

CHAPTER VI

INSPECTION OF BUSINESS PLACES AND ACCOUNTS
AND ESTABLISHMENT OF CHECK POSTS

40. *Maintenance of true and correct accounts by dealers.*—Every person registered under this Act, every dealer liable to get himself registered under this Act and every other dealer who is required so to do by the authority by notice served in the prescribed manner shall keep and maintain true and correct accounts and such other records as may be prescribed, in Malayalam, Tamil, Kannada, or English relating to his business, showing such particulars as may be prescribed. Different particulars may be prescribed for different classes of dealers.

41. *Credit notes and debit notes.*—(1) Where subsequent to any sale of taxable goods effected by a dealer the purchaser has returned the goods covered by the tax invoice fully or partly, within the period permitted by this Act or the Rules made thereunder, the dealer effecting the sale shall issue, forthwith, to the purchaser a credit note containing such particulars as may be prescribed.

(2) Where a tax invoice or a bill of sale has been issued as per the provisions of this Act or the Rules made thereunder and the tax payable in respect of the sale is more than the amount shown as tax charged in such tax invoice or sale bill, as the case may be, the dealer making such sale shall issue to the purchaser a debit note containing such particulars as may be prescribed.

42. *Audit of accounts and certification of returns.*—Every dealer whose total turnover in a year exceeds rupees forty lakhs shall get his accounts audited annually by a Chartered Accountant or Cost Accountant and shall submit copy of the audited statement of accounts and certificate, in the manner prescribed.

43. *Power of Survey.*—Any officer not below the rank of an assessing authority may, for the purpose of survey for ascertainment of commencement of liability for registration under this Act, enter any place of business and require the dealer, employee or any other person who may at that time helping in carrying on such business, to provide necessary facility,—

(i) to inspect books of accounts or documents relating to the business, and

(ii) to check or verify the cash and stock of goods which may be found therein, and

(iii) to furnish such information including such statement relating to any matter which may be useful for or relevant to any proceedings under this Act and the dealer, employee or any other person shall comply with such requirements:

Provided that no residential accommodation (not being a shop-cum-residence) shall be entered into or inspected unless such officer is specially authorized in writing by the Commissioner to search that residential accommodation.

44. *Power to order production of accounts and powers of entry, inspection etc.*—(1) An officer not below the rank of an assessing authority may, for the purposes of this Act, by notice, require any dealer,—

(a) to produce or cause to be produced before him any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information, relating to his business, and such dealer shall comply with such requisition.

(2) Any officer, not below the rank of an assessing authority may,

(a) enter any place of business; and

(b) inspect any accounts, registers, records or other documents relating to his business and the goods in his possession.

(3) If any officer not below the rank of an assessing authority has reason to believe that a dealer is trying to evade any tax under this Act, he may, for reasons to be recorded, enter and search,—

(a) the place of business of the dealer; or

(b) any other place where the dealer is keeping or is reasonably suspected to be keeping any goods, accounts, registers, records or other documents relating to his business;

Provided that no residential accommodation (not being a shop-cum-residence) shall be entered into or searched unless such officer is specially authorized in writing by the Commissioner to search that accommodation.

Explanation—For the purposes of clause (b), “place” includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspections or search may seize such accounts, registers, records or other documents, as he considers necessary and on such seizure he shall grant the dealer a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the officer seizing them beyond a period of sixty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act:

Provided that the next higher authority shall not give permission to retain such accounts, registers, records or other documents beyond a period of ninety days from the date of the seizure.

(7) The power conferred by sub-sections (3) and (5) shall include:—

(a) the power to break open any box or receptacle or place or the door of any premises, in which any goods or any accounts, registers, records or other documents of the dealer are, or are reasonably believed to be kept:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so.

(b) the power to seal any box or receptacle, godown or building, where any goods or any accounts, registers, records or other documents are, or are reasonably believed to be kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building, or is not available, and then to break open such box, receptacle, godown or building on the authority of an authorization in writing by the Commissioner.

(c) the power to search any person who has got out of, or is about to get into or is in, any place referred to in clause (a) or clause (b) of sub-section (3) or any vessel or vehicle of any dealer, if the Officer has reasons to suspect that such person has secreted about his person any goods or any accounts, registers, records or other documents.

(d) The power to require any person who is found to be in possession or control of any accounts, register or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section (2) of the Information Technology Act, 2000, to afford such officer the necessary facility to have an access to such books of accounts or other documents.

(e) The power to record the statement of any dealer or his manager, agent or servant, to take extracts from records found in any premises and to put identification marks on accounts, registers, documents or goods.

(f) the power to take samples of goods from the possession of any dealer, where he considers it necessary, to protect the revenue against mistake or fraud and provide a receipt of any samples so taken and the samples shall,

except where an offence is found, be returned to the dealer or be disposed of, with the approval of the Commissioner, after giving the dealer an opportunity of being heard.

(8) If any officer, while inspecting any place of business under sub-section (2) or searching any place under sub-section (3) finds therein any goods not accounted for by the dealer in his accounts and other records required under section 40 to be kept and maintained by him, such officer may, after giving the dealer a reasonable opportunity of being heard, by order, direct the payment of a penalty, not exceeding fifty per cent of the value of the goods not accounted for, as may be fixed by such officer.

(9) If any officer, during the course of any inspection or search of any business place, building, godown or any other place finds that any goods not accounted for by any dealer in this accounts or other records required to be maintained under this Act and not claimed by any dealer or any other person are stored in any business place, building, godown or other place, such officer may seize the same by giving the owner of such business place, building, godown or other place a receipt of the goods seized and after giving him a reasonable opportunity of being heard, sell the same in public auction, in the manner as may be prescribed.

45. *Purchase of goods to prevent under valuation.*—The assessing authority or any other officer empowered in this behalf by the Government, is satisfied that any dealer with a view to evade payment of tax, shows in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods, shall have the power to purchase such goods at a price of ten per cent above the purchase value or the value disclosed by any principal or agent in the case of goods received on consignment basis plus transporting charges and entrust such goods for sale to the Kerala State Civil Supplies Corporation Ltd. or Kerala State Marketing Federation Limited or to any such public distribution system or sell such goods in public auction.

46. *Establishment of check post and documents to be carried with the goods.*—(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may by notification in the Gazette direct setting up of check posts at such place or places, and define the boundaries of such check posts and notify the area of the check posts included within such boundaries, hereinafter, referred to as the notified area, and demarcate such boundaries by means of barriers or otherwise for the purpose of regulating the passage of goods across the notified area.

(2) If the Commissioner is satisfied that for the purpose of preventing evasion of tax, check posts are to be set up for a specified period or periods, he may for reasons to be recorded in writing, set up such check posts and all other provisions relating to the check posts mentioned in sub-section (1) shall be applicable to such check posts also.

