with the provisions of Section 13; or

(j) obstructs or prevents an officer empowered under Section 13 or the officer-in-charge of a check-post or barrier established under Section 28 from performing any of his functions under this Act; or

(k) refuses or neglects to furnish any information, which may be in his knowledge or possession and which he has been required to furnish for the purposes of this Act, or furnishes information which is false in any material particulars; or

(1) issues or furnishes a false certificate or declaration, by reason of which a tax on sale or purchase ceases to be leviable under this Act

or the Rules made thereunder; or

(m) makes use of a prescribed form of declaration or certificate, which has not been obtained by him or by his principal or agent in accordance with the provisions of this Act or the Rules made thereunder; or

(n) closes or leaves his place of business with a view to prevent inspection under this Act or the Rules made thereunder; or

(o) imports or transports, or attempts to import or transport, or abets the import or transport of any goods in contravention of the provisions of Section 28-A; or

(p) fails or refuses to stop or to keep stationary his vehicle or vessel, when asked to do so by the officer-in-charge of a check-post or barrier established under Section 28 or by an officer empowered under Section 13; or

(q) fails to obtain authorisation for transit of goods or to deliver the same, as provided in Section 28-B; or

(qq) realises any amount as trade tax on sale or purchase of goods or any amount in lieu of such tax by giving it any different name or colour in contravention of the provisions of subsection (2) of Section 8-A; or

(r) otherwise acts in contravention of the provisions of this Act or the Rules made thereunder;

it may, after such inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him,--

(i) in a case referred to in clause (a), clause (b) or clause (e), a sum not less than ten percent, but not exceeding 25 percent of the tax due, if the tax due is up to ten thousand rupees and fifty percent, if the tax due is above ten thousand rupees;

(ii) in a case referred to in clause (c), clause (d), clause (1) or clause (m), a sum not less than fifty percent, but not exceeding two hundred percent of the amount of tax, which would thereby have been avoided;

(iii) in a case referred to in clause (f), a sum of rupees fifty or double the amount of tax involved, whichever is greater, for the first default, and rupees one hundred or four times the amount of tax involved, whichever is greater, for the second and each subsequent default;

(iv) in a case referred to in clause (g), a sum of rupees one hundred for each month or part thereof for the default during the first three months, and rupees five hundred for every month or part thereof after the first three months during which the default

continues ;

(v) in a case referred to in clause (i), clause (k), clause (n) or clause (r), a sum not exceeding rupees two thousand;

(vi) in a case referred to in clause (h), or clause (j), a sum not exceeding rupees one thousand;

(vii) in a case referred to in clause (p), a sum not exceeding rupees one thousand;

(viii) in a case referred to in clause (qq), a sum not less than the amount of tax realised or, as the case may be, realised in excess, but not more than three times the said amount;

(ix) in a case referred to in clause (o) or clause (q), a sum not exceeding forty percent of the value of goods involved or three times of the tax leviable on such goods under any of the provisions of this Act, whichever is higher.

Explanation.--The "assessing authority" includes an officer not below the rank of a Trade Tax Officer, Grade II posted at the check-post or an officer authorised to exercise powers under Section 13 or Section 13-A, or both, as the case may be.

(2) A copy of the order passed under sub-section (1) shall be served on the dealer or person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person in the prescribed manner within thirty days of such service, failing which it may be recovered as if it were an arrear of land revenue.

(3) No order shall be made under sub-section (1), unless the dealer or other person concerned has been heard or has been given a reasonable opportunity of being heard.

1[(3-A) No order shall be made under sub-section (1) in respect of a case referred to in clause (q) of the said sub-section after the expiration of six years from the end of the financial year in which authorisation for transit of goods was required to be obtained under Section 28-B.]

(4) No prosecution under Section 14 shall be instituted in respect of the same facts, on which a penalty imposed under this section has been paid in addition to the tax due.

(5)2[* * *]

(6) The provisions of this section shall, mutatis mutandis, be applicable to the executor, administrator and the legal representative referred to in Section 7-C.

1. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

2. Deleted by U.P. Act 11 of 1968.

16. Indemnity :-

No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything, which is in good faith done or intended to be done under this Act or Rules made thereunder.

17. Bar To Certain Proceedings :-

No assessment made and no order passed under this Act or the Rules made thereunder by any authority shall be called in question in any Court, and, save as is provided in this Act, no appeal or application for revision or review shall be against any such assessment or order.

18. Assessment Of Reconstituted Or New Firms, And Changes Of Partnership :-

(1) Every dealer discontinuing business during the course of an assessment year, whose average monthly turnover for the portion of the year ending with the discontinuance of the business is not less than one-twelfth of one lakh rupees in the case of manufacturers or one lakh fifty thousand rupees in the case of other dealers or of such larger amount as may be notified under sub-section (2) of Section 3, or whose turnover during such period is liable to tax under sub-section (3) of Section 3, shall, within thirty days from the date of such discontinuance give notice of the fact to the Assessing Authority, and shall also submit a statement of his turnover in such form and verified in such manner, as may be prescribed.

Explanation.--The dissolution of a firm or association of persons or partition of a joint Hindu family or transfer by a dealer of his business shall be deemed to be discontinuance of business within the meaning of this sub-section.

(2) Every dealer commencing business during the course of an assessment year, whose average estimated monthly turnover for the remainder of the year is not less than one twelfth of rupees one lakh in case of manufacturers or one lakh fifty thousand rupees in case of other dealers or of such larger amount as may be notified under sub-section (2) of Section 3, or whose turnover during such period is liable to tax under sub-section (3) of Section 3, shall, within 30 days from the expiry of the month in which business was commenced, give notice of the fact to the Assessing Authority, and

shall submit a statement of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed.

(3) If the Assessing Authority, after such enquiry, as it deems necessary, is satisfied that the return or returns submitted under subsection (1) or (2) are correct and complete, and that the average monthly turnover is not less than the amount computed in accordance with sub-section (1) or (2), as the case may be, or the turnover of the dealer is liable to tax under sub-section (3) of Section 3, it shall assess the dealer on the total turnover shown in the return or returns.

(4) If no return is submitted by a dealer under sub-section (1) or (2) within the period fixed therefor, or if any return submitted by him appears to be incorrect or incomplete, the Assessing Authority shall, after such enquiry, as it deems necessary, determine to the best of its judgment the turnover of the dealer and may assess the tax, if any, payable:

Provided that, if at the end of the assessment year, the average monthly turnover in a case falling under sub-section (1) or (2) is found to be less than the amount specified therein, the tax paid shall be refunded, except to the extent the dealer is liable to deposit it under sub-section (1) of Section 29-A.

Exception.--The above proviso shall not apply to the case of a dealer, whose turnover is liable to tax under sub-section (3) of Section 3.

Explanation.--For the purpose of this section, the turnover shall be deemed to be the aggregate of the turnovers referred to in subsection (2) of Section 3.

19. Assessment Of Minors And Incapacitated Persons :-

In the case of any guardian, trustee or agent of any minor or other incapacitated person, carrying on business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be, levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such person or other incapacitated person, if he were of full age and sound mind and if he were conducting the business himself; and all the provisions of the Act and the Rules made thereunder shall apply accordingly.

20. Assessment Of Court Of Wards, Etc. :-

In the case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator General, the Official Trustee or any Receiver or Manager (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by him or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General, Official Trustee, Receiver or Manager, in like manner and in the same terms as it would be leviable upon and recoverable from the dealer, as if he were conducting the business himself, and all the provisions of the Act and the Rules made thereunder shall apply accordingly.

21. Assessment Of Tax On The Turnover Not Assessed During The Year :-

(1) If the Assessing Authority has reason to believe that the whole or any part of the turnover of a dealer, from any assessment year or part thereof, had escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions has been wrongly allowed in respect thereof, the Assessing Authority may, after issuing notice to the dealer and making such inquiry, as it may consider necessary, assess or re-assess the dealer to tax according to law:

Provided that the tax shall be charged at the rate, at which it would have been charged, had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation I.--Nothing in this sub-section shall be deemed to prevent the Assessing Authority from making an assessment or full assessment to the best of its judgment.

