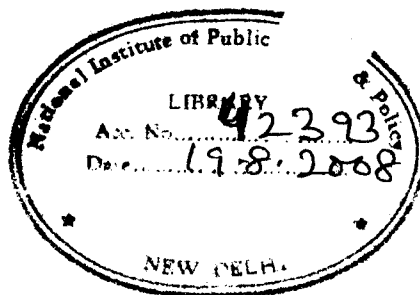


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SALES TAXATION IN WEST BENGAL

REPORT  
ON  
LEGISLATIVE REFORMS

January 1985



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## PREFACE

It is for the first time that the National Institute of Public Finance and Policy, an autonomous, non-profit organisation whose main functions are to carry out research, do consultancy work and undertake training in the area of public finance and policy, has undertaken to do legislative drafting for a State Government. Legislation is the connecting link between policies and their execution and there are several obvious advantages in entrusting the two functions to one body. One is that it would reduce the gap between precept and practice. Another is that, if a study were to be followed up with a legislative draft for implementation, the study itself would tend to become more realistic and practical.

The draft has been prepared by S/S K.N. Balasubramanian and S. Pavamani, Consultants at the Institute. It is earnestly hoped that the draft would help the Sales Tax Administration in West Bengal, for whom it is meant, to legislate a more compact, logically arranged and simpler law to replace the plethora of laws currently operating in the State in the field of sales taxation.

New Delhi  
14.1.1965

R.J. Chelliah  
Director

## Acknowledgment

I am grateful to Dr R J Chelliah, Director, National Institute of Public Finance and Policy for giving me this opportunity of involving myself in the original drafting of a legislative measure which seeks to consolidate several Acts and at the same time give it a more logical structure. I started the exercise with a long discussion with Dr A Bagchi my former colleague in the NIPFP (at present Officer on Special Duty, Department of Economic Affairs, Government of India) whose ideas and suggestions as contained in his Interim Report on Sales Taxation in West Bengal I have the privilege of translating into legislation in a draft form. I am deeply indebted to Shri K Srinivasan, my colleague in the NIPFP who very kindly went through the draft Bill and gave very useful suggestions which are reflected in the final draft of the Bill. Shri S Pavamani, also my colleague in the NIPFP, shared with me the burden of drafting the consolidated Bill and the Report setting out its purpose, scope and content Shri R S Tyagi provided excellent secretarial assistance.

I shall be failing in my duty if I do not place on record the monumental contribution made to the drafting of the Bill by the officers of the West Bengal Government - Shri N P Bagchee, Special Secretary, Shri D K Manovalan, Commissioner, Commercial Taxes, Shri K K Saha, Additional Commissioner and Shri A K Sarkar, Deputy Director and ex-Officio Deputy Secretary, Finance. The legal acumen and expertise and the mastery of sales tax law and practice possessed by Shri K K Saha and Shri A K Sarkar have provided me guidance at every stage in the drafting of the Bill.

K N Balasubramanian

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# SALES TAXATION IN WEST BENGAL

## REPORT ON LEGISLATIVE REFORM

### I. BACKGROUND

#### 1. Report of Sales Tax Study Committee

In July, 1978, the Government of West Bengal had set up a Sales Tax Study Committee under the Chairmanship of Shri K B Ghosh, then Additional Commissioner, Commercial Taxes, to review the law, procedures and organisational set up relating to the administration of sales tax in the State. The Study Committee made a detailed report on 27.2.1979 containing as many as 196 recommendations.<sup>1/</sup> The Report covers various aspects of the sales tax law and its administration in the State. A number of these recommendations relate to the organisational set up, manpower, work load and work norms, logistics and administrative procedures. These do not have, by and large, any legislative implications. Similarly, there are a number of recommendations concerning technical procedures which will have to be dealt with through the rules. It will not be necessary to deal with them in the Act as such. There are, of course, a number of recommendations on the substantive law and statutory procedures which will have to be reflected in the main enactment. These recommendations may be broadly classified as follows:

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<sup>1/</sup> Government of West Bengal, Finance Department - Report of the Sales Tax Study Committee (1979).

A. Legislative reform

- i. consolidation of the multiple laws under which sales tax is levied by a composite sales and purchase tax law;

B. Changes in substantive law

- i. last point (L.P.) tax to be the predominant form a taxation; first point (F.P.) to be levied only on a few items which satisfy certain criteria;
- ii. multi-point (M.P.) tax at a concessional rate also to be levied at all intermediate sales including those which have borne F.P. tax;
- iii. double tax on components to be relieved by deducting the cost of inputs from the taxable turnover;
- iv. purchase tax (P.T.) to be levied on all inputs and where purchasers can be more easily identified than sellers (e.g., contractors);
- v. high turnover tax (HTT) to be retained;
- vi. surcharge and additional surcharge to be abolished;
- vii. minimum taxable turnover to be laid down;
- viii. rates to be reduced to 5 or 6;

- ix. exemptions to be rationalised and curtailed;
- x. rounding off of taxable turnover and tax, interest, penalty, etc., to be provided;
- xi. charge of interest on short payment of tax and late submission of returns and grant of interest on excess payments to be provided; concept of 'buying time' with immunity from penalty to be introduced;
- xii. imposition of penalty for failure to get registered to be revived; other penalty provisions to be rationalised;
- xiii. penalty for concealment equal to the amount of concealment and ranging upto  $2\frac{1}{2}$  times the concealment to be provided;
- xiv. penalty in lieu of prosecution to be provided;

C. Changes in procedural law

(a) Jurisdiction

- i. Commissioner's powers of transferring cases to be enlarged;
- ii. challenge to jurisdiction to be made only within a prescribed time;

(b) Procedures relating to permits, registration, etc.