(3) Subject to the provisions of sub-section (4), no person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value, as may be prescribed, by any vehicle or vessel, unless he is in possession of,—

(a) either a tax invoice or delivery note or certificate of ownership containing such particulars, as may be prescribed; and

(b) a permit in such form, as may be prescribed and issued by the officer empowered in this behalf or the assessing authority, as the case may be, when notified goods, exceeding such quantity or value as may be prescribed, is transported into or out of the State:

Provided that in the case of notified goods, the consignment shall be accompanied by a delivery note notwithstanding that it is accompanied by any of the other documents specified in this sub-section.

Explanation I.—The term “goods” referred to in this sub-section shall not include luggage of persons who cross the notified area.

Explanation II.—For the purposes of this Act transport of goods commences at the time of delivery of goods to a carrier or bailee for transmission and terminates at the time when delivery is taken from such carrier or bailee.

(4) No person shall transport within the State, across or beyond the notified area or within two kilometres from the border area, by head load, or by animal load, any consignment of notified goods exceeding such quantity, as may be prescribed, unless he is in possession of the documents specified in sub-section (3).

47. *Procedure for inspection of goods in transit.*—(1) The driver or other person in charge of a vehicle or vessel shall stop the vehicle or vessel and any person referred to in sub-section (4) of section 46 shall stop or, as the case may be, stop the animal at any place within a notified area when so required by the officer in charge of that notified area, or at any other place when so required by any officer empowered by the Government in that behalf, for the purpose of enabling such officer to verify the documents required by sub-section (3) of

section 46 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax.

(2) If such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents (in cases where such documents are necessary) or that any person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on, the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded, as may be estimated by such officer:

Provided that such officer may, if he deems fit, having regard to the nature of the carrier or the goods and other relevant matters, allow such goods to be transported on the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel executing a bond with or without sureties for securing the amount due as security:

Provided further that where the documents produced in support of the transport of goods evidence defects of a minor or technical nature only and the goods are owned by a dealer registered under this Act, such officer may allow the goods to be transported after realising the tax on the turnover of the goods under transport.

(3) Where the owner, driver or person in charge of the vehicle or vessel carrying the goods detained under sub-section (2) is found in collusion for such carrying of goods, the vehicle or vessel shall also be detained and seized by the officer empowered under sub-section (1) and such vehicle or vessel shall be released only on the owner, driver or person in charge of it furnishing the security provided in sub-section (2). In case of failure to furnish the security as above, the officer detaining and seizing the vehicle shall have the power to order the vehicle or vessel being taken to the nearest Police Station or to any check post or to the office of the Commercial Tax Department for safe custody of the goods or the vehicle or the vessel or both:

Provided that where the owner, driver or person in charge of a vehicle or vessel carrying goods is found guilty of the offence under this sub-section for a second or a subsequent time, such vehicle or vessel may be detained for a period not exceeding thirty days from the date of furnishing the security.

(4) If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are

transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, notwithstanding anything to the contrary contained in this Act or the rules made thereunder allow the goods to be transported after realising the tax in respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained by such officer and shall be dealt with in the manner provided in this section as if the transport of goods were an attempt to evade payment of tax due under this Act.

(5) The officer detaining the goods shall record the statements, if any, given by the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel and shall submit the proceedings along with the connected records to such officer not below the rank of Commercial Tax Officer as may be authorised in that behalf by the Government, for conducting necessary inquiry in the manner prescribed:

Provided that where tax is collected under the second proviso to sub-section (2) or under sub-section (4), no enquiry under this sub-section shall be necessary and the officer detaining the goods shall submit the proceedings along with the connected records to the concerned assessing authority.

(6) The officer authorized under sub-section (5) shall, before conducting the inquiry, serve notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer.

(7) No action under sub-section (2) or sub-section (5) or sub-section (6) shall be taken in respect of goods already subjected to the proceedings under those sub-sections.

(8) If the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel does not furnish security or execute the bond as required under sub-section (2) within fourteen days from the date of stopping the vehicle or vessel under sub-section (1), the officer referred to in that sub-section may, by order, seize the goods, and in the event of the owner of the goods not paying the penalty imposed under sub-section (6) within thirty days from the date of the order imposing the penalty, the goods seized shall be liable to be sold for the realization of the penalty in the manner provided in sub-section (11).

(9) When any goods are seized under sub-section (8), the officer seizing the goods shall issue to the owner of the goods if present or, if the owner of the goods is not present, to his representative or the driver or other person in charge of the vehicle or vessel, a receipt specifying the description and quantity of the goods so seized and obtain an acknowledgment from such person or, if such person refuses to give an acknowledgment, record the fact of such refusal in the presence of two witnesses.

(10) The notice under sub-section (6) to be served on the owner of the goods shall be given to the address as furnished in any of the documents referred to in sub-section (1) or to the address furnished by the driver or other person in charge of the vehicle or vessel, and if there are no such documents or if the address is not furnished, a notice giving the description of the goods, the approximate value thereof, the number and description of the vehicle or vessel in which the goods were carried and the date and time of detention and also indicating the provisions of the Act and the rules made thereunder which have been violated shall be,—

(a) displayed on the notice board of the officer authorized under sub-section (5); and

(b) published in not more than two daily newspapers having wide circulation in the area in which the goods were detained, before conducting the inquiry under sub-section (6).

(11) The goods seized under sub-section (9) shall be sold by the officer who imposed the penalty by public auction to the highest bidder and the sale proceeds shall be remitted in the Government treasury. The auction purchaser shall pay the sale value of the goods in ready cash immediately after the sale and he will not be permitted to carry away any part of the property until he has paid for the same in full. Where the purchaser fails to pay the purchase money, the property will be re-sold at once and the defaulting purchaser will be liable for any loss arising from as well as the expenses incurred on the re-sale.

(12) If the goods seized are of a perishable nature or subject to speedy and natural decay, or when the expenses of keeping them in custody are likely to exceed their value, the officer in charge of the notified area or the other officer empowered under sub-section (1), as the case may be, shall immediately sell such goods or otherwise dispose of them and remit the sale proceeds of such goods, or the amount obtained by the disposal of such goods otherwise than by sale, in the Government treasury.

(13) If the order of imposition of penalty under sub-section (6) or of seizure of goods under sub-section (8) is set aside or modified in appeal or other proceedings, the appropriate authority shall also pass consequential orders for giving effect to the order in such appeal or other proceedings, as the case may be.

(14) The owner of the goods sold or otherwise disposed of under this section shall be liable to pay the expenses and other incidental charges for keeping the goods seized in custody until the sale or other disposal and the charges for publication in newspapers of the notice under sub-section (10).

(15) If the sale proceeds of any goods sold or the amount obtained on the disposal of any goods otherwise than by sale under provisions hereinbefore contained exceeds the penalty imposed in respect of such goods, such excess amount after deducting the expenses, incidental charges and charges for publication referred to in sub-section (14) shall be returned by the officer who conducted the sale or otherwise disposed of the goods to the owner of the goods on his establishing the ownership thereof.