Explanation II.--For the purposes of this section and Section 22, Assessing Authority means the officer or authority, who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III.--Notwithstanding the issuance of notice under this sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice, it shall continue to be effective as such, until varied by an order or assessment or re-assessment made under this section in pursuance of such notice.

(2) Except as otherwise provided in this section, no order of

assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the Assessing Authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid, but not after the expiration of 1[six years from the end of such year or March 31, 2002, whichever is later] notwithstanding that such assessment or re-assessment may involve a change of opinion:

Provided further that the assessment or re-assessment for the assessment year 1987-88 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted under Section 4-A has been amended or cancelled by the Commissioner under subsection (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

(3) Where the notice under sub-section (1) for any assessment year has been served within the period specified in sub-section (2), the order of assessment or re-assessment in pursuance thereof may be made within six months, after the expiration of such period.

(4) If an order of assessment is set aside and the case is remanded for re-assessment by any authority under the provisions of this Act or by a competent Court, the order of re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case, or by December 31, 1982, whichever is later.

(4-A) If an order of assessment is quashed on the ground of want of jurisdiction of the Assessing Authority or any other like ground, by any competent authority or Court, fresh order of assessment may be made by the assessing authority having jurisdiction within one year from the date of receipt by the assessing authority, whose order is so quashed, of the copy of order of such authority or Court or by March 31, 1993, whichever is later.

(5) If an order of assessment or re-assessment for any assessment year is set aside under Section 30, a fresh order of assessment or

re-assessment for that year may be made within six months from the date, on which such earlier order was set aside.

(5-A) If an order of assessment or re-assessment or penalty passed against a sick unit is set aside by the State Government by an order under sub-section (2) of Section 38, a fresh order of assessment or re-assessment or penalty, as the case may be, for that year may be made within one year from the date of receipt of such order of the State Government by the Assessing Authority concerned.

(6) Where the proceedings for assessment or re-assessment for any assessment year remain stayed under the orders of any Court or authority, the period commencing on the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in so computing, the period of limitation comes to less than six months, such assessment or re-assessment may be made within six months from the date of receipt by the assessing authority of the order vacating the stay.

(6-A) The period during which any appeal or other proceeding in respect of any other assessment or re-assessment or any other matter of the assessee remained pending before the High Court or the Supreme Court, involving a question of law, having a direct bearing on the assessment or re-assessment in question, shall be excluded in computing the period of limitation provided in this section.

(7) Where in the assessment or re-assessment of a dealer for any assessment year, any Assessing Authority--

(a) has included any turnover and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment--

(i) of such dealer for any other assessment year, or

(ii) of such dealer under the Central Sales Tax Act, 1956, or

(iii) of any other dealer, whether under this Act, or under the Central Sales Tax Act, 1956;

(b) has not included any turnover on the ground that it relates to assessment under the Central Sales Tax Act, 1956 and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of that dealer under this Act, whether for such assessment year or any other assessment year,

then nothing contained in this section limiting the time shall apply

to assessment or re-assessment whether under this Act or under the Central Sales Tax Act, 1956 of such dealer or such other dealer, relating to such assessment year, or such other assessment year, as the case may be.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

22. Rectification Of Mistakes :-

(1) Any officer of authority, or the Tribunal or the High Court may on its own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act, apparent on the record, within three years from the date of the order sought to be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

Provided further that no such rectification, as has the effect of enhancing the assessment, penalty, fees or other dues, shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply, as if such notice had been served in the first instance.

23. Certain Information To Be Confidential :-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or of the Rules made thereunder, or in any evidence given or affidavit or deposition made in the course of any proceedings under the Act or the Rules made thereunder, or in any record of any proceedings relating to the recovery of a demand prepared for the purpose of the Act or the Rules made thereunder, shall be treated as confidential.