- i. provision to be made in the law for grant



of provisional registration certificate;  
condition of furnishing security to be  
included;

- ii. permits, by and large, to be abolished;
- iii. cancellation of registration for failure  
to pay tax to be provided and provisions  
rationalised;
- iv. declaration forms to be withheld from  
defaulters;

(c) Filing of return

- i. return to be filed annually; tax to be paid  
monthly or quarterly;
- ii. monthly return form to be replaced by a  
simple statement;

(d) Assessment

- i. summary assessment on the basis of return  
within prescribed limits to be introduced;  
ambit to be enlarged progressively;
- ii. sample scrutiny of summary assessments to  
be provided;
- iii. ordinary assessments after scrutiny to be  
made in non-summary cases;

- iv. special assessments to be made after intensive scrutiny in large turnover, search and seizure and evasion cases;
- v. Commissioner's power to make finding of fact to the best of his judgment to be made clear in the law;
- vi. provision for rectification to be introduced;
- vii. provision for cancellation of ex-parte assessment to be introduced;
- viii. provisions relating to time bar on assessments to be streamlined;

(e) Appeal, revision, etc.

- i. appeal against rejection of rectification claim and refusal to cancel ex-parte assessment to be provided;
- ii. all orders to be appealable except specified orders;
- iii. summary rejection of appeal to be provided for non-payment of assessed tax subject to condonation;
- iv. Commissioner to have power to decide specific disputed questions;
- v. dismissal of appeal for default to be provided specifying the time limit for restoration;

(f) Payment, collection and recovery of tax

- i. provision to be made for payment of demand within 30 days;
- ii. power to be given to the Commissioner for grant of instalments subject to payment of interest; cancellation facility to be provided in case of default;
- iii. withdrawing of declaration forms from defaulters to be provided;
- iv. failure to pay tax to entail cancellation of registration;
- v. separate chapter on certificate proceedings on the lines of sections 222 to 225, and II Schedule of I.T. Act and ITCP Rules to be enacted in the law;
- vi. transfer of property by defaulter or during pendency of proceedings to be rendered void;

(g) Refunds

- i. power to withhold refund to be given when the order is challenged in appeal.
- ii. grant of interest on delayed refund to be provided for;

D. Reforms relating to enforcement

- i. search and seizure and inspection provisions to be tightened up and streamlined;

E. Other reforms

- i. provisions relating to service of notice to be made clear-cut;
- ii. provisions relating to authorised representatives to be rationalised;
- iii. provision to be inserted for facilitating removal of difficulties;
- iv. provision to be inserted to facilitate write back of written off taxes;

2. Report of the NIPFP Study Team

A study team of the NIPFP led by Dr. A Bagchi had recently conducted a study of the system of sales taxation in West Bengal and furnished an interim report.<sup>1/</sup> The suggestions made in this report are briefly:

- i. Most commodities including inputs would be subjected to tax at the first point (F.P.). A tax at the last point (L.P.) may be levied only in respect of some commodities which are produced by a large number of dealers and have a high proportion of value added at the intermediate stages (e.g., footwear, agricultural implements and high

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<sup>1/</sup> NIPFP - Sales Taxation in West Bengal - Interim Report - December, 1983.

value articles like refrigerator, TV, Video, etc.), Unspecified commodities would be taxed at FP.

- ii. There should be not more than 5 or 6 rates of tax. Goods largely used as inputs should be taxed at 4 per cent, which rate should apply to all purchases and not merely purchases by manufacturers. High value articles like gold and silver may be taxed at  $\frac{1}{2}$  to 1 per cent, luxury goods at 15 per cent and other articles at 8 to 15 per cent.
- iii. Full set off of tax paid on inputs (but not on plant and machinery) should be allowed except where the final product is not disposed of by sale in West Bengal (or in the course of inter-State sale or export). Declaration forms and purchase tax on inputs can then be abolished.
- iv. Set off of tax paid at FP should also be allowed to dealers who sell their commodities across the State or export them outside the country.
- v. All intermediate dealers having turnover exceeding the specified limit should also be required to file accounts, etc. It would be risky to do away with declaration forms but a more effective method of checking evasion would be to cross check the sales and purchases of registered dealers in a scientific and regular manner. To avoid the problems encountered in operating

declaration forms, evidence of purchase from a registered dealer in respect of a FP commodity may be furnished on the purchase voucher indicating the registration number and other particulars of the selling dealer as in Gujarat.

- vi. If the system of cross checking works properly, there would be no need to compel intermediate dealers to produce declaration forms obtained from the tax authorities to support their purchases or sales from or to registered dealer. This would be true at least as far as first point goods are concerned. If, however, it is felt that doing away with the declaration forms for the LP would be risky, the declaration forms might be retained for new and small dealers only (that is, those with turnover below Rs 10 lakh).
- vii. With greater reliance on FP tax, it may not be possible to do away with check posts but the surveillance should be confined to high value and evasion-prone goods. Officers of the Department should be given powers to check consignments at the offices of the transporters.
- viii. The high turnover tax (HTT) is undesirable.
- ix. The exemption limits need to be raised and rationalised.
- x. The provisions relating to voluntary registration should be tightened up.