(16) Notwithstanding anything contained in the foregoing provisions where any officer referred to in sub-section (1) finds on inspection of any goods under transport that such goods are transported or attempted to be transported in the name of bogus or unidentifiable person or under cover of bogus documents, such officer may, after giving notice to the owner or any person in charge of the vehicle, carrier of bailee in writing and after following such procedure as may be prescribed, seize the goods and sell the same in the public auction and the sale proceeds shall be remitted to Government.

48. *Transit of goods through the State and issue of transit pass.*—(1) When a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel shall obtain a transit pass in the prescribed form for such goods from the officer-in-charge of the first check post after his entry into the State and deliver it to the officer-in-charge of the last check post before his exit from the State.

(2) If the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel fails to deliver the transit pass for such goods referred to in sub-section (1) to the last check post, it shall be presumed that such goods which are liable to tax under this Act and the goods have been delivered within the State for sale:

Provided that where the goods carried by such vehicle or vessel are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State, shall be on the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel, as the case may be.

(3) Where it is presumed under sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel such owner or consignor of goods or owner or driver or person in charge of the vehicle or vessel shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of this Act, irrespective of the limit of any turnover together with an amount of penalty not exceeding twice the amount of such tax as may be assessed, after having given to the person or persons aforesaid an opportunity of being heard by the assessing authority under whose jurisdiction the check post is situate.

(4) Where any person consigns any goods or transports any goods from another State into the State and where the particulars furnished in the documents accompanying the goods are false or the consignor or purchaser stated therein is found to be bogus or non-existent or is not traceable or denies such purchase, it shall, unless the consignor or the owner or driver or the person in charge of the vehicle proves to the satisfaction of the assessing authority that the particulars furnished in the document are true, be presumed that such goods which are liable to tax under this Act have been sold in the State by the consignor or the owner of the goods or the owner or driver or person in charge of the vehicle or the person in charge of the goods or all of them jointly and they shall be jointly or severally liable to pay tax on such sales which shall be assessed and recovered in the manner provided in sub-section (3).

(5) For the purpose of this section, the owner or driver or person in charge of the vehicle or vessel shall, unless he is a registered dealer under this Act, be deemed to be a registered dealer for assessment of tax under this Act.

(6) Where the goods enter the State by way of import from foreign countries through any airport or sea port and the goods are transported to a place outside the State through a vehicle or vessel, the transit pass shall be obtained from the first check post or from the office of the Commercial Taxes Department nearer to the airport or sea port, as the case may be, and the provisions in sub-sections (1) to (5) shall apply accordingly.

49. *Confiscation by Authorised officers in certain cases.*— (1) Any officer, not below the rank of a Commercial Tax Officer shall have the power to intercept and search the vehicle or vessel or any conveyance transporting notified goods at any place within the State for the purpose of enabling such officer to verify whether any notified goods are being smuggled into or out of the State.

(2) If on verification such officer has reason to suspect that the notified goods are being smuggled into or out of the State, he may, without any unreasonable delay, produce the goods and the vehicle before such officer authorised by the Government, by notification in the Gazette, not below the rank of an Assistant Commissioner.

(3) Where the authorised officer is satisfied that the driver or other person in charge of the vehicle or vessel or other conveyance is smuggling notified goods, the officer shall have the power to seize and detain the goods along with the vehicle or vessel:

Provided that before taking action to seize and detain the goods and the vehicle or vessel under this section, the officer shall give the person in charge of the goods and the owner, if ascertainable, and to the owner of the vehicle or the person in charge of the vehicle a notice in writing informing him the reason for the seizure and detention of the goods and vehicle or vessel and an opportunity of being heard:

Provided further that the authorised officer may release the goods and the vehicle or vessel seized and detained if the owner or the person in charge of the notified goods or the owner or person in charge of the vehicle or vessel files an option to pay in lieu of seizure and detention, a penalty equal to thrice the amount of tax due at the rate applicable to the goods liable to seizure and detention and twice the tax due or an amount of Rs.50,000 whichever is higher for the release of the vehicle or vessel in lieu of detention:

Provided further that if the owner of the vehicle produces the documents specified in sub-section (3) of section 46 and the owner of the goods proves the bonafides of the transport of goods within seven days of the seizure and detention the officer shall release the goods and the vehicle.

(4) Notwithstanding anything contained in the foregoing provisions, if the owner or person in charge of the notified goods or the owner or person in charge of the vehicle fails to prove the genuineness of the transport of the notified goods or to remit the penalty as specified in second proviso to sub-section(3), within thirty days from the seizure and detention of goods and the authorised officer has reason to believe that the owner or the person in charge of the vehicle or the driver has transported the notified goods to evade payment of tax with the knowledge or connivance of the owner of the goods, the officer may confiscate the vehicle or vessel along with the goods.

(5) No order confiscating any vehicle or vessel shall be made under sub-section (4), if the owner or the person in charge of the vehicle or vessel proves to the satisfaction of the authorised officer that it was used for carrying the notified goods without the knowledge or connivance of the owner himself, his agent, if any, or the person in charge of such vehicle or vessel and that each of them have taken all reasonable and necessary precautions against such use:

Provided that the authorised officer shall serve notice to the owner of the vehicle or the person in charge of the vehicle or the owner of the notified goods, if ascertainable, intimating the reason for the confiscation of the vehicle or vessel and an opportunity of being heard. The officer shall also afford an opportunity to pay a penalty equal to thrice the amount of tax attempted to be evaded by the owner of the goods and rupees one lakh by the owner or person in charge of the vehicle or vessel in lieu of confiscation of vehicle, if the owner of the notified goods is not ascertainable or not willing to remit the penalty specified, the owner of the vehicle or the person in charge of the vehicle or vessel shall pay three times of the tax sought to be evaded and an amount of rupees one lakh in lieu of confiscation of the goods and vehicle.

(6) Any person aggrieved by an order under sub-section (5) may, within thirty days from the date of communication to him of such order, file an application for revision in such manner and in such form as may be prescribed and accompanied by a fee of rupees five hundred before the Deputy Commissioner and the Deputy Commissioner may pass such orders thereon as he thinks fit:

Provided that the Deputy Commissioner may admit an application for revision preferred after the expiry of the said period if he is satisfied that the applicant had sufficient cause for not filing the revision petition within the said period.

(7) Any person aggrieved by an order under sub-section (6) may, within thirty days from the date of communication to him of such order, file a revision in such manner and in such form as may be prescribed and accompanied by a fee of rupees five hundred before the Commissioner and the decision of the Commissioner shall be final:

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period if it is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(8) Where an order of confiscation under this section has become final in respect of any goods/vessel such goods vehicle or vessels as the case may be shall vest in the Government free from all encumbrances.

(9) The award of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act.