(2) Nothing in sub-section (1) shall apply to the disclosure of any such particulars,--

(i) for the purpose of any investigation of, or prosecution for any offence under this Act or under the Indian Penal Code, 1860, or

under any other enactment for the time being in force; or
(ii) to any person acting in the execution of the Act or the Rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the Rules made thereunder; or
(iii) occasioned by the lawful employment under the Act or the Rules made thereunder of any process for the recovery of any demand; or
(iv) to a Civil Court in any suit to which the Government are a party, which relates to any matter arising out of any proceedings under the Act or the Rules made thereunder; or
(v) occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document; or
(vi) to an officer of Central Government or the Government of any State, for the purpose of enabling that Government to levy or realise any tax imposed by it; or
(vii) to an officer of the Central or the State Government for the purposes of making any inquiry against any Government servant; or
(viii) for purposes of audit of public accounts.

24. Power To Make Rules :-

- (1) The State Government may make Rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing powers, such Rules may provide for--
 - (a) all matters expressly required or allowed by this Act to be prescribed;
 - (b) the licensing of persons engaged in the sale or purchase of goods and the imposing of conditions in respect of the same for the purpose of enforcing the provisions of this Act and fees for licences;
 - (c) the determination of turnover for the purposes of assessment of tax under this Act;
 - (d) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;
 - (e) the appointment, duties and powers of officers appointed for the purposes of enforcing the provisions of this Act;
 - (f) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;
 - (ff) 1[* * *]

(g) refunds of amounts deposited under sub-section (1) of Section 29-A, the procedure for such refunds and the period within which they may be made;

(gg) the manner of putting seals under sub-section (4-A) of Section 13 and the manner in which and by whom the same shall be removed and for the custody of sealed property and other goods and documents referred to in that sub-section;

(ggg) the custody of the goods seized under Section 13-A; and

(h) the matters which are to be or may be prescribed.

(3) The power to make Rules conferred by this section shall be subject to the condition of the Rules being made after previous publication for a period of not less than four weeks:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, it may make any Rule without such previous publication.

(4) All Rules made under this section shall be published in the Gazette and upon such publication shall have effect immediately as if enacted in this Act.

25. Power To Issue Notifications With Retrospective Effect :-

Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue a notification under Section 3-A, or Section 3-D or Section 4 or Section 4-B, so as to make it effective from a date not earlier than six months from the date of issuance of such notification:

Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

26. Application Of The Act To The Merged States :-

For the purposes of assessment of tax, every dealer who, on the first day of January, 1950, has been carrying on the business of buying or selling or supplying goods in the merged States of Banaras, Rampur or Tehri-Garhwal shall, notwithstanding anything in this Act, be deemed to have been a dealer commencing business during the course of an assessment year and the provisions of Section 18 shall mutatis mutandis apply to him.

27. Section 27 :-

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1. Deleted by U.P. Act 19 of 1958.

28. Establishment Of Check-Posts And Barriers :-

The State Government, if it is of opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act in respect of the sale of goods within the State after their import into the State, may by notification in the Gazette, direct the establishment of check-posts or barriers at such places within the State, as may be specified in the notification.

28A. Import Of Goods Into The State Against Declaration :-

(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place without the State, any goods other than the goods exempt under clause (a) of Section 4 in such quantity or measure or of such value, as exceeds,--

(a) (i) twenty kilograms in the case of foodgrains, cereals, pulses, soyabean, and all products thereof, and all raw materials including resin, rosin and oilseeds used for extracting oils of any kind; or

(ii) rupees fifty, in the case of other goods; or

(b) the quantity, measure or value notified by the State Government in that behalf, in connection with business, shall obtain the prescribed form of declaration, on payment of the prescribed fee, from the Assessing Authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.

