

Uttar Pradesh Value Added Tax (Amendment) Act, 2009

11 of 2009

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Uttar Pradesh Value Added Tax (Amendment) Act, 2009

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An Act further to amend the Uttar Pradesh Value Added Tax Act, 2008 It is hereby enacted in the Sixtieth Year of the Republic of India as follows:-- 1. Received the assent of the Governor on February 27, 2009 and published in the U.P. Gazette, Extra., Part 1, Section (Ka), dated 28th February, 2009, pp. 20-39

1. Short Title And Commencement :-

This Act may be called the Uttar Pradesh Value Added Tax (Amendment) Act, 2009.

(2) Clauses (d) and (e) of Section 2, Section 3, Section 5 and Section 6, clauses (f), (g) and (h) of Section 8, Section 10, clause (a) of Section 11, Section 14, sub-section (17) of the principal Act inserted by Section 16, Section 17, 18, 22, 24, 29 and 34 shall be deemed to have come into force on January 1, 2008 and the remaining provisions shall come into force at once.

2. Amendment Of Section 2 Of U.P. Act No. 5 Of 2008 :-

In Section 2 of the Uttar Pradesh Value Added Tax Act, 2008 hereinafter referred to as the principal Act,--

(a) in clause (h) for sub-clauses (ix) and (x) the following sub-clauses shall be substituted, namely:--

"(ix) a railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found bogus, forged or not verifiable, or the owner or person in charge of a vehicle who obtained authorization for transit of goods from the officer in charge of entry check post but failed to deliver the same to the officer in-charge of the exit check post;

(x) an owner or person in-charge of a godown, cold storage or warehouse who stores commercial goods, other than those of transporters except those referred to in sub-clause (ix);".

(b) in clause (p) the following proviso shall be inserted at the end, namely:--

"Provided that tax paid or payable in respect of transfer of right to use any goods shall not form part of the input tax;".

(c) in clause (ad), in the Explanation after clause (iv) the following clauses shall be inserted, namely:

"(v) Tax charged or chargeable shall not form the part of the sale price

(vi) Cash or trade discount at the time of sale as evident from the

invoice shall be excluded from the sale price but any ex post facto grant of discounts or incentives or rebates or rewards and the like shall not be excluded from the sale price;"

(d) for clause (ag) the following clause shall be substituted, namely:--

(ag) "tax" means a tax leviable under this Act, on the sale or purchase or both, as the case may be, of goods other than newspaper; and shall include,--

(i) Composition money either at an agreed rate or in lump sum, as the case may be, payable, in lieu of actual amount of tax due on turnover of sales, in accordance with provisions of Section 6 or Section 6-A;"

(ii) amount of reverse input tax credit;.

(e) for clause (ah) the following clause shall be substituted, namely:--

(ah) "taxable dealer" means a dealer who is liable to pay tax under this Act;.

(f) for clause (at) the following clause shall be substituted, namely:--

(at) "Web site" means World Wide Web of the Department of Commercial Taxes of Uttar Pradesh with such domain "up.nic.in" and with address "http://comtax.up.nic.in" or any other web site noticed by the State Government..

3. Amendment Of Section 3 :-

In Section 3 of the principal Act,--

(a) in sub-section (3) in the table for the entries appearing at Serial No. 8, the following entries shall columnwise be substituted, namely:--

(1)	(2)	(3)
"8	(i) A railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found bogus, forged or not verifiable: or the owner or person in charge of a vehicle who obtained authorization for transit of goods from the officer in charge of entry check post but failed to deliver the same to the officer in charge of the exit check post,	First date on which any taxable goods are found in the possession or custody
	(ii) an owner or person in-charge of a godown or cold storage or warehouse other than a transporter except those covered under clause (i) who fails to disclose the name and address of the owner of any taxable goods stored in such godown, cold	

storage or warehouse other than transporter except those covered under clause (i) or if discloses such name and address of owner of taxable goods is found bogus, forged or not verifiable.".	
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(b) in sub-section (4) the following proviso shall be inserted at the end, namely:--
"Provided that where a dealer carries on business during part of an assessment year, taxable quantum shall be partial amount of five lakh rupees which shall be computed on pro rata basis and for this purpose part of the month shall be counted as a full month."

(c) after sub-section (10) the following sub-section shall be inserted, namely:--
"(11) Subject to such conditions as may be prescribed, the State Government may permit any power project industrial unit engaged in generation, transmission and distribution of electrical energy, having aggregate capital investment of Rs 1000 crore or more to own the tax liabilities of a dealer of such sales as are made to that unit."

4. Amendment Of Section 4 :-

In Section 4 of the principal Act, in sub-section (3) for the words "is not entitled to realize" the words "is not entitled to realize or has not realized if entitled" shall be substituted.