50. *Procedure as to perishable goods seized under section 49.*—

(1) Notwithstanding anything contained in section 49, the authorised officer may direct the sale of any goods seized under that section which is subject to speedy and natural decay and remit the sale proceeds into the Government Treasury.

(2) The authorised officer may deal with the proceeds of the sale of goods under sub-section (i) in the same manner as he might have dealt with the goods if it had not been sold.

51. *Possession and submission of certain records by owners etc., of vehicle and vessels.*—The owner or other person in charge of a vehicle or vessel shall, while transporting any consignment of goods exceeding such quantity or value as may be prescribed under sub-section (3) of section 46, carry with him,—

(i) a tax invoice, delivery note or certificate of ownership; and

(ii) such other documents as may be prescribed, relating to the goods under transport and containing such particulars as may be prescribed and shall submit the documents aforesaid or copies thereof to the prescribed authority, having jurisdiction over the area in which the goods are delivered, along with such return within such time as may be prescribed

52. *Forwarding agency, etc., to submit returns.*—Every clearing or forwarding house or agency, transporting agency, shipping agency, shipping out agency, railway authorities, air cargo authorities or steamer agency in the State shall submit to the assessing authority of the area such returns and information as may be prescribed, of all goods cleared, forwarded, transported, or shipped by it. The assessing authority concerned shall have the power to call for and examine the books of account or other documents in the possession of such agency with a view to verify the correctness of the returns submitted and the agency shall be bound to furnish the books of account or other documents when so called for.

53. *Banks to submit returns.*—Every Bank, including any branch of a bank or any banking institution in the State, shall submit every month to the assessing authority of the area, a return in the prescribed form, of all bills relating to goods discounted, cleared or negotiated by or through it during the preceding month, in such manner as may be prescribed.

54. *Warehousemen and banks to furnish details.*—Every warehouseman and every bank, including any branch of a bank or any banking institution in the State, shall, if so required by an officer not below the rank of an assessing authority, furnish such information, document or statement as he may consider necessary for the purpose of any proceedings under this Act.

. CHAPTER VII

APPEALS, REVISIONS AND SETTLEMENT OF CASES

55. *Appeals to the Deputy Commissioner (Appeals).*—(1) Any person aggrieved by any order issued or proceedings recorded other than those under sub-section (3), sub-section (8) or sub-section (9) of section 16, sub-section (8) of section 19, sub-section (3) of section 25, sub-section (8) or sub-section (9) of section 44, section 49, section 67, section 68, section 69 or section 70 passed by an authority empowered to do so under this Act, not being an authority above the rank of an Assistant Commissioner may, within a period of thirty days from the date on which the order was served on him, appeal against such order to the Deputy Commissioner (Appeals):

Provided that the Deputy Commissioner (Appeals) may admit an appeal presented after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period:

Provided further that in the case of an order under sub-section (3) of section 22 or section 24, or section 25, no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax or other amounts admitted by the appellant to be due or of such instalment thereof as might have become payable, as the case may be.

(2) Where an appeal lies against any order under sub-section (1), any order issued under section 66 to rectify any error in such order shall also be appealable under the said sub-section.

(3) The appeal shall be in such form and shall be verified in such manner as may be prescribed, and shall be accompanied by a fee of five hundred rupees.

(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amounts shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the Deputy Commissioner (Appeals) may, at his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) In disposing of an appeal, the Deputy Commissioner (Appeals) may, after giving the appellant a reasonable opportunity of being heard,—

(a) in the case of an order of assessment or penalty, either confirm, reduce, enhance or annul the assessment or the penalty or both;

(b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed;

(c) or pass such other orders as he may think fit; or

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

Provided that, at the hearing of any appeal against an order of the assessing authority, the assessing authority or the officer empowered by the Commissioner in this behalf shall be heard.

(6) The order of the Deputy Commissioner (Appeals) disposing of an appeal before it shall state the point for determination, the decision thereon and the reason for arriving at such decision.

(7) Where as a result of the appeal any change becomes necessary in the order appealed against, the Deputy Commissioner (Appeals) may, direct the assessing authority to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or as the case may be the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

56. *Powers of revision of the Deputy Commissioner suo motu.*—(1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by any officer or authority subordinate to him which in his opinion is prejudicial to the interest of the Revenue and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this act, may pass such order thereon as he thinks fit.

Explanation.—For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Deputy Commissioner shall not pass any order under sub-section (1) if,—

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired from the year in which the order referred to therein was passed.

(3) Notwithstanding anything contained in sub-section (2), the Deputy Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

57. *Power of revision of Deputy Commissioner on application.*—(1) Any person objecting to an order passed or proceedings recorded under this Act for which an appeal has not been provided for in Section 55 or Section 60 may, within a period of thirty days from the date on which a copy of the order or proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the Deputy Commissioner:

Provided that the Deputy Commissioner may admit an application for revision presented after the expiration of the said period, if he is satisfied that the applicant had sufficient cause for not presenting the application within the said period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner, and be accompanied by a fee of five hundred rupees.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of the Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction, in such form and in such manner, as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

58. *Powers of revision of the Commissioner suo motu.*—(1) The Commissioner may *suo motu* call for and examine any order passed or proceedings recorded under this Act by any officer or authority, subordinate to him other than that of the Deputy Commissioner (Appeals) which in his opinion is prejudicial to the interest of revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act may pass such order thereon, as he thinks fit.

Explanation.—For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Commissioner shall not pass any order under sub-section (1) if—

(a) the time for appeal against that order has not expired;

(b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired from the year in which the order referred to therein has passed.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

59. *Power of revision of the Commissioner on application.*—(1) Any person objecting to an order passed by the Deputy Commissioner, other than an order of the Deputy Commissioner (Appeals) under section 55 may, within a period of thirty days from the date on which a copy of the order was served on him file an application for revision of such order to the Commissioner:

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period if he is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(2) Such application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of seven hundred and fifty rupees.

(3) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order against which the application has been preferred:

Provided that the Commissioner may in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction in such manner as may be prescribed.

(4) On admitting an application for revision, the Commissioner may call for and examine the record of the order against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act pass such order thereon as he thinks fit.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

60. *Appeal to the Appellate Tribunal.*—(1) Any person objecting to an order passed by the Deputy Commissioner (Appeals) under sub-section (5) of section 55 or any officer empowered by the Government in this behalf may, within a period of sixty days from the date on which the order was served on him, in the manner prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

(2) The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file within thirty days of the receipt of the notice, a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the Deputy Commissioner (Appeals) and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand rupees.

(4) In disposing of an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard either in person or by a representative,—

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

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

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

Provided that if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition to the High Court against such decision or an appeal to the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition to the High Court or the appeal to the Supreme Court is disposed of.