- xi. The multi-point (MP) tax should be done away with; alternatively, it may be retained at a low rate of  $\frac{1}{2}$  per cent or so but not exceeding 1 per cent. If the rate is raised above this level, a system of set off should be allowed. If a MP tax is allowed to continue, the rates of tax for FP tax may be somewhat scaled down (where the rate is 8 per cent or more). Inputs should be given the same treatment whether MP tax is abolished or allowed to continue.
- xii. Purchase tax on raw jute may be retained.
- xiii. Imposing a purchase tax on the inputs of hotels and house builders does not seem to be advisable as, by virtue of the constitutional amendment, it should now be possible to tax food supplied in hotels as also material supplied in a works contract, by the States themselves. Food supplied in hotels excluding the value of the service element is now taxed at 8 per cent. In the case of works contracts, no doubt some of the material should bear tax but there is no reason to tax them in the hands of the buyers.

The NIPFP team has also made some suggestions for procedural reforms. These are:

- i. Periodicity of returns should be rationalised. Quarterly/monthly returns should be replaced by monthly returns in summary form to be followed by a detailed annual return.

- ii. Provision in the law should be made for charging interest if tax is withheld beyond the relevant month without reasonable cause.
- iii. Summary assessment procedure by accepting the returns should be introduced (except in new and large cases) subject to sample scrutiny being made of a certain percentage of the cases selected by an independent authority.
- iv. Guidelines regarding furnishing security for registration, supply of declaration forms, etc., should be issued.
- v. Some measures should be adopted for mitigation of hardship in the case of small industrial units in the matter of obtaining registration, eligibility certificates and fixation of security deposits.

The NIPFP team has also concurred with the view that the first step towards any reform of the complicated system of sales taxation in the State would be to consolidate the legislations for implementing the tax. The team has, however, suggested that an exception should be made in the case of motor spirit where there are only five major dealers and the pricing of petroleum products is looked after by the Central government through a Committee and that, while consolidating the sales tax laws, the law relating to the taxation of motor spirit need not be disturbed.



The NIPFP Study has also a final report on its anvil. This report is, however, likely to deal primarily with matters relating to the administration of the sales tax laws in West Bengal - organisation, manpower, work load, work norms, work aids and strategy. The recommendations contemplated in the final report are not, therefore, likely to require legislation for implementation.

### 3. Drafting of/<sup>a</sup>Comprehensive Bill

The Finance Department of the Government of West Bengal had, some years back, prepared a draft of a Bill to give effect to the various recommendations of the Study Committee and with a view to legislating a comprehensive Sales Tax Act to replace all the different laws in force in the State and to consolidate their provisions. This draft has since become quite outdated on account of large scale amendments made to the sales tax laws in force in the State in the interregnum and the repeal of the West Bengal Paddy Purchase Act, 1970 (WB Act XV of 1970). The forty sixth amendment of the Constitution of India has also added a new dimension to the problem. The Finance Department of the Government of West Bengal have therefore approached the NIPFP for assistance in revising the draft, updating it and incorporating therein the recommendations contained in the Interim Report of the NIPFP so that the Bill could be introduced in State legislature as early as possible.

Before launching the exercise of preparing a redraft of the Sales Tax Bill, the connected problems have been discussed with a team of senior officers of the West Bengal Government consisting of S/S N P Bagchee, Special Secretary, Finance, D K Manovalan, Commissioner, Commercial Taxes, K K Saha, Additional Commissioner and Shri A K Sarkar, Deputy Director and ex-officio Deputy Secretary, Finance (referred to as the official team in this report). The dialogue with the members of the official team has been taking place almost continuously through the present exercise. The lucid presentation by them of the existing laws and the problems arising in their actual working and the practical suggestions made by them on the basis of their long experience in administering the law have made no mean contribution to the substance and form of the revised draft.

The scope of the present project, the methodology adopted and a detailed discussion of the scheme of the proposed Bill and the provisions incorporated therein are set out in the ensuing Chapters of this Report. The revised draft of the West Bengal Sales Tax Bill as emerging from the present study is appended as an Annexe to this Report.

## II. SCOPE AND METHODOLOGY

### 1. Historical Backdrop

The Bengal Finance (Sales Tax) Act, 1941 is over four decades old and relates to the pre-independence era. The law was enacted at a time when its contents and the competence of the legislating body to enact it did not have to be tested on the touch stone of the Constitution of India and, naturally, it does not in some respects, quite measure up to the constitutional requirements. The Constitution of India expressly declares as void all laws in force in the territory of India immediately before its commencement, in so far as they are inconsistent with the fundamental rights of the citizens, to the extent of such inconsistency.<sup>1/</sup> But other inconsistencies persist in such old laws. In particular, many of the old laws suffer from what would today be regarded as excessive delegation of subordinate legislative powers to the administrative authority. Thus, in the West Bengal Sales Tax Acts, many substantive issues, which probably the legislature ought to have dealt with, seem to have been left to the rule - making authority. After independence, the complexion of tax administration in India has undergone a sea change. The administration is now required to be more responsive to the attitudes and expectations of the taxpaying public and has to respect the new spirit of freedom, equality and natural justice. At the same time, the opportunities thrown open by the rapid industrialisation and economic development in the post-independence era to anti-social elements seeking to circumvent or evade their obligations under the tax laws have to be thwarted by mere stringent legislation.