5. Amendment Of Section 5 :-

In Section 5 of the principal Act, in sub-section (1),--

(a) for the words "any taxable goods" the words "any taxable" shall be substituted;

(b) in clause (i) for the words "other than" the words "goods other than" shall be substituted;

(c) for the words "shall be liable to pay tax on" the words "shall be liable to pay tax levied on" shall be substituted.

6. Amendment Of Section 6 :-

In Section 6 of the principal Act,--

(a) in sub-section (1) for the first proviso the following proviso shall be substituted, namely:

"Provided that in the case of a dealer not being a dealer executing works contract, who carries on exclusive business of re-sale of goods within the State after their purchase from a registered dealer within the State and whose turnover on sale of such goods, for any assessment year, does not exceed fifty lakh rupees or his turnover, for the assessment year preceding that assessment year, has not exceeded fifty lakh rupees, the State Government may notify a rate per cent on sale of such goods. Different rates may be notified for different goods;".

(b) for sub-sections (2), (3) and (4) the following sub-sections shall be substituted, namely:--

"(2) Any dealer, who opts for payment of composition money under this section, shall not be entitled to claim credit of input tax under Section 13 in respect of purchase of goods which are re-sold by him during the period in which he is liable to pay composition money under this section or in respect of purchase of goods which have been used, consumed or utilized in manufacture or processing of goods which are sold by him during such period and where the dealer has claimed credit of input tax in respect of any such goods, the same shall stand reversed and the dealer shall pay such amount of reverse input tax credit in accordance with the provisions of Section 14.

(3) Any dealer who opts for payment of composition money under this section shall not issue any tax invoice and shall not realize any amount from the purchaser by way of tax or by giving it a different name or colour.

(4) A dealer who makes purchase of any goods from a dealer, who has opted for payment of composition money under this section, shall not be entitled to claim credit of input tax in respect of goods purchased from such dealer."

(c) after sub-section (4) the following sub-section shall be inserted, namely:--

"(5) Where the turnover of sales, in case of a dealer who has opted to pay composition money under first proviso of sub-section (1) exceeds Rs Fifty lakh, he shall be liable to pay tax at the rate provided under Section 4 on and from the day the turnover exceeds Rs Fifty lakh.

Explanation.--For the purposes of sub-sections (1) and (5) where a dealer carries on business during a part of an assessment year, annual turnover shall be partial amount of fifty lakh rupees which shall be computed on pro rata basis and for this purpose part of a calendar month shall be counted as a full month."

7. Insertion Of New Section 6-A :-

After Section 6 of the principal Act the following section shall be inserted, namely:--

"6-A. Compounding of tax and penalties in certain cases.--

(1) Notwithstanding anything to the contrary contained in any other provision of this Act, but subject to the directions of the Commissioner, the assessing authority may accept from any person

other than registered dealer by way of composition money either in lump sum or at an agreed rate in lieu of tax or penalty leviable or imposable under this Act, where any person--

(a) imports or attempts to import or abets the import of any goods, in contravention of the provisions of Section 50 or Section 51 with a view to evading payment of tax on sale of,

(i) such goods; or

(ii) goods manufactured, processed or packed by using such goods; or

(b) transports, attempts to transport any taxable goods in contravention of any provision of this Act; or

(c) carries taxable goods in a vehicle or vessel and such goods has not been shown in the accounts, registers and other documents maintained in regular course of business.

a sum not less than the amount of tax involved under any provision of this Act but not more than three times of the amount of such tax or forty per cent of the value of goods involved whichever is higher.

(2) The provision of sub-section (1) shall not apply to those persons who do not disclose, before the assessing authority, the goods contained in the vessel or vehicle.

(3) Any person who has paid composition money under sub-section (1) shall not for the same goods be required to,--

(a) furnish the return of the tax period under Section 24;

(b) take registration under Section 17;

(c) be assessed under any provision of this Act;

(d) be liable to tax under Section 3;

Explanation.--For the purposes of this section the assessing authority includes an officer not below the rank of Commercial Tax Officer empowered to exercise the powers under Sections 45 or Section 48 or posted at the check post."

8. Amendment Of Section 13 :-

In Section 13 of the principal Act,--

(a) in sub-section (1) in clause (a) in the table for the entries appearing at Serial No. 3 the following entries shall columnwise be substituted, namely:--

1	2	3
"3.	If purchased goods are-- (i) transferred or consigned outside the State otherwise than as a result of a sale; or (ii) used in manufacture of any	Partial amount of input tax, which is in excess of four per cent of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government."

<p>taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.</p>	
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(b) in sub-section (1) for the Explanation the following Explanation shall be substituted, namely:--

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

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

(b) goods required for use in manufacture of any goods shall not include goods required for running of captive power plant."