(5) Where as a result of the appeal any change becomes necessary in the order appealed against, the Appellate Tribunal may authorize the assessing authority to amend such order accordingly and on such amendment being made any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed:

Provided further that where the Appellate Tribunal has passed an order of stay in an appeal it shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided also that if such appeal is not so disposed of within the period specified in the second proviso the stay order shall stand vacated after the expiry of the said period.

(7) The Appellate Tribunal may, on the application of the appellant or the respondent review any order passed by it under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made:

Provided that no such application shall be preferred more than once in respect of the same order.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed, and where the application is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of rupees three hundred.

(9) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (7) shall be communicated in the manner prescribed to the appellant, the respondent, the authority on whose order the appeal was preferred, the Deputy Commissioner concerned, and the Commissioner.

61. *Filing of application for settlement of cases.*—(1) Notwithstanding anything contrary contained in this Act an assessee may, at any stage of an appeal or revision pending before any authority under the Act or the High Court, make an application in such form and in such manner as may be prescribed, containing a full and true disclosure of his turnover which had not been disclosed before the Assessing Authority including the additional amount of tax payable on such turnover and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless, the assessee has furnished the return of turnover, which he is or was required to furnish under any of the provisions of this Act:

Provided further that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) On receipt of an application under sub-section (1), the Settlement Commission shall call for a report from the Deputy Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstance of the case or complexity of investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded, with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that the Deputy Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission, and if the Deputy Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(5) A copy of every order under sub-section (4) shall be sent to the applicant and to the Deputy Commissioner.

(6) Subject to the provisions of sub-section (7), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (4) allowing the applications to be proceeded with, pay the additional amount of tax or other amount payable on the turnover disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(7) Where the additional amount of tax or other amount referred to in sub-section (6) is not paid by the assessee within the time specified under that sub-section, the Settlement Commission may, at its discretion, permit the assessee to pay the amount within a period not exceeding fifteen days.

(8) Where an application is allowed to be proceeded with under sub-section (4), the Settlement Commission may call for the relevant reports from the Deputy Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Deputy Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matter covered by the application and any other matter relating to the case.

(9) After examination of the records and the report of the Deputy Commissioner received under sub-sections (4) or (8) and after giving an opportunity to the applicant and to the Deputy Commissioner to be heard, either in person or through a representative duly authorised in this behalf and after examining such further evidences as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Deputy Commissioner under sub-section (4) or sub-section (8).

(10) Every order passed under sub-section (9) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(11) Where any tax payable in pursuance of an order under sub-section (9) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, the assessee shall be liable to pay interest at the rate of one per cent for each month or part thereof, for the first three months after the date specified for its payment; and at the rate of two per cent for each month or part thereof, subsequent to the first three months aforesaid, on the amount remaining unpaid from the date of expiry of the period of thirty-five days.

(12) Where a settlement become void as provided under sub-section (10), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the authority concerned may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(13) If the matter is settled under the provisions of this section the Deputy Commissioner shall intimate the fact of such settlement to the authority specified in sub-section (1) or to the High Court as the case may be.

62. *Appeal to the High Court.*—(1) Any person objecting to an order affecting him passed under section 58 or section 94 may, within a period of ninety days from the date on which a copy of the order was served on him in the manner prescribed, appeal against such order to the High Court:

Provided that the High Court may admit an appeal preferred after the period of ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand five hundred rupees.

(3) In disposing of an appeal, the High Court may, after giving the parties a reasonable opportunity of being heard either in person or by a representative,

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

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct that a fresh assessment may be made after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

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

(4) Where as a result of the appeal any change becomes necessary in the order appealed against, the High Court may authorize the Commissioner to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(5) Every order passed in appeal under this section shall be final.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) The High Court may, on the application of the appellant or the Commissioner, review any order passed by it under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by the applicant, when the order was made.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of three hundred rupees.

(9) The High Court may, at its discretion, award the cost in an appeal under sub-section (1) or in a review under sub-section (7).

63. *Revision by the High Court.*—(1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of section 60, or any person objecting to an order passed by the Commissioner under sub-section (4) of section 59 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal or the Commissioner has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where it is preferred by a person other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of one thousand five hundred rupees.

(3) If the High Court, on pursuing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4) If the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question of law raised, or pass such order in relation to the matter as the High Court thinks fit.

(5) Where the High Court remits the matter under sub-section (4) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.

(6) Before passing an order under sub-section (4) the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.

(7) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(8) The High Court may, on the application of any party to a revision under this section, review any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

(9) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is preferred by a person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand five hundred rupees.

(10) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount paid in excess by any person shall be refunded to him, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(11) The High Court may at its discretion, award the cost in a revision under sub-section (1) or in a review under sub-section (8).

64. *Appeals, petitions and applications to the High Court to be heard by a Bench of not less than two judges.*—Every appeal preferred to the High Court under section 62, every petition under section 63 and every application under the said sections shall be heard by a Bench of not less than two judges, and in respect of such appeal, petition or application, the provisions of section 98 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, so far as may be, apply.

65. *Fee for interlocutory petitions.*—Every interlocutory application prescribed by the Government and filed before the authorities under this Act specified below, other than those filed by officers empowered by Government, shall be accompanied by the following fees, namely:—

- (a) Before the Deputy Commissioner (Appeals) : Two hundred rupees
or the Deputy Commissioner
- (b) Before the Commissioner or
the Appellate Tribunal : Three hundred rupees

66. *Power to rectify any error apparent on the face of the record.*—(1) Any authority including Appellate Tribunal and Settlement Commission issuing any order or proceedings under this Act may, on application or otherwise, at any time within four years from the year in which the order is passed by it, rectify any error apparent on the face of the record:

Provided that no such rectification, which has the effect of enhancing an assessment or any penalty, shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund to the person entitled thereto.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer or other person, a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice has been given in the first instance.

Explanation.— The liability to pay the tax or other amount shall arise only from the date specified in the revised notice.

CHAPTER VIII

OFFENCES AND PENALTIES

67. *Imposition of penalty by authorities.*—(1) Notwithstanding anything contained in section 71 if any authority empowered under this Act is satisfied that any person,—

- (a) being a person required to register himself as a dealer under this Act, did not get himself registered; or
- (b) has failed to keep true and complete accounts; or
- (c) has failed to submit any return as required by the provisions of this Act or the rules made thereunder; or

- (d) has submitted an untrue or incorrect return; or
- (e) has made any bogus claim of input tax credit or refund; or
- (f) has continued the business during the period of suspension of registration; or
- (g) has failed to return the unused statutory Forms and Declarations under this Act after the cancellation or suspension of the registration; or
- (h) has not stopped any vehicle or vessel when required to do so; or
- (i) has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of this Act or the rules made thereunder; or
- (j) has acted in contravention of any of the provisions of this Act or any rule made thereunder, for the contravention of which no express provision for payment of penalty or for punishment is made by this Act; or
- (k) has abetted the commission of the above offences, or
- (l) has abetted or induced in any manner another person to make and deliver any return or an account or a statement or declaration under this Act or rules made thereunder, which is false and which he either knows to be false or does not believe to be true,

such authority may direct that such person shall pay, by way of penalty, an amount not exceeding twice the amount of tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding twenty-five thousand rupees in any other case:

Provided that the authority empowered under this section shall dispose of the case within one year from the date of detection of offence mentioned under this section except where the extension of time is granted by the Deputy Commissioner.

