
Uttar Pradesh Value Added Sales Tax Act, 2003

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Uttar Pradesh Value Added Sales Tax Act, 2003

1. Short Title, Extent and Commencement :-

(i) This Act may be called the Uttar Pradesh Value Added Sales Tax Act, 2003. (ii) It extends to the whole of the State of Uttar Pradesh. (iii) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the State Government may, by notification in the official Gazette appoint, and different dates may be appointed for different provisions.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context: - (I) "Act" means the Value Added Sales Tax Act, 2003. (II) "Additional Commissioner of Commercial Taxes" means a person posted by the State Government as Additional Commissioner in the Commercial Tax Department of the State Government and includes an Additional Commissioner Grade I Commercial Taxes and an Additional Commissioner Grade II Commercial Taxes. (III) "Appellate authority" means the authority to whom an appeal lies under section -57. (IV) "Appointed Day" In relation to any provision of this Act, means the date on which such provision comes into force. (V) "Assessing Authority" means any officer not below the rank of Commercial Tax Officer Grade II, posted by the State Government or by the Commissioner of Commercial Taxes in a Commercial Tax Circle of the Commercial Tax Department of the State Government and includes an officer posted at a Check-post or barrier or an officer posted in a Special Investigation Branch or a Mobile Squad Unit of the Commercial Tax Department of the State Government (VI) "Assessment year or year" means period of twelve consecutive months ending on March, 31. VII) "Assistant

Commissioner of Commercial Taxes" means any person appointed and, or, as the case may be, posted by the State Government or any person appointed by the State Government and posted by the Commissioner of Commercial Taxes in the Commercial Tax Department of the State Government as Assistant Commissioner of Commercial Taxes and includes an Assistant Commissioner (Assessment) Commercial Taxes, an Assistant Commissioner (Special Investigation Branch) Commercial Taxes, Assistant Commissioner (Check-posts) Commercial Taxes, an Assistant Commissioner (Administration) Commercial Taxes, an Assistant Commissioner (Registrations) Commercial Taxes, an Assistant Commissioner (Tax Recovery) Commercial Taxes, an Assistant Commissioner cum State Representative Commercial Taxes, an Assistant Commissioner (Check-posts) Commercial Taxes, and an Assistant Commissioner (Mobile Squad) Commercial Taxes. (VIII) "Business", (a) 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) for cash, deferred payment or other valuable consideration; (iii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste or byproducts, 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, and (iv) any transaction of sale or purchase of capital assets pertaining to such trade, commerce, manufacture, adventure or concern, but business does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods. (IX) "Commercial Tax Officer" means any person appointed by the State Government and posted by the Commissioner of Commercial Taxes as Commercial Tax Officer in the Commercial Tax Department of the State Government and includes a Commercial Tax Officer (assessment), a Commercial Tax Officer (Special

Investigation Branch), a Commercial Tax Officer (Mobile Squad), a Commercial Tax Officer (Registrations), a Commercial Tax Officer (Check-post), a Commercial Tax Officer (Administration), a Commercial Tax Officer (Recovery) and a Commercial Tax Officer cum State Representative. (X) "Commercial Tax Officer Grade II" means any person appointed and posted by the Commissioner of Commercial Taxes in the Commercial Tax Department of the State Government as Commercial Tax Officer Grade II and includes a Commercial Tax Officer grade II (assessment), a Commercial Tax Officer Grade II (Special Investigation Branch), a Commercial Tax Officer Grade II (Mobile Squad), a Commercial Tax Officer Grade II (Registrations), a Commercial Tax Officer Grade II (Check-post) and a Commercial Tax Officer (Recovery) (XI) "Commissioner" means the person posted by the State Government as Commissioner of Commercial Taxes in the Commercial Tax Department of the State Government and includes an Additional Commissioner, an Additional Commissioner Grade-I, Additional Commissioner Grade-II, and a Joint Commissioner of Commercial Taxes. (XII) "Capital Goods" means plant, machinery, equipments, apparatus, components, moulds required by a dealer for use in manufacture or processing of his own goods for sale by a dealer or for use in packing of such manufactured goods by such dealer, whether sales of manufactured goods are made directly by the dealer or otherwise. (XIII) "Casual Dealer" means a person who whether as principal, agent or in any other capacity carries on occasional transactions in the nature of business involving buying, selling supplying or distributing goods or conducting any exhibition cum sale in the State of Uttar Pradesh, whether for cash or for deferred payment or for commission or remuneration or other valuable consideration; (XIV) "Certificate of Moratorium" means certificate of moratorium for payment of tax granted under section -35. (XV) "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, whether on his own account or on account of others, for cash or for 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

herein before 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 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 head quarter 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; (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 the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash or for deferred payment or other valuable consideration; (ix) every person who supplies, 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) whether such supply or service is for cash, deferred payment or other valuable consideration. (x) a casual dealer, who has whether as principal or agent or in any other capacity, carries on occasional transactions of a business, in the nature involving buying, selling supplying or distribution of goods, in the State, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, who does not reside or has no fixed place of business within the State; 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 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; (XVI) "Declared Goods" means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in the inter-state trade or commerce; (XVII) "Deputy Commissioner of Commercial Taxes" means any person appointed and, or, as the case may be, posted by the State Government as Deputy Commissioner of Commercial Taxes in the Commercial Tax Department of the State Government and includes a Deputy Commissioner (Enforcement) Commercial Taxes, a Deputy Commissioner (Appeals) Commercial Taxes, a Deputy Commissioner (Check-posts) Commercial Taxes, a Deputy Commissioner (Administration) Commercial Taxes, a Deputy Commissioner (Tax Recovery) Commercial Taxes, a Deputy Commissioner (Assessment) Commercial Taxes, a Deputy Commissioner (Audit) Commercial Taxes, a Deputy Commissioner (registrations) Commercial Taxes and a Deputy Commissioner cum State Representative of Commercial Taxes. (XVIII) "Document" includes title deeds, writing or inscription including electronic data. Computer programme, computer tapes, computer disc, computer floppy and the like that furnishes evidence; (XIX) "Eligibility Certificate" means eligibility certificate granted under provisions of section -4-A of the U.P. Trade Tax Act 1948, or rules made or notifications issued thereunder to industrial units established on or after 1-10-82 or to such other industrial units which have taken programme of expansion or diversification or modernisation or backward integration; (XX) "Goods" means every kind or class of movable property and includes live stock, all materials, commodities and articles involved in the execution of a works contract, growing crops, grass, trees and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale, but does not include money, actionable claims, stocks, shares, securities or postal stationery sold by the postal department; (XXI) "Importer" in relation to any goods means the dealer who makes the first sale of such goods after their import into the State; (XXII) "Input tax" for the purpose of this Act input tax means the aggregate of the following amounts: (i) amount of tax charged in accordance with provisions of this Act by the registered selling dealer to the purchasing dealer on the turnover of sales of goods; (XXIII) "Invoice" means a document listing goods, sold with price, quantity etc, and includes a statement of account, a bill, cash memo and any other similar record, regardless of its form or characteristics and a cash register, slip or receipt; (XXIV) "Joint Commissioner of Commercial Taxes"

means any person posted by the State Government as Joint Commissioner in the Commercial Tax Department of the State Government and includes a Joint Commissioner (Appeals) Commercial Taxes. A Joint Commissioner (Enforcement) Commercial Taxes and a Joint Commissioner (Check-post) Commercial Taxes.

(XXV) "Manufacture" means producing, making, mining, collecting, extracting, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed; (XXVI) "Manufacturer" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture; (XXVII) "Officer-in-charge of a check post or barrier" includes an officer not below the rank of a Commercial Tax Officer Grade II, posted by the Commissioner Commercial tax, at a check post or barrier, (XXVIII) "Person" For the purpose of this Act person includes: (i) a dealer, as defined under clause (10) of this section; (ii) a sole proprietor; (XXIX) "Prescribed" means prescribed under the rules made or notifications issued under this Act; (XXX) "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; (XXXI) "Purchase price" means the amount of valuable consideration paid or payable by a dealer in respect of purchase 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. Explanation: Purchase price does not include: (XXXII) "Registered dealer" means a dealer registered under section 17 of this Act and includes a dealer who has obtained registration voluntarily; (XXXIII) "Registering Authority" means any officer not below the rank of Commercial Tax Officer Grade II, posted by Commissioner Commercial Taxes in Registration Cell of a Commercial Tax Circle to perform all or any of the functions of Registering Authority under the Act in respect of dealers of such Circle and Registering Authority includes an officer posted in a Commercial Tax Circle and having jurisdiction over the dealer. (XXXIV) "Re-Sale" means a sale of any goods purchased by the dealer in the same form and condition in which such goods were purchased; (XXXV) "Return" means any return prescribed and/or required to be furnished under this Act or the rules made there under; (XXXVI) "Rules" means rules made under this Act by the State Government to carry out the purposes of the Act. (XXXVII)

"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) by one person to the other person 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) delivery of goods on hire purchase or any other system of payment by instalments; (iv) a transfer, delivery or supply of goods under a contract 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; (v) supply of goods by an association or body of persons (whether incorporated or not) to a member thereof for cash, deferred payment or other valuable consideration; (vi) 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, deferred payment or other valuable consideration and such delivery, transfer or supply of any goods under clauses (i) to (vi) above shall be deemed to be sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made. (XXXVIII). "Saleprice" means the amount of valuable consideration paid or payable to a dealer for any sale made including any some charged for any thing done by the dealer in respect of goods at the time of or before delivery thereof, other than cost of outward freight or delivery or cost of installation in cases where such cost is separately charged. Explanation: (i) In case of sale of goods warehoused in bonded warehouses, appointed or licensed, under the Central Excise Act 1944 or the U.P. Excise Act the sale price shall include the duties paid or payable under the aforesaid Acts in respect of such goods at the time of clearance of the goods from the bonded warehouse whether such duties are paid or payable by or on the behalf of the seller or by any person who clears the goods. (ii) In a case in which any amount of duties payable by a dealer is deferred for a period or point of payment of any Duty is shifted, sale price shall include such amount of Duties; (iii) Sale price shall not include any amount allowed by seller of goods to the purchaser as cash discount or commission or trade discount at the time of sale of goods. (iv) In

case of delivery of goods on hire purchase or any other system of payment by instalment sale price shall be the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of or the acquisition of property in goods to which the agreement relates and includes sum as payable by the hirer under the hire purchase agreement by way of deposit or other initial payment or credited or to be credited to him under such agreement on account of any such deposit or payment whether that sum is to be or has been paid to owner or to any person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by another means but does not include any sum payable as a penalty or as compensation or damages for breach of agreement. (v) The amount for which goods are sold or purchased shall include the price of packing material in which they are packed. (vi) Sale price of goods in relation to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is the valuable consideration received or receivable in respect of a works contract less actual amount incurred towards labour and services and amount of profit relating to supply of labour and services and such other amounts as may be prescribed. Sale price of goods does not include any sum received or receivable by the contractor as claim or damages from the contractee but sale price does not exclude any amount paid or payable by the contractor for any breach of conditions of the contract or agreement or paid or payable as any penalty or damages. (vii) In respect of transfer of right to use goods, any goods for any purpose (whether or not for a specified period) sale price means the valuable consideration received or receivable in respect of such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement.. (viii) In respect of a sale, if amount of tax under this Act is charged separately by the dealer in accordance with provisions of this Act, the same shall not be deemed part of sale price and in all other cases amount of tax shall be deemed part of sale price. (XXXVIII). "Sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for any thing done by the dealer in respect of goods at the time of or before delivery thereof, other than cost of outward freight or delivery or cost of installation in cases where such cost is separately charged. Explanation: (i) In case of sale of goods warehoused in bonded warehouses, appointed or licensed, under the Central Excise Act 1944 or the U.P. Excise

Act the sale price shall include the duties paid or payable under the aforesaid Acts in respect of such goods at the time of clearance of the goods from the bonded warehouse whether such duties are paid or payable by or on the behalf of the seller or by any person who clears the goods. (ii) In a case in which any amount of duties payable by a dealer is deferred for a period or point of payment of any Duty is shifted, sale price shall include such amount of Duties; (iii) Sale price shall not include any amount allowed by seller of goods to the purchaser as cash discount or commission or trade discount at the time of sale of goods. (iv) In case of delivery of goods on hire purchase or any other system of payment by instalment sale price shall be the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of or the acquisition of property in goods to which the agreement relates and includes sum as payable by the hirer under the hire purchase agreement by way of deposit or other initial payment or credited or to be credited to him under such agreement on account of any such deposit or payment whether that sum is to be or has been paid to owner or to any person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by another means but does not include any sum payable as a penalty or as compensation or damages for breach of agreement. (v) The amount for which goods are sold or purchased shall include the price of packing material in which they are packed. (vi) Sale price of goods in relation to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is the valuable consideration received or receivable in respect of a works contract less actual amount incurred towards labour and services and amount of profit relating to supply of labour and services and such other amounts as may be prescribed. Sale price of goods does not include any sum received or receivable by the contractor as claim or damages from the contractee but sale price does not exclude any amount paid or payable by the contractor for any breach of conditions of the contract or agreement or paid or payable as any penalty or damages. (vii) In respect of transfer of right to use goods, any goods for any purpose (whether or not for a specified period) sale price means the valuable consideration received or receivable in respect of such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement.. (viii) In respect of a sale, if amount of tax under this Act is charged separately by the dealer in accordance

with provisions of this Act, the same shall not be deemed part of sale price and in all other cases amount of tax shall be deemed part of sale price. (XXXIX) "Schedule" means any Schedule appended to this Act; (XL) "Section" means section of this Act; (XLI) "Settlement commission" means the Commission constituted under section 65 of this Act. (XLII) "State" means the State of UTTAR PRADESH, (XLIII) "Tax" For the purpose of this Act, tax means tax leviable on sale or purchase of goods other than newspapers and tax includes (a) lump sum (composition money) accepted in lieu of actual amount of tax due on turnover of sales and, or as the case may be, of purchases as provided under section 26 of the Act; (XLIV) "Taxable Goods", means goods other than the goods the sale or purchase of which is not liable to tax under this Act; (XLV) "Tax period" - means calendar month or a quarter of an assessment year ending on thirtieth June or thirtieth September or thirty-first December or thirty-first March; or part thereof as the case may be, as may be prescribed. (XLVI) "Tribunal" means the Tribunal constituted under section -59 of this Act; (XLVII) "Turnover of sales" means the aggregate of amount of sale prices of goods sold or supplied or distributed by way of sale by a dealer, either directly or through another, on his own account or on account of others, whether for cash or deferred payment or other valuable consideration. (XLVIII) "Turnover of Purchases" with its cognate expressions means the aggregate of the amounts of purchase prices paid or payable in respect of purchases of goods made by a dealer either directly or through another dealer, whether in his own account or on account of others, after deducting the amount, if any, refunded to such seller in respect of any goods returned to such seller within such period as may be prescribed; (XLIX) "Vehicle" For the purpose of this Act vehicle includes wheeled conveyance used for carriage of goods solely or in addition to passengers. (L) "Vessel" includes any container, ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner. Explanation: For the purpose of this Act, any person who carries any goods as personal luggage or as person in charge of the goods shall be deemed a vehicle carrying goods. (LI) "Works contract" means any contract for works that involves transfer of property in goods (whether as goods or in some other form) involved in the execution of such works and work 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.

3. INCIDENCE AND LEVY OF TAX :-

(1) Subject to other provisions of this Act, every dealer who is liable to pay tax in accordance with provisions under sub-section (2) shall pay tax, in the manner prescribed, on turnover to be determined in the prescribed manner, of all sales inside the State and, or, as the case may be, of all purchases inside the State as mentioned in sub-section (4), of all taxable goods at such point of sale or purchase and at such rates as provided by or under this Act.

(2) Every dealer-

4. RATES OF TAX :-

(1) Subject to other provisions of this Act, the tax payable by a dealer shall be paid and be levied on (a) the turnover of sales of declared goods at every point of sale at such rate not exceeding the maximum rate of tax under section 15 of the Central Sales Tax Act, 1956, as may be notified by the State Government; (b) the turnover of sales of Aviation Turbine Fuel, Diesel, Natural Gas and Petrol at such

5. Liability of payment of Special Additional Tax :-

(1) Every dealer who is liable to pay tax according to provisions under section 3, in addition to tax payable under other provisions of the Act, shall, from the date he is liable to pay tax, pay a special additional tax on the turnover of sales of such goods at such point of sale and at such rate as may be notified by the State Government. Provided that where any goods so notified are purchased by a dealer from any person in the circumstances mentioned in sub-section (5) of section 3, dealer purchasing such goods shall be liable to pay special additional tax on the turnover of purchases of such goods at the same rate at which turnover of sales of such goods is liable to payment of tax. (2) For all purposes under the Act special additional tax shall be deemed to be part of tax. (3) No input tax credit shall be admissible in respect of amount of special additional tax.

6. Liability On Issuing False Certificate, Etc :-

Notwithstanding anything to the contrary contained elsewhere in this Act and without prejudice to the provisions of sections 52 and 54, 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:

7. Liability in cases of proprietorship and partnership concerns :-

Subject to other provisions under the Act- (i) Where business has been carried on by an individual as proprietor of any business establishment, such person shall be liable to pay any amount of tax or penalty or fee due under this Act, and notwithstanding anything contained in any law for the time being in force where any assessment has been made or any penalty has been imposed in the name of such dealer, the person who has carried on business shall be liable to pay amount of tax levied or penalty imposed or any other amount determined payable or due under the Act; and (ii) Where business has been carried out in the name of a partnership firm, each person who has been a partner in such firm, subject to other provisions under the Act, shall be liable to pay jointly and severally any amount of tax, penalty or fee which is to be paid by the firm and is due under the Act, and where any tax has been assessed or any amount has been imposed as penalty on such firm, it shall be deemed that such tax has been levied or penalty has been imposed on such each person who has been a partner in the firm.

8. Liability To Tax Of A Dissolved Firm And Liability :-

To Tax Of Transferee, 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 up to 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) Where the ownership of the business of any dealer liable to pay tax is transferred, the transferor and 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.

9. Liability Of Payment Of Tax Due From Deceased :-

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

10. LIABILITY IN CASES 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.

11. LIABILITY IN CASE 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 there under shall apply accordingly.

12. EXEMPTION FROM TAX AND ZERO RATING :-

(1) Notwithstanding anything contained in this Act, no tax under this Act shall be payable and be levied on - (a) turnover of sale or purchase of such goods, as may be notified by the State Government; (b) on the turnover of sales or purchases where such sale or purchase is- (i) in the course of inter - state trade or commerce; or (ii) outside the State; or (iii) in the course of export of goods out of the territory of India or in the course of the import of the goods into the territory of India. Explanation - For the purpose of this Act, expressions under sub-clause (i), sub-clause (ii) and sub-clause (iii) of clause (b) shall have the same meanings as assigned to them under section 3, section 4 and section 5 of The Central Sales Tax Act, 1956 respectively. (2) No tax shall be levied under this Act on turnover of purchases of any taxable goods where such goods are purchased for- (i) sale in the course of export of goods out of the territory of India; or (ii) use in the manufacture or processing of goods for sale in the course of export of goods out of the territory of India; or (iii) use in packing of goods for sale in the course of export of goods out of the territory of India. (3) Amount of tax paid to registered selling dealer in respect of purchases of goods by a registered purchasing dealer who purchases such goods for any of the purpose mentioned in clauses (i) to (iii) of sub-section (2), subject to other provisions of this Act, shall be refunded to the purchasing dealer.

13. REBATE OF TAX ON CERTAIN PURCHASES AND SALES :-

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 up to the full amount of - (i) (a) tax leviable on any registered dealer in respect of sale of such goods or class of goods by such dealer, to such persons or class of persons other than dealers, as may be specified in the notification; or (b) tax leviable on turnover of purchase in of such goods or class of goods by such dealers or class of dealers as may be specified in the notification, where such goods are used in manufacture or processing of Aviation Turbine Fuel, Diesel, Natural Gas or Petrol or used in packing of such manufactured goods; or (c) tax paid or payable by such dealers or class of dealers to the registered selling dealer in respect of purchase of such goods or class of goods, as may be specified in the notification and as are used in manufacture or processing of Aviation Turbine Fuel, Diesel, Natural Gas or Petrol or in packing of such manufactured goods, or Explanation: Dealers entitled for claim of rebate under sub-clause (b) or sub-clause (c) shall pay full amount of tax leviable on turnover of sale or purchase and shall be entitled to claim rebate in tax payable by them to the State Government for the period during which such goods are used for specified purpose. (ii) tax payable on sale or purchase of any goods where tax on sale or purchase of such goods is leviable under any other State Act and if it is proved that turnover of sales and, or of purchases have been disclosed under that Act before the authority competent to levy tax under that Act,

14. INPUT TAX CREDIT :-

(1) Subject to other provisions under this section, an amount of input tax credit as provided in sub-section (2) in respect of purchases from inside the State, of taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, shall be admissible and be allowed to a dealer who is liable to pay tax under this Act. (2) Subject to provisions under this section:- (I) in respect of purchases of taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol where purchased goods are intended- (i) either to be re-sold inside the State in the same form and same condition; or (ii) to be sold in the course of export of the goods out of the territory of India; or (iii) being declared goods are intended to be sold in the course of inter-state trade or commerce; or (iv) being raw materials or consumable stores or fuels or lubricants or packing materials are intended to be consumed or utilized or used in manufacture or processing of any taxable goods except Aviation Turbine Fuel, Diesel, Natural Gas and Petrol or in packing of such manufactured or processed goods, where such

manufactured or processed goods are to be sold either within the State or in the course of the export of the goods out of the territory of India or in the course of inter-state trade or commerce, an amount equal to the amount of input tax shall be admissible and be allowed as input tax credit. Provided that in relation to purchase of food grains in pursuance of any order made under section 3 of the Essential Commodities Act, 1955 including any purchase in excess of levy share, by any dealer who makes purchases from the State Government or its purchasing agent, shall, in respect of such food grains, shall be entitled to claim input tax credit of an amount equal to an amount of tax payable by it on sale of such food grains subject to maximum amount of input tax. (II) In respect of purchases of any taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol where such goods are intended to be consumed or utilized or used in the manufacture or processing of any taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol or in packing of such manufactured or processed goods as are intended to be consigned for delivery at a place outside the State except by reason of a sale, a partial amount of input tax which is in excess of four percent of tax paid or payable in respect of purchases of such goods, shall be admissible and be allowed as input tax credit. (III) (a) in respect of purchase of capital goods other than the goods the sale or purchase of which is exempt from levy of tax under clause (a) of sub-section (1) of section by a dealer where such capital goods are purchased by such dealer on or after the date of commencement of this Act, and are intended to be consumed or utilized or used in manufacture or processing of any taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol or in packing of such manufactured or processed goods, where such manufactured or processed goods are intended to be sold either within the State or in the course of the export of the goods out of the territory of India or in the course of interstate trade or commerce, an amount equal to the amount of input tax shall be admissible and be allowed as input tax credit, (b) in respect of purchases of any capital goods liable to tax where such capital goods are purchased on or after the date of commencement of this Act, and are intended to be consumed or utilized or used in the manufacture or processing of any taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol or in packing of such manufactured or processed goods if such manufactured or processed goods are intended to be consigned for delivery at a place outside the State except by reason

of a sale, a partial amount of input tax which is in excess of four percent of tax paid or payable in respect of purchases of such capital goods, shall be admissible and be allowed as input tax credit. (c) in respect of taxable goods other than Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, purchased by a dealer within a period of three months prior to the date of commencement of this Act for resale and held such goods in opening stock on the date of commencement of this Act by a dealer who is liable to pay tax from the date of commencement of this Act and the dealer furnishes the purchase bill or cash memo issued by the selling dealer registered under the U. P. Trade Tax Act, 1948 showing the amount of tax realized, an amount of input tax credit in accordance with provisions under clause (I) or clause (II), as may be applicable, subject to a maximum amount of tax that would have been payable in respect of purchase of such goods under provisions of this Act had this Act been applicable on the date of purchase of such goods, shall be admissible and be allowed as input tax credit. Explanation: For removal of doubts it is made clear that under this Act no input tax credit shall be admissible (a) in respect of purchases of goods other than declared goods where such goods are intended to be sold or are sold in the course of inter- state trade or commerce; or (b) in respect of purchases of goods that are intended to be consigned or have been consigned for delivery at a place outside the State; or (c) in respect of purchases of any goods that are intended to be sold or have been sold by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract or if such goods are intended to be consumed or have been consumed in the execution of a works contract. (d) in respect of purchases of goods that are intended to be sold or have been sold under an agreement of transfer of right to use any goods (whether or not for a specified period) for any purpose ; or (e) in respect of purchases of goods that are stolen or lost or destroyed or disposed of in any manner other than in the ordinary course of business ; or (f) in respect of purchase of a generator or a captive power plant including their parts, components and accessories where such goods are intended to be used or have been used by the dealer; or (g) in respect of any capital goods that have been purchased for use or have been used in the manufacture or processing of goods or in packing of any such manufactured or processed goods if such capital goods have been purchased before the date of commencement of this Act; or (h) in respect of purchase of capital goods if such capital goods are

intended to be used or have been used in the manufacture or processing of goods other than taxable goods and Aviation Turbine Fuel, Diesel, Natural Gas and Petrol or in packing of such manufactured or processed goods or if such capital goods are intended to be used in execution of works contract; or (i) in respect of purchase of capital goods that are purchased either for use in manufacture or processing of goods or for use in packing of such manufactured or processed goods, provided that rate of tax on such capital goods is four percent or lower and if manufactured or processed goods are intended to be consigned for delivery at a place outside the State except by reason of a sale. (j) In respect of purchase of such capital goods the sale or purchase of which is liable to tax at a rate of four percent or lower than four percent and such capital goods are either intended to be used or have been used in manufacture or processing of goods or, in packing of manufactured or processed goods where such manufactured or processed goods are intended to be consigned or have been consigned for delivery at a place outside the State except by reason of a sale. (k) in respect of purchase of any capital goods if such goods are intended to be used or have been used in the manufacture or processing of any goods or in packing of such manufactured or processed goods, provided that such manufactured or processed goods are ' (a) Either intended to be sold or have been sold by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; or (b) intended to be sold or have been sold by way of transfer of right to use any goods (whether or not for a specified period) for any purpose. (l) in respect of purchase of such capital goods as are not intended for use in manufacture or processing of goods or for packing of such manufactured or processed goods, for the purpose of sale by the dealer; or if such capital goods are not exclusively meant for use in manufacture or processing of goods or for use in packing of such manufactured or processed goods, for the purpose of sale by the dealer. (m) in respect of purchase of any goods as are liable to tax at a rate of four percent or lower, and if such goods are intended to be used or have been used as raw material or consumable stores or fuels or lubricants or packing materials, in manufacture or processing of goods or in packing of such manufactured or processed goods, if such manufactured or processed goods are intended to be consigned or have been consigned for delivery at a place outside the State except by reason of a sale. (n) in respect of purchase of