(c) for sub-section (3) the following sub-section shall be substituted, namely:

"(3) (a) Where purchased goods are to be used or disposed of partially for the purpose specified in clause (a) of sub-section (1) or otherwise, the input tax credit may be claimed and be allowed proportionate to the extent they are used or disposed of for the purposes specified in such clause.

(b) Subject to the provisions of this section where during process of manufacture of vat goods, exempt goods and non-vat goods except as by product or waste product are produced, the amount of input tax credit may be claimed and be allowed in proportion to the extent they are used or consumed in manufacture of taxable goods other than non-vat goods and exempt goods.

Explanation.--For the purpose of this sub-section the "exempt goods" shall include taxable goods other than non-vat goods, which are disposed of otherwise than by way of sale within the State or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or sale outside the State."

(d) in sub-section (4) for the words "tax payable by him" appearing at the end, the words "tax payable by him and possesses the proof of payment of tax on the turnover of purchase liable to tax" shall be substituted.

(e) in sub-section (7) after sub-clause (ii) the following sub-clause shall be inserted, namely:--

"(iii) such goods are for transfer of right to use such goods."

(f) sub-section (9) shall be renumbered as clause (a) thereof and after clause (a) as so renumbered the following clause shall be inserted, namely:--

"(b) Where works contract is partially executed by a sub-contractor, the amount of input tax credit, in respect of purchase of goods involved in the execution of works contract shall be claimed by and be allowed to the contractor or such sub-contractor to the extent of purchase of goods by them."

(g) in sub-section (11), in the proviso for the word "Ordinance" the word "Act" shall be substituted.

(h) in the Explanation,--

(i) for the word and figure "Explanation (1)" the word "Explanation" shall be substituted.

(ii) after clause (iii) the following clause shall be inserted, namely:--

"(iv) where during the process of manufacture of any vat goods any non-vat goods are produced as, by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of vat goods. Similarly, where during the process of manufacture of any non-vat goods any vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of non-vat goods."

9. Amendment Of Section 15 :-

In Section 15 of the principal Act, in sub-section (3) for the existing proviso the following proviso shall be substituted, namely:--

"Provided that in case of a dealer whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority shall allow provisional refund of excess amount of input tax credit for any tax period in accordance with the provisions of Section 41."

10. Amendment Of Section 17 :-

In Section 17 of the principal Act,--

(a) for sub-section (5), the following sub-section shall be substituted, namely:--

"(5) (a) Every dealer who holds a valid registration certificate issued under the erstwhile Act and is liable to tax under this Act, shall submit to the registering authority or the assessing authority, as the case may be, an application in the prescribed form and in the prescribed manner, for issue of registration certificate by such authority relating to validity of such certificate under this Act, within a period of fifteen months from January 1, 2008:

Provided that if the assessing authority or the registering authority is satisfied that sufficient reasons exist preventing the dealer to submit the application within the said period, he may extend the period not exceeding one month, as he thinks fit on the application of the dealer who has deposited late fees at the rate of Rs Five hundred per month or part thereof.

(b) If a dealer who holds the registration certificate issued under erstwhile Act, fails to submit the application to the assessing authority or registering authority for validation and issue of registration certificate under this Act, within the period referred to in clause (a) in prescribed form and manner, the registration certificate shall cease to have effect."

(b) for sub-section (6), the following sub-section shall be substituted, namely:--

"(6) (a) No railway container contractor, air cargo operator, courier service provider, or owner or person in-charge of a godown, cold storage or warehouse other than transporter who stores commercial goods, shall operate its business of taxable goods in the State without being registered with the registering authority in such manner as may be prescribed. Any operator of such business shall apply within prescribed period for his registration to the registering authority in the prescribed manner;

(b) a railway container contractor, an air cargo operator, a courier

service provider, an owner or person in-charge of a godown, cold storage or warehouse other than transporter or carrier, who stores commercial goods shall maintain such records as may be prescribed;

(c) every transporter or carrier who is covered under the Carriage by Road Act, 2007 shall furnish to the assessing authority, such informations and documents as may be prescribed."

(c) for sub-section (9), the following sub-section shall be substituted, namely:--

"(9) Subject to the provisions of sub-section (5) the registration certificate issued under the erstwhile Act and validly held under this Act shall be valid with effect from the date of commencement of this Act."

(d) for sub-section (13), the following sub-section shall be substituted, namely:--

"(13) During the period of suspension of registration certificate under sub-section (12), the dealer shall be treated as unregistered dealer. However if the registering authority himself by an order in writing drops the proceeding of cancellation or the order of suspension passed by the registering authority is set aside by any competent court or authority under this Act, the dealer shall be treated as registered dealer during such period."