(2) Notwithstanding anything contained in sub-section (1), where on completion of an assessment in relation to a dealer under sections 22, 23, 24 or 25, it is found that the tax so determined on such assessment was not paid by the dealer, the assessing authority may direct such dealer to pay, in addition to the tax so determined, a penalty, in the case of a dealer who has made part payment, at thrice the balance amount of tax so determined, and in the case of a dealer who has not paid any amount, thrice the complete amount so assessed.

Explanation.—The burden of proving that any person is not liable to the penalty under sub-section (1) shall be on such person.

(3) No order under sub-sections (1) or (2) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

68. *Penalty for default of payment of tax.*—(1) Where an assessee makes default in payment of tax or any other amount due under this Act within the time specified in the notice of demand, he shall, in addition to the tax or other amount in arrears and the amount of interest payable under sub-section (5) of section 31, be liable to pay, by way of penalty such amount and in the case of a continuing default, amount at such rate for every day during which the default continues, as the assessing authority may direct, so, however, that the total amount of penalty shall not exceed the amount of tax or other amount in arrears.

(2) No penalty under sub-section (1) shall be imposed without giving the assessee a reasonable opportunity of being heard.

69. *Penalty for transport of goods without records.*—(1) If any officer empowered under sub-section (1) of section 47 finds on inspection of any vehicle or vessel that any transporting agency or contract carriage transporting any goods without the documents required under sub-section (3) of section 46, such officer may, without prejudice to any action that may be taken under section 47, impose by an order in writing on such transporting agency, or contract carriage, or the owner of the vehicle a penalty equal to twice the amount of the tax due on such goods subject to a minimum of ten thousand rupees.

(2) Where a transporting agency or contract carriage or the owner of the vehicle or vessel is subsequently found guilty of the offence under sub-section (1) for more than one occasion, the officer referred to in that sub-section may, in addition to the penalty that may be imposed under the said sub-section, by an order in writing detain the vehicle or vessel for a period of thirty days from the date of inspection of the vehicle or vessel, whether the vehicle or vessel used for the Commission of the offence on subsequent occasion is the same or not.

(3) The vehicle or vessel detained under sub-section (2) shall be kept in safe custody by the officer detaining the vehicle on a place notified by the Government.

(4) No order under sub-section (1) or sub-section (2) shall be passed unless such person affected by such order has been given an opportunity of being heard.

(5) The vehicle or vessel detained under this section shall, after the expiry of thirty days from the date of detention, be released to the person from whom it was detained.

Explanation.—Transporting agency for the purposes of this section shall include parcel agency.

70. *Penalty for prevention or obstruction of survey, inspection etc.*—Any person who,—

(a) prevents or obstructs survey, inspection, entry, search, seizure or checking of invoices by an officer empowered under this Act, or

(b) prevents or obstructs inspection of any vehicle or vessel or goods transported, or seizure of goods by an officer in charge of a check post or barrier or any officer empowered under this Act, or

(c) prevents or obstructs any other act of an officer which he is empowered to perform under this Act,

shall, pay by way of penalty an amount not exceeding fifty thousand rupees, as may be imposed by an officer not below the rank of an assessing authority:

Provided that no order under this shall be passed unless the person affected by such order is given an opportunity of being heard.

71. *Punishment for submitting untrue return etc.*—Any person who,—

(a) knowingly submits an untrue return or fails to submit return as required by the provisions of this Act or the rules made thereunder, or

(b) fails to keep true and complete accounts, or

(c) dishonestly objects to or fails to comply with the terms of a notice issued to him under sub-section (1) of section 35, or

(d) being a person obliged to register himself as a dealer under this Act does not get himself registered, or

(e) has made any bogus claim of input tax credit or refund, or

(f) has continued the business during the period of suspension of registration, or

(g) has not stopped any vehicle or vessel when required to do so, or

(h) prevents or obstructs survey, inspection, entry, search, checking of tax invoice or seizure by an officer empowered under this Act, or

(i) prevents or obstructs inspection of any vehicle or vessel or goods transported, otherwise or seizure of goods by an officer in charge of a check post or barrier or any officer empowered under this Act, or

(j) fraudulently evades the payment of tax, fee or other amount due from him under this Act, or

(k) carries on business as a dealer without furnishing the security demanded under sub-section (1) of section 17,

(l) wilfully acts in contravention of any of the provisions of this Act or the rules made thereunder, for the contravention of which no express provision for punishment is made by this Act,

shall, on conviction by a Magistrate be punished with simple imprisonment for a period which shall not be less than six months but which may extend to one year and shall also be liable to fine not less than the tax or other amounts due but not exceeding fifty thousand rupees.

72. *Penalty for illegal collection of tax.*—(1) If any person collects any sum by way of tax or purporting to be by way of tax in contravention of sub-section (2) or sub-section (3) or sub-section (4) of section 30, he shall, in addition to the forfeiture of such illegal collection, be liable to pay penalty not exceeding five thousand rupees:

Provided that no penalty or forfeiture shall be ordered under this sub-section if the assessing authority is satisfied that the sum so collected has been returned to the person from whom it was collected.

(2) No penalty or forfeiture shall be ordered under this sub-section against any person unless such person is given an opportunity of being heard.

(3) Where any sum is forfeited to the Government under sub-section (1), any person from whom the amount was collected in contravention of the provisions of sub-section (2) or sub-section (3) or sub-section (4) of section 30 may apply to the assessing authority for reimbursement of such sum and the amount shall be reimbursed to such person in the prescribed manner.

(4) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed or forfeiture has been ordered under this section.

73. *Punishment for abetment.*—Any person who,

(a) abets or induces in any manner another person to make and deliver any return or an account or a statement or declaration under this Act or rules made thereunder, which is false and which he either knows to be false or does not believe to be true, or

(b) abets or induces in any manner another person or persons to prevent or obstruct survey, inspection, entry, search, checking of tax invoice or seizure by an officer empowered under this Act, or

(c) abets to act in contravention of any of the provisions of this Act or the rules made thereunder,

shall, on conviction by a Magistrate be punished with simple imprisonment for a period which shall not be less than three months but which may extend to six months and shall also be liable to fine not exceeding fifty thousand rupees.