such goods as are taxable at a rate greater than four percent , partial amount of input tax to the extent it exceeds four percent of the turnover , if such purchased goods are intended to be used or have been used as raw materials or consumable stores or fuels or lubricants or packing materials in the manufacture or processing of goods, or in packing of such manufactured or processed goods, if such manufactured or processed goods are intended to be consigned or have been consigned for delivery at a place outside the State except by reason of a sale. (o) in respect of purchase of any goods that were purchased for use as raw materials or consumable stores or fuels or lubricants or packing materials for use in manufacture or processing of goods or packing of such manufactured or processed goods, if such goods and, or, as the case may be, any manufactured or semi-manufactured or processed or semi-processed goods that have been produced using such purchased goods, are stolen or lost or destroyed or gifted or given free of cost or disposed of in any manner, other than in the ordinary course of business. (p) in respect of purchase of such goods as are not exclusively meant for use as rawmaterial or consumable stores or fuels or lubricants or packing materials for use in the manufacture or processing of goods or packing of such manufactured or processed goods for sale by the dealer. (q) in respect of purchase of goods that are intended to be used or have been used as rawmaterials or consumable stores or fuels or lubricants or packing materials, in the manufacture or processing of goods or in packing of such goods, if such manufactured or processed goods are- (a) either intended to be sold or have been sold by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; or (b) intended to be sold by way of transfer of right to use any goods (whether or not for a specified period) for any purpose. (r) in respect of purchase of such capital goods as were used or were acquired for use by any other dealer earlier inside the State. (s) in respect of purchase of goods which remain in stock whether goods as such or as constituents of finished or semi-finished goods - (i) at the time of discontinuance of business, as closing stock; or (ii) on the date from which cancellation of registration is effective, as opening stock; or (ii) on the date from which the dealer is declared non taxable, as opening stock; or (iii) that are sold by a selling commission agent on behalf of a principal; or (iv) except as provided in sub-clause (c) of clause (v) of sub-section (2), that have been purchased on a date prior to the date on which the

dealer becomes liable to pay tax under this Act; and in respect of purchases of goods that have been used as fuel, lubricants and other consumables in manufacture or processing of goods held in stock as aforesaid; (t) in respect of purchases of goods if tax payable to the State Government by the purchaser himself in respect of purchases of such goods under this Act or under the U. P. Trade Tax Act 1948 has not been paid. (u) in respect of purchases if tax is not payable on any earlier sale or purchase of such goods under this Act or under the U. P. Trade Tax Act 1948. (v) in respect of goods which have been purchased from a dealer who has opted scheme of payment of composition money in lieu of tax on the turnover of sale and, or, as the case may be, of purchase of such goods. (w) In respect of amount of tax paid or payable as Special Additional Tax; or (x) in respect of purchases of goods that are intended to be consumed or utilized or used in the manufacturing or processing of any goods in respect of sale of which rebate is admissible under clause (II) of section 13. (y) In respect of purchases of any goods which- (i) either are any of the goods amongst Aviation Turbine Fuel, Diesel, Natural Gas and Petrol; or (ii) have been purchased before the Date of commencement of this Act but have not been purchased for resale within the State. Explanation I:- For the purpose of this section expressions "goods held in opening stock" and "goods held in closing stock" on any date, in reference to input tax credit and reverse input tax credit refers to- (i) in case of a dealer other than a manufacturer or manufacturer cum trader all taxable goods except Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, held in stock by the dealer in the same form and condition in which those were purchased; and (ii) in case of a manufacturer or manufacturer cum trader (a) all taxable goods except Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, held in stock by the dealer in the same form and condition in which those were purchased ; (b) goods used in manufacture or processing of any taxable goods (whether finished or not) except Aviation Turbine Fuel, diesel, Natural Gas and Petrol; and (c) goods used in packing of such manufactured or processed goods. Explanation II:- Capital goods for the purpose of this section carries the same meanings as assigned to it under clause (XII) of Section 2, but does not include- (a) goods other than taxable goods and Aviation Turbine Fuel, Diesel, Natural Gas and Petrol , and (b) such capital goods as are intended to be used in manufacture or processing of Aviation Turbine Fuel, Diesel, Natural Gas, Petrol and goods the sale or

purchase of which is exempt from payment of tax under clause (a) of sub-section (1) of section 12 or in packing of such goods. (c) a captive power plant and generator. Explanation III:- Raw-materials or consumable stores or fuels or lubricants or packing materials do not include Aviation Turbine Fuel, Diesel, Natural Gas, Petrol and goods the sale or purchase of which is exempt from payment of tax under clause (a) of sub-section (1) of section 12. Explanation IV:- Input tax does not include (i) the amount of tax paid or payable whether to the seller of the goods or to the State Government in respect of purchases of Aviation Turbine Fuel, Diesel, Natural Gas, Petrol and goods the sale or purchase of which is exempt from payment of tax under clause (a) of sub-section (1) of section 12 or in packing of such goods. (ii) amount of Special Additional Tax paid or payable on purchase of any goods under provisions of section 5 of the Act. (3) Amount of input tax credit for a tax period shall be computed in the following manner: For each purpose the commodity purchased during a tax period is intended to be sold, or used or consumed or utilized amount of input tax credit if allowable according to provisions under sub-section - (2), shall be computed separately for each purpose by using the following formula: $M \times N$ Where: M: represents full or the partial amount of input tax for the tax period, as may be applicable, according to provisions of sub-section (2) for a particular purpose and; N: represents the extent (expressed as percentage) to which the dealer purchased such commodity during the period for the particular purpose. The amount of input tax credit in respect of purchases of a particular commodity during the tax period shall be the aggregate of all amounts of input tax credits computed in respect of each purpose the commodity purchased is to be utilized. Total amount of input tax credit shall be the aggregate of input tax credits for all commodities. (4). For the purpose of claiming partial or full amount of input tax credit in respect of goods mentioned in sub-clause (c) of clause (III) of sub-section (3) held in opening stock on the date of commencement of this Act, the dealer shall prepare and submit inventory of such goods along with details of partial or full amount of input tax credit within a period of thirty days from the date of commencement of this Act, to its assessing authority. The assessing authority shall examine the claim of the dealer and for this purpose the assessing authority may make any such enquiry as it considers necessary. If the assessing authority is satisfied that the amount of partial input tax credit or full input tax credit, as the case may be, appears to be correct, it shall intimate the dealer and in a case in

which assessing authority is of the opinion that amount of partial input tax credit or full input tax credit claimed by the dealer is not reasonable in view of the facts found, it, after giving reasonable opportunity of being heard to the dealer, shall determine by passing an order, the partial or full amount of input tax credit that may be allowed to the dealer. (5) Amount of input tax credit in respect of capital goods shall be claimed and allowed in the following manner: Total amount of input tax credit in respect of any capital goods shall be divided into two parts. First part will represent the partial amount of input tax which is payable or is paid in excess of four percent on purchase of such capital goods (such amount of input tax in this sub-section hereinafter referred to as the plus amount of input tax) and the second part will represent the remaining amount of input tax on such capital goods (hereinafter referred to as the remainder amount of the input tax). Out of the plus amount of input tax, input tax credit shall be allowed and be claimed in five successive annual installments of equal amount, each installment to be claimed in the return of the first tax period and first such installment shall be claimed in the return of the first tax period of the assessment year subsequent to the assessment year in which such capital goods have been PURCHASED. Out of the remainder amount of input tax, input tax credit shall be claimed in five successive assessment years first such assessment year being the assessment year subsequent to the assessment year in which such capital goods have been used in manufacture or processing or packing of manufactured goods for full assessment year. Amount of input tax credit in a particular assessment year out of the remainder amount of input tax shall be claimed in the return of the first tax period of such assessment year and amount of input tax credit for each assessment year out of the remainder amount of input tax shall be computed according to following formula: Amount of input tax credit for any assessment year out of the remainder amount of input tax = $(R \times A) / (5 \times T)$ Where R- Represents the amount of remainder input tax A- Represents aggregate of sales under the clauses (i), (ii) and (iii) below, during the assessment year preceding the assessment year in which input tax credit is to be claimed. (i) sales inside the State; (ii) sales in the course of export ; and (iii) sales in the course of inter-state trade or commerce. T- represents the sum of the turnover of sales of manufactured goods sold in any manner and value of manufactured goods consigned to a place outside the State during the assessment year preceding the assessment year in

which input tax credit is to be claimed. Total amount of input tax credit in any assessment year in respect of purchase of capital goods shall be the sum of two amounts of input tax credits as computed above. (6). In the circumstances and in respect of goods or, as the case may be, of amount mentioned below Input tax credit shall not be admissible and if it has been claimed by the dealer, it shall stand reversed:- (i) in case of a dealer who discontinues business, in respect of goods held in opening stock in the same condition in which those were purchased and in respect of goods or class of goods used in manufacture or processing or packing of goods held in opening stock on the date of discontinuance of business; or (ii) in case of a dealer whose registration certificate is cancelled, in respect of goods held in opening sock in the same condition in which those were purchased and in respect of goods or class of goods used in manufacture or processing or packing of goods held in opening stock on the date from which cancellation of registration certificate is effective; or (iii) in case of a dealer in whose case if purchased goods or goods manufactured or processed out of any purchased goods, are stolen or destroyed or lost or disposed of otherwise than in the ordinary course of business, in respect of purchased goods or as the case may be, in respect of the goods used in manufacture or processing or packing of goods, stolen or destroyed or lost or disposed of otherwise than in the ordinary course of business; or (iv) where for any reason by a dealer excess input tax credit has been claimed, in respect of goods in respect of which input tax has wrongly been claimed; or (v) in case of a dealer who returns any purchased goods to the selling dealer within six months of the date of purchase of such goods, in respect of goods returned to the selling dealer; or (vi) in case of a dealer who has received credit note from selling dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act, in respect of excess amount of input tax in respect of which credit note has been received; or (vii) in case of a dealer who has been declared non-taxable under sub-section (13) of section 3 by the assessing authority, in respect of goods held in opening stock in the same condition in which those were purchased and in respect of goods or class of goods used in manufacture or processing or packing of goods held in opening stock on the date from which he is declared non- taxable; or (viii) in case of a dealer who opts any scheme of composition of tax liability under section 26 of the Act, in respect of- (a) goods or class of goods held in stock on the date of

commencement of the period of composition in the same condition in which those were purchased; and (b) goods or class of goods used in manufacture or processing of goods or in packing of such manufactured or processed goods where such manufactured or processed or packed goods are held in opening stock on the date of commencement of the period of composition of tax liability. Amount of reverse input tax credit shall be computed in prescribed manner and shall be payable by the dealer along with compound interest at a rate of eighteen percent per annum from the date immediately succeeding the last date prescribed for filing return of such tax period for which such input tax credit was claimed till the date of its payment. (7). Claim of input tax credit shall be made in the following manner: (i) In respect of goods held in opening stock on the date of commencement of this Act in respect of which partial or full amount of input tax credit is admissible according to provisions under sub-clause (c) of clause (III) of sub-section (2), input tax credit shall be claimed in six equal monthly installments and first such installment shall be claimed in the return of the tax period that commences after expiry of a period of three calendar months from the date of commencement of this Act, (ii) In respect of capital goods, amount of input tax shall be claimed in accordance with the provisions under sub-section (5). (iii) In other cases input tax credit shall be claimed in the return of the tax period in which purchases of goods to which such input tax credit relates, have been made. Amount of input tax credit along with amount of input tax credit carried forward from immediately preceding tax period shall be adjusted against the aggregate of amount of tax payable and the amount of reverse input tax credit, if any, due for the tax period. If after adjustment an excess amount of input tax credit is left, it will be adjusted towards the tax payable for the same tax period under the provisions of the Central Sales Tax Act, 1956. Remaining amount of input tax credit, if any shall be carried forward in the return of the next tax period and shall be added in the amount of input tax credit for that tax period. If after submission of return for the last tax period of the assessment year, amount of input tax credit exists, the same shall be adjusted towards any amount due from such dealer either under this Act or under the Central Sales Tax Act 1956 or under the U.P. Trade Tax Act 1948. If after such adjustment, any amount is found refundable to the dealer and if the dealer has not made any request to withhold such amount towards his future liabilities, subject to provisions under section - (41), the same shall be refunded to the

dealer. Subject to provisions under section-41, a compound interest at a rate of twelve percent per annum shall be allowed on such amount of refund from the date following the last date prescribed for submitting the return till the date refund is allowed. If the return for the last tax period is submitted after the expiry of the time prescribed, if refund is due, the same shall be allowed along with compound interest at a rate of twelve percent per annum from first date of the month succeeding the month in which such return has been furnished till the date of refund. (8) (i) In respect of purchases by a dealer of goods which are liable to tax at the point of sale, no input tax credit shall be allowed if original copy of sale invoice or bill or cashmemo issued by the registered dealer selling the goods in the prescribed manner is not produced before the assessing authority or if on such sale invoice or bill or cash-memo amount of tax realized by seller is not shown separately or if the name and registration number of the dealer claiming input tax credit are not mentioned on it. (ii) No input tax credit shall be allowed in respect of purchases on which purchaser himself is liable to pay tax unless he proves that he has paid tax on such purchases. (iii) No input tax credit shall be allowed in respect of purchases of goods in respect of which dealer is liable to deduct amount of tax in accordance with provisions under clause (C) or clause (D) of sub-section (1) of section 31, unless the dealer proves that after deduction, the amount of tax has been deposited in the prescribed manner. Provided that in special prescribed circumstances input tax credit may be allowed even if sale invoice or bill or cash-memo as required above is not produced. (9) The methods that are used by a dealer in an assessment year to determine the extent to which goods are used, consumed or supplied or intended to be used or consumed or supplied in the course of making sales or disposal of goods shall be fair, reasonable and in intelligible form in the circumstances. (10) Subject to other provisions input tax credit shall be admissible in respect of only those goods which are purchased from within the State. (11) In case of a dealer who opts any scheme of composition of tax liability under provisions of section 26 of the Act, input tax credit shall not be admissible in respect of - (i) purchases made during the period of scheme, of goods or class of goods in respect of which scheme of composition of tax liability has been accepted; (ii) purchases made during the period of scheme, of goods or class of goods required for use in the manufacturing or processing of any goods or class of goods or for use in packing of such manufactured or processed

goods in respect of which scheme of composition of tax liability has been accepted ; or (iii) goods held by the dealer in opening stock on the date of commencement of the period under scheme. (12) Input tax credit shall not be allowed against such purchase invoice or bill or cash memo as is obtained by the dealer from any dealer without making purchase of goods shown in such purchase invoice or bill or cash memo. (13) Where any goods are sold by a principal through a selling agent, input tax credit in respect of purchases of such goods shall be claimed by the principal. (14) Where in case of a manufacturer account books have not been maintained by a dealer or account books maintained by the dealer are not found worthy of credence or, purchase value of goods consumed or used or utilized in manufacture or processing of any goods including semi-manufactured or semi-processed goods is not ascertainable from the account books maintained, purchase value of such goods shall be determined in the prescribed manner (15) in respect of purchase of goods which remain in stock whether goods as such or as constituents of finished or semi-finished goods - (a) at the time of discontinuance of business, as closing stock; or (b) on the date from which cancellation of registration is effective, as opening stock; or (c) on the date from which the dealer is declared non taxable, as opening stock; or (d) that are sold by a selling commission agent on behalf of a principal; or (e) except as provided in sub-clause (c) of clause (IV) of sub-section (2), that have been purchased on a date prior to the date on which the dealer becomes liable to pay tax under this Act; and in respect of purchase of fuel, lubricants and other consumable goods, consumed in manufacture or processing of goods held in stock as aforesaid, if input tax credit has been already claimed, the same shall stand reversed.

15. NET TAX PAYABLE BY A DEALER :-

(1) The net amount of tax payable by a dealer for a tax period shall be determined according to the formula: $(A - B)$ Where : A : represents the aggregate of- (i) amount of tax payable according to provisions of section-3 and section 4 of the Act on turnover of sales or purchases or both, as the case may, of taxable goods during the tax period; (ii) amount of Special Additional Tax payable under provisions of section 5, (iii) amount payable during the tax period under the provisions of section 26 of the Act, and (iv) any amount of reverse input tax credit payable; B : represents the aggregate of : (i) amount of input tax credit according to provisions under

section 14, (ii) amount of input tax credit carried forward from immediately preceding tax period return, (iii) amount of rebate admissible according to provisions under section 13, and (iv) amount of tax deducted at source by purchasers of goods in accordance with provisions under section 34 in relation to purchases during the tax period. (2) Where amount determined by using formula under sub-section (1) is a negative amount, the dealer shall carry forward such amount to be added in input tax credit amount of succeeding period, the above process shall be applicable in respect of tax returns of all the periods for the assessment year and if net tax payable calculated according to formula under sub-section (1) for the last tax period is negative amount, such amount shall, subject to provisions under sections 40 be refunded to the dealer within thirty days after expiry of the period prescribed for the submission of return for the last tax period. Provided form negative amount as aforesaid amount payable under the Central Sales Tax Act, 1956 may be adjusted and remaining negative amount if any shall be carried forward in the next tax period. (3) If amount found refundable referred to in sub-section (2) is not refunded in accordance with the provisions under section-(40) within the time prescribed, the dealer shall be entitled for simple interest at a rate of nine percent per annum from the date following the last date prescribed for submitting return for the last tax period till the date refund is given and if the return for the last tax period is submitted after the prescribed date for submitting such return amount of interest shall be allowed from first day of the month after expiry of month succeeding the month in which return for the last period of the year has been filed. (4) If the amount of net tax payable in any return or revised return for any tax period is not paid within the time prescribed for submission of return of such tax period dealer, shall be liable to pay interest according to provisions of sub-section (2) of section 33 of the Act. (5) Following amounts shall be deposited separately by the dealer or other person and no deduction whatsoever shall be made from such amount : (i) the amount of tax deducted by a dealer or some other person from sellers of goods in accordance with provisions of section 34, and (ii) the amount wrongly realised as tax from purchasers of goods.

16. CERTAIN PRESUMPTIONS AND BURDEN OF PROOF :-

For all purposes under the Act - (I) In any assessment proceedings where any fact is specially within the knowledge of the assessee,

the burden of proving that shall lie upon him, and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act, shall lie upon him and assessing authority shall presume the absence of such circumstances. (II) Where a driver or the person in charge of any vehicle obtains an authorization for transit of any goods through the State under section- (50) of the Act and undertakes the responsibility to transport such goods outside the State, but fails to produce such goods along with authorization for transit before the officer in charge of the exit check post, unless after furnishing proper and sufficient evidence it is proved that such goods have been taken outside the State, it shall be presumed that the owner of such vehicle in collusion with the transporter who has issued goods - receipts in respect of such goods, the person in charge of the vehicle and the person who has hired the vehicle, after importing such goods inside the State, have sold such goods inside the State. In such a case owner of the vehicle, the transporter, the person in charge and hirer of vehicle shall jointly and severally be liable to pay tax on such presumed sales of goods and also for payment of amount of penalty that may be imposed under the Act. (III) Where a driver or person in charge of any vehicle while obtaining authorization for transit of any goods through the State under section- (50) of the Act, undertakes responsibility of handing over such goods to some other bonafide person or transporter inside the State for transporting such goods outside the State, but fails to prove that the goods were handed over to such bonafide person or transporter and if it is found that the goods have not been transported outside the State, it shall be presumed that such goods have been imported with a view to evade payment of tax and have been sold inside the State by the owner of the vehicle in collusion with the transporter who has issued goods receipts in respect of such goods, the person in charge of the vehicle and the person who has hired the vehicle. In such a case such transporter, owner of the vehicle, the person in charge and the hirer of the vehicle shall jointly and severally be liable to pay tax assessed on such presumed sales of such goods and for payment of amount of penalty that may be imposed under the provision of this Act. (IV) Where a driver or person in charge of any vehicle while obtaining authorisation for transit any taxable goods through the State under section -(50), declares that goods after entry into the State shall be transported outside the State by some other transporter inside the

State by some other vehicle and such driver or person in charge of vehicle while obtaining authorisation for transit at the entry check post undertakes responsibility of carrying goods out side the State, if it is found that the goods have not been carried outside the State, unless after furnishing proper and sufficient evidence, otherwise is proved, it shall be presumed that the owner of such vehicle in collusion with the transporter who has issued goods-receipts in respect of such goods, the person in charge and the hirer of the vehicle, after importing such goods inside the State have sold the such goods inside the State. In such a case the owner of the vehicle, the transporter who has issued goods-receipts in respect of such goods, the person in charge and the person who has hired the vehicle, shall jointly and severally be liable to pay tax assessed on such presumed sales of such goods and for payment of amount of penalty that may be imposed under the provisions of the Act. (V) Where a driver or person in charge of any vehicle while obtaining authorization for transit of any goods through the State under section (50), discloses that goods will be handed over to some bonafide transporter inside the State for transporting them outside the State, and does not undertake responsibility of taking goods outside the State, the burden to prove that the goods were handed over to such bonafide transporter inside the State, shall lie upon the owner of the vehicle and person in charge of the vehicle. In such a case if it is found that the goods have not been carried outside the State, and if the driver or the person incharge of the vehicle after furnishing proper and sufficient evidence proves that the goods were handed over to such bonafide transporter, it shall be presumed that such transporter in collusion with the transporter who has issued goodsreceipts in respect of such goods and the person who has hired the vehicle, after having imported such goods inside the State, have sold such goods inside the State. In such a case such transporter within the State and transporter outside the State who has issued goods-receipts in respect of such goods and the person who has hired the vehicle shall jointly and severally be liable for payment of tax assessed on such presumed sales of goods and for payment of amount of penalty that may be imposed under the Act. Provided that if it is found that goods have not been carried outside the State and if the transporter inside the State, after furnishing proper and sufficient evidence proves that the goods were handed over to some other vehicle for transport outside the State, it shall be presumed that the transporter who has issued goods-receipts in respect of such goods, transporter inside the

State to whom such goods were handed over in collusion with the owner of the vehicle to whom goods were handed over by the transporter inside the State in collusion have sold such goods inside the State and in such circumstances they shall jointly and severally be liable to pay tax assessed on such presumed sales of such goods and for payment of amount of penalty that may be imposed under Act. (VI) Where at a check post or at any other place inside the State, it is found that any taxable goods for the purpose of business, are being imported without a form of declaration prescribed under clause (a) of sub-sections -(2) of section -(48) unless after furnishing proper and sufficient evidence otherwise is proved, it shall be presumed that , (i) such goods are being imported with a view to evade payment of tax under this Act and; (ii) such goods are being imported with a view to evade payment of tax on sales of such goods. Provided that if goods are meant for use in manufacture or packing of any goods, it shall be presumed that goods are being imported with a view to evade payment of tax on sale of goods to be manufactured or packed. (VII) Where it is found that any dealer while importing taxable goods has shown purchase lesser than the fair market purchase value of such goods then- (i) in a case of manufacturer of goods, if such goods are raw materials or packing materials or containers or consumable stores it shall be presumed that part of the purchase value of such goods has been suppressed with a view to show the sale value lesser than the actual value of goods to be manufactured, with a view to evade part payment of tax on the sale value of goods to be manufactured; and (ii) in a case of a dealer who is importing such goods for resale inside the State, it shall be presumed that purchase value of such goods have been shown less with a view to show sale value lesser than the actual sale value of such goods with a view to evade part payment of tax on sale value of such goods. (VIII) Where any goods relating to business are traced to a bonafide dealer and are found in any building or place or vessel belonging to the dealer but the dealer has not accounted for such goods in books, accounts or documents maintained by him in the ordinary course of business or where any goods traced to a bonafide dealer are found in any other place or building or vessel or vehicle whether belonging to the dealer or not, are on inward journey to the business place of the dealer but such goods are not accompanied by the prescribed documents (i) if there is evidence about import of the goods by the dealer, it shall be presumed that such goods have been imported with a view to evade payment of

tax on sale of such goods; and (ii) if there is no evidence about import of goods by the dealer, it shall be presumed that such goods have been purchased with a view to evade payment of tax on purchase and, or sales of such goods. Provided that if goods found are for use in manufacture or processing of any goods, in the circumstances under clause (i) above it shall be presumed that goods manufacture by using such goods shall be sold without payment of tax and in the circumstances under clause (ii) above, it shall be presumed that such goods have been purchased with a view to evade payment on purchase of such goods and tax on sale of goods to be manufactured by using such goods. Provided further that if goods found are goods manufactured by the dealer, it shall be presumed that goods used in the manufacture of the goods found, have been purchased from within the State with a view to evade payment of tax on purchase of goods and manufactured goods will be sold without payment of tax. (IX) Where any goods relating to business found in any place or building or vessel or vehicle are traced to any bonafied dealer and are found in onward journey to a place which does not belong to the dealer, if such goods are not accompanied by the documents prescribed under the Act- (i) if there is evidence about import of the goods by the dealer, it shall be presumed that such goods have been imported with a view to evade payment of tax on sale of such goods; and (ii) if there is no evidence about import of goods by the dealer, it shall be presumed that such goods have been purchased with a view to evade payment of tax on purchase and have been sold with a view to evade payment of tax on sale of such goods. Provided that if goods found are goods manufactured by the dealer, it shall be presumed that goods used in the manufacture of such goods, have been purchased from within the State with a view to evade payment of tax on purchase of goods and manufactured goods have been sold without payment of tax. (X) Where any goods relating to business are found in custody of any person who carry on activities ancillary or incidental to or in connection with business mentioned in the explanation to sub-section (1) of section 40 claims to carry on any profession other than business, if such person fails to show entries of such goods in books or accounts or documents maintained by him in the ordinary course of such his profession or service and also fails to prove that the same belong to some other person or dealer, he shall be deemed to be owner of such goods and in respect of such goods - (i) if there is evidence about import of the goods, it shall be presumed that such goods

have been imported with a view to evade payment of tax on sale of such goods; and (ii) if there is no evidence about import of goods, it shall be presumed that such goods have been purchased with a view to evade payment of tax on purchase and, or sale of such goods. (XI) Where any books or accounts or documents found in any place or building or vessel or vehicle unless themselves reveal that they belong to some other dealer or person or unless the person incharge of such place or building or vessel or vehicle, after furnishing proper and sufficient evidence proves that the same belong to some other person or dealer, such books, accounts or documents shall be deemed to belong to such person incharge of such place or building or vessel or vehicle and if such books or accounts or documents contain transactions relating to business of purchase and sale of goods, unless proved otherwise such transactions shall be deemed to have been made by such person incharge in the course of business and such person shall be deemed a dealer in respect of such transactions. (XII) Where any transactions of sale and, or purchase are found recorded in any books or accounts or documents relating to a dealer and if such transactions are not found recorded in the books or accounts or documents maintained by the dealer in the ordinary course of business (i) if there is evidence to show that the dealer has imported such goods, it shall be presumed that such goods have been imported with a view to evade payment of tax on sale of such goods; and (ii) if there is no evidence to show that the goods have been imported by the dealer and if the dealer fails to produce sale invoice or bill or cashmemo issued by registered selling dealer from whom such goods have been purchased , it shall be presumed that goods have been purchased with a view to evade payment of tax on purchase and, or sale of such goods. Provided that if goods were for use in manufacture of goods in the circumstances referred to in clause (i) above, it shall be presumed that goods have been imported with a view to evade payment of tax on sale of such manufactured goods if manufactured goods are taxable goods and in the circumstances referred to in clause (ii) above it shall be presumed that the goods are purchased with a view to evade payment of tax on purchase of such goods and tax on sale of manufactured goods if such manufactured goods are taxable goods. (iii) if the dealer proves or if it is found that goods were received from a principal for sale by the dealer in the capacity of commission agent , it shall be presumed that such goods were received for sale with a view to evade payment of tax on sale of such goods. (XIII)

Unless after furnishing proper and sufficient evidence proved otherwise, transactions found in any books, accounts or documents found in any place, building, vessel or vehicle belonging to a dealer shall be deemed to have been made by such dealer in connection with his business. (XIV) Where in respect of purchase of any goods from within the State it is mandatory to obtain transport memo or a challan, as the case may be, referred to in sub-section- (6) of section - (21), if the same has not been obtained and preserved it shall be deemed that purchases have been made with a view to evade payment of tax. Where purchased goods are meant for use in manufacture of any taxable goods, it shall be presumed that such goods have been purchased with a view to evade payment of tax on sale of goods to be manufactured. (XV) Where in respect of sale of any goods or class of goods transport memo or a challan, as the case may be, referred to under section - (21) is mandatory to be issued and is mandatory to accompany the goods during transit, if the same has not been issued or if goods are not accompanied by such transport memo or challan, it shall be presumed that selling dealer has kept sales or dispatches of such goods outside the books, accounts or documents maintained by him in the ordinary course of business. (XVI) Where a dealer or his agent, after taking delivery of goods from the seller, himself has consigned the goods or is carrying such goods himself as personal luggage, if it is found that some of the goods are not covered by transport memo or challan or transfer invoice, as may be applicable, made available or produced by such dealer or agent, unless proved otherwise it shall be presumed that such excess goods found have been purchased with a view to evade payment of tax on purchase of such goods and will be sold without payment of tax. Where goods are for use in manufacture of any goods it shall be presumed that manufactured goods shall be sold without payment of tax. (XVII) Where a dealer obtains any purchase invoice or bill or cash-memo from a registered dealer without making purchase of goods shown in such purchase invoice or bill or cash-memo, it shall be presumed that the dealer obtaining such document has purchased goods of equal quantity or measure and of value shown in such document from other persons with a view to evade payment of tax on purchase of such goods in the circumstances in which tax cannot be levied on the person selling such goods.