(e) in sub-section (14), in Explanation (1) for the words "imposable or any prosecution for an offence under this Act" the words "imposable under this Act", shall be substituted.

11. Amendment Of Section 21 :-

In Section 21 of the principal Act,--

(a) in sub-section (2), in the proviso, in Hindi version for the words "???(I)" the words "???(I)" shall be substituted.

(b) in sub-section (13) for clause (d) the following clause shall be substituted, namely,--

"(d) in the case of a dealer who has opted for payment of composition money under Section 6,

(i) goods held in opening stock on the date on which provisions of Section 6 has become applicable and;

(ii) goods held in opening stock on the date on which provisions of Section 6 ceases to apply;"

(c) in sub-section (16) the proviso shall be omitted.

(d) in sub-section (17) in the Explanation, clause (iii) shall be omitted.

12. Amendment Of Section 22 :-

In Section 22 of the principal Act,--

(a) in sub-section (1),--

(a) for the words "tax or a lump sum" the words "composition money" shall be substituted.

(b) for the words "a tax invoice in the prescribed form and manner containing such particulars as may be prescribed" the words "tax invoice containing such particulars as may be prescribed including name and complete address and Taxpayers Identification Number, if any, of the person purchasing the goods" shall be substituted.

(c) the provisos shall be omitted.

(b) (a) for sub-section (3) the following sub-section shall be substituted, namely:--

"(3) All dealers except as provided in sub-section (1), shall issue sale invoice to the purchaser in such manner and containing such particulars as may be prescribed.

Explanation.--In this sub-section sale invoice means any invoice in the nature of bill, invoice, cash/credit/memo containing such particulars as may be prescribed."

(b) in sub-section (4) for the words "a bill or cash memo" or the words "a cash memo or bill" wherever occurring the words "sale invoice" shall be substituted.

(c) for sub-sections (5) and (6) the following sub-section shall be substituted, namely:--

"(5) Every dealer referred to in sub-section (1) shall charge amount of tax payable separately on every tax invoice. However, the dealer referred in sub-section (3) may charge tax separately.

(6) Office copy of tax invoice, sale invoice as the case may be, prepared by the selling dealer and copies of tax invoice, sale invoice, as the case may be, received by the purchasing dealer shall be preserved by them for the period provided under sub-section (3) of Section 21."

13. Amendment Of Section 23 :-

In Section 23 of the principal Act,--

(a) for sub-section (1) the following sub-section shall be substituted, namely:--

"(1) (a) No person who is not a dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person any amount by way of tax on sale or

purchase of goods or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour and no dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person, other than a person to whom goods are sold by him, any amount by way of tax on sale or purchase of goods, or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour;

(b) Where tax is payable on sale or purchase of goods on any turnover by a dealer including a commission agent or any person mentioned in clause (h) of Section 2 registered under this Act, such dealer may recover an amount, equivalent to the amount of tax on sale or purchase of goods payable, from the person to whom any such goods is sold by him, whether on his own account or on behalf of his principal."

(b) after sub-section (3) the following sub-section shall be inserted, namely:--

"(4) No dealer shall include the amount of tax already paid on the purchase of goods in the sale price of such goods resold or goods manufactured by using such goods."

14. Amendment Of Section 24 :-

In Section 24 of the principal Act, in sub-section (9) for the word "returns" wherever occurs the word "information and documents" shall be substituted.

15. Insertion Of New Section :-

After Section 26 of the principal Act the following section shall be inserted, namely:--

"26-A. Special provision relating to casual traders.--

(1) Notwithstanding anything to the contrary contained in any other provision of this Act, a casual trader shall--

(a) inform the assessing authority at least three days before beginning of his business in Uttar Pradesh, such particulars of his business in Uttar Pradesh, such particulars of his business in such form and in such manner as may be prescribed;

(b) deposit security in cash or in the form of bank draft, of such amount as may be fixed by the assessing authority which shall not exceed estimated liability to pay tax for such period for which the casual trader is conducting the business in Uttar Pradesh;

(c) pay tax daily on sales made during the previous day;

(d) furnish to the assessing authority next day after the conclusion

of his business in Uttar Pradesh, a return in the prescribed form and manner; and

(e) not issue any tax invoice.

(2) The assessing authority shall, after verification of information furnished to him under clause (a) and receiving the security under clause (b) of sub-section (1), shall register the casual trader.

(3) After registration of casual trader, the assessing authority shall issue the required forms to him for use as the declaration or certificate referred to in Sections 50 and 51 of this Act for bringing goods for sale in Uttar Pradesh and the casual trader shall maintain complete account of the used forms and surrender the unused forms along with the return referred to in clause (d) of sub-section (1).