(2) Where such goods are to be consigned by road,--

1[(a) the importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him and the driver or any other person-in-charge of any vehicle carrying any such goods shall carry with him the copies of such declaration duly verified by the consignor in the prescribed manner together with such other documents as may be prescribed, and shall deliver one copy of such declaration,--

(i) where such goods are brought by a road on which a check-post or barrier is established under Section 28, to the officer-in-charge

of such check-post or barrier before crossing the check-post or barrier, and

(ii) where such goods are brought by a road on which no such check-post or barrier is established, to the officer-in-charge of the nearest check-post or barrier established under the said section before transporting such goods further within the State;

and the other copy of the declaration and the remaining documents along with the goods to the importer or his agent,]

(b) the officer-in-charge of the check-post or barrier shall grant a receipt for the copy of declaration delivered to him and it shall not be necessary for the driver or the person-in-charge of the vehicle to deliver any copy of the declaration at any other check-post or barrier that he may cross, if he shows such receipt to the officer-in-charge of such other check-post or barrier;

2[(c) Omitted]

(d) the importer shall preserve the other copy of the declaration and other documents delivered to him or to his agent under Clause (a) for such period as may be prescribed and produce them before the Assessing Authority whenever demanded by it within such period.

(3) Where such goods are consigned by rail, river, air or post, the importer shall not--

(a) obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer, as may be authorised in this behalf, by the State Government, a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement by such officer ; and

(b) after taking delivery, carry the goods away or cause the goods to be carried away from the railway station, steamer or boat, station, air-port or post-office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with the goods.

(4) Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer, and the importer shall submit the same for endorsement by the officer referred to in sub-section (3) by the next working day.

(4-A) Where any person intends to bring, import or otherwise receive into the State from any place without the State any goods referred to in sub-section (1) otherwise than in connection with business and obtains the prescribed form of certificate, the

provisions of sub-sections (2), (3) and (4) shall, mutatis mutandis, apply as if the word "certificate" were substituted for the word "declaration" used therein.

(5) The driver or other person-in-charge of any vehicle carrying any goods referred to in the preceding sub-section shall stop the vehicle at every such check-post or barrier or, when so required by an officer authorised under sub-section (2) of Section 13, at any other place, and keep it stationary for so long as may be considered necessary by the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (2) of Section 13, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-section, and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.

(6) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and if, for reasons to be recorded, he is satisfied, after giving such person an opportunity of being heard, that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods.

(7) The provisions of sub-sections (2), (6) and (8) of Section 13-A shall mutatis mutandis apply to such detention, as they apply to seizure under that section.

(8) Nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or the post office or any officer of the post office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890, or in a post office as defined in the Indian Post Office Act, 1898.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 29.1.2001).

2. Omitted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 29.1.2001).

28B. Transit Of Goods By Road Through The State And Issue Of

Authorisation For Transit Of Goods :-

When a vehicle coming from any place outside the State and bound for any other place outside the State, and carrying goods referred to in sub-section (1) of Section 28-A, passes through the State, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer-in-charge of the first check-post or barrier after his entry into the State and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle:

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person-in-charge of the vehicle.

1[Explanation.--For the purpose of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle.]

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 5.3.2001).

28C. Section 28C :-

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1. Omitted by U.P. Act 33 of 1979.

28D. Section 28D :-

1[* * *]

1. Omitted by U.P. Act 33 of 1979.

29. Refund :-

(1) The assessing authority shall, in the manner prescribed, refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under this Act:

Provided that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956 (Act 74 of 1956), and only the balance, if any, shall be refunded.

(2) If the amount found to be refundable in accordance with

subsection (1) is not refunded as aforesaid within three months from the date of order of refund passed by the Assessing Authority or, as the case may be, from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or Court, the dealer shall be entitled to simple interest on such amount at the rate of eighteen percent per annum from the date of such order or, as the case may be, the date of receipt of such order of refund by the Assessing Authority to the date of the refund:

Provided that for calculation of interest in respect of any period after the 26th day of May, 1975, the sub-section shall have effect as if for the words six months the words three months were substituted and for the words six percent the words twelve percent were substituted.

(3) Notwithstanding any judgment, decree or order of any Court or authority, no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act.

1[(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where the tax has been paid by a dealer on purchase of certain goods and the value of goods manufactured out of such goods is inclusive of such tax and the State Government remits the tax liability on such purchases retrospectively, the dealer shall not be entitled to refund of tax paid on purchases of such goods unless he proves to the satisfaction of the Assessing Authority that he has not passed on the liability of such tax to any party as a result of any sale or otherwise.]