17. REGISTRATION :-

(1) (a) Every dealer who held a registration certificate or a

provisional registration certificate issued under any provisions the U.P. Trade Tax Act, 1948 on the date immediately preceding the date of commencement of this Act, and is liable to pay tax from the date of commencement of this Act, if registration certificate or the provisional registration certificate granted to him has not been cancelled before the date of commencement of this Act by the assessing authority under that Act, shall be deemed to be a registered dealer on the date of commencement of this Act, (b) Every dealer who had obtained registration voluntarily under the provision of U.P. Trade Tax Act, 1948 and if neither registration certificate granted to him under that Act has been cancelled before the commencement of this Act nor such dealer has discontinued business till the date of commencement of this Act; shall be deemed to be a registered dealer under this Act on the date of commencement of this Act. Provided that where a dealer who has been a registered dealer under the provisions of the U.P. Trade Tax Act 1948 immediately before the commencement of this Act, but in view of the increase in the threshold limit as mentioned in clause (i) or clause (ii), as may be applicable, of sub-section (6) of section 3 such dealer has not remained liable to pay tax under this Act, if the dealer desires to retain registration certificate as voluntary registration certificate, he may apply for continuation of registration on the prescribed form of application for registration to the prescribed authority within thirty days from the date of commencement of this Act. Provided further that if any dealer referred to in clauses (a) or (b) or proviso above was required to pay any fee for renewal of the registration certificate under the provisions of U.P. Trade Tax Act, 1948, if the same has not been paid, registration certificate under clause (a) or clause (b) above shall not be deemed valid on the date of commencement of this Act, but if such dealer deposits amount of renewal fee along with rupees one hundred as late fee within thirty days from the date of commencement of this Act, he shall be deemed to be registered dealer from the date on which he presents application to the prescribed authority in the form prescribed for obtaining registration. (2) Every dealer who had applied for grant of registration certificate under any provision of the U.P. Trade Tax Act, 1948, before the date of commencement of this Act, and whose such application is pending for disposal before assessing authority under that Act, if registration certificate is granted to him under that Act, and if he has not discontinued business on the date of commencement of this Act, shall be deemed a registered dealer

with effect from the date of commencement of this Act, provided he deposits renewal fee if required , within thirty days from the date of commencement of this Act. Provided that if any dealer otherwise is not liable to pay tax under this Act from the date of commencement of this Act according to provisions under section 3, he shall not be deemed a registered dealer unless he presents application in the prescribed form in the prescribed manner before the prescribed authority along with proof of deposit of registration fee, for continuation or grant of voluntary registration certificate.

(3) Subject to provisions under sub-sections (1) and (2), every dealer who is liable to pay tax in accordance with any provision under section 3 and every dealer from whom any amount of tax has been deducted under the provisions of Section- (34), shall present an application in the prescribed manner and in the prescribed form before the prescribed authority within a period of thirty days from the date on which he becomes liable for payment of tax for grant of registration certificate after depositing rupees one thousand as registration fee in the prescribed manner. Provided that a dealer who would have become liable to pay tax on any date during the assessment year preceding the first assessment year under this Act, had this Act been in force in such preceding assessment year, shall present an application in the prescribed manner before the prescribed authority after depositing in the prescribed manner rupees one thousand as registration fee within thirty days from the date of the commencement of this Act. Provided further that a dealer who had become liable for obtaining registration certificate under any provision of the U.P. Trade Tax Act 1948, and is liable to pay tax on the date of commencement of this Act under this Act, if such dealer has not applied for issue of registration under the U. P Trade Tax Act 1948 without prejudice to any other liability under that Act, shall, for grant of registration, present an application in the prescribed form and in prescribed manner before the prescribed authority within thirty days from the date of commencement of this Act after depositing rupees one thousand as registration fee. Explanation- In computation of period of thirty days for the purpose of this section the date on which a dealer becomes liable for payment of tax shall be included. (4) Dealer who intends to manufacture any taxable goods for sale or who intends to carry on business of sale or purchase of taxable goods or who is carrying on business of sale or purchase of goods but otherwise is not liable to obtain registration, if he so desires, may present an application in the prescribed form and in prescribed

manner for grant of voluntary registration certificate at any time on or after the date of commencement of this Act after depositing in the prescribed manner rupees one thousand as registration fee. Such registration certificate shall be valid with effect from the date on which registration certificate is granted. (5) Dealer who holds a registration certificate referred to in sub-section (1) above shall present the certificate of registration before the prescribed authority along with an application for grant of fresh registration certificate within sixty days of the commencement of this Act. Any dealer referred to in sub-section (2) shall present an application along with registration certificate to the prescribed authority within thirty days from the date on which registration certificate is granted to him under the provisions of the U.P. Trade Tax Act 1948. (6) Subject to provision under sub-section (7) if the authority prescribed for granting registration certificate is satisfied that the dealer is a bona fide person with bona fide intention of carrying on business, it may, after making such inquiry as it may deem necessary, cause the dealer to be registered. Provided that where any security for grant of registration certificate has been demanded from the dealer, registration shall be granted after the dealer has furnished such security to the satisfaction of the prescribed authority. (7) If application for registration is incorrect or incomplete or is not in order or the fee or penalty has not been paid or the security has not been furnished or if the prescribed authority is not satisfied that dealer is a bonafide person with bonafide intention of carrying on business, it may after giving a reasonable opportunity being heard to the applicant reject the application by an order in writing. (8) The registration certificate 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 obtain registration in case he applies for grant of registration certificate within the prescribed time and, in any other case, from the date on which he presents application for grant of registration certificate. (9) Subject to provision under sub-section (10), registration certificate granted under this section shall remain in force till the date of discontinuance of business (10) When any business in respect of which a certificate of registration has been granted to a dealer on an application made, has been discontinued, or (a) in case of a dealer referred to in clause () of sub-section () of section 3, the aggregate of turnover of sales and, or, as the case may be, of purchases has remained below the prescribed minimum limit of taxable turnover for the last three consecutive years; or (b)

an incorporated body is closed down or if it otherwise ceases to exist; or (c) the owner of an ownership business dies leaving no successor to carry on business; or (d) in case of a firm or association of persons if it is dissolved or (e) a person or dealer is registered by mistake, or (f) a dealer fails to furnish return and pay tax and interest according to such return or returns within the time extended, or (g) a person or a dealer to whom registration was granted is found guilty of misusing such certificate of registration in any manner; or (h) a dealer has failed to furnish security or, as the case may be, additional security demanded from him in the interest of revenue; or (i) a dealer has obstructed any officer or authority empowered to make survey or inspection of business premises or account books or goods belonging to dealer or suspected to belong to the dealer; or (j) the dealer has transferred any prescribed form of declaration or certificate obtained by him to any other person or dealer except for lawful purposes; or (k) the person to whom registration was granted has permitted some other person to carry on business in the name of the dealer; or (m) the dealer has issued any tax invoice to any person without making sales of goods shown in the tax invoice to such person, the prescribed authority after giving reasonable opportunity of being heard to the dealer shall cancel the registration of such dealer with effect from the date of order. Provided that where it is found by the registering authority that: (i) the person to whom registration was granted has permitted some other person to carry on business in the name of the dealer; or (ii) the dealer has issued any tax invoice to any person without making sales of goods shown in the tax invoice to such person, (iii) the turnover of sales and, or, as the case may be, of purchases has remained below the prescribed minimum limit of taxable turnover for the last three consecutive years the registering authority may cancel the registration with effect from a date prior to the date of order. Explanation: The dissolution of a firm or association of person 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. (11) The prescribed 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 it 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 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 18. (b) in 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 event necessitating the amendment if information in that behalf is furnished within the time prescribed under section 18 and in any other case, from the date of receipt of request for such addition or modification by the Assessing Authority. (c) in 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 18. Explanation 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. (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 the 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 there of 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 18 the certificate of registration shall be amended. (13) The registration certificate granted under this section shall not be cancelled or amended by prescribed authority on its own motion without the dealer being given reasonable opportunity of being heard. (14) Where a dealer presents an application for registration after expiry of time prescribed under sub-section (2) or (3) if he deposits late fee at a rate of rupees one hundred per month or part of it, for the period of the delay along with the registration fee prescribed under sub-section (2) or sub-section (3), registration certificate may be granted with affect from the date of presentation of application form.

18. INFORMATION TO BE FURNISHED REGARDING CHANGE OF BUSINESS :-

If any dealer to whom the provisions of section 17 apply- (a) transfers his business or any part thereof by sale, lease, leave, license, 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 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 grant of registration certificate under section 17, shall within thirty days of the occurring of any of the events aforesaid, inform the prescribed authority in the form and manner as may be prescribed.

19. SECURITY IN THE INTEREST OF REVENUE :-

(1) Where it appears necessary to the assessing and/or prescribed 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 there under; or (c) as a condition for the grant or as the case may be, the continuance in effect or registration certificate, it may, by an order in writing and for reasons to be recorded therein, direct, before the grant or as the case may be, 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 dealer or person concerned has already furnished such security additional security of any nature, as may be specified for all or any of the aforesaid purposes. (2) No dealer or the person concerned shall be required to furnish any security or additional security under subsection (1) by the Assessing and/or Prescribed 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 such Authority on the turnover of the dealer for the assessment year in which such security is required to be furnished. (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) the Commissioner may, in respect of any goods notified by the 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 person concerned under sub-section (1) 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 authority granting the certificate under section 17 or issuing the forms referred to in clauses (b) of sub-section (1), as the case may be, and shall within sixty 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 goods 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 any dealer or person concerned is found to have misused any of the forms referred to in sub-section (1) 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 the assessing authority. (7) The Assessing or the Prescribed Authority, as the case may be, may - (a) refuse to grant; or (b) suspend any such certificate already issued; or (c) refuse to issue any of the forms referred to in sub-section (1) or sub-section (3); to any dealer or the person concerned, who has failed to comply with an order under subsection (1) or sub-section (3) or with the provisions of sub-section(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 (59) if it is not required for the purpose of this Act. (9) An appeal under section (57) 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 -59. (11) The provisions of this section shall mutatis mutandis, apply in relation to security required to be furnished under the order of any authority under this Act or the Court.

20. QUOTING OF REGISTRATION NUMBER ETC. :-

(1) Every registered dealer shall quote registration number allotted to him by the prescribed authority on all correspondences made, or statements and returns submitted, or information furnished and documents issued by him. He shall also mention invariably his registration number on each copy of treasury challan while depositing amount of tax, or fee or any other dues under this Act. (2) Selling dealer, if required by the purchaser of such goods shall show him the registration certificate granted to him under the provisions of this Act. (3) While making purchases of any goods every purchasing dealer who is a registered dealer under this Act shall give name, address and his registration number to the selling dealer and the selling dealer shall mention the name, address and such registration number of purchasing dealer on Tax invoice or retail invoice or sale invoice or bill or cash memo or transfer memo or challan or transfer invoice, as the case may be. (4) Every registered dealer under this Act shall present registration certificate granted to him before an officer or official of the Commercial Tax Department of the State Government whenever required by such officer or official in connection with any proceedings under this Act. (5) Every dealer who possesses permanent Account Number allotted by the Income Tax Department shall mention it on all applications made, returns submitted by him before any authority under this Act.

21. ACCOUNTS TO BE MAINTAINED BY DEALERS :-

(1) Subject to the other provisions under this section, every dealer liable to pay tax 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 good 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 the Act shall in addition to the accounts referred to in other sub-sections of this section, 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 clause (iii) of sub-section (2) of section 3, in an assessment year does not exceed ten 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, documents and the stock books required to be maintained under this section shall be preserved by the dealer or, as the case may be, by the manufacturer for such period as may be prescribed. (4) In respect of purchase of goods from a person other than a registered dealer, in cases in which selling dealer does not issue sale invoice or bill or cash memo, the purchasing dealer in respect of such purchases of goods shall issue to the seller a purchase invoice in such manner containing such particulars as may be prescribed and shall obtain signature or thumb impression of person making such sale. (5) (i) Every registered dealer while making sales of any goods except Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, of any amount to another registered dealer shall issue to the purchaser of goods a Tax Invoice in prescribed manner containing such particulars as may be prescribed, in legible form. Amount of tax charged on sales of goods shall be shown separately. Provided that where purchasing dealer is liable to deduct amount of tax payable by the selling dealer as tax under provisions of section 34, selling dealer in stead of issuing a Tax invoice shall issue a sale invoice or bill or cash memo in the prescribed form containing such particulars as may be prescribed and will subtract the amount of tax separately from the amount receivable from the purchaser. (ii) Subject to provision under clause (i) every dealer liable to pay tax while making sale of any goods except Aviation Turbine Fuel, Diesel, Natural Gas and Petrol, to any person where sale price of single sale exceeds such amount as may be prescribed, shall issue in the prescribed manner to the purchaser a retail sale invoice or bill or cash-memo containing such particulars as may be prescribed, in legible form. Such dealer shall not charge

separately any amount as tax in respect of such sale of goods. Provided that where a purchaser demands or if any other law requires, the dealer shall issue a retail sale invoice or bill or cash memo containing such particulars as may be prescribed, to the purchaser of goods even if sale price of single sale does not exceed amount so prescribed but he shall not charge amount of tax separately on such retail sale invoice or bill or cash memo. (iii) Every registered dealer liable to pay tax on sales of Aviation Turbine Fuel, Diesel, Natural Gas or Petrol while making sales to any person other than a dealer, where sale price of single sale exceeds such amount as may be prescribed, shall issue in the prescribed manner to the purchaser a sale invoice or bill or cash-memo containing such particulars as may be prescribed, in legible form. Such dealer may charge amount of tax payable by him separately on such sale invoice or bill or cash memo. Provided that where a purchaser demands or if any other law requires, the dealer shall issue a sale invoice or bill or cash memo to the purchaser of goods even if sale price of single sale does not exceed amount so prescribed and may charge amount of tax payable separately on such sale invoice or bill or cash memo. (iv) Every registered dealer liable to pay tax on sales of Aviation Turbine Fuel, Diesel, Natural Gas or Petrol while making sales to a dealer of any amount, shall issue in the prescribed manner to the purchaser a sale invoice or bill or cash-memo containing such particulars as may be prescribed, in legible form. Such dealer may charge amount of tax payable by him separately on such sale invoice or bill or cash memo. (v) Every dealer who is not liable to pay tax on any sales of Aviation Turbine Fuel, Diesel, Natural Gas or petrol while making sale of such goods to any dealer shall issue in the prescribed manner to the purchaser a sale invoice or bill or cash memo containing such particulars as may be prescribed, in legible form, but he shall not charge any amount from the purchaser in the name or colour of tax. (vi) Every dealer who is not liable to pay tax on any sale of Aviation Turbine Fuel, Diesel, Natural Gas or petrol while making sale of such goods to any person other than a dealer, where sale price of single sale exceeds such amount as may be prescribed, shall issue in the prescribed manner to the purchaser a sale invoice or bill or cash-memo containing such particulars as may be prescribed, in legible form. Such dealer shall not charge any amount in the name or colour of tax on such sale invoice or bill or cash memo. Provided that where a purchaser demands or if any other law requires, the dealer shall issue a sale invoice or bill or cash memo to the

purchaser of goods even if sale price of single sale does not exceed amount so prescribed but shall not charge any amount in the name or colour of tax on such sale invoice or bill or cash memo. (6) Every dealer while making purchases of any goods from another dealer (whether registered or not) shall give his name, address and registration number, if any, to the selling dealer. (7) Every registered dealer who consigns betel nuts, catechu, edible oils including refined oils, vanaspati ghee and other vegetable oils for use in manufacturing of edible oils, iron-steel, food grains, oil seeds, mentha oil, menthol, pan-masala, whether tobacco mixed or otherwise and such other goods or class of goods, as the State Government may, by notification in the Gazette, specify, of such quantity or measure or value as may be notified, to a dealer whether by reason of sale or otherwise, shall issue a transport-memo in prescribed manner and , in prescribed form obtained from the Assessing Authority having jurisdiction over the area in which principal place of such dealer is situated. Such transport-memo completed in all respects shall accompany the goods during journey of goods and shall be delivered to the consignee dealer at the time of delivery of goods and where goods are handed over to the consignee dealer at the business place of the selling dealer such transport memo completed in all respects shall be delivered to the receiver of such goods. Counter foil of transport memo shall be retained by the consignor dealer as part of account books. (8) Except as provided in sub-section (7) above every registered dealer and every dealer liable to pay tax while consigning any taxable goods to another dealer whether as a result of sale or otherwise, shall issue in the prescribed manner a legible challan or transfer invoice containing prescribed particulars, to the purchaser or consignee person of goods. Such challan or transfer invoice shall be prepared in duplicate and original copy of such challan or transfer invoice shall accompany the goods during the journey of goods. Duplicate carbon copy of such challan or transfer invoice shall be preserved by the dealer as part of account books. (9) Person transporting the goods for delivery to the consignee shall fill in the particulars in the relevant columns provided on transfer memo, sale invoice or bill or cash memo, or transfer invoice or challan, as the case may be. Person transporting goods shall deliver such documents to the consignee dealer along with goods. (10) Consignee dealer of goods shall preserve documents referred to in sub-section [7] and sub-section-[8] above for the period prescribed under sub-section-[3] above and shall not transfer any such

documents to any other person. (11) Every dealer who receives any certificate or any form of declaration prescribed under this Act or rules made or notifications issued hereunder, from the assessing authority, shall use them in the prescribed manner and shall keep an account of all such used or unused certificates or forms of declaration in the prescribed manner. (12) No dealer shall transfer to any person and no person shall receive from any person any certificate or any form of declaration prescribed under this Act or rules made or notification issued hereunder except according to the provisions of this Act and rules made or notifications issued thereunder. (13) Any dealer who receives any prescribed form of declaration including duplicate copy of declaration form for import of goods and documents referred to in sub-section [4] to sub-section [8], shall preserve them for a period prescribed under sub-section [3] of this section. (14) Where a dealer purchases or receives or disposes of manufactured goods in more than one of the following ways: (i) makes sale of taxable goods inside the State; or (ii) dispatches any taxable goods to other dealers for sale inside the State; or (iii) makes sale of taxable goods in the course of inter state trade or commerce; or (iv) makes sale in the course of export or import; or dispatches any taxable goods out side the State otherwise than by way of sale, shall keep separate account of sales or dispatches and also purchases and receipts of goods for such purposes separately as far as possible. (15) Any dealer who claims input tax credit under section 14 shall maintain a register in respect of computation of input tax credit tax period wise. (16) A dealer who maintains or keeps books, accounts in a computer, shall also maintain day to day print out of all such books, accounts and documents. He shall also prepare floppies of such books or accounts or documents and shall maintain them as part of accounts. (17) Every dealer liable to pay tax shall prepare an inventory of goods held in Stock whether purchased from inside the State or imported from outside the State, along with their purchase value, on following dates: (i) Goods held in opening stocks on the date on which the dealer becomes liable to pay tax; (ii) Goods held in closing stocks on the last date of each financial year; (iii) Goods held in opening stock on the first date of the assessment year in which the dealer applies for issue of orders under sub-section (12) of section 3; (iv) Goods held in stocks at the time of discontinuance of business. Provided that if the dealer manufactures any goods and holds any manufactured or semi- manufactured goods in stocks, he shall also prepare inventory of goods and record

estimated purchase value of goods present in manufactured or semi-manufactured goods as constituents and estimated purchase value of goods used in manufacture of such goods as fuel or consumable stores or lubricants or packing materials. (18) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax payable under this Act in respect of that sale the registered dealer making the sale, if refunds the excess amount realised as tax or allows credit of such amount to the purchaser in any other manner, shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed. (19) Where the tax invoice has been issued and the tax payable under this Act in respect of the sales exceeds the amount of tax charged in that tax invoice the registered dealer making the sale, if realises from the purchaser the amount of tax that has been charged less on a tax invoice or receives credit of such amount in any other manner, shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed. (20) In case of goods returned or rejected by the purchaser, the purchaser shall account for the amount of tax invoice in his books of account, shall issue a debit note of the amount to the seller and receive a credit note issued by the seller a credit note shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer containing the particulars as may be prescribed. (21) If the purchasing dealer does not produce a debit note issued by the selling dealer, of the amount that was charged less on the tax invoice, he shall not be entitled to claim input tax credit in respect of such amount.

22. REALISATION OF TAX FROM PURCHASERS BY SELLERS

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(1) Except as provided in subsection (5) of section 21, no dealer shall realise any amount in any manner in the name and colour of tax under this Act in respect of any sale of any goods. (2) A registered dealer who is entitled to realise amount of tax separately on Tax invoice or sale invoice or bill or cash memo in accordance with provisions under sub-section (5) of section 21 shall not realise any amount in excess of the amount of tax payable by him under the provisions of this Act. (3) Except as provided in section- 34, no dealer whether or not liable to pay tax on any purchase of any goods under this Act, shall deduct any amount in the name of tax in any manner from the seller of such goods. If purchaser of goods deducts any amount as purchase tax form the seller of goods

without any other liability under this Act, such amount shall be deemed to be the part of turnover of purchases.

23. SUBMISSION OF RETURNS :-

(1) Every dealer who is liable to pay tax under this Act, and every dealer from whom tax has been deducted at source under section-34, shall submit such return or returns of his turnover or of amounts deducted, as the case may be, for such tax periods as may be prescribed within such time, 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 submission of the return by any person or class of persons. Provided that every dealer liable to pay tax including a dealer who claims input tax credit under section- 14 of the Act, shall also submit along with return a list of purchases of goods from registered dealers and list of sales of goods to registered dealers in the prescribed manner containing such particulars as may be prescribed. (2) Before submitting the return under sub-section-(1), the dealer shall deposit, in such manner as may be prescribed the amount of net tax payable shown in the return along with any such amount which has been wrongly realized in excess of amount of tax due under the Act from purchasers of goods during the tax period of return. (3) Every person or dealer to whom provision of section - 34 applies, shall submit a statement of details of dealers from whom deductions have been made, with their complete names and addresses along with details of amount of payments made and amounts of tax deducted during the tax period within the time prescribed for depositing the amount of tax deducted, and shall deposit the amount of tax deducted in the prescribed manner and within the time prescribed under sub-section - (6) of section-34. (4) 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-(2) is deferred, there shall be payable simple interest at the rate eighteen percent per annum on such deposit from the date immediately following the last date prescribed for the submission of the return till the date of deposit of such amount. (5) 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 (4) 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. (6) If 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. (7) Every dealer liable to pay tax under this Act, including a dealer who has carried on business during part of an assessment year, shall submit annual return of turnover of purchases and sales in the prescribed form, in the prescribed manner and within the prescribed time along with such other details and documents as may be prescribed. (8) Every dealer or any other person to whom provisions of section 34 apply, shall submit for the assessment year such details as may be prescribed in the prescribed form and within the prescribed time.

24. ASSESSMENT OF TAX FOR A TAX PERIOD :-

Where in respect of any tax period of an assessment year:- (a) no tax return has been submitted by a dealer within the time prescribed or within the time allowed by the assessing authority, if extended, under sub-section-(1) of section -23 or if return has been submitted but amount of tax payable has not been deposited ; or (b) preliminary examination of return by the assessing authority reveals that computations shown in the return are wrong or amount of input tax credit claimed or tax payable shown is incorrect; or (c) on the basis of material available on records with the assessing authority, it is satisfied that the turnover of sales or purchases or both, as the case may be, disclosed by the dealer is not worthy of credence ; it may, after making such inquiry as it may deem fit and after giving a reasonable opportunity of being heard to the dealer, determine to the best of his judgment the turnover and the amount of tax payable and make an order of assessment of turnover and tax for such tax period. The dealer shall within thirty days of service of such assessment order and notice of demand on him, deposit the amount of tax assessed in excess of the amount of tax already deposited by him. Provided that no order of assessment for

any tax period of an assessment year shall be made after the dealer has submitted annual return for such assessment year and where annual return has not been submitted by the dealer, assessment shall not be made after expiry of the period prescribed or time allowed, if extended, for submission of annual return for such assessment year.