(4) The assessing authority shall, after examining the return furnished by the casual trader under clause (d) of sub-section (1), the forms referred to in sub-section (3) and the accounts maintained by him including the sale invoices issued, assess him to tax within one week and shall serve upon him a notice of assessment and demand and after adjusting any tax and any other dues payable under this Act, refund the balance amount of security to him in case security is deposited.

(5) The casual trader shall pay immediately the amount mentioned in the notice of assessment and demand.

(6) On being satisfied that the amount due has been paid the assessing authority shall release the security or balance security, as the case may be.

(7) Notwithstanding anything to the contrary contained in any other provision of this Act, the taxable quantum referred to in Section 3 in respect of a casual trader shall be nil.

Explanation.--In this section casual trader means a person who, whether as principal, agent or in any other capacity undertakes occasional transactions in the nature of business involving buying, selling, supply or distribution of goods or conducting any exhibition-cum-sale in Uttar Pradesh whether for cash, differed payment, commission, remuneration or other valuable consideration."

16. Amendment Of Section 33 :-

In Section 33 of the principal Act, after sub-section (16) the following sub-sections shall be inserted, namely:--

"(17) Notwithstanding anything to the contrary contained in any other provision of this Act and the rules made thereunder, the

State Government, may grant moratorium from payment of admitted tax to a power project industrial unit, subject to such conditions as may be prescribed.

Explanation.--For the purposes of this sub-section "admitted tax" shall include the tax liability of other dealers owned by such unit under sub-section (11) of Section 3.

(18) Where any goods has been seized by any competent authority for realization of tax or penalty leviable under this Act and such goods has been given in the custody of any person by such authority. If such person fails to return the goods to the authority in the same form and condition, an amount equal to the value of goods shall be recovered from such person as an arrear of land revenue."

17. Amendment Of Section 34 :-

In Section 34 of the principal Act, after sub-section (13) the following sub-section shall be inserted, namely:--

"(14) No deduction under this section shall be made on the turnover of sale where such sale takes place--

(i) in the course of inter-State trade or commerce; or

(ii) outside the State; or

(iii) in the course of the export out of, or import into, the territory of India;".

18. Amendment Of Section 39 :-

In Section 39 of the principal Act, in sub-section (1) in clause (b) in Hindi Version for the words "???(I)" the words "???(I)" shall be substituted.

19. Amendment Of Section 40 :-

In Section 40 of the principal Act, after sub-section (7) the following sub-section shall be inserted, namely:--

"(8) The amount refundable under the erstwhile Act may be adjusted against the amount of tax or penalty or any other dues under this Act."

20. Insertion Of New Section 40-A :-

After Section 40 of the principal Act, the following section shall be inserted, namely:--

"40-A. Withholding of refund in certain cases.--

(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in any judgment, decree or order of any court, Tribunal or other authority, where after giving reasonable opportunity of being heard to the dealer or the person concerned, the Commissioner is satisfied on the report of the assessing authority that,--

(a) the dealer has submitted false return of the turnover or has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover or has prevented the assessing authority or any other competent authority from making inspection and examination of books, accounts or documents maintained or goods shown to be held in stock by such dealer or obstructed any competent authority in performing his functions under this Act; or

(b) any purchase in respect of which input tax credit in any return has been claimed, is not verifiable; or

(c) the dealer has obtained tax invoices without making actual purchase of goods; or

(d) the dealer has failed to furnish any security demanded from him under any provision of this Act or the Central Sales Tax Act, 1956; or

(e) the circumstances exist involving fraud, and where the Commissioner is of the opinion that if refund is allowed, it may not be possible to realize any amount of tax or penalty likely to be levied, he may permit the assessing authority to pass an order for withholding, as a security, such amount of refund as would be sufficient to cover the amount of tax or penalty or both, as the case may be, likely to be levied, for a period as may be determined by the Commissioner.

(2) Where the assessing authority finds that the circumstances mentioned in sub-section (1) exist and sufficient material is available on the record, it shall send a report to the Commissioner along with the material for seeking the permission to withhold the amount of refund.

(3) The assessing authority shall complete the proceeding for assessment or penalty or both, pending before him within such period as may be determined by the Commissioner:

Provided that if the Commissioner is satisfied that the circumstances exist which would prevent the assessing authority to complete the assessment or penalty proceeding within the determined period, he may extend the period not exceeding 90 days.

(4) After the completion of the proceeding withheld amount shall be adjusted against demand created due to assessment or penalty proceeding and the balance if any shall be refunded along with interest at the rate of twelve per cent per annum from the date on which refund has become due, in the manner provided under this Act and the rules made thereunder.

Explanation.--For the purposes of this section refund includes the refund of input tax credit."