Explanation I. --The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in manner prescribed.

Explanation II.--The expression refund includes any adjustment under the proviso to sub-section (1).

1. Inserted by U.P. Act No. 11 of 2003, dated 17.12.2003 (w.e.f. 18.10.2002).

29A. Procedure For Disbursement Of Amount Wrongly Realised By Dealer As Tax :-

(1) Where any amount is realised from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of any goods, in contravention of the provisions of sub-section (2) of Section 8-A, such dealer shall deposit the entire amount so realised in such manner and within such period, as may

be prescribed.

(2) Any amount deposited by any dealer under sub-section (1) shall, to the extent it is not due as tax, be held by the State Government in trust for the person from whom it was realised by the dealer, or for his legal representatives, and the deposit shall discharge such dealer of the liability in respect thereof to the extent of the deposit.

(3) Where any amount is deposited by any dealer under sub-section (1), such amount or any part thereof shall, on a claim being made in that behalf be refunded, in the manner prescribed, to the person from whom such dealer had actually realised such amount or part, or to his legal representatives, and to no other person:

Provided that no such claim shall be entertained after the expiry of three years from the date of the order of assessment or one year from any date of the final order on appeal, revision or reference, if any, in respect thereof, whichever is later.

Explanation.--The expression "final order on appeal, revision or reference," includes an order passed by the Supreme Court under Article 32, Article 132, Article 133, Article 136 or Article 137 or by the High Court under Article 226 or Article 227 of the Constitution.

29B. Reimbursement In Respect Of Declared Goods :-

(1) Where any tax has been levied under this Act in respect of the sale or purchase of any goods referred to in Section 14 of the Central Sales Tax Act, 1956, and such goods are subsequently sold in the course of inter-State trade or commerce, and tax has been paid under the said Central Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under this Act may, on an application being made in writing to the Assessing Authority within six months from the date on which the tax was so paid or the date of commencement of the Uttar Pradesh Sales Tax (Amendment) Act, 1973, whichever is later, be reimbursed to the person making such sale in the course of inter-State trade or commerce.

(2) Where the Assessing Authority is satisfied that the application is maintainable under sub-section (1), it shall in the manner prescribed reimburse to the applicant the amount of such tax and, in any other case, shall reject the application:

Provided that no such application shall be rejected wholly or in part except after the applicant has been given a reasonable opportunity of being heard:

Provided further that the amount found to be reimbursable shall first be applied towards the tax or any other amount outstanding against the applicant under this Act and only the balance, if any, shall be reimbursed.

30. Power To Set Aside An Order Of Assessment Or An Order In Appeal :-

(1) In any case in which an order of assessment or penalty is passed ex parte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and re-open the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and re-open the case for hearing:

Provided that no such application for setting aside an ex parte assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.

(2) Where an assessment order under sub-section (1) of Section 7-A is passed, ex parte, the dealer may apply to the Assessing Authority within thirty days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the return and deposited the tax due according to the return within thirty days from the last day prescribed for filing such return, it may modify or set aside such order and also the demand notice, if any, issued thereunder.

(3) If a dealer is granted an eligibility certificate under Section 4-A for the period for which an order of assessment or re-assessment or an order in appeal has been passed prior to the grant of eligibility certificate, such order may be set aside either on its own or on the application of the dealer, by assessing or appellate authority having jurisdiction within one year of the receipt by him of the copy of the order granting such eligibility certificate or March 31, 1995, whichever is later, and a fresh order may be passed according to law:

Provided that where the application under this sub-section has been made by the dealer within the period aforesaid, it may be disposed of even beyond such period.

31. Section 31 :-

(1) Where any dealer has, in accordance with the provisions of Section 7, as it stood prior to its amendment by Section 7 of U.P. Act XIX of 1956, opted to be assessed to tax on the basis of his turnover of the previous year, he shall be assessed to tax at such rates, as are prevalent during the year for which the assessment is being made, and if the rates of tax on any goods or class of goods are altered during such assessment year, the dealer, in respect of the turnover of such goods, shall be liable to pay tax at the altered rates, as if the altered rates were in force during the previous year also, proportionately for the same number of days as they are in force during the assessment year.