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<sup>1/</sup> Constitution of India - Article 13(1).

Many of the States in India, in the territories whereof sales tax was leviable even prior to independence, have opted for fresh legislation after independence and, more particularly, after the reorganisation of the States in 1956. Thus, the composite State of Bombay enacted the Bombay Sales Tax Act, 1959 in replacement of the Bombay Sales Tax Act, 1946 and a host of other laws operating in different areas of its territories. After a separate State of Gujarat was carved out of the territories of the composite State of Bombay, the new State of Gujarat decided to have its own law and the Gujarat Sales Tax Act, 1969 was enacted. The State of Maharashtra has, however, continued with the Bombay Act of 1959 and amended it from time to time. Several important amendments were made to this Act in 1981. Recently, however, a new Bill to replace the 1959 Act appears to have been formulated. The State of Punjab enacted a new Sales Tax Act in 1948 in replacement of the Punjab General Sales Tax Act, 1941. The State of Haryana, which on its formation had the Punjab Act of 1948 applying within its territories, legislated its own Sales Tax Act in 1973. In the State of Karnataka, the Karnataka Sales Tax Act, 1947 replaced the Madras General Sales Tax Act, 1939 and the allied laws till then in force within its territories. Similarly, the State of Andhra Pradesh enacted the Andhra Pradesh General Sales Tax Act, 1957 in place of the Madras Act of 1939 and other laws till then applying within its area. Tamil Nadu replaced the Madras Act of 1939 by the Madras (subsequently changed to Tamil Nadu) General Sales Tax Act, 1959. In Pondicherry, a tax on transactions was leviable under the 'Deliberation' of the Representative Assembly dated 25th April, 1983 as amended by the subsequent 'Deliberation' dated 23 October, 1953. This

was followed by the Pondicherry General Sales Tax Act, 1965 which, having been declared unconstitutional, was soon followed by the Pondicherry General Sales Tax Act, 1967. The Rajasthan Sales Tax Act, 1954 came into force on 2.3.1955 and is operating today as amended from time to time. In the Union Territory of Delhi the Bengal Finance (Sales Tax) Act, 1941 was in force till the Parliament enacted the Delhi Sales Tax Act, 1975. The Sales Tax Acts of Assam, Orissa, U.P., M.P., J & K and Kerala were passed in 1947, 1947, 1948, 1959, 1962, and 1963, respectively. Thus, West Bengal alone seems to be enjoying the almost unique distinction of operating a sales tax law which is more than 40 years old. The State seems to have stalled the need to replace its old laws of 1941 by bolstering it up with supplementary legislation such as the West Bengal Sales Tax Act, 1954, the West Bengal Paddy Purchase Act, 1970<sup>1/</sup> and the West Bengal Motor Spirit Sales Tax Act, 1974 which were super-imposed on the Bengal Finance (Sales Tax) Act, 1941 and the Bengal Raw Jute Taxation Act, 1941. The result, however, does not seem to have been very happy as noted by the Study Committee which observed:

"The very first shortcoming in the legislations, as indeed would strike even a casual observer, is the multiplicity of tax laws. Assuming that it is necessary to retain the salient features of taxation as discussed above, there is no reason why all these features cannot be incorporated in a single consolidated enactment. None interviewed by the Committee favoured the idea of retaining the separate identity of these Acts. On the contrary, strong arguments were made by many to consolidate these Acts in a single Act.<sup>2/</sup>"

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1/ Since repealed from 1 June, 1983.

2/ Government of West Bengal - Report of the Sales Tax Study Committee (1959) - para 2.05.

Naturally, the very first recommendation of the Study Committee has been that, instead of five different laws, there should be a single composite sales and purchase tax law in West Bengal. The NIPFP Study Team has also emphasised the need to consolidate the several existing laws into a single enactment (with the exception of the Motor Spirit Sales Tax Act.<sup>1/</sup>

## 2. Objects and Scope of the Project

One of the objects of the present project is to consolidate the different laws relating to sales tax in the State of West Bengal into a consolidated code. These are:

The Bengal Finance (Sales Tax) Act, 1941  
(Bengal Act VI of 1941)

The Bengal Raw Jute Taxation Act, 1941  
(Bengal Act IX of 1941)

The West Bengal Sales Tax Act, 1954  
(West Bengal Act IV of 1954)

The West Bengal Paddy Purchase Act, 1970  
(West Bengal Act XV of 1970)

The West Bengal Motor Spirits Sales Tax Act, 1974  
(West Bengal Act XI of 1974).

Of these, the Paddy Purchase Act has since been repealed with effect from 1 June, 1983. As regards the Motor Spirits Sales Tax Act, as observed by the NIPFP Study Team, there are only five major dealers of petroleum products and the pricing of such products is looked after by the Government through a Committee. The channels of distribution of such products has certain distinctive features. It would, therefore, be

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1/ NIPFP - Sales Taxation in West Bengal - Interim Report  
(Dec., 1983) - p. 70.

advantageous to administer the sales tax on petroleum products through a separate enactment. No attempt has therefore been made to incorporate the provisions of the West Bengal Motor Spirits Sales Tax Act in the proposed comprehensive Bill. That Act should continue as at present. Hence, out of the five enactments listed above, only the first three would require to be consolidated.

The West Bengal Sales Tax Study Committee and the NIPFP Study Team have both recommended a number of substantive, procedural and administrative measures for reforming the sales tax system in the State and improving its administration. These suggestions, to the extent they are acceptable to the Government, have to be incorporated in the law.