74. *Composition of offences.*—(1) The assessing authority or other officer or authority authorized by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, specified in clauses (a) to (e), (g) and (j) to (l) of section 71, by way of compounding of such offence,—

(a) where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable a sum of money equal to the amount of tax so payable subject to a minimum of rupees five hundred and maximum of rupees two lakhs; and

(b) in other cases, a sum of money not exceeding ten thousand rupees:

Provided that the Commissioner may by order authorize any officer to compound the offence under this section on payment of a reduced amount.

(2) On payment of such amount under sub-section (1), no further proceedings shall be taken against such person, in respect of that offence.

75. *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 conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section,—

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

CHAPTER IX MISCELLANEOUS

76. *Courts not to set aside or modify assessments except as provided in this Act.*—No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act or any proceedings under this Act for the recovery of any tax or other amount due under this Act or to stay any such proceedings or recovery.

77. *Bar against attachment in certain cases.*—Notwithstanding anything contained in any other law in force or in any judgment, decree or order of any court, no court or any other authority shall pass any order attaching any amount due to Government from any person under the provisions of this Act.

78. *Assessment etc., not to be questioned in prosecution.*—(1) Any order of assessment made under this Act shall be conclusive evidence in any prosecution or other proceeding.

(2) The validity of the assessment of any tax, or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied, shall not be questioned in any criminal court in any prosecution or other proceeding, whether under this Act or otherwise.

79. *Bar of certain proceedings.*—(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any Act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

80. *Limitation for certain suits and prosecutions.*—No suit shall be instituted against the Government and no suit, prosecutions or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of:

Provided that, in computing the period of limitation under this section, the time taken for obtaining sanction under the sub-section (1) of section 79 shall be excluded.

81. *Power to summon witnesses and cause production of documents.*—An assessing authority or an appellate or revisional authority (including the Appellate Tribunal) shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and
- (b) compelling the production of any document.

82. *Notice to obtain information.*—(1) Any officer, not below the rank of an assessing authority, may by notice in writing, require any person, whether or not liable to pay tax under the Act,—(a) to furnish any information that may be required by the notice, or (b) to attend at the time and place designated in the notice, for the purpose of being examined on oath by such officer, concerning the tax affairs of that person or any other person and for that purpose such officer may require the person examined to produce any book, record or information stored in computer in the control of that person.

83. *Admissibility of micro films, fascimile copies of documents and computer print out as documents and as evidence.*—(1) Notwithstanding anything contained in any other law for the time being in force,—

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as “a computer print out”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall also be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where, over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and, whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official,

information is supplied with a view to its being, stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being, derived therefrom by calculation, comparison or any other process.

84. *Presumption as to documents in certain cases.*—Where any document,—

(i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place within or outside the State in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall,—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person’s handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

85. *Prohibition of disclosure of particulars produced before commercial tax authorities.*—(1) All particulars contained in any statement made, return furnished or accounts, registers or documents produced under the provisions of this Act or in the evidence given or affidavit or deposition made in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and shall not be disclosed.

(2) Nothing contained in sub-section (1) shall apply to the disclosure of any such particulars,—

(i) to any officer of the Commercial Taxes Department of the State;

(ii) for the purpose of prosecution under the Indian Penal Code (Central Act 45 of 1860), or under this Act in respect of any such statement, return, accounts, registers, documents, evidence affidavit or deposition;

(iii) to any person enforcing the provisions of this Act where it is necessary to disclose the same to him for the purposes of this Act;

(iv) occasioned by the lawful employment under this Act of any process for the recovery of any demand;

(v) to a civil court in any suit to which the Government are party and which relates to any matter arising out of any proceeding under this Act;

(vi) occasioned by the lawful exercise by a public servant of his powers under the Kerala Stamp Act, 1959 (Act 17 of 1959), or the Indian Stamp Act, 1899 (Central Act 2 of 1899), to impound an insufficiently stamped document;

(vii) to an officer of the Government of India, or the Government of any State or Union Territory in India, if an agreement for disclosure on a reciprocal basis has been entered into between the Government and the Government of India or the Government of the State or Union Territory, as the case may be;

(viii) to the Director of Statistics or any officer serving under him and authorized by him in this behalf, as may be necessary for conducting statistical survey;

(ix) to the Director of the Centre for Taxation Studies or any person authorized by him in this behalf, as may be necessary for conducting any research or other studies;

(x) to an officer of any Department of the Central Government or the Government of Kerala after obtaining,—

(a) the permission of the Deputy Commissioner of the district, where such particulars are to be furnished by an officer subordinate to the Deputy Commissioner; and

(b) the permission of the Commissioner, where such particulars are to be furnished by an Assistant Commissioner or by a Deputy Commissioner (Appeals) or by a Deputy Commissioner:

Provided that such particulars shall be furnished under clause (x) only in exceptional cases and that any officer obtaining such particulars shall keep them as confidential and use them only in the lawful exercise of the powers conferred by or under any enactment.

86. *Persons entitled to appear before authority.*—(1) Any person who is entitled or required to appear before any authority other than the High Court in connection with any proceedings under this Act may be represented before such authority,—

(a) by his relative or a person employed by him, if such relative or person is duly authorized by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) by a chartered accountant or a cost accountant duly authorized by him in writing in this behalf; or

(d) by a sales tax practitioner possessing the prescribed qualifications and duly authorized by him in writing in this behalf.

Explanation—For the purpose of this sub-section the expression “a person employed by him” shall mean a person who is a full time employee under the person on whose behalf he is appearing.

(2) The authorisation referred to in sub-section (1) shall be in such form and accompanied by such fee as may be prescribed.

87. *Rounding off of turnover, tax etc.*—(1) The amount of taxable turnover computed in accordance with the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten, and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten, and the amount so rounded off shall be deemed to be the taxable turnover of the dealer for the purposes of this Act.

(2) The amount of tax or other amount due under this Act shall be rounded off to the nearest rupee and for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

88. *Service of notice.*—Any notice required to be served on, or given to, any person under this Act or the rules made thereunder shall be deemed to be duly served or given,—

(a) if the notice is addressed to that person and is given or tendered to him; or

(b) where that person cannot be found, if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to some adult member of his family; or

(c) if it is sent by registered post or by courier service to that person at his last known place of residence or business; or

(d) by sending by FAX, if the FAX Number is known; or

(e) by sending it by e-mail, if the e-mail address is given by the person; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence or by publication in a newspaper.

89. *Refunds.*—(1) When an assessing authority finds, on completion of annual assessment, that a dealer has paid tax in excess of what is due from him, it shall refund the excess to the dealer.

(2) When the assessing authority receives an order from any appellate or revisional authority to make a refund of tax or penalty paid by a dealer it shall effect the refund.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the assessing authority shall have power to adjust the amount due to be refunded under sub-section (1) or sub-section (2), towards the recovery of any amount due, on the date of adjustment, from the dealer.

(4) In case refund under sub-section (1) or sub-section (2) or adjustment under sub-section (3) is not made within ninety days of the date of completion of assessment or, as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten per cent per annum on the amount due to him from the date of expiry of the said period up to the date of payment or adjustment.