25. ASSESSMENT FOR AN ASSESSMENT YEAR :-

(1) In respect of every dealer liable to pay tax, subject to other provisions, for each assessment year there shall be an assessment of (i) turnover of purchases and turnover of sales of taxable goods made by the dealer during the assessment year whether such purchases or sales had been made directly by the dealer or through his branch, depot or agent; (ii) tax payable by the dealer for such assessment year; and (iii) admissible amount of input tax credit and amount of reverse input tax credit if any. Provided that where the dealer has carried on business during a part of the assessment year, such assessment shall be for such part of the assessment year. Every dealer liable to pay tax, for each assessment year, shall furnish to the assessing authority an annual return of self assessment in the prescribed manner in the prescribed form within the prescribed time. Provided that on the application of the dealer, in appropriate cases the assessing authority may extend the period for furnishing annual return of self assessment but such extended period shall not exceed ninety days beyond the time prescribed for furnishing such return. (3) Subject to provisions under sub-section (4), every dealer who has furnished annual return referred to in sub-section (2) shall be deemed to have been self assessed on the turnover of purchases and turnover of sales disclosed in the annual return and to an amount of tax payable admitted in such return. Return itself shall be deemed to be an assessment and any fact disclosed or any figure mentioned in the return shall be deemed part of such assessment order. For all purposes under the Act, rules made or notifications issued thereunder, last date of the assessment year subsequent to the assessment year in which the date prescribed for submission of annual return falls, shall be deemed to be the date of assessment order and annual return shall be deemed to be an assessment order. Provided that if the assessing authority finds any computation error and amount of tax admitted by the dealer is to be enhanced, the dealer shall be required to present revised annual return of turnover and tax within the time allowed, along with proof of deposit of tax and

interest. In the circumstances revised return shall be deemed to an assessment order. (4) In each assessment year, in respect of twenty percent of dealers out of total number of dealers liable to pay tax, as may be specified or selected by the Commissioner or by any other officer not below the rank of an Additional Commissioner, as may be authorized by the Commissioner and dealers falling in any of the categories mentioned below, assessment shall be made by the assessing authority after detailed, scrutiny and examination of books, accounts or documents kept by the dealer in relation to business and returns, if any, submitted by the dealer and after making such enquiry as it may deem fit: (i) Dealer who has not submitted annual return of turnover and tax within the prescribed time or within such further time, as may be extended or the dealer has not submitted the revised return as required under proviso to sub-section (3) within the time allowed; or (ii) Dealer in whose case, preliminary examination of annual return by the assessing authority reveals that computations shown in annual return are wrong or amount of input tax credit claimed or tax payable shown is incorrect; or (iii) Dealer by whom no return for any tax period has been filed or returns have not been filed for some of the tax periods of the assessment year ; or. (iv) Dealer in whose case assessing authority has passed provisional assessment order under section-24 in respect of one or more tax periods to the best of his judgment; or (v) Dealer in whose case on the basis of material available on records if the assessing authority is satisfied that the turnover of sales or of purchases or of both, as the case may be, disclosed by the dealer in annual return of turnover and amount of tax payable shown is not worthy of credence and, or tax shown payable in the return has not been deposited by the dealer, or amount of input tax credit claimed is wrong or amount of tax payable shown is incorrect; or (vi) Dealer about whom there is presumption that he has made any sales or purchases of any taxable goods under this Act, or (vii) Dealer who has prevented or obstructed an officer empowered to make inspection, search or seizure under the provisions of section -44 or section -46 of the Act; or (viii) Except a dealer who has opted any scheme of payment of lump sum in lieu of tax due on turnover of sales or purchases, a dealer in whose case amount of tax has been deducted at source under section 34;d (ix) Dealer in whose case assessment is to be made for such first assessment year in which he has carried on business during the whole assessment year; or (x) Dealer who has commenced business after the first day of the

assessment year for which assessment is to be made; (xi) Person who has obtained authorization for transit of goods through the State; (xii) Such other dealers or class of dealers as may be specified by the commissioner; or (5) In case of a dealer in which regular assessment is to be made, the assessing authority, for the purpose of examination of accounts, return or returns submitted by the dealer and for making such enquiry as it may deem fit, before the expiry of the period prescribed for making assessment, shall serve on the dealer a notice requiring him, on a date to be specified therein, to produce or cause to be produced there, any books, accounts or documents kept by him in relation to his business and any evidence on which the dealer may rely in support of the contents of returns of various tax periods and annual return submitted by him. If the dealer has not submitted the annual return he shall also be required to submit such return on the specified date. After making audit and examination of returns, books, accounts and documents and after making such enquiry, as it may deem fit- (i) if the assessing authority is satisfied that turnover of sales and, or of purchases disclosed and amount of tax shown payable by the dealer in annual return is correct and worthy of credence, it shall assess the dealer to tax in accordance with the provisions of the Act, by an order in writing, on the turnover admitted by the dealer; and (ii) where assessing authority is of the opinion that the turnover disclosed by the dealer in the annual return or the amount of tax shown payable does not appear to be correct, it shall issue notice to the dealer stating reasons there for to show cause why turnover disclosed and, or amount of tax shown payable by the dealer should not be rejected and why he should not be assessed to tax in accordance with provisions of the Act, on the turnover to be determined to the best of its judgment. If after considering the reply, if submitted by the dealer, and after giving reasonable opportunity of being heard to the dealer, assessing authority is satisfied that the turnover disclosed by the dealer is not worthy of credence and, or rate of tax admitted by the dealer is not correct, it shall determine the turnover to the best of its judgment and assess the dealer to tax according to provisions of the Act by an order in writing. (iii) Where show cause notice under clause (ii) has been issued to the dealer and after considering the reply submitted by the dealer, if assessing authority is satisfied that the turnover disclosed by the dealer and, or the rate of tax admitted is correct, it shall assess the dealer, by an order in writing, to tax according to the provisions of the Act, on the turnover admitted by

the dealer. Provided that the show cause notice referred to in sub-clause (ii) shall contain all such reasons on which the assessing authority has formed its opinion about incorrectness of the turnover and, or rate of tax. Provided further that where opportunity for production of books, accounts and documents has been afforded to the dealer but for any reason he has not availed such opportunity and thereby the assessing authority could not examine the correctness and propriety of particulars shown in the returns, it shall not be necessary to issue show cause notice to such dealer before making assessment order to the best of its judgment. (6) Copy of assessment order passed by the assessing authority under sub-section (3) along with demand notice of the amount of tax, if any, to be deposited by the dealer, shall be served on the dealer. (7) Dealer shall deposit the tax assessed in excess of tax deposited by him for the assessment year within a period of thirty days after the date of service of the final assessment order and demand notice. If the amount of tax deposited by the dealer is found in excess of tax assessed, the same shall be refunded according to the provisions of the Act. (8) Assessing authority shall not be precluded from making final assessment order under this section on the ground of passing of any provisional assessment order in respect of any tax period under Section-24. Also on passing of final assessment order, assessment orders passed, under Section-24 shall stand merged in the final assessment order passed under this section. (9) Notwithstanding any thing contrary contained in this Act or in any other Act for the time being in force, in cases of following dealers or class of dealers in respect of different transactions more than one assessment may be made for the same assessment year: (i) Dealers or persons who have obtained more than one authorisation for transit of goods through the State, in respect of each authorisation for transit of goods through the State separate assessment order may be passed; (ii) casual dealers who have not obtained registration certificate and have no fixed place of business; by different assessing authorities in whose jurisdiction they have carried on business by each such authority in respect of business carried on in its jurisdiction; (iii) dealers other than registered dealers who import taxable goods on each occasion they import goods separate assessment may be made by the officer empowered to seize such goods; (iv) dealers other than registered dealers who either execute works contracts or affect transfer of right to use any goods for any purpose in jurisdictions of more than one assessing authority and have no fixed place of business, by

each such assessing authority in respect of business done in its jurisdiction. Provided that more than one assessment shall not be made in respect of the same turnover of sales of goods or turnover of purchases of goods.

26. COMPOSITION OF TAX LIABILITY :-

(1) Notwithstanding anything contained in this Act but subject to direction of the State Government and subject to provision under sub-section (2), the assessing authority may accept a lump sum as composition money in lieu of (a)ount of tax payable on the turnover of sales of such goods or class of goods and during such period as may be agreed upon, by dealers : (i) Who carry on exclusive retail business of purchase and of sale of goods within the State only; (ii) Who do not manufacture any goods; (iii) who do not sale any goods in the capacity of importer; and (iv) whose neither turnover of sales nor turnover of purchases for the assessment year preceding the assessment year for which scheme is applicable has exceeded rupees twenty- five lakh and whose turnover as aforesaid is not likely to exceed rupees twentyfive lakh for the assessment year for which scheme is applicable and where the dealer has not carried on business during the whole preceding assessment year, neither his turnover of sales nor his turnover of purchases for the assessment year for which scheme is applicable is likely to exceed rupees twenty-five lakh. (b) amount of tax payable on the turnover of sales of self manufactured bricks, tile-bricks, brickbats, brick-gitti or brick-rori and surakhi during such period as may be agreed upon. (c) amount of tax payable on the turnover of sales of goods by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of any works contract of such nature as may be specified; amount of tax payable on the turnover of sales of goods by dealers who make sales of goods by way of transfer of right to use any goods (whether or not for a specified period) for any purpose in respect of such goods and during such period as may be specified ; (d) amount of tax payable by casual dealers on the turnover of sales of such goods or class of goods and during such period as may be specified; (e) amount of tax that may be payable by dealers other than registered dealers in respect of turnover of any presumed purchases or sales of goods under this Act ; (f) amount of tax that may be payable on estimated turnover of sales of goods being imported for sale by persons other than registered dealers. Provided that where a composition money for a period has been accepted in reference to

any goods or class of goods, any change in rate of tax which may come into force after the date of such agreement in respect of such goods or class of goods, shall have the effect of making a proportionate change in the lump sum in relation to that part of the period of assessment during which the changed rate remains in force. (2) Any dealer who makes purchases of any goods or class of goods from persons other than registered dealers from within the State for sale under any of the clauses (a) to (e) except clause (b) or for use in manufacture of any goods mentioned in clause (b) or for use in the execution of a works contract of the nature specified under clause (d), notwithstanding anything contrary contained in the Act, the State Government, may direct such dealer to pay amount of tax due in accordance with the provisions of the Act on the turnover of such purchases of goods during such period, in the manner and within the time as may be prescribed under the scheme. (3) Any dealer who opts scheme of composition of tax liability, shall not be entitled to claim input tax credit and if the dealer has already claimed input tax credit in respect of any goods held by him in his opening stock on the date of commencement of the period of composition, the dealer shall be liable to pay such amount as reverse input tax credit within thirty days from the date of commencement of such period. (4) Where the State Government is of the opinion that it no longer in the public interest to continue any scheme of composition of tax liability, it may at any time during the period, withdraw such scheme and in that case if a lump sum amount of composition money has been fixed, a part of it in the proportion of the part of the period during which the scheme remained in force shall be payable by the dealer. (5) Where a composition money has been accepted in lieu of tax on turnover of sales and, or, as the case may be, of purchases of any goods or class of goods, if the dealer does not carry on any other business of sale and, or as the case may be, of purchase of goods and does not obtain any form of declaration or certificate either prescribed under this Act or under the Central Sales Tax Act, 1956 it shall not be necessary for him to submit return / returns under section 23 of the Act in respect of the period for which composition money has been accepted. (6) Any dealer who opts scheme of payment of tax under this section shall not realise any amount from the purchasers as tax or in the name and colour of tax. (7) any dealer who opts any scheme of payment of tax under this section shall not be entitled to claim input tax credit in respect of purchases of goods that are covered under the scheme and no input tax credit shall be allowed

by the assessing authority. If claim of input tax credit has already been claimed or allowed that shall stand reversed and amount of such reverse input tax credit shall be realised as tax along with amount of interest at a rate of twelve percent per annum from the date it was claimed and till the date of payment of such amount.

(8) Any dealer who makes purchases of any goods from a dealer, who has opted any scheme of payment of tax under this section, shall not be entitled to claim input tax credit in respect of goods purchased from such dealer.

(9) In respect of a case falling under clause (a) of sub-section (1), in case of a dealer whose application is found in accordance with the provisions of this section and direction issued by the State Government in that behalf but during the period of the scheme, the turnover of sales or of purchases exceeds the prescribed limit of turnover, such dealer shall be liable to pay tax in accordance with the other relevant provisions under the Act, on such exceeded turnover of sales and or, as the case may be, of purchases and in such case the moment the turnover exceeds the prescribed limit, it shall be presumed that period of scheme has expired.

(10) Except dealers falling in clause (f) or clause (g) of sub-section (1), every other dealer to whom this section applies, shall without prejudice to any other provisions under the Act, shall be liable to furnish following information to the assessing authority:

- (i) Inventory of goods held in stock as opening stock on the first day of the period for which scheme is applicable;
- (ii) List of purchases of all goods along with details of names, addresses and registration numbers of dealers the selling dealer, name, quantity and value of goods;
- (iii) Particulars including account and usage of forms or certificates prescribed under this Act or under the Central Sales Tax Act, 1956 and rules made hereunder;
- (iv) Inventory of goods held in stock as closing from whom such goods have been purchased, date of purchase, number and date of sale voucher issued by stock at the time of expiry of the period under the scheme.
- (v) Amount of reverse input tax credit in respect of goods held by the dealer in opening stock on the date of commencement of the period of composition of tax liability.

(11) Notwithstanding anything contrary contained in any other provision of this Act, where a lump sum has been accepted by the assessing authority under this section, assessing authority shall not make an assessment in respect of turnover and tax covered under the scheme for such period for which scheme is applicable but assessing authority shall not be precluded from making assessment of tax on the turnover not covered by the scheme.

Explanation: For the purpose of this section the assessing authority includes an officer appointed and posted by the Commissioner at a check-post.

27. ASSESSMENT OR REASSESSMENT OF TURNOVER ESCAPED FROM ASSESSMENT AND PERIOD OF LIMITATION FOR MAKING ASSESSMENTS OR RE-ASSESSMENTS :-

(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has 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 deduction or exemption have 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 reassess 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 judgement.

Explanation II :- For the purpose of this section and of section 31, "assessing authority" means the officer or authority who has made 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 of assessment or re-assessment made under this section in pursuance of such notice.

(2) Assessment order for any tax period of an assessment year may be made within the time prescribed under Section -24.

(3) Except as otherwise provided in this section or Section - 28, assessment or reassessment for any assessment year may be made at any time within a period of five years after the expiry of assessment year for which assessment is to be made.

(4) Assessment or reassessment order in respect of turnover escaped from assessment may be passed at any time within five years and nine months ending on 31st -December after the expiry of the assessment year for which assessment is to be made, provided that notice under this section has been served within a period of five years and six months ending on 30th September after the expiry of the assessment year

for which assessment is to be made. (5) Notwithstanding anything contained in sub-section (2) or sub-section (3), where an appellate authority under section 59 or a taxing authority under section- 60, or the Tribunal either under section-61 or under section 62 or the High Court under section -63 or the State Government under section 76 has - (i) set aside an order of assessment or reassessment and has directed assessing authority to pass fresh assessment or reassessment order; or (ii) directed the assessing authority to set aside an order of assessment or reassessment to pass fresh order of assessment or re-assessment; or (iii) quashed any order of assessment or reassessment for want of jurisdiction of assessing authority, or due to improper service of any notice or due to service of improper notice, authority competent to make an order of assessment or reassessment may make fresh order of assessment or re-assessment before expiry of the assessment year subsequent to the assessment year in which such order or direction is received by the assessing authority according to rules or procedure. Provided that where any assessment or reassessment order made earlier has been quashed for want of proper service of notice or for want of jurisdiction or for want of service of proper notice, fresh order of assessment or re-assessment may be made by the competent assessing authority after serving proper notice properly and after affording reasonable opportunity of being heard, to the dealer before expiry of the assessment year subsequent to the assessment year in which such order quashing the earlier order of assessment or reassessment is received by the competent assessing authority according to rules or procedure. (6) Where an order of assessment or reassessment has been set aside by the assessing authority himself under section - 32 of the Act, a fresh order of assessment or reassessment may be made before expiry of the assessment year in which such order of assessment or reassessment has been set aside. Provided that if an order of assessment or re-assessment made ex parte is set aside on or after first of October in any assessment year, fresh order of assessment or re-assessment may be made on or before thirtieth of September of the assessment year subsequent to the assessment year in which such ex parte order of assessment or re-assessment was set aside. Provided further that where second or subsequent time any order of assessment or reassessment is made ex parte and where such second or subsequent ex parte order of assessment or reassessment is to be set aside and a fresh order of assessment or reassessment is to be made, such second or subsequent ex parte

order of assessment or reassessment may be set aside and fresh order of assessment or re-assessment may be made within the time within which after setting aside first ex parte order of assessment or reassessment, fresh order of assessment or re-assessment was to be made. (7) Notwithstanding anything contained contrary to in sub-section (6) or section 32, where- (i) an order of assessment or re-assessment is to be made in compliance of an order passed or direction issued by an appellate authority under section 59 or the revising authority under section 60 or the Tribunal either under section 61 or under section 62 or the High Court under section 63 or the State Government under section 76; or (ii) in a case in which an order of assessment or re-assessment is to be made in exercise of powers under proviso to sub-section (5), no fresh order of assessment or re-assessment shall be made after expiry of the period prescribed under sub-section (5) even if the assessing authority after making an ex parte order of assessment or re-assessment sets aside such order of assessment or re-assessment and makes fresh order of assessment or re-assessment. This provision shall also apply in cases of second and subsequent assessment or reassessment orders made ex parte. (8) Notwithstanding any thing contained in sub-section (3) or sub-section-(4), if the Commissioner on his own or on the basis of reasons recorded by assessing authority, is satisfied that it is just and expedient so to do, authorises the assessing authority in that behalf, such assessment or reassessment may be made within a period of six years after expiry of assessment year to which such assessment or reassessment relates notwithstanding such assessment or reassessment may involve a change of opinion. Provided that before authorising the assessing authority by the Commissioner it shall not be necessary for Commissioner to hear the dealer. (9) Where the proceedings for assessment or re-assessment for any assessment year remain stayed under the order of any court or authority, the order of assessment or reassessment may be made before the expiry of the assessment year subsequent to the assessment year in which the order vacating the stay is received by the concerned assessing authority according to rules or procedure. (10) 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 reassessment 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. (11) Notwithstanding anything contained in this section, where the State Government is of the opinion that due to any extra-ordinary circumstances prevalent at the time in the State or any part of it, it will be difficult to complete assessment or re-assessment in any case or class of cases within the time prescribed under this section, before expiry of such period, it may, by notification in the Gazette, extend the time limit prescribed under this section for making assessment or re-assessment in such a case or class of cases. (12) Where any dealer claims refund of any amount deposited by him as tax or of any amount deducted from him as tax under provisions of sub-section (1) of section 34 or of any amount recovered from him as tax and where no assessment has been made within the time prescribed under this section, nothing contained in this section shall prevent the assessing authority from making an assessment of turnover and tax beyond the time prescribed under this section for such assessment year towards tax liability of which such amount has been deposited or deducted or recovered.

28. ASSESSMENT OF ESCAPED TURNOVER IN CASE OF PRICE VARIATION :-

Where under agreement between seller and purchaser it is agreed that sale price of goods due to price escalation shall be settled on a latter date and in the circumstances such date falls in any assessment year subsequent to the year in which goods have been sold, amount receivable due to price settlement, such amount, for all purposes under this Act, shall be deemed to be turnover during the tax period in which such settlement is made. The Assessing Authority shall proceed to assess the tax payable on such amount as his turnover of the tax period in which settlement has been made. Provided that the tax on such turnover of sales shall be

charged at the rate at which it would have been charged had such turnover been assessed for the assessment year to which such turnover belongs.

29. PROTECTIVE ASSESSMENT :-

(1) Where the assessing authority has reason to believe that any person with a view to evade payment of tax or in order to claim any input tax rebate which he otherwise is not eligible for or was carrying on business in the name of, or in association with any other person either directly or indirectly, whether as an agent, employee, manager, partner or power of attorney holder and guarantor, relative or sister concern or in any other capacity, such person and the person in whose the name the registration certificate, if any, is taken, shall severally and, or jointly be liable for payment of tax, penal interest or penalty or any other amount due under the Act which shall be assessed, levied and recovered from all or any such person as if such person or persons are dealers under the Act. However, before taking any action under this section, the person concerned shall be given a reasonable opportunity of being heard. (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.

30. ROUNDING OFF OF TURNOVER AND 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 purpose 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 rupees, 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.

31. RECTIFICATION OF MISTAKES :-

(1) Any officer or 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 face of 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 therefrom all the provisions of the Act and rules framed thereunder shall apply as if such notice have been served in the first instance.

32. POWER TO SET ASIDE :-

(1) In any case in which an order of assessment or re-assessment or order of penalty has been made 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 under this Act on the turnover of sales or purchases, or both, 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. Provided further that where after setting aside an ex parte order again an ex parte order has been passed and the assessing authority keeping in view the provision under first or second proviso to sub-section (5) of Section 27 is of the view that if the ex parte order is set aside, sufficient time required for passing fresh order shall not be left, it may refuse to set aside such second or subsequent ex parte order. (2) Where an assessment order under sub-section (1) of section- 24 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 there under.

33. PAYMENT AND RECOVERY OF TAX :-

(1) Any amount of tax or fee or penalty or any other amount which a dealer or other person is liable to pay under any provision of this

Act, shall be deposited by the dealer or such other person in the prescribed manner within the prescribed time. (2) Subject to provisions under sections (3), (4) and (6) the tax admittedly payable shall be deposited within the time prescribed, failing which simple interest at the rate of eighteen percent per annum shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount and nothing contained in section- 26 shall prevent or have the effect of postponing liability to pay such interest. Explanation:- I - For the purpose of this sub-section, the tax admittedly payable means the tax which is due under this Act on the turnover of sales or, as the case may be, on the turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or in any proceedings at any stage under this Act, whichever is greater. Explanation: - II - For the purpose of this section tax admittedly payable includes an amount of composition money or any instalment of such composition money to be deposited by a fixed date, as prescribed by the State Government or fixed by the Commissioner under section -26 of this Act and amount of reverse input tax credit. (3) The amount of tax assessed under this Act in excess of amount of tax already deposited, along with the interest payable according to the provisions of this Act shall be deposited in the manner specified in and within thirty days of the service of the notice of assessment and demand. (4) If the tax (other than the tax admittedly payable to which sub-section-(2) applies, assessed, reassessed or enhanced by any authority or court remains unpaid for three months after expiration of the period specified in the notice of assessment and demand, simple interest at the rate of eighteen percent per annum on the unpaid amount calculated from the date of such expiration shall become due and be payable : Provided that the amount of interest under this sub-section shall be recalculated if the amount of tax is varied on appeal or revision or by any order of a competent court or authority. Provided further that where an order of assessment or reassessment is passed under remand proceedings or an order of assessment or reassessment is passed after reopening of an exparte order and the tax payable is enhanced the dealer shall be liable to pay interest on such enhanced tax as it was enhanced in the order of assessment made for the first time and for this purpose the date of service of the notice of assessment and demand shall be deemed to be amended accordingly. (5) The amount of interest payable under sub-sections

(2), (3), (4) and (5) 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 purpose to be part of the tax. (6) Where realisation 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 (4) shall be payable also for any period during which such order remained in operation. (7) Amount imposed by way of penalty under any provision of this Act shall be deposited in the prescribed manner and within thirty days of service of the order imposing such amount by way of penalty. Amount assessed as tax shall be deposited in the manner specified in and within thirty days of the service of order of assessment and notice of demand. Any other amount except the amount of tax assessed and penalty imposed, assessed or imposed or determined as payable under any provision of this Act, shall be paid in the prescribed manner and within the prescribed time and where no such time has been prescribed within thirty days of service of order by which such amount has been assessed, imposed or determined. (8) Notwithstanding anything contained in any law 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 and 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 claim, if any, as may have fallen due for payment by such dealer to such person and as may be legally subsisting. (9) The assessing authority may at any time or from time to time amend or revoke any such notice. (10) Any person making any payment in compliance with notice under sub-section (7) 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 the amount referred to in the receipt. (11) Any person discharging any liability to the dealer after receipt of the notice referred to in sub-section -(7) 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. (12) Where a person, to whom a notice under sub-section (8) 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. (13) Any amount - (i) which is admitted by a dealer to be due in any tax return; or (ii) of tax assessed in excess of tax deposited by the dealer; or (iii) of tax deducted at source by a dealer or any other person; or (iv) of composition money or instalment of such composition money; or (v) wrongly realized as tax from purchaser in contravention of provision under section- 22; or (vi) ordered to be paid under provision of section -52 or section - 55; or (vii) of penalty; or (viii) of interest payable under this Act ; or (ix) other wise due under the provision of this Act is not paid within the prescribed time or within such extended time as may be allowed by any competent Court or authority shall become recoverable as arrears of land revenue. Notwithstanding any thing contained in any other law to any special or general order of the State Government, any such amount shall be recovered as arrears of land revenue, or in 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 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 shall proceed to make recovery in prescribed manner; (14) 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 of the person who is liable and 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 purpose of recovering the amount specified in the certificate, shall have also all the powers which :- (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.

(15) Notwithstanding anything contained in sub-section (2) and sub-section (3) and notwithstanding any judgement, 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 proceeding is filed in respect of such tax or dues then- (a) where as a result of such appeal, revision or other proceeding 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 proceeding may be continued from the stage at which it stood immediately before such disposal; (b) where as 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 realized (ii) if any recovery proceeding 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 proceeding, 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 amount of the tax or other dues is not enhanced (with reference to the amount assessed by the Assessing authority) as result of such appeal, revision or other proceedings

(16) 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. (17) Where any amount of tax assessed under sub-section-(2) of section-25 or penalty imposed under section-54 is recoverable from an owner of a vehicle and recovery certificate has been issued, the officer competent to execute the recovery certificate may take assistance of police and other officers or officials of the State Government in locating such vehicle or other vehicles of the same owner. If so required by the recovery officer such other officers or official shall be empowered to detain such vehicle. When ever any such vehicle is detained by any officers or official he shall give the cause of detention in writing to the person in charge of the vehicle at the time of detention and shall immediately inform the officer executing the recovery certificate. Officer executing the recovery certificate shall proceed with according to law to realise arrears against such owner of vehicle. Provided that if amount recoverable is paid after detention of vehicle, the vehicle shall be set free. Provided further that if at the time of detention if some goods are loaded on it and owner of such goods is a person other than the owner of the vehicle the owner or the person in charge of the goods shall be allowed to remove such goods from such vehicle if he desires so.