21. Amendment Of Section 41 :-

For Section 41 of the principal Act, the following section shall be substituted, namely:--

"41. (1) Notwithstanding anything contained in Section 40, in the case of a dealer, whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority, upon receiving the return for a tax period and application for provisional refund along with the proof of export, pending audit and investigation to establish the correctness of the claim and consequent assessment, shall, allow provisional refund of the excess amount of input tax credit for such tax period on account of sale in the course of the export of the goods out of the territory of India, within thirty days from the date of receipt of such application:

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 erstwhile Act is due against such dealer the amount found refundable first shall 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:

Provided further that, before granting refund, the assessing authority may require the dealer to furnish security of amount equivalent to amount of refund to its satisfaction where,--

(a) the dealer has been involved in tax evasion under this Act or erstwhile Act or under the Central Sales Tax Act, 1956; or

(b) the dealer has obstructed or prevented the officers empowered under this Act in performing any of his functions or duties assigned to him under this Act; or

(c) the dealer has misused in any way the declaration or the certificate prescribed under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act or under the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007; or

(d) the dealer is defaulter of the payment of tax on the sale or purchase of goods under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act; or

(e) the dealer has violated any provision of this Act resulting in the loss of revenue.

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

(i) main business of export in relation to a dealer shall mean the dealer whose aggregate of turnover of sales in the course of export of goods outside the territory of India under sub-sections (1) and (3) of Section 5 of the Central Sales Tax Act, 1956, for any tax period exceeds fifty per cent of the aggregate of turnover of sale of all goods--

(a) within the State;

(b) in the course of export of goods out of the territory of India; and

(c) in the course of inter-State trade or commerce.

(ii) where any application is incomplete the date of completion of that application shall be deemed to be the date of application.

(2) If, on assessment, the provisional refund granted under sub-section (1) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest at the rate of fifteen per cent per annum and for the period commencing on the date of provisional refund and ending with the date of payment of the amount, as tax due from the dealer.

(3) If the application is not in order or contains wrong particulars it shall be rejected by a speaking order in writing and the dealer shall be informed accordingly:

Provided that no application shall be rejected without affording the dealer an opportunity of being heard.

(4) Notwithstanding any thing contained in the first proviso to sub-section (1) where any industrial unit has been declared sick by any competent court or authority constituted under any law for the time being in force, the provisional refund under this section shall be allowed if such industrial unit satisfied that,--

(a) the package for rehabilitation of the sick unit has been approved by a competent court or an authority;

(b) the State Government has deferred the arrear against such unit under Section 71; and

(c) the conditions imposed by the State Government for deferment of the arrear has been complied with."

22. Amendment Of Section 42 :-

In Section 42 of the principal Act,--

(a) in sub-section (3), for clause (a) the following clause shall be substituted, namely:--

"(a) the industrial unit available or granted benefit of exemption from, or reduction in the rate of tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales of manufactured goods or turnover of purchase of any raw material, processing material, consumable stores, fuel other than petrol and diesel, lubricant required for use in manufacture of goods or in the packing of goods manufactured by such industrial unit or both, and--

(i) whose facility of exemption or reduction in the rate of tax is base on the fixed capital investment as provided under the erstwhile Act or notification issued thereunder; or

(ii) an industrial unit purchased from the State Government or any corporation or undertaking owned or controlled by the State Government and to whom exemption or reduction in the rate of tax has been granted under the erstwhile Act may apply to the Commissioner for issue of the Certificate of Entitlement in the prescribed form and in prescribed manner."

(b) in sub-section (4) for the words "the industrial unit availing benefit of exemption from" the words "the industrial unit availing or granted benefit of exemption from" shall be substituted.

(c) after sub-section (4) the following sub-section shall be inserted, namely:--

(4-A) The industrial unit availing or granted benefit of exemption from, tax on the turnover of purchase before the date of commencement of this Act shall be entitled for exemption by way of refund of Earned Input Tax Credit computed on the basis of data declared in the documents submitted along with the return of tax period in prescribed manner and on fulfilling the following conditions that,--

(a) the industrial unit shall hold valid Certificate of Entitlement issued by the Commissioner as provided under sub-section (3);

(b) the amount of refund shall not be more than an amount equal to input tax credit earned during relevant tax period;

(c) the refund shall be subject to the provisions of Section 40 except that the amount shall not be adjusted against the admitted tax liability;

(d) the facility of refund shall cease on the day when the amount or the period mentioned in the Certificate of Entitlement, whichever is

earlier,

(e) the facility of exemption from, tax by way of refund shall be available only in respect of raw material, processing material, consumable stores, fuel other than petrol and diesel, lubricant, required for use in manufacture of goods or in the packing of manufactured goods mentioned or described in the Certificate of Entitlement.