Apart from substantive and procedural reforms, the law also needs schematic and structural reform. The Sales Tax Study Committee did not go into these aspects. Apparently, it decided to leave the matter to the draftsman. The NIPFP Study Team was also not required to examine this aspect of the matter. The sales tax laws in force in the State today are the products of unplanned development. In recent years, there has been a spate of amendments to the existing laws with numerous insertions by way of sections and clauses with multiple alphabetical suffixes [e.g., Section 4AAAA of the 1954 Act and clauses (ccc) and (cccc) of sub-section (1) of section 5 of the 1941 Act]. The Acts are not divided into subjectwise Chapters and the substantive provisions and procedural provisions are found inter-mixed making the arrangement illogical and their comprehension difficult. For instance, even within the same statute, the

penal provisions are scattered through its length and breadth [e.g., sections 5A, 5B(1)(b), 11(1), 11(2d), 11(2g), 11(4B), 20A and so on]. Some important substantive provisions appear in the Rules and require to be brought over to the main enactment. These apart, it is desirable to borrow some of the procedures which have been found useful and effective in the administration of the direct tax laws for improving the sales tax administration in the State (e.g., separate tax recovery machinery, forum for settlement of cases, etc.). All this would involve a total rewriting of the law. It would indeed be unfortunate if the present opportunity is not taken advantage of for bringing about such schematic reform. There is also the need to improve the drafting style imparting to the law greater clarity, consistency, and uniformity of phraseology.

In sum, the scope of the present project is:

- a. to consolidate the provisions of the Bengal Finance (Sales Tax) Act, 1941, the Bengal Raw Jute Taxation Act, 1941 and the West Bengal Sales Tax Act, 1954 into a single enactment;
- b. to incorporate in the law the recommendations of the West Bengal Sales Tax Study Committee and the NIPFP Study Team for substantive and procedural reforms; and
- c. to bring about a structural and schematic reform of the law, achieving at the same time, a general improvement in the drafting.



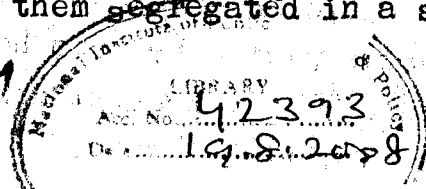
### 3. Methodology

a. Integration of several laws. The methodology adopted in the project has naturally been dictated by the objects and scope of the project. For integrating the existing laws into a single code, their provisions had to be analyzed, identifying common or corresponding provisions on the one hand and provisions which are distinctive to particular Acts on the other. The machinery provisions in the different Acts have a large measure of similarity and have been replaced by a common set of provisions. Of course, in the process, some adjustments have been unavoidable. Where reforms are also contemplated entailing revision of the existing provisions, the new provisions have been tailored to suit the needs of all the component laws. Where no such reform or revision is necessary, the common provision has been based by and large on the 1941 Act which has the widest application, but, at the same time ensuring that no great violence is done to the corresponding provisions of the other laws.

b. Structural reform. As remarked earlier, the existing laws are products of unplanned growth resulting from attempts to meet the needs and exigencies of particular occasions. The 1941 Act, which had originally 27 sections, has had an equal number of new sections with alphabetical suffixes inserted from time to time. The more recent 1954 Act which had also 27 sections to start with, has had 17 new sections similarly added. Insertions to and deletions of clauses, sub-clauses, provisos and explanations in both the Acts have been too many to enumerate. The existing Acts are not divided into Chapters and the original logic in the arrangement of sections has been completely disturbed by numerous

deletions and insertions. To impart into the law a more to logical sequence and greater clarity, the revised draft seeks/ divide the consolidated Act into 13 distinct Chapters, each Chapter covering a particular subject. The Chapters have been so arranged that substantive and quasi-substantive provisions stand grouped separately and procedural provisions stand arranged in the chronological order of the procedures themselves starting with registration and logically moving through filing of returns, assessment, interest and penalties, payment and collection of taxes, and appeals, revision, reference and settlement of cases. Special provisions of infrequent application such as <sup>the</sup> exercise of police powers, prosecution and the like appear in later Chapters. The closing Chapter is a wrap-up one containing miscellaneous provisions which are not amenable to being fitted in elsewhere. This Chapter also contains transitional provisions for ensuring a smooth switch-over from the existing laws to the new law and provisions relating to rule making authority. The very first Chapter of course is, in consonance with traditional practice, the preliminary Chapter dealing with title, extent and commencement of the new Act and definitions. In addition to the 13 Chapters, there are six Schedules. The first five Schedules (A to E) list out goods for various purposes of the Act such as exemption, levy of tax at particular points of sale, etc. The Sixth Schedule (F) provides a self-contained code for the coercive recovery of tax arrears on the pattern of the 2nd Schedule to the Income-tax Act, 1961. As these provisions are independent of the normal provisions of the law and would be administered by an independent organisation within the Department, it would be advantageous to have them segregated in a separate

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Schedule. The pattern of re-structuring of the law has been conceived with due regard to the need for making the law more logical in its presentation and easier of comprehension, compliance and administration.

c. Implementation of the recommendations of the West Bengal Sales Tax Study Committee and the NIPFP Study Team.