34. MODE OF RECOVERY OF TAX DUE IN CERTAIN CASES: TAX DEDUCTION AT SOURCE :-

(1) Notwithstanding anything contained in section- 22 and without prejudice to any other mode of recovery or payment or collection of tax due under this Act, but subject to other provisions under this section - (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 some other form) in pursuance for 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 by credit or in cash or in any other manner, deduct an amount equal to amount of tax payable by the contractor on the turnover of goods, determined in the manner prescribed under sub-section (3) of section 4 of the Act, in respect of taxable goods sold inside the State by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, towards full satisfaction of tax payable on sales of goods inside the State.

Amount of tax to be deducted shall be computed in accordance with the rates of tax provided by or under sub-section (1) of section 4. Provided that where the person responsible for making payments to the contractor is unable to ascertain the turnover of various goods involved in the execution of the works contract or if the contractor, for any reason claims that he is not liable to pay tax on turnover of sales inside the State of any taxable goods or that he is liable to pay as tax an amount lesser than the amount of deduction worked out on turnover of sales of taxable goods inside the State, the person responsible for making payment shall require the contractor to produce directions issued by the assessing authority of the contractor in this behalf and there upon on receipt of such directions, such person shall deduct such amount towards tax or, as the case may be, shall not deduct any amount towards tax, as may be mentioned in the directions issued in this behalf by the assessing authority on the application of the contractor. Provided further that where any contractor has made deduction from the payments made to his sub-contractor in accordance with sub-section (5) the amount of such payments shall be deducted from the amount on which deduction is to be made under this clause. (B) Where in respect of a sale (except a sale in the course inter-state trade or commerce or a sale outside the State or a sale in the course export) of taxable goods, under an agreement of transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, lessor called a seller of goods is a dealer other than a registered dealer and where lessee called purchaser of goods, not being liable to pay tax under the Act on purchase of such goods, is either a registered dealer or a person other than a dealer amongst following: (i) the Central Government or any State Government ; or (ii) any local authority, any corporation or undertaking established or constituted by or under a Central Act or a State Act ;or (iii) any co-operative society or other society, club, firm or other association of persons, whether incorporated or not, the person responsible for making payment to the lessor in respect of sale of goods, for discharge of liability on account of valuable consideration payable for such sale of goods under an agreement of transfer of right to use any goods, shall at the time of making such payments to the seller, either by credit or by payment in cash or in any other manner, towards full satisfaction of amount of tax payable by the seller, deduct an amount equal to the amount computed on the turnover of such sale at a rate provided by or under sub-section (2)

of section 4. Provided that where the lessee is not able to ascertain the turnover of taxable goods sold inside the State or if for any reason, the lessor claims that he either is not liable to pay any amount as tax on any turnover of sales inside the State of any taxable goods or is liable to pay as tax a lesser amount than the amount of deduction worked out on turnover of sales as above, the person responsible for making payment shall require the lessor to produce directions issued in this behalf by the assessing authority of the lessor and there upon on receipt of such directions such person shall deduct such amount or shall not deduct any amount towards tax, as may be mentioned in the directions issued in this behalf, on the application of the lessor, by the assessing authority.

(C) Except in respect of a sale of any goods under a works contract or under an agreement of transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, where a dealer selling any taxable goods is a dealer other than a registered dealer and is liable to pay tax under this Act on sale of such goods, and where the person purchasing such goods, not being liable to pay tax under the Act on purchase of such goods, either is a registered dealer or is a person other than a dealer amongst following: (a) the Central Government or any State Government; or (b) any corporation or under taking established or constituted by or under a Central Act or a State Act, person responsible for making payments to the seller for discharge of liability on account of valuable consideration payable for such sales of goods, shall at the time of making such payments to the seller either by credit into the account of the seller or by payment in cash or in any other manner, deduct an amount equal to the amount of tax payable under this Act, towards full satisfaction of payment of tax on such sales by the dealer selling such goods. Amount to be deducted shall be computed on the turnover of sales of goods at rates provided by or under sub-section (1) of section 4. Provided that if the dealer selling any taxable goods, for any reason claims that he either is not liable to pay tax on such sales of goods inside the State or is liable to pay as tax an amount lesser than amount of deduction worked out on turnover of sales, the person responsible for making payment shall require the selling dealer to produce directions issued in this behalf by the its assessing authority and there upon on receipt of such directions such person shall deduct such amount or shall not deduct any amount towards tax, as may be mentioned in the directions issued in this behalf, on the application of the

selling dealer, by the assessing authority. (D) Where seller of such goods, as the State Government by notification Specify, is a registered dealer and has sold such goods on behalf of a principal, principal being a person other than a registered dealer, to a registered dealer who is carrying on business in such goods, the purchasing dealer, from amount payable to the seller for discharge of any liability on account of valuable consideration payable for such sale of goods and amount of tax on such sale under this Act, shall deduct an amount equal to the amount of tax payable towards the full satisfaction of the tax payable on such sale. Amount to be deducted shall be computed on the turnover of sales at such rates as may be notified by the State Government under sub-section (1) of section 4 and, or sub-section (1) of section (5) in respect of such goods. Provided that if the dealer selling any taxable goods, for any reason claims that he either is not liable to pay tax on such sales of goods inside the State or is liable to pay as tax an amount lesser than amount of deduction worked out on turnover of sales, the person responsible for making payment shall require the selling dealer to produce directions issued in this behalf by the assessing authority of the selling dealer and there upon on receipt of such directions such person shall deduct such amount or shall not deduct any amount towards tax, as may be mentioned in the directions issued in this behalf, on the application of the selling dealer, by the assessing authority. (2) Where selling dealer referred to in any of the clauses under sub-section (1), of any goods either claims that he is liable to pay as tax an amount lesser than the proposed amount of deduction or claims that he is not liable to pay any amount of tax in respect of sales referred to in sub-section (1) above, such dealer may apply to the assessing authority having jurisdiction over the principal place of business of the dealer or if the dealer has no fixed place of business, to the assessing authority in whose jurisdiction such dealer ordinarily resides, with such evidences as are required to substantiate the claim of the dealer, for issue of direction to the purchaser to deduct lesser amount of tax or as may be, not to deduct any amount as tax. (3) The assessing authority referred to in sub-section (2), after giving reasonable opportunity of being heard to the dealer and after examining the liability of payment of tax of the dealer according to the relevant provisions of the Act, in respect of sale of goods, shall by an order in writing direct the purchaser of the goods to deduct such amount as tax, or, as the case may be, not to deduct any amount as tax, as may be mentioned in the order made by him. (4)

Nothing contained in sub- sections (1) to (3) above and in sub-section (5) below shall prevent the assessing authority from making an assessment of tax payable by the dealer in accordance with other provisions of the Act and notwithstanding anything contained in this section, the dealer shall be liable to pay tax according to other relevant provisions of the Act. (6) 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: (7) The person making such deductions under sub-section (1) or sub-section (5) shall, at the time of payment or discharge furnish to the selling dealer a certificate in such form and manner and within such period as may be prescribed. (8) The person responsible for making the payments to the selling dealer 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 submission of the return by such person. The amount deducted under sub-section (1) or sub- section (5) 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. (9) 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 selling dealer, and credit shall be given to him for the amount so deducted on the production of the certificate, referred to in sub-section (7) in the tax return of the relevant period or the assessment made, as the case may be, for the relevant assessment year and any amount found in excess of tax due shall be refunded to the selling dealer. (10) If any such person referred to in sub-section (1) or sub-section (5) fails to make the deduction or , after deducting, fails to deposit the amount so deducted as required by subsection (6), the assessing authority may, after giving to such person an opportunity of being heard, by order in writing, direct such person shall pay, by way of penalty, a sum not exceeding

twice the amount deductible under the section but not so deducted and, if deducted, not so deposited into the Government Treasury. (11) Without prejudice to the provisions of sub-section (10), 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 compound 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. (12) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (11) shall be a charged upon all assets of the person concerned. (13) Payment by way of deduction in accordance with sub-section (1) or sub-section (5) shall be without prejudice to any other mode of recovery of tax due under this Act from the selling dealer under sub-section (1) or sub-section (5), as the case may be. (14) Where purchaser of goods under any of the clauses under sub-section (1) makes purchases from a person other than a dealer, no deduction of any amount shall be made by the purchaser of the goods, but the onus to prove that goods have been purchased from a person other than a dealer shall lie on such purchaser of goods, failing which it shall be presumed that goods have been purchased from a dealer and deduction has not been made in contravention of the provisions under this section. Explanation : - For the purpose of this section, assessing authority in relation to person responsible for making payments to the seller means the officer having jurisdiction over the place where the place of business or residence of such person is located.

35. MORATORIUM FOR PAYMENT OF TAX IN LIEU OF EXEMPTION FROM TAX :-

(1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing production of any goods or for promoting the development of any industry already in existence, in the State generally or in any districts or parts of districts in particular, it may on application or otherwise in any particular case or generally, by notification declare, that to the dealer running new units whose date of starting production falls on or before December 31, 2001 and dealers owning manufacturing units which have under taken expansion, diversification or modernization or backward integration and have started production on or before December 31, 2001, if

such dealers hold an eligibility certificate issued under the provisions of section- (4-A) of the U.P. Trade Tax Act 1948, rules made and notifications issued thereunder or if such dealers may be issued eligibility certificate under sub section- (2) of this section. in lieu of exemption from tax, moratorium for payment of tax to the extent and during the period provided in sub section- (3) of this section be allowed subject to conditions given under sub-section- (4) of this section and also subject to such other conditions as may be prescribed or as the State Government may, by notification in the Gazette, specify. Provided that notwithstanding anything contained contrary in any other provision of this Act; and in particular the provision of repeal of section (4-A) and 8(2-A) of the U.P. Trade Tax Act, 1948, rules made and notifications issued there under, in respect of dealers who have been granted facility of moratorium for payment of tax admittedly payable, such facility shall continue and shall be deemed to have been granted under this Act and for this purpose, the relevant provisions under the U.P. Trade Tax Act, 1948, as those stood at the time, shall be deemed to be the part of this Act. Any applications pending for issue of orders for moratorium for payment of tax admittedly payable before the Commissioner Trade Tax under the U.P. Trade Tax Act, 1948 shall be deemed to be pending before the authority prescribed under this section and the same shall be disposed of according to the provisions of the U.P. Trade Tax Act 1948 as it was in force on the date of presentation of the application before the Commissioner under that Act. (2) Notwithstanding anything contained contrary to the provision of this Act and in particular to the provisions of repeal of section - (4-A), 8(2-A) of the U.P. Trade Tax Act, 1948 rules made and notifications issued there under- (i) application for grant of eligibility certificate presented on a date prior to the date of commencement of this Act before the competent authority under that Act shall be deemed pending before the prescribed authority under this Act. (ii) Dealer owning new units whose date of starting production falls before the date of commencement of this Act and dealers owning such units as have under taken expansion or diversification or modernization or backward integration who could not present application for granting of eligibility certificate under the provisions of section 4-A of the U.P. Trade Tax Act 1948, before the date of commencement of this Act and time prescribed for presenting the same has not expired on the date of commencement of this Act, may apply for grant of eligibility certificate by the last date prescribed under that Act for

this purpose before the prescribed authority under the Act. Applications under clause (i) and (ii) above shall be disposed of by the prescribed authority according to the provisions of the U.P. trade Tax Act 1948, rules made and notifications issued there under as they stood before the commencement of this Act . For this purpose such provisions shall be deemed to be part of this Act. Dealers found eligible for grant of eligibility certificate shall be granted eligibility certificate. (3) Dealers holding eligibility certificate either granted under the provisions of the U.P. Trade Tax Act, 1948 before the date of commencement of the Act or who may be granted eligibility certificate in accordance with the provisions under sub-section-(2) of this section, shall be eligible for the facility of moratorium for payment of tax in lieu of exemption from tax to the extent and for the period as under. (i) subject to provision under clause (ii) below, to the extent of one hundred and thirty percent of amount of exemption from tax mentioned in the eligibility certificate less aggregate of amount of exemption from tax as has been availed before the date of commencement of this Act, in cases of dealers who have enjoyed exemption from tax during any period before the commencement of this Act and in other cases in which dealers have opted moratorium for payment of tax in lieu of exemption from tax, to the extent of aggregate amount of one hundred percent of the amount of exemption from tax mentioned in the eligibility certificate and fifty percent of the amount of fixed capital investment mentioned in the eligibility certificate less aggregate of such amount in respect of which facility for moratorium for payment of tax has been availed during the period before the commencement of this Act. (ii) in respect of tax payable for the remaining period as on the date of commencement of this Act, out of the maximum period mentioned in the eligibility certificate . Explanation: For the purpose of computation of amount of tax for the purpose of deferment, net amount of tax payable in respect of any manufactured goods arrived at by deducting the amount of input tax credit relating to goods that are intended to be consumed or utilised or used in the manufacture of such goods or intended to be used in packing of such manufactured goods, from amount of tax admittedly payable on turnover of sales of such manufactured goods shall be taken into account and such amount shall not be clubbed with any other amount of tax payable. (4) Facility of moratorium for payment of tax under this section shall be granted and be subject to the following conditions. (i) Facility shall be allowed only to those manufacturers who hold eligibility

certificate referred to in sub-sections (2) and (3) of this section and who obtain certificate of moratorium in the prescribed manner from the prescribed authority. (ii) Facility shall be limited to the amount of tax and for the period mentioned in subsection (3) of this section. (iii) Payment of amount of tax for each assessment year, which the dealer would have been liable to pay as tax admittedly payable on sales of goods less amount of input tax credit relating to goods intended to be consumed or utilised or used in the manufacture of goods to which the eligibility certificate relates, shall be deferred for a period of five years. Such period of 5 years shall be computed from 1st May of the assessment year subsequent to assessment year to which such amount of tax relates. (iv) Facility shall be available to only such manufactures who create first or second charge on its property in favour of the State Government sufficient to cover the amount of tax in respect of which moratorium has been granted. (v) The amount of tax the payment of which has been deferred, in respect of each assessment year shall be paid by the manufacture in a lump sum within one month of the expiry of the period of moratorium; (vi) The moratorium shall cease and the total amount shall become payable- (a) on the date of discontinuance of business where the manufacturer discontinues business within the meaning of explanation -II of sub-section- (4) of section- (3) of this Act; (b) on the date on which dealer violates any of the conditions subject to which eligibility certificate has been granted; (c) on the date on which order of cancellation of certificate of moratorium under sub section(5) is served on the dealer and the amount shall be paid in lump sum within three months of its so becoming payable. (vii) Facility shall not be admissible in respect of the amount of tax assessed in excess of tax admittedly payable. (viii) Facility shall be admissible in respect of tax on sales of goods mentioned in the eligibility certificate. (ix) Facility may be withdrawn by the State Government by notification in the gazette, where it is of the opinion that it is no longer in public interest, provided that the facility shall not be withdrawn with retrospective effect. (x) Facility shall be withdrawn on cancellation of certificate of moratorium by the Commissioner under sub-section (5) of this section. In such a case facility shall be withdrawn with effect from the date mentioned in the order. (xi) Facility shall not be available in respect of tax payable on purchases of goods, if any, and in respect of sales of goods in respect of which eligibility certificate is not applicable. (xii) If the amount in respect of which moratorium has been granted is not paid within the time

specified in clauses (v) or (vi) as the case may be the manufacturer shall in addition to any penalty which the assessing authority may deem fit to impose under section- (54), be liable to pay interest in accordance with sub-section- (2) of section- (33) for the entire period during which the amount remained deferred and subsequently till the date of its payment. (xiii) Facility shall be subject to such other conditions as may be prescribed or as may be notified in Gazette by the State Government in this behalf. (5) The Commissioner may cancel the certificate of moratorium in the following circumstances - (i) Where dealer is involved in the evasion of tax either under this Act or under the Central Sales Tax Act, 1956; or (ii) Where dealer has not paid any amount of tax or penalty due from him either under this Act or under the Central Sales tax Act, 1956; or (iii) Where the dealer has acted in contravention of any of the conditions of eligibility certificate; or (iv) Where dealer has discontinued business; or (v) Where the dealer has misused the facility in any manner. Explanation- The expressions " new units" and "units which have undertaken expansion, diversification or modernization or backward integration" and "eligibility certificate" shall have same meanings as assigned to them under section 4-A of the U.P. Trade Tax Act 1948 as it stood on the date of starting production by such units.

36. MORATORIUM FOR PAYMENT OF TAX IN LIEU OF EXEMPTION FROM TAX :-

(1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing production of any goods or for promoting the development of any industry already in existence, in the State generally or in any districts or parts of districts in particular, it may on application or otherwise in any particular case or generally, by notification declare, that to the dealer running new units whose date of starting production falls on or before December 31, 2001 and dealers owning manufacturing units which have under taken expansion, diversification or modernization or backward integration and have started production on or before December 31, 2001, if such dealers hold an eligibility certificate issued under the provisions of section- (4-A) of the U.P. Trade Tax Act 1948, rules made and notifications issued thereunder or if such dealers may be issued eligibility certificate under sub section- (2) of this section. in lieu of exemption from tax, moratorium for payment of tax to the extent and during the period provided in sub section- (3) of this

section be allowed subject to conditions given under sub-section-(4) of this section and also subject to such other conditions as may be prescribed or as the State Government may, by notification in the Gazette, specify. Provided that notwithstanding anything contained contrary in any other provision of this Act; and in particular the provision of repeal of section (4-A) and 8(2-A) of the U.P. Trade Tax Act, 1948, rules made and notifications issued there under, in respect of dealers who have been granted facility of moratorium for payment of tax admittedly payable, such facility shall continue and shall be deemed to have been granted under this Act and for this purpose, the relevant provisions under the U.P. Trade Tax Act, 1948, as those stood at the time, shall be deemed to be the part of this Act. Any applications pending for issue of orders for moratorium for payment of tax admittedly payable before the Commissioner Trade Tax under the U.P. Trade Tax Act, 1948 shall be deemed to be pending before the authority prescribed under this section and the same shall be disposed of according to the provisions of the U.P. Trade Tax Act 1948 as it was in force on the date of presentation of the application before the Commissioner under that Act. (2) Notwithstanding anything contained contrary to the provision of this Act and in particular to the provisions of repeal of section - (4-A), 8(2-A) of the U.P. Trade Tax Act, 1948 rules made and notifications issued there under- (i) application for grant of eligibility certificate presented on a date prior to the date of commencement of this Act before the competent authority under that Act shall be deemed pending before the prescribed authority under this Act. (ii) Dealer owning new units whose date of starting production falls before the date of commencement of this Act and dealers owning such units as have under taken expansion or diversification or modernization or backward integration who could not present application for granting of eligibility certificate under the provisions of section 4-A of the U.P. Trade Tax Act 1948, before the date of commencement of this Act and time prescribed for presenting the same has not expired on the date of commencement of this Act, may apply for grant of eligibility certificate by the last date prescribed under that Act for this purpose before the prescribed authority under the Act. Applications under clause (i) and (ii) above shall be disposed of by the prescribed authority according to the provisions of the U.P. trade Tax Act 1948, rules made and notifications issued there under as they stood before the commencement of this Act . For this purpose such provisions shall be deemed to be part of this Act.

Dealers found eligible for grant of eligibility certificate shall be granted eligibility certificate. (3) Dealers holding eligibility certificate either granted under the provisions of the U.P. Trade Tax Act, 1948 before the date of commencement of the Act or who may be granted eligibility certificate in accordance with the provisions under sub-section-(2) of this section, shall be eligible for the facility of moratorium for payment of tax in lieu of exemption from tax to the extent and for the period as under. (i) subject to provision under clause (ii) below, to the extent of one hundred and thirty percent of amount of exemption from tax mentioned in the eligibility certificate less aggregate of amount of exemption from tax as has been availed before the date of commencement of this Act, in cases of dealers who have enjoyed exemption from tax during any period before the commencement of this Act and in other cases in which dealers have opted moratorium for payment of tax in lieu of exemption from tax, to the extent of aggregate amount of one hundred percent of the amount of exemption from tax mentioned in the eligibility certificate and fifty percent of the amount of fixed capital investment mentioned in the eligibility certificate less aggregate of such amount in respect of which facility for moratorium for payment of tax has been availed during the period before the commencement of this Act. (ii) in respect of tax payable for the remaining period as on the date of commencement of this Act, out of the maximum period mentioned in the eligibility certificate . Explanation: For the purpose of computation of amount of tax for the purpose of deferment, net amount of tax payable in respect of any manufactured goods arrived at by deducting the amount of input tax credit relating to goods that are intended to be consumed or utilised or used in the manufacture of such goods or intended to be used in packing of such manufactured goods, from amount of tax admittedly payable on turnover of sales of such manufactured goods shall be taken into account and such amount shall not be clubbed with any other amount of tax payable. (4) Facility of moratorium for payment of tax under this section shall be granted and be subject to the following conditions. (i) Facility shall be allowed only to those manufacturers who hold eligibility certificate referred to in sub-sections (2) and (3) of this section and who obtain certificate of moratorium in the prescribed manner from the prescribed authority. (ii) Facility shall be limited to the amount of tax and for the period mentioned in subsection (3) of this section. (iii) Payment of amount of tax for each assessment year, which the dealer would have been liable to pay as tax admittedly

payable on sales of goods less amount of input tax credit relating to goods intended to be consumed or utilised or used in the manufacture of goods to which the eligibility certificate relates, shall be deferred for a period of five years. Such period of 5 years shall be computed from 1st May of the assessment year subsequent to assessment year to which such amount of tax relates. (iv) Facility shall be available to only such manufactures who create first or second charge on its property in favour of the State Government sufficient to cover the amount of tax in respect of which moratorium has been granted. (v) The amount of tax the payment of which has been deferred, in respect of each assessment year shall be paid by the manufacture in a lump sum within one month of the expiry of the period of moratorium; (vi) The moratorium shall cease and the total amount shall become payable- (a) on the date of discontinuance of business where the manufacturer discontinues business within the meaning of explanation -II of sub-section- (4) of section- (3) of this Act; (b) on the date on which dealer violates any of the conditions subject to which eligibility certificate has been granted; (c) on the date on which order of cancellation of certificate of moratorium under sub section(5) is served on the dealer and the amount shall be paid in lump sum within three months of its so becoming payable. (vii) Facility shall not be admissible in respect of the amount of tax assessed in excess of tax admittedly payable. (viii) Facility shall be admissible in respect of tax on sales of goods mentioned in the eligibility certificate. (ix) Facility may be withdrawn by the State Government by notification in the gazette, where it is of the opinion that it is no longer in public interest, provided that the facility shall not be withdrawn with retrospective effect. (x) Facility shall be withdrawn on cancellation of certificate of moratorium by the Commissioner under sub-section (5) of this section. In such a case facility shall be withdrawn with effect from the date mentioned in the order. (xi) Facility shall not be available in respect of tax payable on purchases of goods, if any, and in respect of sales of goods in respect of which eligibility certificate is not applicable. (xii) If the amount in respect of which moratorium has been granted is not paid within the time specified in clauses (v) or (vi) as the case may be the manufacturer shall in addition to any penalty which the assessing authority may deem fit to impose under section- (54), be liable to pay interest in accordance with sub-section- (2) of section- (33) for the entire period during which the amount remained deferred and subsequently till the date of its payment. (xiii) Facility shall be

subject to such other conditions as may be prescribed or as may be notified in Gazette by the State Government in this behalf. (5) The Commissioner may cancel the certificate of moratorium in the following circumstances - (i) Where dealer is involved in the evasion of tax either under this Act or under the Central Sales Tax Act, 1956; or (ii) Where dealer has not paid any amount of tax or penalty due from him either under this Act or under the Central Sales tax Act, 1956; or (iii) Where the dealer has acted in contravention of any of the conditions of eligibility certificate; or (iv) Where dealer has discontinued business; or (v) Where the dealer has misused the facility in any manner. Explanation- The expressions "new units" and "units which have undertaken expansion, diversification or modernization or backward integration" and "eligibility certificate" shall have same meanings as assigned to them under section 4-A of the U.P. Trade Tax Act 1948 as it stood on the date of starting production by such units.

37. RECOVERY OF TAX IN CASE OF A COMPANY UNDER LIQUIDATION :-

(1) Every person-- (a) who is the liquidator of a company which is being bound up, whether under orders of a Court or otherwise; or (b) who has been appointed the receiver of any assets of a company (here in after referred to as the liquidator) shall within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority. (2) The appropriate authority shall after making such inquiry or calling for such information as it may deem fit, notify the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which in the opinion of the appropriate authority would be sufficient to provide for any tax which is then or likely thereafter to become, payable by the company. (3) The liquidate shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section {2} and on being so notified, shall set aside on amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets. Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of tax payable by the company under this Act or for making any payment over debts due to Government on the date of liquidation or for meeting such costs or expenses of the

winding up of the company as are in the opinion of the appropriate authority reasonable. (4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of such section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay: Provided that if the amount of any tax payable by the company is notified under subsection (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount. (5) Where there are more liquidators than one, the liquidations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally. (6) The provision of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. Explanation-
-(1) "appropriate authority" in relation to a company means the competent authority to assess the tax on the company. (2) company has the meanings assigned to it by clause (1) of sub-section (1) of section (3) of the Companies Act, 1956 (1 of 1956).

38. LIABILITY OF DIRECTOR OF PRIVATE COMPANY IN LIQUIDATION :-

Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, can not be recovered, then every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

39. 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 installments 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.