90. *Power to withhold refund in certain cases.*—(1) Where an order giving rise to refund is the subject matter of appeal or any other proceedings under the Act and the assessing authority is of the opinion that the grant of refund is likely to prejudice the public revenue, it may, for good and sufficient reasons to be recorded in writing withhold the refund until such time as it deems proper.

(2) Where a refund is withheld and the matter is finally settled in favour of a dealer, a simple interest of six per cent per annum shall be paid for the period commencing from the first day of the order determined, in favour of the dealer and ending the date on which the refund is made, where the assessing authority fails to make the refund within ninety days from the date of receipt of such order by it.

91. *Appropriation of payment.*—Where any tax or any other amount due or demanded under the Act is paid by any dealer or other person, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under sub-section (5) of section 31 on such date of payment and the balance available shall be appropriated towards principal outstanding.

92. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) determining the total turnover, taxable turnover or turnover of a dealer for the purposes of this Act;
- (c) the assessment to tax under this Act of business which is discontinued or the ownership of which has changed;
- (d) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the state;
- (e) the assessment of a business owned by any person 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 appointed by or under any order of a court;
- (f) the administration of the notified areas and the barriers erected and the check posts set up under this Act and the regulation of the work therein;
- (g) the disposal of goods confiscated under this Act and the procedure for dealing with the proceeds thereof;
- (h) requiring the submission of returns;

(i) the form in which and the particulars to be contained in any declaration to be given under this Act, the authority from whom, the conditions subject to which and the fees subject to payment of which such form of declaration may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

(j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this act;

(k) the term of office, and conditions of service of the members of the Appellate Tribunal and the Settlement Commission;

(l) the manner in which and the extent to which, tax paid may be refunded;

(m) the issue of bills or cash memoranda, the class or classes of dealers who should maintain counterfoils for the same and the particulars to be shown in and the manner of maintenance of such counterfoils and the time for which they should be preserved;

(n) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;

(o) the issue of delivery notes or way-bills in respect of goods delivered or transferred to retail dealers in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;

(p) the extent of liability of commission agent, broker, *del credere* agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(q) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;

(r) any other matter for which there is no provision or on sufficient provision in this Act and for which provision is, in the opinion of the Government necessary for giving effect to the purposes of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that this rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

93. *Power to amend Schedules.*—(1) The Government may, by notification in the Gazette add, omit or amend any entry in any of the Schedule to this Act, but not so as to enhance the rate of tax in any case.

(2) Where a notification has been issued under sub-section (1), there shall, unless the notification is in the meantime rescinded, be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Assembly following the date of the issue of the notification a Bill on behalf of the Government, to give effect to the addition, omission or amendment of the entries in the Schedules specified in the notification, and the notification, shall cease to have effect when such Bill is passed into a law, whether with or without modifications, but, without prejudice to the validity of anything previously done thereunder:

Provided that, if a notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Legislative Assembly during that session itself:

Provided further that where for any reason a Bill as aforesaid could not be passed into a law within six months from the date of its introduction in the Legislative Assembly, the notification shall, without prejudice to anything previously done thereunder cease to have effect on the expiration of the said period of six months.

(3) All references made in this Act to any Schedule shall be construed as references to that Schedule as for the time being amended in exercise of the powers conferred by this Section.

94. *Power of Commissioner to issue clarification.*—(1) If any dispute arises, otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal, as to whether, for the purpose of this Act,—

(a) any person is a dealer; or

(b) any transaction is a sale; or

(c) any particular dealer is required to be registered; or

(d) any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof; or

(e) any activity carried out in any goods amounts to or results in the manufacture of goods;

such dispute shall be decided by the Commissioner on application by a dealer or any other person.

(2) The Commissioner shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence and after considering such evidence and hearing the parties.

(3) Every application by a dealer or any other person other than an officer acting on behalf of the Government under sub-section (1) shall be in such form as may be prescribed and shall be accompanied by a fee of five hundred rupees.

(4) Where any question arises from any order already passed or any proceedings recorded under this Act, or any earlier law no such question shall be entertained for determination under sub-section (1).

(5) Every order issued by the Commissioner under sub-section (1) shall, subject to the provisions of section 62, be final and binding on the applicant and all authorities subordinate to the Commissioner including Deputy commissioner (Appeals):

Provided that the decision of the Commissioner shall not affect the liabilities of any person under this Act as respects any sale or purchase effected prior to such determination.

95. *Change of an incumbent of an office.*—Whenever in respect of any proceedings under this Act, any prescribed authority ceases to exercise jurisdiction and is succeeded by another who has and exercised jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that before proceeding under this section the authority shall give the person affected thereby an opportunity of being heard.

96. *Time limit for disposal of appeal or revision.*—Every appeal or revision filed under the provisions of this Act, shall be disposed of within one year from the date of filing of such appeal or revision as the case may be:

Provided that the period during which the proceedings are stayed by any competent authority shall be excluded for the purpose of computing the period of one year.

97. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

(2) All orders made under sub-section (1) shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than fourteen days and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

98. *Repeal and saving.*—(1) The Kerala General Sales Tax Act, 1963 (15 of 1963) is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto anything done or any action taken including any

appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit, in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act and any reference in the said Act to an officer, authority, Tribunal or Court shall be construed as reference to the corresponding Officer, authority, Tribunal or Court appointed or constituted under this Act, and if any doubt arises as to who is such corresponding officer, authority, Tribunal or Court, the decision of the Government thereon shall be final:

Provided further that in respect of industrial undertakings claiming exemption or deferment under the Industrial Policy of the State under any notification issued under the said Act, the rights accruing to them for any period subsequent to the date of commencement of this Act shall be governed by the provisions of section 32.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act as if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

(3) Nothing contained in sub-section (1) shall affect the right to initiate and complete any proceedings pending at the commencement of this Act regarding the assessment, levy, collection and recovery of the tax chargeable under the said Act including that of escaped turnover or affect the liability of any person to pay any sum due from him or any existing right of refund under the said Act.

(4) Notwithstanding such repeal of the Kerala General Sales Tax Act, 1963 (15 of 1963), any proceedings pending before any Authority under the said Act, or High Court at the commencement of this Act, shall be continued and finally decided or determined under the provisions of that Act as if it had not been repealed.

(5) Notwithstanding such repeal of the Kerala General Sales Tax Act, 1963 (15 of 1963) Government may permit the use of the registration certificates issued under the provisions of the said Act and also of such forms issued under the rules made under the said Act till such time, as may be notified by Government.

(6) Any arrears of tax or other amount pending and any recovery proceedings initiated or continued shall be continued as if the levy, collection and recovery are made or is continuing under the provisions of this Act and provisions of this Act relating to penalty and interest shall apply to such arrears of tax, or other amount which are in arrears at the commencement of this Act.