Implementation of the recommendations of two expert studies, one made at the instance of the Government of West Bengal and the other by the NIPFP, is another important object of the present project. For this purpose, the suggestions emerging from the two studies had to be analysed and those requiring legislative action segregated. By and large, the recommendations made by the two groups take us in the same direction but there are a few suggestions which conflict. In resolving the conflicts, considerable reliance has been placed on the views of the senior officers of the Finance Department of the West Bengal Government, essentially, the present project is aimed at providing assistance to the Government in the implementation of its own decisions by formulating a legislative draft. A reference to these areas of conflict would be made at the appropriate places while discussing the relevant provisions of the draft Bill.

d. Experience of other States. While enacting an entirely new law, it would be useful to draw from the experience of other States in the matter of sales tax legislation. As mentioned earlier, practically every State has passed fresh sales tax legislation after independence. The structure of these more recent laws and the new measures and procedures contemplated by them have considerably influenced the formulation of the present draft of a consolidated sales tax law for West Bengal.

e. Studies on sales taxation by expert bodies. A number of studies have been carried out on sales taxation in different States. The NIPFP has also carried out a number of such studies and even as on date some studies are in progress. The findings given and suggestions made in the following reports have also been kept in view while preparing the present draft:

S.R. Kanwar - Report of the Tamil Nadu Sales Tax Committee (Oct., 1978)

NIPFP - A Survey of the Tax System in Assam (Dec., 1978)

Kanwarlal Gupta - Report on the Simplification and Rationalisation of the procedures relating to Sales Tax (1978)

NIPFP - Report of the Gujarat Taxation Enquiry Committee (1980)

NIPFP - Sales Tax System in Bihar (1981)

NIPFP - Information System and Evasion of Sales Tax in Tamil Nadu (Dec., 1982).

NIPFP - The Income Responsiveness of State Taxes in Maharashtra (July, 1983)

NIPFP - Sales Tax System in Delhi (July, 1984).

f. Law Commission's reports. There are some reports of the Law Commission of India which have a bearing on sales tax legislation. In their Second Report the Commission <sup>laid down</sup> had ~~the~~ principles for determining when a sale or purchase takes place in the course of inter-State trade or in the course of import or export of goods into or from India. These principles were engrafted in the Central Sales Tax Act, 1956. In their 30th Report, the Law Commission examined certain

problems arising out of the Supreme Courts decision in K G Khosla's Case.<sup>1/</sup> The Law Commission of India in their sixty first report have examined certain problems connected with powers of the States to levy a tax on the sale of goods. The important matters which engaged the attention of the Commission were, taxability of works contracts, hire purchase transactions, sale of food or drink by a hotelier, sales of goods by an unincorporated club, association or firm to its members, sale of controlled commodities, etc., and evasion of Central sales tax by what are known as consignment transfers from one State to another. The recommendations made by them have led to the amendment of the Constitution of India to which a reference would be made later. The Law Commission also examined certain problems connected with the Central Sales Tax Act, 1956. Some of the recommendations made by the Commission <sup>in</sup> regard to imposition of penalties under the Central sales tax are equally relevant for the State levies as well. The Commission's report also refers to their earlier report on Social and Economic Offences<sup>2/</sup> wherein higher punishments had been recommended for certain offences. The recommendations have been followed up by amendments made to the direct tax laws. In their 61st Report, the Law Commission have examined these amendments from the angle of their suitability for adoption in sales tax laws.

In brief, the recommendations of the Law Commission in regard to penalties are:

- (1) stiffer punishments should be provided in large evasion cases and on second and subsequent

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1/ K G Khosla & Co. Pvt. Ltd. vs. Dy. Commissioner of Commercial Taxes, Madras AIR 1966 SC 1216.

2/ Law Commission of India - 47th Report.

conviction for sales tax offences; a minimum sentence should also be provided in the law without any power of relaxation;

- (ii) for continuing offences, a daily fine should also be provided;
- (iii) abetment of evasion should be made punishable, the punishment becoming stiffer when the evasion is large;
- (iv) in the case of corporations, a sentence of public condemnation should be provided; and
- (v) a provision for publication of names of convicted persons should be inserted in the law.

The Law Commission have also examined questions relating to the legislative competence of the States to establish checkpoints or barriers.

The various recommendations and observations of the Law Commission have been kept in view while drafting the penal and other provisions of the consolidated law. A reference to the specific recommendations of the Law Commission would be made while discussing the appropriate provisions of the draft Bill.

g. The Constitution of India. Several provisions of the Constitution and the amendments made thereto from time to time have great relevance to legislation on sales tax. Articles 301 and 304 impose certain general limitations on the States' power to levy taxes which affect trade, commerce

and intercourse within the territory of India. The legislative authority of the States in India to impose a tax on sales and purchases conferred by entry 54 of List II of the 7th Schedule to the Constitution is further restricted by three important limitations contained in Articles 286(1)(a), 286(1)(b) and 286(3) of the Constitution. The main purpose of these limitations is to protect international trade from taxation by the States and to prevent the imposition of any unduly heavy burden upon the consumer by multiple taxation upon a single transaction of sale by restricting the power of the States to tax sales or purchases outside the State; another object is to limit taxation of sale or purchase of essential goods.