40. REFUNDS AND ADJUSTMENTS :-

(1) Subject to provision of sub-section-(2) of section 42, the assessing authority shall in the manner prescribed; refund to the dealer an amount of tax, fees, or other dues paid or credited in excess of the amount due from him under this Act. Provided that, amount found to be refundable shall first be adjusted towards tax or any other amount out standing against the dealer under this Act or under The Central Sales Tax Act 1956 or under the Uttar Pradesh Trade Tax Act, 1948 and only the balance if any shall be refunded. Provided further that in respect of amount of input tax credit subject to provisions under sections 41 and 42 be allowed only after the dealer has submitted returns for all such tax periods for which he is required to submit returns for the assessment year to which such refund relates and where the dealer has not furnished all such returns only after the final assessment for such assessment year has been made. (2) Where amount is found refundable in accordance with the provisions under subsection (1), the same shall be refunded along with simple interest at a rate of nine percent per annum. For the purpose of interest, deposits made on earlier dates shall be considered towards tax payable. The interest shall be computed with effect from 1st May of the assessment year subsequent to assessment year in which the excess amount is deposited or credited and if excess amount has been deposited in more than one year, interest shall be computed in respect of amount of excess deposit in each assessment year separately with effect from 1st of May of assessment year subsequent to the assessment year in which such excess amount has been deposited. (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. (4) Notwithstanding anything contained contrary in this section any dealer to whom refund of any amount is to be made, may, before the date such refund is allowed, apply to the authority competent to allow refund for withholding amount of refund for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956. If the dealer has presented application for withholding amount of refund, authority competent to issue refund shall withhold amount of refund. In such a case dealer shall not be entitled for interest. (5) Where any amount of tax under sub-section (1) of section 34 has been deducted from any dealer as tax payable by him for any assessment year, if annual return of turnover has not been submitted by the dealer or if dealer has not been assessed for such assessment year, amount deducted, for the purpose of sub-section (3) shall be deemed to be tax due under the Act and shall not be refunded to the dealer. 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 an adjustment under the proviso to subsection (1).

41. Provisional refund :-

(1) Notwithstanding anything contained in section 40, if a registered dealer has filed any return for any tax period as required under this Act and the return shows any amount to be refundable to the dealer on account of sales in course of export out of the territory of India, then pending audit and investigation to establish the correctness of the claim and consequent assessment, if any, the dealer may apply in the manner and form prescribed to the Commissioner for grant of provisional refund of amount of input tax credit relating to such sales. Provided that if any amount of tax, fee or penalty or any other amount either under this Act or under the Central Sales Tax Act, 1956 or under the U. P. Trade Tax Act, 1948 is due against such dealer, amount found refundable first be adjusted towards such amount of tax or fee or penalty, as the case may be, and excess, if any, shall be refunded to the dealer. (2) Subject to the provisions of sub-section (3), the Commissioner may require the dealer to furnish a Bank Guarantee or other security as may be prescribed for an amount equal to the amount of refund and on receipt of such guarantee or other security, the Commissioner shall grant the dealer a provisional refund that may be determined as refundable. (3)The Commissioner may direct the

assessment under section 39 of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment. (4) If, on assessment, the provisional refund granted under sub-section (2) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest, as if it is tax due from the dealer under this Act. (5) Simple interest will be charged on such excess amount referred to in sub-section (4) at the rate of eighteen percent per annum from the date of grant of provisional refund till the date of its repayment.

42. WITHHOLDING OF REFUNDS IN THE INTEREST OF REVENUE :-

Notwithstanding anything contained contrary in any other provisions of this Act, where after giving reasonable opportunity of being heard to the dealer or any other person, assessing authority is satisfied that: (i) turnover shown in any return submitted by any dealer is not reasonable and the dealer has prevented in any manner the assessing authority or any other competent officer from making inspection and examination of books, accounts or documents or goods shown to be held in stock by such dealer; or (ii) there is prima facie evidence on record to show that the dealer has shown lesser turnover of sales or turnover of purchases than the actual in any return; or (iii) any purchase in respect of which in any return input tax credit has been claimed but such purchase is not verifiable, or (iv) the dealer has claimed input tax credit on the basis of purchase invoices or bills or cash-memos without making purchases of goods shown in such purchase invoices or bills or cash-memos, and if the assessing authority is of the opinion that if refund is allowed, it will become difficult to realise any amount of tax or penalty to be levied in future, it may pass an order for withholding refund for a period not exceeding three months beyond the date of passing of assessment order in respect of such assessment year for which above stated reasons have been found, of any amount due to the dealer for adjustment towards future liabilities of the dealer. Provided that if the dealer furnishes security of the amount of refund to the satisfaction of the assessing authority, refund shall be released. Provided further that if any refund has been withheld under this section, and if any amount out of refundable amount is adjusted towards any tax liability of the dealer, the dealer shall not be entitled for any amount of interest

on amount so adjusted.

43. PROCEDURE FOR DISBURSEMENT OF AMOUNT WRONGLY REALISED BY DEALERS AS TAX :-

(1) Where any amount has been realized from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of provisions under section-22 such dealer shall deposit the entire amount so realised in such manner and within the period prescribed under section - 23. (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 on whom such liability has been passed ultimately in respect of goods on the sale or purchase which excess amount has been charged. (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 on whom liability of such amount ultimately has been passed. Provided that no such claim shall be entertained after expiry of three years from the date of order of assessment or one year from the date of the final order on appeal, revision or reference if any in respect thereof which ever is later. (4) Where any amount has been deposited by any dealer in accordance with provisions under sub-section (1), dealer shall not be entitled to allow refund of such amount to the purchaser of goods. 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 227 of the constitution.

44. INPUT TAX CREDIT EXCEEDING TAX LIABILITY :-

If for any assessment year, amount of input tax credit determined under section 14 exceeds tax liability for that assessment year, the excess amount may be set off against any out standing dues payable under this Act, or the Central Sales Tax Act 1956, or the U.P. Trade Tax Act, 1948.

45. POWER TO ORDER PRODUCTION OF ACCOUNTS AND POWER OF ENTRY, INSPECTION, SEARCH AND SEIZURE :-

(1) Without prejudice to other provisions under this Act any officer empowered by the state Government in this behalf for the purpose of this Act, may require - (i) any dealer to produce before him any book, document or account in his possession relating to his

business or relating to business of other dealers; or (ii) any other person who carry on activities ancillary or incidental to or in connection with the business of buying or selling goods by dealers whether business of such activities is carried on as a sole business or as partial business, to produce before him any such book or account or document as is in his possession, relating to details of goods and, or transactions of sales and, or purchases of goods or receipts and, or dispatches of goods or transportation or storage or manufacture or processing of goods, relating to his business or, as the case may be, relating to the business of other dealers and such other books, accounts or documents relating to receipts or payments of any amounts by the dealer or amounts received from dealers or payments made to dealers by such other persons. Officer authorised may inspect, examine, take copies of such books, accounts or documents produced by dealer or such other person and make such enquiries from such dealer or such other person, as may be necessary for the purpose of the Act. Provided that books, accounts and documents of a period more than five years prior to the assessment year shall not be so required, unless in any particular case, for reasons to be recorded, such officer considers it necessary. Explanation: For the purpose of this section, following persons shall be deemed to carry on activities ancillary or incidental to or in connection with the business of purchase or sale of goods by dealers: (i) brokers or canvassing agents who themselves do not sell or purchase goods but act as mediators between selling dealer and purchasing dealer in relation to sale or purchase of goods; or (ii) transporters or forwarding agents of goods who transport or forward goods belonging to dealers; or (iii) persons who fabricate or manufacture any goods for dealers; or (iv) persons who receive or dispatch goods on behalf of a dealers; or (v) persons who store any goods belonging to dealers; or (vi) persons who maintain and, or possess books, accounts or documents relating to business of dealers; or (vii) persons who handle goods of a dealer in any other capacity. (2) Any officer authorised under sub-section-(1) may visit and enter the business place or places and office premises of dealers and other persons mentioned in sub- section- (I) at all reasonable times with a view to inspect books , documents and accounts maintained or goods held in possession in the ordinary course of business by dealers or other persons mentioned in sub-section (1). 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. (3) All books, documents, and accounts maintained by any dealer or a person mentioned in sub-section (1) in the ordinary course of business, the goods in his possession and his place of business or office premises or vessel or vehicle shall be open to search and inspection at all reasonable times by officer authorised by the State Government under sub-section(I) (4) If the officer authorised under sub-section (1) while examining any books, accounts or documents or conducting search or inspection under sub-section (3) 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 document he may seize such account, register or document as may be necessary. The officer 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 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 documents, 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 documents. (5) Notwithstanding anything contained in sub- section (4), the officer seizing any account, register or other document under that sub-section 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. (6) An officer conducting search or inspection under sub-section (3) (i) shall have the power to seal the place of business, 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 other person in occupation or incharge of such office, shop, godown, vessel, 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 in charge of the office, shop, godown, vessel or vehicle or the box almirah or other receptacle found in 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 office, shop godown vessel or vehicle or the box almirah or other receptacle may break open the same and prepare a list of the goods and documents found therein. (7) No person shall tamper with any seal put under sub-section -(6). (8) Any officer empowered under sub-section (1) while making search or inspection under this section may require any dealer or the other person to give any information likely to be in his possession in respect of such books, documents, accounts or goods found at the time of search or inspection or seizure under this section. (9) The officer who has made inspection or search or seizure of any books, accounts or documents or investigation or an officer who has made investigations under this section, on the basis of facts found, shall prepare a report in respect of such inspection or search or seizure or investigation and where the officer preparing the report is an officer different from the assessing authority, such officer shall forward a copy of such report to the assessing authority of the dealer. Provided that where the officer who has prepared report referred to in this sub-section, is of the opinion that liability of payment of tax by the dealer in addition to liability of payment of tax admitted by such dealer may exceed rupees one lakh, such officer shall serve the dealer with a notice stating such facts to show cause why adverse inference should not be drawn on the basis of such facts. The dealer on receipt of such notice shall submit his reply to such officer two copies along with evidence if any. If the officer issuing notice is an officer other than the assessing authority, it shall forward to the assessing authority a copy of report, a copy of show cause notice issued and a copy of reply received from the dealer, if submitted by the dealer along with its comments on the reply submitted by the dealer. (10) The provisions of section 100 and 165 of 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 (4) the period during which proceedings under this Act remain stayed under the orders of any Court or authority shall be excluded.

46. Tax audit :-

(1) The assessing authority having jurisdiction over the dealer and officers authorized to exercise powers under sub-section (1) of section 45 may undertake tax audit of the records, stock in trade and the related documents of the dealer, who are selected by the Commissioner in the manner as may be prescribed for the purpose. (2) For the purpose of the tax audit, officer empowered to make audit may require the dealer to produce before him records and other documents in his office or at such other public place as may be mentioned in the notice. Provided that where it is convenient, officer may take up tax audit in the office, business premises or warehouse of the dealer. (3) For the purpose of tax audit under sub-section (1) the Commissioner or any other tax officer directed by him shall examine the correctness of return or returns filed and admissibility of various claims including input tax credit. (4) Where tax audit is made by any officer other than the assessing authority of the dealer, such officer shall send audit report prepared by it to the assessing authority of the dealer. (5) The dealer shall extend necessary co-operation in making tax audit.

47. POWER TO SEEK INFORMATION, TO SUMMON WITNESS ETC :-

(1) For the purpose of this Act, any officer under this Act, not being an officer below the rank of Commercial Tax Officer Grade II, may require any dealer or other person to furnish any information which may be, or is in his knowledge or possession. Whenever so required, the dealer or such other person shall furnish correct, complete and true information. (2) All officers under this Act shall have the same powers as are vested in a court under the Civil Procedure Code - 1908, when trying a suit in respect of following matters, namely - (i) Enforcing the attendance of any person and examining him on oath or affirmation. (ii) Compelling the production of documents, and (iii) issuing commission for the examination of witness; and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Panel Code. (3) Summons for the production of documents or the attendance of any person shall be issued in the prescribed form.

48. POWER TO SEIZE GOODS :-

(1) Notwithstanding anything contained in any provisions of this Act an officer authorised under sub-section-(1) of section 45 shall have the powers to seize any goods - (i) which are found in a

dealers place of business or vehicle or vessel 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 vessel or any other building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in the ordinary 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 (2) Where any officer empowered by the State Government in this behalf has reason to believe that the goods found in any vehicle or vessel, building or place are not traced to any bonafide 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. (3) An officer seizing the goods under sub-section (1) or sub-section (2) 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. (4) The said assessing authority shall serve on the dealer or, as the case may be, the person incharge 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. (5) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person incharge 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) or sub-section -(2), it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit. (6) 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. (7) 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 fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty to be imposed, and tax likely to be levied, 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 amount of penalty likely to be levied and the amount of tax likely to be assessed shall be shown separately. Provided further that the Commissioner or such other officer, not below the rank of an 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. (8) The sum of penalty or such part thereof as remains after adjustment of any amount deposited towards penalty under sub-section (5) 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 imposed and tax assessed and, subject to the provision of section-40, refund the balance, if any, to the dealer or, as the case may be (9) 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 tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person in-charge in accordance with the provisions of sub-section (7). (10) If the amount deposited under sub-section (7) is more than the amount of penalty imposed under sub-section (4), and tax assessed under this Act 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 40.

49. 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 or in respect of goods that have been manufactured by using goods so imported, 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.

50. IMPORT OF GOODS INTO THE STATE BY ROAD 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 from payment of tax on sale or purchase of such goods under clause (a) of Section-12 in such quantity or measure or of such value, as may be 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 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 -- (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 with such other documents as may be prescribed, and shall deliver on copy of such declaration,- (i) where such goods are brought by a road on which a check post or barrier is established under section 47 to the officer-in- charge of such check- post or barrier, and (ii) where such goods are brought by a road on which no 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 other copy of declaration and the remaining documents along with goods to importer or his agent. (b) the officer -in-charge of the check-post or barrier grant a receipt for the copy of declaration delivered to him and it shall not be necessary for driver or the person incharge of the vehicle to deliver any copy of the declaration at the other check-post or barrier that he may cross, if he shows such receipt to the officer -in- charge of the checkpost or

barrier. (c) 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 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 authorised on this behalf. (4) 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 vehicles carrying any goods referred to in the preceding sub-sections shall stop the vehicle at every such check-post or barrier or, when so required by an officer authorised under sub-section (1) of section 45, 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 officer authorised under sub-section (1) of section 45, 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 addresses 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 to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding subsection and if, for reason 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 provision of sub-sections (3), (7) and (9) of section 48 shall mutatis mutandis apply to goods detained under sub-section (6), as they apply to goods seized under that section. (8) Where the assessing authority or an officer empowered under this section, is satisfied that any dealer bringing or 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 each estimated sale value or presumed sale value, as the case may be, to the dealer. (9) The power of sub-section (8) shall not be exercised unless the dealer is afforded an opportunity of being heard. (10) For the purpose of sub-section (9), the notice printed on the declaration form shall be deemed to be a notice for the purpose of sub-section (8) and no fresh notice shall be required to be given for hearing to the dealer. (11) The goods acquired under sub-section (8) shall be disposed of in such manner as may be specified by the Commissioner. Explanation :- For the purpose of sub-section (8) : (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.

51. IMPORT OF GOODS INTO THE STATE BY RAIL, RIVER, AIR OR POST :-

(1) Where any goods other than the goods exempt from payment of tax on sale or purchase under clause (a) of section 12, are consigned by rail, river, air or post from a place outside the State for delivery to a dealer inside the State, the importer shall (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 form prescribed under clause (a) of sub-section (2) of section -50 in duplicate duly filled in and signed by him for endorsement by such officer; and (b) after taking delivery, carry goods away or cause the goods to be carried away from the railway station, steamer or boat station, or air port or post office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with goods. (2) Where any taxable goods are brought into the State by rail, river or air 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 (1) by the next working day before the officer authorized in that behalf. (3) Where any person intends to bring, import or otherwise

receive into the State from any place outside the State by rail or river or air or post any taxable goods otherwise than in connection with business and obtains the form of certificate prescribed under subsection-(2) of section- 50, the provision of sub-section (1) and (2) shall mutatis-mutandis apply as if word "Certificate" is substituted for the word declaration used therein. (4) Where an officer making inspection, search finds any consignment of taxable goods in respect of which declaration before the prescribed authority has not been made in the manner prescribed under this section and if after giving reasonable opportunity of being heard to the person in charge of the goods at the time of inspection of goods or the owner of the goods as the case may be, is satisfied that any taxable goods are being imported in an attempt to evade payment of tax under this Act, he may after recording such reasons, may detain such goods. Provisions under section section 48 shall mutatis-mutandis apply to such detention of goods as they apply to goods seized under that section.

52. ISSUE OF AUTHORISATION FOR TRANSIT OF GOODS THROUGH THE STATE :-

(1) The driver or person in charge of a vehicle carrying taxable goods, consigned from a place outside the State and consigned to a place outside the State, the driver or other person in charge of such vehicle shall obtain, in the prescribed manner and in prescribed form, an authorisation for transit of goods through the State, in two copies from the officer in charge of the first check post or barrier (hereinafter referred to as entry checkpost) after entry of goods into the State but before crossing the entry check- post and shall produce it in duplicate along with goods mentioned in such authorisation for transit before the officer in charge of the check-post or barrier (hereinafter referred to as exit check-post) prior to his exit from the State and obtain a copy of such authorisation for transit of goods duly endorsed by the officer in charge of the exit check-post, 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 such vehicle. Provided that where the goods carried by such vehicle after obtaining authorisation for transit outside the State are transported outside the State by any other vehicle subject to the provisions under sub-sections (2), (3), (4) and (5) of section-16, the onus of proving that the goods have actually been moved out of State shall be on the owner or person in charge of the vehicle who has obtained authorisation for transit.

(2) Where any goods consigned from any place outside the State are brought into the State at any place by railway or air or post or steamer for transport outside the State by road, the driver or person in charge of vehicle carrying goods from railway station or airport or post office or steamer station, as the case may be, to the place outside the State shall obtain authorisation for transit in duplicate in prescribed manner and in prescribed form from the assessing authority in whose jurisdiction such railway station or airport, or post officer or steamer or boat station is situated, and shall produce it along with goods before the officer-in charge of the exit check-post for endorsement, failing which it shall be presumed that the goods have been sold by the owner or the person in charge of the vehicle, inside the State. (3) Where any goods are brought from a place outside the State by road and after entry of such goods into the State, the same are to be transported to a place outside the State either by railway or airway or by post or by river, the driver or person in charge of the vehicle, while obtaining authorisation for transit from entry check, post shall state the fact to this effect in the application for obtaining authorisation for transit. The driver or the person in charge of such vehicle shall also mention the authority before whom after handing over goods to railway or airway or post office or steamer or boat copies of authorisation for transit along with copy of goods receipt is to be produced for endorsement on them. For this purpose office of assessing authority having jurisdiction over area in which such railway station or airport or post office or steamer station is situated shall also be deemed to be the exit check-post.. Officer in charge of the entry check-post after making such enquiry as he deems fit shall issue authorisation for transit. After handing over goods to railway or airway or post office or steamer or boat, as the case may be, two copies of authorisation for transit along with goods receipt issued by railway or air port authority or post-office or steamer owner and xerox copy of the same shall be produced before the officer in charge of the exit check-post mentioned in the authorisation for transit for endorsement on them, failing which it shall be presumed that the goods have been sold inside the State by the owner or the person in charge of such vehicle. (4) Where goods are carried from a place outside the State for delivery at a place inside the State but during transit the vehicle carrying such goods after entry into the State has to leave the State one or more times. driver or the person in charge of the vehicle shall obtain authorisation for transit of goods each time he enters and leaves

the State. For each such fragment of journey, provisions of subsection (1) shall be applicable. In such a case the driver or person in charge of the vehicle shall carry with him the declaration for import of goods along with other documents. Provided that in such a case original copy of declaration shall be collected at the check post where vehicle enters finally inside the State. (5) With a view to prevent evasion of tax on sales of goods inside the State in the garb of authorisation for transit of goods, the Officer in charge at the entry check post, other officers authorised under sub-section -(1) of section 45 and sub-section (1) and subsection (2) of section -48 of the Act, and officer in charge of the exit check post shall be empowered to inspect and seize the goods if the same are found materially different from the goods stipulated in the authorization for transit of goods. Officer in charge of exit check-post shall have power to inspect the goods under this section with a view to insure the very goods for which authorisation for transit was obtained, are being carried out side the State. Provided that during inspection of goods under sub-section- 5 if Officer in-charge of entry check-post after inspection of goods is of the view that goods are according to the quantity or measure disclosed in the application for authorisation for transit but disclosed value of such goods is too low and is not worthy of credence he can estimate the fair market value of such goods and put a note in this regard on the authorisation for transit. In such a case if driver or person in-charge of the vehicle fails to produce goods described in the authorisation for transit before any other officer making inspection under this section, estimated value of goods shall be deemed actual value of goods for all purposes under this Act. Provided further that difference due to quality of goods shall not be deemed to be material difference for the purpose of seizure of goods under this sub-section. (6) In respect of goods seized under the provision of this section provisions of subsections (3) to (10) of section- 48 shall mutatis mutandis apply. (7) In a case in which vehicle has been hired by a transporter only upto a place inside the State for carrying goods and the driver or the person in-charge of vehicle does not own responsibility of taking goods outside the State, the officer at the entry check-post in appropriate cases may require security to be furnished in the interest of revenue, before issuing authorisation for transit of goods. The amount of security demanded under this sub-section shall not exceed the tax payable on the value of such goods. In cases where disclosed value is much low in comparison to market value of such goods, an amount of security shall be

computed on the basis of market value of such goods. Security demanded under this sub-section may be furnished by recipient of such goods inside the State or by the transporter who has hired the vehicle, if such person undertakes responsibility of carrying goods outside the State. In such a case in which security has been accepted, the Officer in-charge of the Entry Check-post shall put a note to this effect on all copies of authorisation for transit and as soon as the vehicle carrying such goods passes the Exit Check-Post, after producing the authorisation for transit, before Officer in-charge of the Exit Check Post, such officer shall communicate the fact by speedy mode of communication to the Officer- in-charge of the entry check post. The Officer incharge of Entry Check post on receipt of such information shall return/refund the security to the person or the transporter from whom the same was accepted. (8) In case of a vehicle whose driver or person in-charge has earlier obtained authorisation for transit of any goods and information has been received in respect of such authorisation for transit that the same has not been produced before the Officer incharge of the Exit check-pot along with the goods mentioned in it, if the driver or person in-charge of such vehicle requests for issue of transit authorisation in respect of some different goods on some other occasion, the officer in-charge of the Entry check-post may require the driver or the person in-charge of the vehicle to furnish security in the interest of revenue for issue of authorisation for transit as provided in sub-section (7) above, and remaining provisions of sub-section (7) in respect of such security, shall mutatis mutandis apply.

53. POWER TO SEEK ASSISTANCE FROM POLICE ETC :-

An officer exercising power under the provisions of section- 45 or section- 48 or section- 50 or section-51 or section 52 and section- 81, may take the assistance of police or other officers or officials of the State.

54. OFFENCES AND PROSECUTION :-

(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) being liable to pay tax under this Act, carries on business as a dealer without applying for registration under and in accordance with section 17; or (c) refuses to permit or refuses or neglects to produce for inspection or examination any book, document or account, or refuses to display material in a computer or in a computer floppy or refuses to allow copies or printout of the

material in a computer or its floppy to be taken in accordance with the provisions of Section 45; or (d) fails to issue a Tax Invoice or sale invoice or bill or cash-memo or fails to issue a transport memo or challan or transfer invoice in accordance with the provisions of this Act, or (e) closes or leaves place of business or being a driver or person in-charge of a vehicle carrying goods leaves the vehicle with a view to prevent inspection under 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 recovery of tax or any other dues payable by him under this Act, on conviction, be punishable with fine which may extend to five thousand rupees, and where the default is continuing one, to a further fine which may extend to one hundred rupees 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, a minimum punishment to be awarded shall be a fine of three thousand rupees or the amount of tax involved, whichever is less. (2) Notwithstanding anything contained in sub-section (1), any person who willfully - (a) submits a false return of turnover under this Act; or (b) 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 along with the return in accordance with the provisions of this Act ; or (c) maintains or produces false accounts, registers or documents; or (d) issues or furnishes a false or wrong certificate or declaration, prescribed either under the Act, or any rule made or notification issued thereunder, by reason of which a tax on sales or purchases ceases to be leviable either in whole or in part; or (e) makes a false verification or declaration on an application for registration or in connection with any other proceeding under this Act; or (f) evades payment of the tax which he is liable to pay under this Act; or (g) obstructs or prevents an officer empowered under this Act from performing any of the functions under this Act or the rules made thereunder; or (h) tampers with any seal put under sub-section -6 of section 44; or (i) demands or charges on the sale or purchase of any goods any amount of tax in contravention of provisions of this Act; or (j) 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 particular; or (k) carries on or continues to carry on business as a dealer without furnishing the security

demand under section 19 of the Act. (l) issues a false sale invoice or bill or cash memo without sale of goods shown in such sale invoice or bill or cash memo ; or (m) issues a false transport memo or challan or transfer invoice without dispatch or delivery of goods shown in such transport memo or challan or transfer invoice; (n) receives a false purchase invoice or bill or cash memo from a dealer without purchase of goods shown in such purchase invoice or bill or cash memo ; or (o) receives a transport memo or challan or transfer invoice without receipt of goods shown in such transport memo or challan or transfer invoice ; or (p) uses or furnishes a prescribed form of declaration or certificate which has not been obtained by him or his authorised agent from the prescribed authority in the prescribed manner ; or (q) transfers a prescribed form of declaration or certificate to any other dealer or person except for lawful purposes ; or (r) receives or possesses a prescribed form of declaration or certificate which has not been obtained in accordance with the provisions of this Act or the rules made thereunder ; or (s) fails to obtain authorisation for transit of goods through the State as provided under section- 50 and also fails to prove that the goods are meant for delivery outside the State ; or (t) having obtained authorisation for transit of goods through the State - (i) having taken responsibility to carry out goods outside the State, fails to prove that the same has been carried outside the State ; or (ii) having taken responsibility to hand over such goods to a bonafide person for carrying them outside the State, fails to prove that the goods were handed over to a bonafide person; or (u) having received any goods mentioned on an authorisation for transit through the State for carrying them outside the State fails to prove that the goods have been carried outside the State ; or (v) being a transporter or forwarding agent prepares any documents relating to any goods showing that the goods have been received for transporting them to a place outside the State fails to prove that the same have been carried outside the State ; or (w) being owner of a vehicle whose driver or person in-charge receives inside the State any goods mentioned on an authorisation for transit through the State fails to prove that the goods have been transported outside the State ; or (x) imports or transports or abets to import or transport any taxable goods through road but fails to disclose particulars of any goods as provided under section-50 of this Act before the officer in-charge of a check-post or before an officer empowered under subsection (1) of section -45; or (y) claims an input tax credit on the basis of false

purchase invoice or bill or cash-memo ; or (z) participates in an unlawful assembly with a view to prevent or obstruct an officer from performing his functions or discharging his duties under this Act; or otherwise misbehaves with or threatens an officer ; or (aa) produces a false or forged proof of deposit of any amount of tax or fee, or penalty or any sum due under this Act. shall, without prejudice to his liability under any other law for the time being in force and in addition to 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 default is a continuing one, to a further fine which may extend to Rupees 100 (one-hundred) for every day after the first day during which the default continues : Provided that in the event of 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 there under except with the previous sanction of the Commissioner, and no Court inferior to that of a Magistrate of 1st class shall try any such offence. (4) All offences under this section shall be cognizable and bailable.