(f) the amount of exemption from by way of refund on the turnover of purchase of goods, shall be deducted from the total amount mentioned or described in the Certificate of Entitlement.

(g) the industrial unit has not misused the facility of exemption from tax in any manner.

Explanation.--"Earned Input Tax Credit" means the amount of admissible Input Tax Credit computed on the basis of data declared in the returns of tax period where industrial unit was availing benefit of exemption under the erstwhile Act..

(d) in sub-section (5) for clause (a) the following shall be substituted, namely:--

"(a) The amount found refundable shall be refunded within a period of 30 days from the last date of the month in which dealer files the return of relevant tax period. Where the return of tax period is not complete and dealer fulfils the requirement of return on a date later to the due date for filing of return of tax period, such date shall be deemed to be the date of filing of return of tax period."

(e) for sub-section (8) the following sub-section shall be substituted, namely:--

"(8) The industrial unit availing the benefit of tax deferment as provided under sub-section (2) or availing the facility of refund as provided under sub-section (4), shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of Section 13. The industrial unit availing the facility of refund on both sale and purchase, shall be eligible for claiming Input Tax Credit while computing net tax payable on the turnover of sale of goods described in the Certificate of Entitlement."

(f) after sub-section (13) the following sub-section shall be inserted, namely:--

"(14) On scrutiny of account or subsequent investigation it is found that data furnished along with return of the tax period is found wrong or not reliable or based on no genuine material on record, without prejudice to the provisions of Section 54, the excess amount refunded shall be deposited within 30 days of notice received from the assessing authority along with interest at the

rate of 15 per cent per annum with effect from the date of refund to the date of deposit, failing which the excess amount refunded shall be recovered as an arrears of land revenue.".

23. Amendment Of Section 48 :-

In Section 48 of the principal Act,--

(a) in sub-section (1) after clause (ii) the following clause shall be inserted, namely:--

"(iii) which are found in any place business, vehicle, vessel or any other building or place, and such goods are accompanied by any tax invoice or sale invoice or any other document pertaining to value of goods, as the case may be, containing value of goods under valued to the extent more than fifty per cent of the value of goods prevalent at the relevant time in local market area where the said transaction had taken place, with intention to evade payment of tax.".

(b) in sub-section (5) for the words "other document referred to in sub-section (1)" the words "other documents referred to in sub-section (1) of the goods are undervalued to the extent of more than fifty per cent of the value of goods prevalent at the relevant time in the local market area where the said transaction had taken place, with intention to evade payment of tax," shall be substituted.

24. Amendment Of Section 52 :-

In Section 52 of the principal Act for the word and figure "Section 51" the word and figure "Section 50" shall be substituted.

25. Amendment Of Section 54 :-

In Section 54 of the principal Act, in sub-section (1),--

(a) in the table,--

(i) for the entries at Serial Nos. 5 and 15 the following entries shall columnwise be substituted respectively, namely:--

1	2	3
"5	Where the dealer has,-- (i) failed to issue or has deliberately not issued a tax invoice or sale invoice; or	40% of the value of goods
	(ii) deliberately not obtained tax invoice in spite of being a registered dealer while purchasing the goods liable to tax under this Act from a registered dealer; or	
	(iii) not issued purchase invoice: in accordance with the	

	any disclosed purchase invoice, in accordance with the provisions of this Act	
15	Where the driver or person in charge of the vehicle, as the case may be,--	40% of the value of goods".
	(i) fails to obtain authorization for transit of goods through the State and also fails to prove that goods are meant for delivery to dealers or persons outside the State; or	
	(ii) while obtaining authorization for transit of goods through the State undertakes responsibility of handing over such goods to a bona fide person inside the State for carrying them outside the State but fails to handover such goods to such bona fide person; or	
	(iii) being a person, who receives any goods from driver or person in-charge of a vehicle for carrying them outside the State, does not carry such goods outside the State; or	
	(iv) being a transporter or hirer of a vehicle prepares goods-receipt by showing false destination of goods outside the State	

(ii) for the words "disclosed value" appearing in Column 3 of the entries at the Serial Nos. 11, 12 and 14 the word "value" shall be substituted.

(iii) after entry at Serial No. 21 the following entries shall columnwise be inserted, namely:

1	2	3
"21-A	Where the dealer has included the amount of tax paid or payable, on the turnover of purchase of the goods in the sale price of goods resold or goods manufactured by using such goods	not less than the amount of tax but not more than three times of tax which has been included in the sale price of the goods
21-B	Where the dealer or any other person, as the case may be, has issued or received any tax invoice or sale invoice or any other document pertaining to value of goods, as the case may	40% of the value of goods".
	be, containing value of goods undervalued to the extent more than fifty per cent of the value of goods prevalent at the relevant time in the local market area where the transaction has taken place, with intention to evade payment of tax	

(b) in the Explanation for clauses (ii) and (iii) the following clauses shall be substituted, namely:

"(ii) If the value of goods described or mentioned in tax invoice, sale invoice or any such other document is undervalued to the extent of more than fifty per cent of the value of goods prevalent at the relevant time in the local market area where the transaction has taken place, the estimated value prevalent at the relevant time in such local market area shall be deemed to be the value of such goods,

(iii) If the value of goods is not described or mentioned in tax invoice, sale invoice or any such other document the estimated value prevalent at the relevant time in the local market area where the transaction has taken place, shall be deemed to be the value of such goods."