The most important amendment to the Constitution from the sales tax angle is the 46th amendment which received the assent of the President on February 2, 1983. The need for this amendment arose from a series of Supreme Court decisions which had the effect of unduly restricting the States' power to tax sales and purchases. The Supreme Court held that the expression 'sale of goods' as used in entry 92A of List I and entry 54 of List II of the 7th Schedule to the Constitution had the same meaning as in the Sale of Goods Act, which implied that the transaction should have the following ingredients, namely, parties competent to contract, mutual assent and transfer of property from one of the parties to the contract to the other thereto for a price. The result of this approach was that transfer of goods involved in a works contract, consignment transfers, sale of goods by unincorporated bodies to their members, supply of foods and drinks by hoteliers to lodgers, transfer of

commodities in pursuance of a direction under control orders, transfers on hire purchase or of right to use, all fell outside the scope of sales tax levy either by the Centre or by the States. As mentioned earlier, the Law Commission of India had also examined the implications of the decisions of the Supreme Court and made certain recommendations which have been referred to in an earlier paragraph. The 46th amendment to the Constitution seeks to fill in the gaps in the States' fiscal powers caused by the Supreme Court's decisions. Broadly speaking, the amendment adopts a dual approach. First, a new entry 92B has been inserted in the Union List in the 7th Schedule to enable the levy of a tax on inter-State consignment of goods. Such transactions would now be taken care of by Central legislation and the sales tax law of individual States would no longer be concerned with them. Second, the definition of 'tax on the sale or purchase of goods' in a new clause (29A) inserted in Article 366 has specifically brought within the scope of taxation of sale or purchase the following transactions:

- (i) transfer for consideration of controlled commodities;
- (ii) the transfer of property in goods involved in the execution of a works contract;
- (iii) delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration;
- (v) the supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and



- (vi) the supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration.

This amendment is of great relevance in drafting sales tax legislation and has been taken due note of.

h. Drafting style. In the foregoing paragraphs the material which has gone into the making of the present draft Bill has been set out in fair detail. While the substantive contents of any law are no doubt very important, its drafting style is no less important. The purpose of a substantive provision is often lost in incompetent drafting. The test of the pudding, they say, is in the eating. The test of a well drafted law is in its actual interpretation by Courts. Courts construe laws according to uncodified rules which have been developed by them over the years. These maxims of interpretation have been borne in mind throughout the present exercise so as to reduce the scope for the intended purpose of the provisions being frustrated in the process of judicial interpretation. Fiscal legislation is particularly prone to such distortions as Courts often tend to interpret an ambiguous or not so clear provision in favour of the subject. If the interpretation of an Act by the Courts does not carry out the intention of the framers of the law by reason of unhappy or ambiguous phrasing, it is for the legislature to intervene.<sup>1/</sup> Courts are reluctant to fill in obvious lacunae in the Act by a process of interpretation.<sup>2/</sup> Vagueness and proneness to multiple meanings are common maladies of tax laws. Commenting on the Income tax Acts in UK Lord Buckmaster observed:

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1/ Ramanandan Prasad vs. Mahant Kapildev (1951) SCR 138,144.

2/ Vidyavati vs. State of Punjab AIR 1958 SC 519.

"It is not easy to penetrate the tangled confusion of these Acts of Parliament and though we have entered the labyrinth together, we have unfortunately found exit by different paths.<sup>1/</sup>"

To the extent possible an attempt has been made to avoid such multiple exits. Clarity and precision are not always easy to attain in drafting a tax law. For, as Stephen J remarked in *Re Castioni*:<sup>2/</sup>

"it is not enough to attain a degree of precision which a person reading in good faith can understand; but it is necessary to attain, if possible, a degree of precision which a person reading in bad faith cannot misunderstand.

The perfect statute has never been written and never will be. Like perfect justice it is only an ideal.<sup>3/</sup>

Montesquieu in his L'Esprit-desLois lays down seven rules of legislative diction which are summarised by C K Allen<sup>4/</sup> as follows:

- (i) the style should be both concise and simple; grandiose or rhetorical phrases are merely distracting surplusage;
- (ii) the terms chosen should, as far as possible, be absolute and not relative, so as to leave the minimum of opportunity for individual differences of opinion;

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1/ *Great Western Railway Co. vs. Bater* (1922) 2 ACI, 11.

2/ (1891) 1 Q B 149, 167.

3/ G R Rajagopaul - *The drafting of Laws* p. 27.

4/ *Law in the Making* p. 484 (1964).

- (iii) laws should confine themselves to the real and the actual, avoiding the metaphorical or hypothetical;
- (iv) they should not be subtle "for they are made for people of mediocre understanding; they are not an exercise in logic, but in the simple reasoning of the average man";
- (v) they should not confuse the main issue by any exceptions, limitations or modifications save such as are absolutely necessary;
- (vi) they should not be argumentative; it is dangerous to give detailed reasons for laws, for this merely opens the door to controversy; and
- (vii) above all, they should be maturely considered and of practical utility and they should not shock elementary reason and justice and la nature des choses; for, weak, unnecessary and unjust laws bring the whole system of legislation into disrepute and undermine the authority of the State.

These observations remain as valid today as they were in Montesquieu's time .