55. OFFENCES BY COMPANIES :-

(1) If the person committing an offence under this Act is a company, the company as well as every person in-charge of, and responsible to the company for the conducts 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 with out this knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding any thing contained in sub-section (1), where an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect of 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 be punished accordingly. Explanation - For the purpose 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.

56. PENALTIES IN CERTAIN CASES :-

(1) If the assessing authority is satisfied that any dealer or other person- (a) (i) has without reasonable cause failed to deposit the tax due under this Act or an amount referred to in sub-section (1) of section 43, for any tax period within the time prescribed or allowed and in the prescribed manner; or. (ii) having deposited the tax due under this Act. within the time prescribed or allowed for any tax period, has without reasonable cause failed to submit the return in the prescribed manner of such tax period; or. (b) has submitted false return of his turnover under this Act; or (c) has concealed particular 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 Tax Invoice or sale invoice or bill or cash-memo in accordance with the provisions of this Act ; or (g) has failed to issue a challan or transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act ; or (h) (i) being liable for registration under this Act has failed to apply in the prescribed manner and within the prescribed time; or (ii) being liable for registration carries on or continues to carry on business beyond thirty days from the date on which he becomes liable to obtained registration without applying for registration or without furnishing the security demanded for grant of registration. (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- 45; or (j) obstructs or prevents an officer empowered under section-45 or the Officer - incharge of a check-post or barrier established under section-49 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. (l) (i) issues or furnishes a false or wrong certificate or declaration prescribed either under the Act, or under any rule made or any notification issued thereunder, by reason of which a tax on sales or purchases, ceases to be leviable, whether in full or in part; or (ii) issues a Tax Invoice or sale-invoice or bill or cash-memo without

sale of goods ; or (iii) issues a transport memo or challan or transfer invoice without dispatch or delivery of goods ; or (iv) receives a Tax Invoice or sale-invoice or bill or cash-memo without purchasing of goods mentioned in such document ; or (v) receives a transport memo or challan or transfer invoice without receipt of goods. (m) (i) 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 (ii) transfers a prescribed declaration form or certificate to any other person except for lawful purposes under the provisions of this Act or the rules made thereunder ; or (iii) receives or possesses a prescribed declaration form or certificate which has not been obtained in accordance with the provision of this Act or the rules made thereunder ; or (n) (i) closes or leaves place of business with a view to prevent inspection under this Act or the rules made thereunder; or. (ii) being a driver or person in-charge of vehicle leaves the vehicle with a view to prevent inspection of goods loaded on it under any provisions of this Act or rules made thereunder. (iii) does not stop the vehicle carrying taxable goods when so required by an officer empowered to inspect goods under this Act or the rules made thereunder ; or (o) (i) imports or attempts to import or abets the import of any goods, in contravention of the provisions under section-50 or section- 51 with a view to evade payment of tax on sale of such goods or if goods are for use in manufacturing or processing of goods for sale with a view to evade payment of tax on sale of such manufactured goods ; or. (ii) transports or attempts to transport or abets the transport of any taxable goods in contravention of any provisions of this Act ; or. (p) (i) fails to obtain authorisation for transit of goods through the State and also fails to prove that goods are meant for delivery to dealers or other persons outside the State ; or (ii) fails to obtain authorisation for transit but proves that goods are meant for delivery to dealers or other persons outside the State ; or (iii) having not taken responsibility of taking goods outside the State, after obtaining authorisation for transit of goods fails to prove that such goods were handed over to a bonafide transporter inside the State for taking them outside the State ; or (iv) being a transporter or forwarding agent who receives any goods from driver or person in-charge of a vehicle for carrying them outside the State but fails to prove that goods have been carried outside the State ; or (v) being driver or person in-charge of a vehicle or such transporter who receives goods inside the State for carrying them outside the

State, fails to produce copies of authorisation for transit of goods along with goods before the officer -in-charge of the exit check-post but proves that goods have been carried outside the State ; or (vi) being a transporter or hirer of a vehicle has prepared documents showing the destination of goods to a place outside the State, but fails to prove that after obtaining authorisation for transit from officer-in-charge of the entry check-post, goods have been carried outside the State ; or (q) (i) being registered dealer realises any amount as tax or in the name or colour of tax under this Act, which is not payable by him in respect of goods sold or purchased ; or (ii) being an unregistered dealer realises any amount as tax or any amount in the name or colour of tax under this Act, on any sale or purchase of goods ; or (iii) being a dealer who is liable to obtain registration and has applied for grant of registration, but his application for registration is pending for disposal, charges separately from purchaser an amount as tax under this Act; or (r) fails to keep stationary a vehicle for inspection of goods and/or for search of such vehicle ; or (s) makes a false verification or declaration on an application for registration or in connection with any other proceedings under this Act ; or (t) does not maintain books, accounts, documents in the prescribed manner, or (u) Wrongly claims an amount as input tax credit, or (v) carries or transports goods without filling details in relevant columns on a transport memo or challan or transfer invoice, time of movement of vehicles and particulars of goods receipt, etc.; or (w) produces a false proof of deposit of any amount of tax or fee, or penalty or any sum due under the Act; or (x) claims an input tax credit on the basis of false purchase invoice or bill or cash-memo; or (y) provokes or invites other person or persons with a view to prevent an officer from discharging his duties under the Act or participates in an unlawful assembly with a view to prevent an officer from discharging his duties under the Act, or otherwise misbehaves with or threatens any officer; or (z) other wise acts in contravention of the provisions of this Act or rules made thereunder. It may, after such enquiry, 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 payable by him, an amount according to the table given below-

TABLE			
SR.NO.	CLAUSE	SUB CLAUSE	AMOUNT OF PENALTY
1	2	3	4
			(i) Sum not less ten percent but not exceeding twenty five

1.	(a)	(i)	percent of the amount of tax payable where amount of tax payable does not exceed ten thousand rupees. (ii) Sum not less than ten percent but not exceeding fifty percent of the amount of tax payable where amount of tax payable exceeds ten thousand rupees.
			an amount not exceeding rupees two thousand.
2	(b)	-	sum not exceeding three times of the amount of tax involved.
3	(c)	-	a sum not less than one hundred percent of tax but not exceeding three times of the amount of tax treating the turnover concealed liable to tax.
4	(d)	-	a such not less than fifty percent of the amount of tax but not exceeding three times the amount of tax treating the turn over concealed liable to tax.
5	(e)	-	(i) a sum not less than ten percent but not exceeding twenty five percent of the amount of tax payable where amount of tax does not exceed ten thousand rupees ; and (ii) a sum not less than ten percent but not exceeding fifty percent of the amount of tax where amount of tax payable exceeds ten thousand rupees.
6	(f)	-	a sum not exceeding three times of the amount of tax or forty percent of the value of goods which ever is higher.
7	(g)	-	a sum not exceeding three times of the amount of tax or forty percent of the value of goods whichever is higher.
8	(h)	(i) and (ii)	a sum of rupees one hundred for each month or part thereof for default during the first three months and rupees five hundred for every month or part there of after the first three months during which the default continues.
9	(i)	-	a sum not exceeding five thousand rupees

10	(j)	-	a sum not exceeding ten thousand rupees
11	(k)	-	a sum not exceeding five thousand rupees
12	(l)	(i)or(ii)or(iii)or(iv)or(v)	a sum not exceeding three times of tax treating the value of goods as taxable turnover of goods or forty percent of the value of goods whichever is higher:
13	(m)	(i)or(ii)or(iii)	(i) if value of goods is mentioned on such form of declaration or certificate a sum equal to three times of the amount of tax treating the turnover of goods liable to tax or forty percent of the value of goods mentioned on it, whichever is higher. (ii) if form of declaration or certificate is blank a sum of fifty thousand rupees
14	(m)	(i)or(ii)or(iii)	a sum not exceeding five thousand rupees
15	(o)	(i)or(ii)	a sum not exceeding three times the amount of tax involved or forty percent of value of goods which ever is higher.
16	(p)	(ii)	a sum not exceeding two thousand rupees.
17	(q)	(i)or(ii)or(iii)	a sum not exceeding three times of the amount of tax realized.
18	(r)		a sum not exceeding ten thousand rupees.
19	(s)		a sum not exceeding ten thousand rupees.
20	(t)		a sum not exceeding two thousand rupees.
21	(u)		a sum not exceeding an amount equal to three times of amount of input tax credit.
22	(v)		a sum not exceeding two thousand rupees.
23	(w)		a sum of ten thousand rupees or three times of amount shown deposited whichever is higher
24	(x)		a sum of ten thousand rupees or forty percent of value of goods shown on false purchase invoice or bill or cash memo

			whichever is higher
25	(y)		a sum not exceeding ten thousand rupees.
26	(z)		a sum not exceeding two thousand rupees.

Explanation (I) The assessing authority includes an officer not below the rank of an officer appointed and posted by the Commissioner Commercial Tax, at a check-post or an officer competent to exercise powers under sections -44, 45, 46, 48, 49 and 50 of the Act; (II) For the purposes of this section where amount of penalty is to be determined on the basis of turnover of goods, value of goods shown or found, as the case may be, shall be deemed to be turnover of taxable goods and relating to taxable sale or purchase. (III) For the purposes of clauses (I), value of goods written on such documents and if value is not written then market value of goods, shall be deemed the turnover of sales or purchases of taxable goods relating to taxable sale or purchase. (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 in the manner provided under section 33. (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. (4) No prosecution under section- 54 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) The provisions of this section shall mutatis mutandis be applicable to the executor, administrator and the legal representative referred to in section-53, (6) where any penalty order passed by assessing authority either under this section or any other section of this Act, is quashed by any authority or Court in exercise of powers vested in it on the ground- (i) Show cause notice issued to dealer or any other person is not in accordance with the provisions of this Act or for any other reason such notice is defective ; or (ii) penalty order has been passed quoting wrong section of the Act ; assessing authority may pass fresh order of penalty after issuing proper notice, in the proper section of the Act, within one year from the date of receipt of order quashing such earlier order. (7) where in case of a sick unit any penalty order has been passed exparte and appeal has not been filed against such order, if the State Government issues directions to the assessing authority to set aside such order and to pass fresh order of penalty, assessing authority may pass such fresh order of penalty within a period of one year from the date on which it receives the order or directions from the State Government.

57. 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 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 Rupees 5000 (five-thousand) or triple the amount of tax recoverable whichever is greater in addition to the amount of the tax recoverable. (c) Where the offence consists of import or transport or abetment to import or transport of any goods in contravention of the provisions of section 48, 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. (d) in other cases a sum exceeding five thousand rupees. Explanation-- For the purpose of this section assessing authority includes an officer not below the rank of an officer appointed and posted by the Commissioner Commercial Tax at a check post.

58. REVIEW BY ASSESSING AUTHORITY AND POWER TO GRANT STAY :-

(1) Where in any assessment order amount of tax has been assessed in excess of amount of tax admitted by the dealer due to non-submission of any prescribed forms of declaration or certificates prescribed either for exemption from tax or for reduction in rate of tax, and if on the application of the dealer for extension of time for submitting such forms or certificates time for submitting the same could not be extended, due to any reason by the assessing authority before passing such assessment order, the assessing authority on the application of the dealer may review such assessment order once during a period of nine months from the date of service of such order on the dealer to allow the benefit of such declaration forms or certificates as are submitted within six months from the date of service of order subject to following conditions. (i) The dealer informs in writing to the assessing authority within thirty days from the date of service of such order on him that he wishes to submit any of such form of declaration or certificates within six months from the date of service of order on him; (ii) The dealer furnishes an affidavit to the effect that he has not filed an appeal against the assessment order; (iii) The dealer furnishes security of disputed amount of tax to the satisfaction of assessing authority; (iv) The dealer has deposited admitted tax within thirty days from the date of service of order on him ; and (v) Forms of declaration or certificates submitted by the dealer are found in order; (2) Where any dealer has fulfilled conditions referred to in under clauses (i), (ii), (iii) and (iv) of sub-section (1), the assessing authority may stay the recovery of disputed amount of tax till the disposal of review application.

59. APPEAL :-

(1) Any dealer or other person aggrieved by an order made by the Assessing Authority, other than an order mentioned in section 65 or sub-section (7) of section 48, may, within thirty days from the date

of service of the copy of the order, after serving a copy on the Assessing Authority or the State representative, as the case may be, appeal to such authority as may be prescribed. (2) Where an appeal under this section has been filed by any dealer or any other person against an order referred to in sub-section (1) and where by due to filing of such appeal the Commissioner can not proceed with revising such order passed by assessing authority on the point of legality or propriety of such order under section 60, the Commissioner may apply to the appellate authority to examine the legality and propriety of such order on such point or points as may be mentioned in the application. A copy of such petition shall be served on the dealer or such other person and shall be decided along with the appeal filed by the dealer or other person by a common judgment. Such application shall be treated cross appeal to appeal filed by the dealer or any other person. Provided that no application for examination of legality and propriety under this subsection shall be entertained after the disposal of appeal filed by the dealer or other person, as the case may be. Provided further where the Commissioner under this section has filed an application, dealer or other person shall not be entitled to withdraw appeal filed by him. Explanation - For the purpose of this sub-section Commissioner includes an officer authorised to file appeal on behalf of Commissioner before the Tribunal under section 61 of this Act. (3) 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 purchases, or both, 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. (4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner. (5) The Appellate Authority may, after calling for and examining the relevant records and after giving both parties a reasonable opportunity of being heard or, as the case may be. (a) in the case of an order of assessment and 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-clause ; or (b) in the case of any other order confirm, cancel or vary such order or set aside the order and direct the Assessing Authority to pass a fresh order after such inquiry as may be specified ; or; Provided that subject to second proviso to sub-section-(2) 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 examination of legality or propriety has been made by the Commissioner. (6) The appellate Authority, may, on the application of the applicant 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 where an order under appeal does not involve any dispute about tax , fee or penalty, Appellate Authority may stay the operation of such order till the disposal of appeal subject to such conditions including a condition of furnishing of a security in cash or other wise as he may deem fit. (i) Provided further that no application under this sub-section shall be entertained unless it is filed along with the memorandum of appeal under sub-section(1): (ii) 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. (iii) no stay order granted under the proviso to this sub-section shall remain in force after the expiry of the time allowed for fulfilling the condition, if any, unless the appellant has fulfilled the conditions subject to which stay order has been granted within the time allowed in the order of stay. If stay order has been passed subject to condition of filing any security, the appellant shall furnish security to the satisfaction of assessing authority with in the time allowed, failing which stay order shall not remain in force after the expiry of the time allowed for fulfilling the conditions, if any. 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. (7) An order passed under this section shall, subject to the provisions of this Act, be final. (8) If the amount of tax assessed, fee levied or penalty imposed is reduced by the Appellate Authority

under sub-section-(5), he shall order the excess amount of tax, fee or penalty if realized, to be refunded. (9) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section. Provided that above provision shall not apply in respect of appeals which are against such orders in respect of which proceedings under section 58 have already been initiated before filing such appeal. For this purpose if notice under section 58 has been issued by the competent authority on a date prior to the date of presentation of appeal, it shall be presumed that proceedings have been initiated under that section. (10) The appellate authority shall be under the superintendence and control of the Commissioner: Provided that in the exercise of such superintendence and control, no order, 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. (11) For the purpose of this section service of an order passed by assessing authority and service of memo of appeal on the State Representative. shall be deemed to be service on the Commissioner. (12) All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together.

60. REVISION BY THE COMMISSIONER :-

(1) The Commissioner or such other Officer not below the rank of Joint Commissioner as may be authorised in this behalf by the Commissioner by notification may call for and examine the record relating to any order (other than an order mentioned in section 54 passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of 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 59, or an order passed by the Appellate Authority under that section. (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 . Explanation- Where the appeal against any order is withdrawn or is dismissed for nonpayment of fee payable under section 75 or for non-compliance of sub-section (1) of section 59, the order shall not be deemed to have been the subject-matter of

an appeal under section 59; (4) Any dealer or other person aggrieved by an order made by assessing authority under any provision of this Act shall not be entitled to file a petition or any other application or appeal under this section.

61. 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 the judge of the High Court, and (b) the persons belonging to the Uttar Pradesh Trade Tax Services who hold or have held a post not below the rank of 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 senior most amongst them shall be appointed as the President. (ii) No person shall be appointed from amongst the advocate unless- (a) he has paid Income tax from his profession (exclusive of all other Income) in each of five consecutive years preceding such appointment. (b) he has attained the age of 50 years on the first day of the appointment year. The appointment year shall have the same meanings as assigned to it under the U.P. Trade Tax Service Rules. (c) Members under this clause shall be appointed for three year from the date of appointment or till he attains the age of superannuation as prescribed under U.P. Fundamental rules, which ever is earlier. (2) The State Government may prescribe such other qualification or conditions for the appointment of the President and the other members of the Tribunal as it may deem fit. (3) The provisions of rule 56 of the U.P. Fundamental Rules shall continue to apply to every member of the Tribunal including the President whether appointed before or after the commencement of this Act, as they apply to any other Government servant : Provided that a member of the Tribunal including the President appointed before the commencement of the U.P. Trade Tax (Second Amendment and Validation Act, 1983, may continue as such till he attains the age of sixty years. (4) any person aggrieved by an order passed under section- 35, section- 59 section- 60, a decision under section- 64, a direction under the proviso to sub-section (7) of section 48 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 order passed by appellate Authority under section- 59 or by revising authority under section- 60 of the

Act, is an order in respect of demand of any security, not being security demanded for release of goods seized under any provisions of this Act, appeal under this section can be filed only after furnishing security, fixed by the appellate authority under section-59 or as the case may be, by revising authority under this section. Provided further 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;

(5) The manner and procedure of summary disposal of appeal shall be such as may be prescribed. (6) Section 5 of the Limitation Act, 1963 shall apply to appeals or other applications under this section. (7) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal. (8) The Tribunal may, if it has not already dismissed the appeal under sub-section (6), 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 (4): (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 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 realized in excess of the due amount to be refunded according to the provisions of this Act. (9) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with 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 proceeding for reassessment under the order appealed against till the disposal of the appeal: Provided that- (i) Where appellate authority under section- 59 has set aside an order of assessment or penalty and has remanded the case to the assessing authority, for decision afresh, and the appellant under this section is a person other than the Commissioner or the State Government, for the

purpose of this section, disputed amount of tax, penalty or composition money shall be deemed to be the same which had been before appellate authority under section- 59 ;and (ii) Subject to provision under sub clause (i) above where order appealed against does not involve any dispute about quantum of tax, fee or penalty, on the application of the appellant the Tribunal may stay the operation of such order till the disposal of appeal subject to such conditions including a condition of furnishing of a security whether in cash or other wise within the time allowed as it may deem fit. No stay order granted under this clause shall remain in force after the expiry of the time allowed for fulfilling the conditions, if any, unless the appellant has fulfilled such condition within the time allowed. If stay order has been granted subject to condition of furnishing any security, the appellant shall furnish security to the satisfaction of assessing authority, failing which stay order shall stand vacated after the expiry of the time allowed for fulfilling the conditions if any. Provided further that- (a) 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 (3) of section- 59. (b) 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. (10) 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 furnished adequate security to the satisfaction of the assessing authority concerned for the payment of the outstanding amount. (11) 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 Tribunal. (12) (a) An appeal against the order of appellate authority under section 59 shall be heard and disposed of- (i) by a bench of two members, where such order, not being an order passed on the application of the appellant for stay, is passed by an Additional commissioner (Appeals) or the amount of tax, fee or penalty in dispute, exceeds

fifty thousand rupees ; (ii) by a single member bench, in any other case. (b) An appeal against an order passed under section 58 or against a direction given under the proviso to sub-section (7) of section 48 shall be heard and disposed of by a bench of two members. (c) An appeal against a decision given under section 64, 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. Provided that an appeal against an order passed on an application for stay, one member bench may finally dispose of such appeal. (13) 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. (14) 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. (15) The decision of case heard by a bench, shall be in accordance with 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, give 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.

62. REVIEW BY THE TRIBUNAL :-

The Tribunal may, on the application either by appellant or by the respondent may within one hundred and fifty days from the date of order passed by it under sub-section (6) or (7) of section -61 review any order passed by it on the basis of facts which were not before it when the order was passed. Provided that no order passed

by it under sub-section (6) or sub-section (7) of section -61 shall be reviewed if revision filed under section -61 against such order has been decided by the High Court.

63. REVISION BY HIGH COURT IN SPECIAL CASES :-

(1) Any person aggrieved by an order made under sub-section- (6) or sub-section(7) of section- 61 other than an order under sub-section (3) of that section summarily disposing of the appeal or by an order passed under section- 62 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) 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. (3) Where an application under this section is pending, the High Court may, on an application in this 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 stay or 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. (4) The High Court shall, after hearing the parties to 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. (5) All applications for revision of orders passed under section 61 in appeals arising out of the same cause of action in respect of an 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 applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together. (6) 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 " a n y person" includes the Commissioner and the State

Government.

64. DETERMINATION OF DISPUTED QUESTIONS :-

(1) If any question arises, otherwise than in a proceedings pending before a Court or before an authority under the Act, 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 74, submit an application to the commissioner, along with 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 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 61 and 63 be final and binding on the applicant, the Assessing Authority and the Appellate Authority. (6) A copy of the decision given under this section shall be sent to the applicant and to the assessing authority concerned.

65. 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- 24 or section 27 initiating an inquiry for assessment or re-assessment; (b) any order or action under section 45 or under sub-section (1) or sub-section (2) or sub-section(7) of section- 48 or under sub-section (6) of section- 50 or order of seizure of goods.

66. ADDITIONAL EVIDENCE IN 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 Assessing Authority.

67. THE SETTLEMENT COMMISSION :-

(1) There shall be a Settlement Commission consisting of such members including a Chairman as the State Government may, from time to time, deem it necessary to appoint from amongst (a) persons who are eligible to be appointed as Secretary to the State Government; and (b) persons belonging to the Uttar Pradesh Commercial Tax Service who hold or have held a post not below the rank of Member Tribunal under the Value Added Sales Tax Act. Provided that where members of Indian Administrative Service are appointed as the members of the Commission, senior most among them shall be the Chairman of the Commission. Provided further that where no member has been appointed as member of the Commission from amongst the members of the Indian Administrative Service or if the post of Chairman is vacant, the Secretary and in the absence of Secretary the Principal Secretary of the Tax and Registration Department of the State Government shall officiate as the Chairman of the Commission. (2) The headquarters of the Commission shall be at Lucknow but the Commission for discharge of its functions, may at its option hold its camp office anywhere in the State at the headquarters of a Commercial Tax circle. Provided that where the Commission holds its office at a place different from its headquarters, it shall intimate the concerned persons by giving them at least fifteen days advance notice. (3) Any dealer or other person (i) who has been served with a notice under sub-section (11) of section 45 and who is suspected to have evaded payment of tax exceeding one lakh rupees or such larger amount of tax as the State Government may by notification in the Gazette specify; or (ii) who has been served with a notice for imposition of penalty either under sub-section (4) of section 48 or under clause (c) of sub-section (1) of section 56 and where the maximum amount of penalty that can be imposed exceeds one lakh

rupees, may apply to the Commission for composition of amount of tax that may be assessed or amount of penalty that may be imposed , within thirty days from the date of receipt of such notice after giving intimation to the authority who has issued such notice . Provided that the Commission may, in appropriate cases, permit a dealer or other person to present an application beyond the period of thirty days but not exceeding ninety days subject to the condition the assessing authority has not passed order of assessment or penalty, as the case may be, in pursuance of such notice. (4) The application shall be addressed to the Chairman Settlement Commission at Lucknow and shall be presented in the prescribed manner and in the prescribed form along with such other documents as may be prescribed. The application shall also accompany the satisfactory proof of deposit of rupees Two thousand five hundred as fee. The application for composition of tax or penalty shall accompany an application for granting stay against proceedings in the matter before the assessing authority. (5) The application received by the Commission shall be marked by the Chairman to one of the members of the Commission. If such member to whom application has been marked by the Chairman, finds that application is in order, he shall order to register case for settlement. At the same time the member shall issue stay orders on the application for stay. If the application is not in order, the member shall issue notice to the applicant stating reasons to show cause why application should not be rejected. If the applicant removes the defects pointed out by the Commission, the member shall order for registration of the case, but where the applicant does not turn up or does not remove the defects pointed out by the Commission, the member shall reject the application. (6) In a case in which case for settlement has been registered, the member shall order to call for the report in the matter, from the authority who has issued the notice in respect of which settlement case has been registered. Such officer shall submit its report within thirty days of receipt of the direction from the Commission. Where the Commission is satisfied that the officer could not submit the report within the stipulated time, it may on application from such authority may extend the time for submitting its report. (7) In a case in which report referred to in sub-section (6) has been received by the Commission, the Chairman shall constitute a bench of two members of the Commission to hear the case and to give its recommendation. The bench constituted for hearing the case shall issue notices for hearing of the case to the applicant and the

Commissioner Value Added Tax. The bench shall hear both the parties and shall examine the relevant records. For this purpose, it may call for any records from the applicant and the Commissioner relating to the case or such other records which may be helpful in the case. (8) After giving reasonable opportunity of being heard to both the parties and after examination of records, the bench shall prepare a proposal of the tax amount or the penalty amount, which in its opinion would be sufficient to be accepted as compounded amount of tax or penalty. Where the settlement case relates to the evasion of tax amount, proposal in respect of amount of penalty under clause (c) of sub-section (1) of section 56 shall also be prepared. The proposal prepared by the bench shall be submitted to the Chairman of the Commission for its approval. Where the Chairman of the Commission gives his assent on the proposal, the applicant shall be served with the proposal for giving his consent within a period of fifteen days from the date of receipt of the proposal. Where the Chairman does not agree with the proposed amount of tax and, or penalty, or if the members of the bench have expressed different opinions, the Chairman will discuss in the matter with the members of the bench and shall reach a decision. Such decision shall be the decision according to the majority opinions expressed by the Chairman and the members of the bench who have heard the case. (9) The applicant within fifteen days from the receipt of the proposal from the Commission shall submit his willingness to pay the proposed amount of tax and, or penalty and if the applicant is not willing to pay the proposed amount, he shall intimate to the Commission, along with reasons why he does not consider it a reasonable proposal. He shall also inform the Commission about the amount of tax and, or penalty which he agrees to pay. (10) If the Commission receives consent of the applicant for payment of the proposed amount, the Chairman of the Commission shall pass an order in the matter and shall direct the applicant to deposit the proposed and agreed amount of tax and, or penalty within thirty days from the date of receipt of the order. Copies of such order shall be sent to the officer who has issued the notice to the applicant, to the assessing authority of the applicant and the Commissioner Commercial Tax. The copy of such order to the applicant shall be sent through its assessing authority. Where the order passed by the Commission relates to amount of tax, copy of such order shall be served on the applicant by the assessing authority along with demand notice for the amount which is to be paid by the applicant. (11) Where the applicant has not agreed

with the proposal served by the Commission and has quoted its own proposal, the Commission in the joint sitting of the Chairman and the members who have heard the case, shall reconsider the case. If the amount proposed by the applicant seems to be reasonable in view of the new facts brought to the notice of the Commission or on the grounds set forth in his proposal by the applicant, it may accept the proposal and may pass the order accordingly. (12) If the applicant has not responded to the proposal offered by the Commission within the time prescribed or within such further time, as may be allowed by the Commission, the Commission shall dismiss the case stating reasons therefor. Copies of such order shall be sent to all persons referred to in sub-section (10). (13) Where the applicant has accepted the proposal and has received the settlement order, he shall deposit the amount mentioned in the order within thirty days from the date of receipt of such order from the assessing authority. Provided that the Commission may, on the application from the applicant, in appropriate cases, grant facility of payment of the amount mentioned in the settlement order along with amount of interest payable, in monthly instalments not exceeding twenty four. (14) If the applicant does not deposit the amount mentioned in the settlement order or any part of it, the same shall become recoverable as arrears of land revenue after thirty days from the date of service of the order on him. The assessing authority shall recover such amount as if such amount is amount of tax assessed or penalty imposed under any other provisions of the Act. Provisions relating to payment of interest in respect of amount of tax shall apply to the amount mentioned in the settlement order in the manner the same are applicable in the case of tax levied under any other provisions of the Act. (15) For all purposes under the Act, amount determined under this section shall be treated to be tax levied or amount of penalty imposed, as the case may be, and date of order made by the Commission shall be treated to be the date of order of assessment or penalty as the case may be. (16) Where application of the dealer or other person has been rejected by the Commission, the assessing authority shall proceed to assess the tax or to impose the penalty in case of such dealer or other person in accordance with the other relevant provisions under the Act. (17) Notwithstanding anything contrary to in section 27 of the Act, where in any case of assessment an application under this section has been rejected by the Commission, the assessment or re-assessment, as the case may be, may be made by the assessing

authority before the expiry of the assessment year subsequent to the assessment year in which order passed by the Commission has been received by the assessing authority through official channel or before expiry of the period prescribed under sub-section (3) or sub-section (4) or sub-section (7) of section 27 as may be applicable, whichever expires later. (18) No appeal, revision or review shall lie against any proceedings or any order made under this section. (19) The Chairman and the members of the Commission shall be under the direct administrative control of the State Government. (20) Where any member of the Commission is not available for a period extending beyond fifteen days at a stretch, to discharge the duties in place of such member, the State Government may, by notification in the Gazette, appoint and direct any member of Commercial Tax Tribunal from amongst the members of the U. P. Commercial Tax Service to work as member of the Commission. Any such officer appointed under this sub-section shall hold the office of the Commission till the member in whose place such officer was appointed resumes his office or till he is transferred from such post by the State Government or till the date of his superannuation whichever is earlier. (21) Service conditions of the members of the Commission, appointed from amongst the members of the Uttar Pradesh Commercial Tax Service shall be the same as those of the Member Tribunal Commercial Tax appointed from amongst the members of the Uttar Pradesh Commercial Tax Service. (22) Where a case of settlement under this section is pending before the Commission, nothing shall preclude the assessing authority from making an assessment or reassessment pertaining to the assessment years to which settlement case is pending but the assessing authority shall make its order by ignoring the material under the show cause notice before the Commission. (23) Where any settlement case relating to evasion of tax is pending for consideration before the Commission, if any additional notice in respect of tax evasion by the same authority or any fresh notice by any other authority is issued on any grounds not mentioned in the earlier notice, the applicant may request the Commission to consider the material set out in such other notice provided the Commission has not made the settlement order.