26. Amendment Of Section 56 :-

In Section 56 of the principal Act, in sub-section (1) for the words "the State Government by notification" the words "the Commissioner" shall be substituted.

27. Amendment Of Section 57 :-

In Section 57 of the principal Act,--

(a) in sub-section (1) for the words "a Tribunal" the words "a Tribunal to be known as Commercial Taxes Tribunal" shall be substituted,

(b) in sub-section (12) for clauses (b) and (c) following clauses shall be respectively substituted, namely:--

"(b) an appeal 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 an order under Section 56 shall be heard and disposed of by a bench of two members."

28. Amendment Of Section 59 :-

In Section 59 of the principal Act, for sub-section (5) the following sub-section shall be substituted, namely:--

"(5) Except as provided in sub-section (3), a decision given by the Commissioner under this section shall, subject to the provisions of Sections 57 and 58, be final and shall be binding on all the assessing authorities and appellate authorities."

29. Amendment Of Section 60 :-

In Section 60 of the principal Act for the words and figures "sub-section (1), (2) or (7)" the words and figures "sub-section (1) or sub-section (2)" shall be substituted.

30. Amendment Of Section 63 :-

In Section 63 of the principal Act, in sub-section (3) for the word "prescribed" the words "determined by the State Government" shall be substituted.

31. Amendment Of Section 64 :-

In Section 64 of the principal Act, for sub-section (2) the following

sub-section shall be substituted, namely:--

"(2) The petition shall be submitted in such form and in such manner as may be prescribed along with satisfactory proof of deposit of fee of five thousand rupees and full disclosure of his turnover which has not been furnished to the assessing authority with additional amount of tax payable on such turnover and such other particulars to the Settlement Commission to have the case settled:

Provided that no petition shall be entertained unless the amount or tax on the turnover of sale or purchase disclosed in the petition has been paid and proof therefor has been enclosed."

32. Amendment Of Section 65 :-

In Section 65 of the principal Act, after sub-section (18) the following sub-section shall be inserted, namely:--

"(18-A) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may order to furnish the security required to be sufficient to cover the revenue loss within the stipulated time in the manner determined by Commission.

(18-B) Any proceeding before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code (45 of 1860)."

33. Amendment Of Section 78 :-

For Section 78 of the principal Act, the following section shall be substituted, namely:--

(a)	The Principal Secretary, Government of Uttar Pradesh in Commercial Tax Department	Chairperson ex officio
(b)	Commissioner Commercial Tax, Uttar Pradesh	Member ex officio
(c)	Additional Commissioner (Vidhi) Commercial Tax, Uttar Pradesh	Member ex officio
(d)	Additional Director (Training), Commercial Tax, Uttar Pradesh	Member ex officio
(e)	Joint Commissioner (Sodh) Commercial Taxes Headquarters Lucknow	Member- Secretary
(f)	Additional Legal Remembrancer nominated by the Principal Secretary and Legal Remembrancer to the State Government	Member
(g)	An officer of the Finance Department not below the rank of	Member

(g)	An officer of the Finance Department not below the rank of Special Secretary to be nominated by the Principal Secretary to the Government of Uttar Pradesh in the Finance Department	Member
(h)	A person who has been a Professor of Economics of a University, nominated by the State Government	Member
(i)	A person who has been the Member of the Tribunal or the Additional Commissioner, Commercial Taxes, nominated by the State Government	Member
(j)	Two persons from amongst office bearers of the recognized Trade Association nominated by the State Government	Member

(2) The Board shall be the apex advisory body regarding system of tax collections, changes in the rate of tax, rules, and procedures, promulgation of schemes, notifications, orders and such other matters as the State Government may from time to time assigned to it.

(3) The members referred to in clause (h) to (j) of sub-section (1) shall be entitled to get such facility or benefit and remuneration as may be determined from time to time by the State Government."

34. Amendment Of Section 81 :-

In Section 81 of the principal Act, in sub-section (2) in clause (b) for the words "manufacturing units enjoying benefits of exemption from payment of tax under Section 4-A of the repealed Act or units" the words "manufacturing units" shall be substituted.