(2) Notwithstanding any judgment, decree or order of any Court, all assessments or orders made, actions or proceedings taken, directions issued, jurisdictions exercised or tax levied or collected by any officer or authority purporting to act under the provisions of sub-section (1) of Section 7, as it stood prior to its amendment by Section 7 of the U.P. Act XIX of 1956, shall be deemed to be good and valid in law as if such assessments, orders, actions, proceedings, directions, jurisdictions and tax have been duly made, taken, issued, exercised, levied or collected, as the case may be, under or in accordance with the said provisions of this Act, as amended by the Uttar Pradesh Bikri-Kar (Sanshodhan) Adhiniyam, 1962 (Act III of 1963) and as if the amendment so made had been in force on all material dates.

Explanation.--For the purposes of this section the expression previous year shall have the meaning assigned to it in sub-clause (i) of Clause (j) of Section 2 of this Act, as it stood prior to its amendment by Section 2 of the U.P. Act XIX of 1956.

32. Fees In Certain Cases :-

1[(1) Subject to the provisions of subsection (3), the fee payable on a memorandum of appeal or other application under this Act filed or moved on or after the date of the commencement of the Uttar Pradesh Trade Tax (Second Amendment) Act, 2000, whether the assessment, penalty or other proceedings giving rise to such appeal or application were initiated before or after such commencement, shall be as follows:--

(a) On a memorandum of appeal under Section 9. Two percent of the amount of tax fee or penalty in dispute, subject to a minimum of 3[fty rupees] and a maximum of 2[five hundred rupees]. (b) On a memorandum of appeal under Section 10. Seven and a half

percent of the amount of tax, fee or penalty in dispute, subject to a minimum of five hundred rupees and a maximum of 4two thousand one hundred rupees on and from March 5, 2001]

(c) On an application under Section 35. Fifty Rupees.

(d) On any other application--

(i) when addressed to the Commissioner or the Revising Authority or the Tribunal. Twenty rupees

(ii) when addressed to any other officer or authority. Ten Rupees.]

(2) The fee referred to in this section and in any other provision of this Act shall be payable in the manner prescribed, and proof of deposit of the same shall be attached to the memorandum or application, as the case may be:

Provided that where the amount of fee payable does not exceed 4[fifty rupees], the same may be paid in Court fee stamps.

(3) No fee shall be payable in respect of:--

(a) an application or a memorandum of appeal presented by the Commissioner or any other officer or authority appointed under this Act or the Rules made thereunder; and

(b) an application in which only information is sought and in which no specific relief is prayed for; and

(c) an application under Section 35, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable.

1. Substituted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

2 Substituted by U.P. Act No. 11 of 2003, for the words "one hundred rupees", dated 17.12.2003 (w.e.f. 18.10.2002).

3 Substituted by U.P. Act No. 11 of 2003, for the words "one thousand rupees", dated 17.12.2003 (w.e.f, 18.10.2002).

4 Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001, for the words "ten thousand rupees" which had been substituted earlier by U.P. Trade Tax (Second Amendment) Act, 2000 (U.P., Act No. 35 of 2000) w.e.f. 1.11.2000 for the words "five hundred rupees".

5 Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 for the words "fifteen rupees" (w.e.f. 5.3.2001).

33. Further Provisions Regarding Recovery :-

In respect of any sum recoverable under this Act as arrears of land revenue, the Assessing Authority may forward to the Collector a certificate under his signature specifying the sum due. Such

certificate shall be conclusive evidence of the existence of the liability, of its amount and of the person who is liable, and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as, if it were an arrear of land revenue:

Provided that without prejudice to the powers conferred by this section the Collector shall, for the purposes of recovering the amount specified in the certificate, have also all the powers which:-

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(a) a Collector has under the Revenue Recovery Act, 1890; and

(b) a Civil Court has under the Code of Civil Procedure, 1908, for the purpose of recovery of an amount due under a decree.