68. 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.

69. 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 the Rules made thereunder.

70. 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 lie against any such assessment or order.

71. 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 Stamps Act, 1899, to impound an insufficient 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.

72. 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 sales or purchase of goods and the imposing of condition in respect of the sale for the purpose of enforcing the provisions of this Act; (c) the determination of the turnover for the purpose of assessment of tax under this Act; (d) compelling the submission of returns and the production of documents and enforcing the attendance of a person and examining them on oath or affirmation; (e) the appointment, duties and powers of the officers appointed for the purpose 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; (g) refunds of amounts deposited under sub-section(1) of Section 42, the procedure for such refunds and the period within which they may be made; (h) the custody of the goods seized under section 46; and (i) the matters which are to be or may be prescribed; (3) The power to make Rules conferred by this section shall be subject to 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.

73. POWER TO ISSUE NOTIFICATIONS :-

Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue notification wherever required

under the provision of this Act 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.

74. FEES IN CERTAIN CASES :-

(1) Subject to other provisions under the Act, the fee payable on a memorandum of appeal or other applications under this Act filed or moved shall be as follows: (a) On a memorandum of appeal under section 59. Two percent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of one thousand rupees. (b) On a memorandum of appeal under section 61. Seven and a half per cent of the amount of tax, fee or penalty in dispute, subject to a minimum of five hundred rupees and maximum of two thousand one hundred rupees. (c) On an application under section- 64 One Hundred rupees. (d) On any other application- (i) When addressed to the Commissioner or the Revising Authority or the Tribunal or the Settlement Commission 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 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. (b) an application in which only information is sought and in which no specific relief is prayed for ; and (c) an application under section 64, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable.

75. 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 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 (Act X of 1949) or any other financial institution specified by the State Government by notification in this behalf.

76. FACILITY FOR SICK INDUSTRIAL UNITS :-

(1) Notwithstanding anything contained in sub-section (1) and sub-section (2) of section- 33 and section- 76, 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 unit 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.

77. POWER TO COLLECT STATISTICS :-

(1) If the Commissioner considers that for the purpose of the better administration of this Act, it is necessary so to do, it may , by issuing a circular and, or by publication in the news paper or by notification in the Gazette, direct that statistics be collected relating to any matter dealt with by or under this Act. (2) Upon being direction made, any person authorised by it in this behalf, call upon all dealers or class of dealers or a particular dealer to furnish such information or returns or statements as may be stated therein relating to any matter in respect of which statistics are to be collected. (3) Dealer or dealers shall be liable to furnish such information within the time allowed.

78. Tax to be first charge on property :-

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer under this Act on account of tax, fee, penalty or interest or any amount which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.

79. Dealer to declare the name of his business manager :-

(1) Every dealer, who is liable to pay tax, and who is a Hindu Undivided Family or an association of persons, club or society , firm

or company, or who is engaged in business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed, furnish a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be manager or managers of such dealer's business for the purposes of this Act. (2) Such declaration shall be furnished at the time of registration, wherever applicable and shall be revised from time to time.

80. Publication and disclosure of information respecting dealers and other persons in public interest :-

(1) Notwithstanding anything contained in section or , if the Commissioner is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit. (2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the appropriate appellate authority has expired without an appeal having been presented or the appeal, if presented has been disposed of. Explanation :- In the case of a firm, company or other association of persons, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Commissioner, the circumstances of the case justify it.

81. Investigation of offences :-

(1) Subject to conditions, if any, as may be prescribed, the Commissioner or any other officer not below the rank of an Additional Commissioner, authorized by the commissioner in this behalf, may authorize either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act. (2) Every officer so authorized shall, in the conduct of such investigation, exercise the power conferred by the Code of Criminal Procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence. (3) Officer conducting investigation under sub-section (1) may take assistance of police

personals of local police station.

82. Appearance before any authority in proceedings :-

(1) Any person who is entitled or required to attend before any authority including the Tribunal and the Settlement Commission in connection with any proceeding under this Act, otherwise than when required to attend personally for examination on oath or affirmation, may attend- (a) by a relative or a person regularly employed by him, or (b) by a legal practitioner, or Chartered Accountant who is not disqualified by or under sub-section (2), or (c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2). only if such relative, person employed, legal practitioner, Chartered Accountant, or sales tax practitioner is authorized by such person in the prescribed form, and such authorization may include the authority to act on behalf of such person in such proceedings. (2) In a case of a sales tax practitioner the Commissioner and in case of a legal practitioner or a Chartered Accountant the competent authority, may by order in writing and for reasons to be recorded therein disqualify such sales tax practitioner or legal practitioner or Chartered Accountant, as the case may be, for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, or sales tax practitioner- (i) who has been removed or dismissed from Government service or (ii) who being a sales tax practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the Commissioner or being a legal practitioner or a Chartered Accountant is found guilty of misconduct in connection with any proceedings under this Act by the authority, if any, empowered to take disciplinary action against the member of the profession to which he belongs. (3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard. (4) Any person against whom any order of disqualification is made by the Commissioner under this section may within one month of the date of communication of such order appeal to the Tribunal to have the order cancelled or modified. The order of the Commissioner shall not take affect until one month of the making thereof. Provided that the Tribunal may grant stay against operation of the order till the decision of the appeal pending before it for disposal subject to such conditions as it may deem fit. (5) The Commissioner may, at

any time suo motu or an application made to him in this behalf, revoke or modify any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified subject to such conditions or restrictions that may be contained in such order.

83. Delegation of the Commissioner powers and functions :-

Except as expressly provided in any other provision under this Act, subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act and the Rules made thereunder to any officer not below the rank of a Joint Commissioner.

84. Authorities under the Act to be public servants :-

All authorities including Commissioner, President and members of the Tribunal and Chairman and members of the Settlement Commission shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code.

85. Powers of Authorities under the Act :-

(1) Except President and members of the Tribunal and Chairman and members of the Settlement Commission shall be under the superintendence and administrative Control of the Commissioner. (2) The Commissioner shall have jurisdiction over whole of the State and shall exercise the powers conferred, and perform the duties imposed by or under the Act or Rules made thereunder. (3) The Commissioner shall have all powers exercisable by subordinate authorities other than the appellate authority under section 54. (4) Consistent with the provisions of the Act and Rules made thereunder, the Commissioner may issue instructions to officers under his subordination, generally regulating the procedure to be followed in carrying out the provisions of the Act or Rules made thereunder. Provided that no order, 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. (5) Subject to general control of the Commissioner- (i) All Additional Commissioners shall also exercise powers vested in the Commissioner; (ii) All Joint Commissioners and all Deputy Commissioners shall exercise the powers conferred including powers delegated to them by the Commissioner, and perform the duties imposed by or under the Act or the Rules made thereunder, as may be consistently with the Act or the Rules made thereunder, be

conferred and assigned to them; and (iii) All other officers except President and Members of the Tribunal and Chairman and Members of the Settlement Commission, shall exercise the powers and perform the duties as may be assigned to them under Rules made under this Act. (6) Authorities under sections and shall exercise the powers and perform the duties in accordance with provisions under sections and respectively or the Rules made thereunder. (7) The State Government, for the purpose of carrying out the provisions under the Act or Rules made thereunder, may appoint and, or as the case may be, post such other officers by name or designation as it may deem fit and as may be prescribed. (8) Authorities under the Act shall exercise their powers in the jurisdiction as may be prescribed or as may be notified by the State Government in exercise of the powers vested in it under the Rules.

86. AUTHORITIES UNDER THE ACT :-

1 . Authorities mentioned in column (2) of the table below appointed and posted by the State Government to carry out the purposes of the Uttar Pradesh Trade Tax Act 1948 shall be deemed to have been appointed and posted by the State Government as authorities mentioned in column (3) of the table against each of them and shall continue in office till such person holds such office and such officer shall exercise the powers vested in and perform the duties cast under this Act, rules made and notifications issued there under.

Sr. No.	Designation of the authority under the U. P. Trade Tax Act, 1948	Designation of the authority under the U. P. Value Added Sales Tax Act, 2002.
1.	Commissioner Trade Tax	Commissioner Commercial Tax
2.	Chairman Settlement Commission Trade Tax	Chairman Settlement Commission Commercial Tax
3.	President Trade Tax Tribunal	President Commercial Tax Tribunal
4.	Member Settlement Commission Trade Tax	Member Settlement Commission Commercial Tax
5.	Member Tribunal Trade Tax	Member Tribunal Commercial Tax
6.	Additional Commissioner Trade Tax	Additional Commissioner Commercial Tax
7.	Additional Commissioner Trade Tax (Legal)	Additional Commissioner Commercial Tax (Legal)
8.	Additional Commissioner Trade Tax (Administration)	Additional Commissioner Commercial Tax (Administration)
9.	Additional Commissioner Trade Tax Grade I	Additional Commissioner Commercial Tax Grade I
	Additional Commissioner	Additional Commissioner Commercial

10.	Trade Tax Grade II	Tax Grade II
11.	Joint Commissioner Trade Tax	Joint Commissioner Commercial Tax
12.	Joint Director Trade Tax Officers Training Institute	Joint Director Commercial Tax Officers Training Institute
13.	Deputy Commissioner Trade Tax	Deputy Commissioner Commercial Tax
14.	Deputy Commissioner Trade Tax (Special Investigation Branch)	Deputy Commissioner Commercial Tax (Enforcement)
15.	Deputy Commissioner Trade Tax (Appeals)	Deputy Commissioner Commercial Tax (Appeals)
16.	Deputy Commissioner Trade Tax (Check Posts)	Deputy Commissioner Commercial Tax (Check posts)
17.	Deputy Commissioner Trade Tax (Supreme Court Works)	Deputy Commissioner Commercial Tax (Supreme Court Works)
18.	Deputy Commissioner Trade Tax (High Court Works)	Deputy Commissioner Commercial Tax (High Court Works)
19.	Assistant Commissioner Trade Tax	Assistant Commissioner Commercial Tax
20.	Assistant Commissioner Trade Tax (Enforcement)	Assistant Commissioner Commercial Tax (Enforcement)
21.	Assistant Commissioner Trade Tax (Special Investigation Branch)	Assistant Commissioner Commercial Tax (Special Investigation Branch)
22.	Assistant Commissioner Trade Tax and State Representative	Assistant Commissioner Commercial Tax and State Representative
23.	Assistant Commissioner Trade Tax (Check-posts)	Assistant Commissioner Commercial Tax (Check-posts)
24.	Assistant Commissioner Trade Tax (Administration)	Assistant Commissioner Commercial Tax (Administration)
25.	Assistant Commissioner Trade Tax (Recovery)	Assistant Commissioner Commercial Tax (Recovery)
26.	Assistant Commissioner Trade Tax (Assessment)	Assistant Commissioner Commercial Tax (Assessment)
27.	Assistant Commissioner Trade Tax (Supreme Court Works)	Assistant Commissioner Commercial Tax (Supreme Court Works)
28.	Assistant Commissioner Trade Tax (High Court Works)	Assistant Commissioner Commercial Tax (High Court Works)

(2) Officers mentioned in column (2) of the table below appointed and posted by the State Government or appointed by the State Government and posted by the Commissioner Trade Tax, to carry out the purposes of the Uttar Pradesh Trade Tax Act 1948 shall be deemed to have been appointed and posted by the State Government or appointed by the State Government and posted by the Commissioner Commercial Tax, as the case may be, as officers mentioned in column (3) of the table against each of them and shall continue in office till such person holds such office and such officer shall exercise the powers vested in and perform the duties cast under this Act, rules made and notifications issued thereunder.

Sr. No.	Designation of the authority under the U. P. Trade Tax Act, 1948	Designation of the authority under the U. P. Value Added Sales Tax Act, 2002.

1.	Trade Tax Officer	Commercial Tax Officer
2.	Trade Tax Officer (A)	Commercial Tax Officer (Administration)
3.	Trade Tax Officer (Special Investigation Branch)	Commercial Tax Officer (Special Investigation Branch)
4.	Trade Tax Officer (Mobile Squad)	Commercial Tax Officer (Mobile Squad)
5.	Trade Tax Officer and State Representative	Commercial Tax Officer and State Representative
6.	Trade Tax Officer (Check-post)	Commercial Tax Officer (Check-Post)
7.	Trade Tax Officer in other any capacity	Commercial Tax Officer posted in the same capacity

(3) Officers mentioned in column (2) of the table below appointed and posted by Commissioner Trade Tax, to carry out the purposes of the Uttar Pradesh Trade Tax Act 1948 shall be deemed to have been appointed and posted by the Commissioner Commercial Tax, as officers mentioned in column (3) of the table against each of them and shall continue in office till such person holds such office and such officer shall exercise the powers vested in and perform the duties cast under this Act, rules made and notifications issued thereunder

Sr. No.	Designation of the authority under the U. P. Trade Tax Act, 1948	Designation of the authority under the U. P. Value Added Sales Tax Act, 2002.
1.	Trade Tax Officer Grade II	Commercial Tax Officer Grade II
2.	Trade Tax Officer Grade II (Special Investigation Branch)	Commercial Tax Officer Grade II (Special Investigation Branch)
3.	Trade Tax Officer Grade II (Mobile Squad)	Commercial Tax Officer Grade II (Mobile Squad)
4.	Trade Tax Officer Grade II (CheckPost)	Commercial Tax Officer Grade II (Checkpost)
5.	Trade Tax Officer Grade II (posted in any other capacity)	Commercial Tax Officer Grade II (Posted in same capacity)

(4) Notwithstanding anything contained contrary in sub-section (1) or sub-section (2) or sub-section (3) authorities or officers appointed and, or posted by the State Government or the Commissioner Trade Tax to carry out the purposes under the U.P. Trade Tax Act, 1948, rules made or notifications issued thereunder shall continue to be so appointed and or posted till they hold office and any officer appointed or posted as officer of the Commercial Tax Department mentioned in column (3) of any table under sub-section (1) or sub-section (2) or sub-section (3) shall also be deemed an officer of the Trade Tax shown in column (2) of the relevant table against each of them and shall be competent to discharge duties cast on him under the U. P. Trade Tax Act, 1948 or the rules made or notifications issued thereunder. (4) Territorial limits of a Bench of a Member Commercial Tax Tribunal or of a Zone of an Additional Commissioner Commercial Tax or a Region of a Deputy Commissioner (Executive) Commercial Tax or Region of a Deputy Commissioner (Appeals) Commercial Tax or Range of an Assistant Commissioner Commercial Tax, unless amended by the State Government by Notification in the Gazette, shall include such circles or a circle or part of such circle of Trade Tax as notified by the State Government under the U. P. Trade Tax Rules, 1948 and as stood on the date immediately preceding the date of commencement of this Act, in case of a Member Trade Tax Tribunal of a Bench or an Additional Commissioner Trade Tax of a Zone or a Deputy Commissioner (Executive) Trade Tax of a Region or a Deputy Commissioner (Appeals) Trade Tax of a Region or an Assistant Commissioner Trade Tax of a Range respectively and territorial limits of a

Commercial Tax Circle shall, unless otherwise notified or amended by the State Government, be the same as notified by The State Government or fixed by the Commissioner Trade Tax. (5) The place of headquarter of a Bench of a Member Tribunal Commercial Tax or an Additional Commissioner Commercial Tax or a Deputy Commissioner (Executive) Commercial Tax or a Deputy Commissioner (Appeals) Commercial Tax or an Assistant Commissioner Commercial Tax or a Commercial Tax Circle shall unless changed by the State Government by Notification in the Gazette, be the same as notified by the State Government in case of a Bench of a Member Trade Tax Tribunal or an Additional Commissioner Trade Tax or a Deputy Commissioner (Executive) Trade Tax or a Deputy Commissioner (Appeals) Trade Tax or an Assistant Commissioner Trade Tax or a Trade Tax Circle respectively.

87. TRANSITORY PROVISIONS :-

(1) With effect from the date of commencement of this Act liability of payment of tax on sale or purchase of any goods made on or after such date, under the provisions of the U. P. Trade Tax Act, 1948, shall cease. (2) Except as provided in this Act, any exemption from payment of tax or any concession in payment of tax or concession or reduction in rate of tax or any rebate or refund in respect of any sale or purchase of any goods granted under any provisions of the U. P. Trade Tax Act, 1948 or rules made or notifications issued thereunder shall not be admissible in respect of purchase or of sale of any goods on or after the date of commencement of this Act. (3) (i) Any case of assessment or reassessment pending on the date of commencement of this Act and cases of assessment or reassessment those may arise as a result of any proceedings under the U. P. Trade Tax Act, 1948; or (ii) Any case of penalty pending on the date of commencement of this Act and those cases in which penalty proceedings may be initiated after such date under the provisions of the U. P. Trade Tax Act, 1948; or (iii) Any appeal or revision or reference pending on the date of commencement of this Act and all such appeals or revisions or references as may be filed after such date under the provisions of the U. P. Trade Tax Act, 1948; or (iv) Any case of review pending on the date of commencement of this Act and all cases of review which may be initiated on or after such date under the provisions of the U. P. Trade Tax Act, 1948; or (v) Any cases of rectification of mistakes on record in any order pending on the date of commencement of this Act and all other cases relating to rectification of mistakes in any order whether made before or after such date those may come on record on or after such date; or (vi) Any applications for grant of registration or for grant of recognition certificate or for grant of eligibility certificate pending on the date of commencement of this Act; or (vii) Any cases in which any officer or authority has been directed by any court or authority in

exercise of powers vested in it to make fresh order, whether before or on or after the date of commencement of this Act; or (viii) Any case pending before the Commissioner under sub-section (3) of section 4-A of the U. P. Trade Tax Act, 1948 or cases in which proceedings may be initiated on or after the date of commencement of this Act including cases in which Commissioner has been directed by any court or authority to make fresh order; or (ix) Any case of seizure of books, accounts or documents or goods; or (x) Any application pending on the date of commencement of this Act and every such application that may be presented on or after such date under the provisions of the U. P. Trade Tax Act 1948; or (xi) Any other cases Pending on the date of commencement of this Act or cases those may come on record on or after such date, shall be disposed of in accordance with the provisions under the U. P. Trade Tax Act, 1948, rules made or notifications issued thereunder within the time prescribed in the said Act. (4) Any amount of tax or penalty or fee assessed, imposed or payable whether before or on or after the date of commencement of this Act under the provisions of the U. P. Trade Tax Act, 1948, for the purpose of payment and recovery of amount due on or after the date of commencement of this Act shall be paid or recovered in accordance with the provisions of this Act. Amount of interest payable for the period before the date of commencement of this Act shall be paid and recovered according to provisions of the U. P. Trade Tax Act, 1948 and for the period starting on or after such date shall be paid and be recovered in accordance with provisions of this Act. (5) Where period of any return relates partly to the period before the date of commencement of this Act, separate returns for period before such date and the period under this Act shall be submitted separately. (6) Where any recovery proceedings in respect of realisation of any amount due from a dealer or any other person under the U. P. Trade Tax Act 1948, have been initiated before the date of commencement of this Act, on commencement of this Act shall continue from the stage the same were pending. (7) In respect of defaults made before the date of commencement of this Act by a dealer or any other person penalty proceedings or prosecution shall be made in accordance with the provisions under the U. P. Trade Tax Act, 1948 and in respect of defaults made on or after the date of commencement of this Act penalty proceedings and prosecution be made in accordance with the provisions under this Act. Where default is of continuing nature and continues on or after such date

penalty proceedings or prosecution shall be made in accordance with provisions of this Act. (8) Any amount of tax or penalty or fee deposited by the dealer or any other person or recovered from the dealer or any other person under the provisions of the U. P. Trade Tax Act, 1948, if is found in excess of amount of tax or penalty or fee payable shall first be adjusted towards any amount outstanding against such dealer or other person either under the U. P. Trade Tax Act 1948 or under this Act or under the Central Sales Tax Act 1956, and remaining if any shall be refunded to such dealer or other person in accordance with provisions of this Act. Interest if payable shall be paid in accordance with the provisions of this Act. (9) Any dealer who was a registered dealer under the U. P. Trade Tax Act 1948 but has not remained liable to obtain registration in view of provisions under this Act or and if the dealer does not desire to remain registered voluntarily, shall surrender registration certificate granted to him within a period of one month from the date of commencement of this Act along with all forms of declaration or certificates remaining unused if any with him. (10) Any form of declaration or certificate prescribed under rules made or notifications issued under the provisions of the U. P. Trade Tax Act, 1948 as are in conformity with provisions of this Act, shall be used by the dealers or other persons who are entitled to use them under this Act unless the same are declared invalid. (11) Any form of declaration or certificate prescribed under the provisions of the U. P. Trade Tax Act 1948, as are not in conformity with any provisions of this Act, remaining unused with any dealer or any other person shall be returned to the assessing authority from whom the same were received within a period of sixty days from the date of commencement of this Act. (12) Any scheme of payment of lump sum in lieu of tax due under the provisions of section 7-D of the U. P. Trade Tax Act, 1948 for a period where part of such period under scheme expires on or after the date of commencement of this Act, shall not be deemed valid under this Act unless the State Government makes an order to this effect. (13) Any security or additional security furnished under the provisions of the U. P. Trade Tax Act, 1948 in respect of grant of registration certificate or continuation of the registration certificate or for safe custody and proper use of any form of declaration or certificate prescribed under the provisions of the said Act shall not be deemed valid for the purposes under this Act unless the dealer furnishes an undertaking from the sureties to this effect on paper duly stamped within thirty days from the date of commencement of this Act. Provided the

assessing authority may extend the time for furnishing undertaking from sureties in appropriate cases. (14) Nothing contained in sub-section (13) shall preclude the assessing authority from demanding any additional security from a registered dealer under this Act . (15) Dealers Who have been granted moratorium for payment of tax in lieu of exemption from tax under sub-section (2-A) of section 8 of the U. P. Trade Tax Act 1948 or dealers who may be granted moratorium for payment of tax from the date of first sale, shall continue to avail such facility under this Act subject to conditions under section 35 of the Act. (16) Any officer authorised by the Commissioner Trade Tax to exercise powers under section 10-B of the U. P. Trade Tax Act 1948 shall be deemed an officer authorised by the Commissioner Commercial Tax to exercise powers under section 61 of this Act and likewise an officer authorised by the Commissioner Trade Tax to exercise powers under proviso to sub-section (6) of section 13-A of the U.P. Trade Tax Act 1948 shall be deemed to be an officer authorised by the Commissioner Commercial Tax to exercise powers under proviso to sub-section (7) of section 48 of this Act. (17) Any orders made or directions issued either by the State government or by the Commissioner Trade Tax for carrying out purposes of the U. P. Trade Tax Act, 1948, to the extent the same are not inconsistent with the provisions under this Act unless the same are modified or amended or varied or withdrawn, shall apply to all matters under this Act and shall be deemed to have been issued under the provisions of this Act.