Explanation.--The expression Collector includes an Additional Collector or any other officer authorised to exercise the powers of a Collector under the law relating to land revenue for the time being in force in the State.

34. Transfer To Defraud Revenue Void :-

(1) Where, during the pendency of any proceedings under this Act, any person liable to pay any tax or other dues creates a charge on, or transfers any 1[movable or immovable] property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings:

Provided that nothing in this section shall impair the rights of a transferee in good faith and for consideration.

(2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, 1949, or any other financial institution specified by the State Government by notification in this behalf.

1. Substituted by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated 30.4.2001 (w.e.f. 29.1.2001).

35. Determination Of Disputed Questions :-

(1) If any question arises, otherwise than in a proceeding pending before a Court or before an Assessing Authority under Section 7 or Section 21, whether, for the purposes of this Act--

(a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a

dealer; or

(b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term; or

(c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or

(d) any particular dealer is required to obtain registration; or

(e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof,

the person or the dealer concerned may, after depositing the fee specified in Section 32, submit an application to the Commissioner, alongwith such documents, as may be prescribed.

(2) The Commissioner shall, after giving the applicant an opportunity of being heard, decide, as he deems fit, the question so arising:

Provided that, before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such inquiries as he considers necessary for the decision of the question.

(3) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing authority, appellate authority, revising authority or the Tribunal.

(4) No question, which arises from an order already passed, in the case of the applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.

(5) Except as provided in sub-section (3), a decision given by the Commissioner under this section shall, subject to the provisions of Sections 10 and 11, be final and binding on the applicant, the Assessing Authority and the Appellate Authority.

(6) A copy of the decisions given under this section shall be sent to the applicant and to the assessing authority concerned.

36. Power To Grant Instalment :-

(1) Subject to such conditions and restrictions, including the conditions regarding furnishing security to the satisfaction of the assessing authority, as may be deemed fit to be imposed,--

(a) the State Government may permit any dealer or other person, against whom any amount of tax, penalty or other dues is outstanding, to pay the amount in such number of monthly instalments not exceeding twenty-four, as it may consider proper in the circumstances of the case; and

(b) the Commissioner may likewise permit any dealer or other

person, against whom any amount of tax, penalty or other dues aggregating not more than one lakh rupees is outstanding, to deposit the same in such number of monthly instalments, not exceeding twelve, as he may consider proper in the circumstances of the case.

(2) Where such dealer or other person fails to furnish, within sixty days of the order referred to in sub-section (1), adequate security to the satisfaction of the Assessing Authority concerned for payment of the outstanding amount, or fails to comply with the conditions or restrictions imposed in such order, the amount due shall be recoverable at once.

37. Section 37 :-

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1. Omitted by Act No. 28 of 1991.

38. Facility For Sick Industrial Units :-

(1) Notwithstanding anything contained in sub-sections (1), (1-A), (1-B), (1-G) or (2) of Section 8 and Section 36, but subject to such conditions, as may be deemed fit to be imposed, the State Government may allow the deferment of payment of any existing or future dues payable by an industrial units under the provisions of this Act or allow payment of such dues in such number of instalments as may be specified, if such industrial unit is declared a sick unit in accordance with the guidelines specified in this behalf by an authorised body constituted by the Central Government or the State Government in connection with the rehabilitation of sick industrial units, and is approved for rehabilitation by an approved agency, appointed by the Central Government or the State Government.

(2) Notwithstanding anything contained in Section 30, the State Government may set aside an order of assessment or penalty passed ex parte against a sick unit and direct fresh disposal of the case in accordance with law.

SCHEDULE 1

FIRST SCHEDULE

1. Omitted by U.P. Trade Tax (Second Amendment) Act, 2000 (Act No. 35 of 2000), dated 31st October, 2000 (w.e.f. 1.11.2000).

SCHEDULE 2

SECOND SCHEDULE

1. Omitted by U.P. Act 4 of 1982.