A word is also necessary about the drafting style adopted, as the traditional legislative drafting style which an eminent jurist like Shri N A Palkhivala has described as 'an out-moded Anglo-Saxon style of drafting', has, in recent times, been the target of serious criticism. This

style of drafting, with its sections and sub-sections, clauses and sub-clauses, provisos and explanations, 'non-obstante' and 'subject to' clauses as also its rigid rules of punctuation, no doubt owes its origin to Anglo-Saxon legislative practices but seems to have found a congenial soil in India and has blossomed almost into a native system over the last century or more. The system has found acceptance by jurists, lawyers, courts and litigants alike. Rules of interpretation have evolved around the rules of drafting and together they constitute an integral system which it is not possible to discard overnight without serious repercussions on the judicial system as a whole. In this exercise, the traditional style of drafting has therefore been almost religiously adhered to; but efforts have been made, by avoiding, to the extent possible, the use of double and treble negatives and frequent cross references, to make each provision self-contained and meaningful even at the cost of some repetition.

Thornton divides the drafting process into the following five stages:<sup>1/</sup>

- i. understanding;
- ii. analysis;
- iii. design;
- iv. composition; and
- v. scrutiny.

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<sup>1/</sup> G C Thornton - Legislative Drafting - p. 96.

He adds that these five stages cannot be regarded as five watertight compartments and are better regarded as recognizable areas of the process as a whole. He compares legislative drafting with the children's game of snakes and ladders where the progress is neither smooth nor regular and frequently it becomes necessary to return to an earlier stage and try again. The present exercise has had a surfeit of snakes and of ladders. Each discussion with the official team generated fresh problems which had to be tackled, or revealed fresh loopholes which had to be covered. The ultimate draft that has emerged may hopefully be regarded as in its final shape which, after the usual touch-up by the State's legislative department, would be found fit for introduction in the State legislature.

### III. SCHEME OF THE DRAFT BILL

#### 1. Broad Outline of the Draft Bill

In the Chief Ministers' Conference held in 1980, a suggestion was made that the Law Commission of India may be requested to prepare a draft of a sales tax law which could be used as a model by the States while bringing about reforms in their own sales tax laws. No such model is, however, as yet ready. In the present exercise, therefore, the schemes of the existing sales tax laws in different States, the Central Sales Tax Act and, more particularly, the Income Tax Act, 1961 have been relied on. It may be mentioned that the Income Tax Act, 1961 is itself based on a draft prepared by the Law Commission in its 12th Report. In its 61st Report which deals with certain problems relating to sales tax, the Law Commission seem to have considered the provisions in the Income Tax Act as a sort of model in regard to penalty provisions.

As mentioned earlier, the present Acts in force in the State are not divided into Chapters and the arrangement of the sections is not entirely satisfactory either. To facilitate easier understanding of the law, the Act has to be divided into Chapters, each Chapter dealing with a particular aspect of the law and one Chapter leading to the other in a smooth logical flow. It may be mentioned that, pointing out a similar defect in the Tamil Nadu General Sales Tax Act, the Kaiwar Committee had recommended that the Act should be split up into Chapters.<sup>1/</sup> The Draft Bill seeks to divide the proposed consolidated Act into the following Chapters:

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1/ S. R. Kaiwar - Report of the Tamil Nadu Sales Tax Committee (Oct., 1978) - para 15.12.

<u>Chapter</u>	<u>Subject</u>
Chapter I	Preliminary
Chapter II	Tax Authorities, Bureau, Tribunal and Settlement Commission
Chapter III	Incidence and Levy of Tax
Chapter IV	Registration of Dealers
Chapter V	Return, Assessment, Re-assessment and Rectification
Chapter VI	Charge of Interest and Imposition of Penalty
Chapter VII	Payment, Collection, Recovery and Refund of Tax or Other Sums
Chapter VIII	Appeal, Reference, Revision and Other Reliefs
Chapter IX	Settlement of Cases
Chapter X	Accounts, Inspection, Search and Seizure, Restrictions on Movement of Goods and Power to Call for Information
Chapter XI	Responsibilities and Liabilities of a Dealer in Special Circumstances
Chapter XII	Offences and Prosecution
Chapter XIII	Miscellaneous.

There will be six Schedules to the Act - A to F. Schedule F will incorporate a self-contained code for recovery of tax on the income tax model. The other Schedules list out goods which are exempt or which are taxable at different points and, in the latter case, also spell out the rates wherever these are not provided in the main Act.

2. Title, Commencement, Extent and Definitions

In the traditional style, the very first Chapter with the heading 'Preliminary' incorporates provisions relating to title, extent and commencement of the Act and also the general definitions relevant for the purposes of the Act. A number of new definitions have been added to help crystallise the meanings of specific terms used in the Act. Some of the existing definitions have been modified in the light of the changes that are necessary in the substantive law. These would be dealt with while discussing the relevant substantive provisions. The following new definitions have been added:

Additional Commissioner;  
appointed day;  
assessment;  
company;  
director;  
firm, partner and partnership;  
last point of purchase;  
last point of sale;

Official Gazette ;  
person;  
place of business;  
principal officer;  
public servant;  
purchase;  
rules;  
Settlement Commission;  
taxable goods;  
Tax Recovery Officer;



the State;  
the State Government;  
turnover of purchases;  
turnover of sales;  
warehouse; and  
works contract.

Some of the existing definitions in the different laws have been omitted as they would not fit in with the scheme of the revised draft or as they would get substituted by certain other definitions in the revised draft.

### 3. Tax Authorities, etc.

Chapter II of the draft Bill deals with administrative authorities, etc. Under the West Bengal Sales Tax Law, the Commissioner is constituted as a sort of supreme authority exercising multiple functions under the statute - assessment, review and revision - apart from administrative powers as the head of the organisation. A coordinate authority designated as Additional Commissioner came into being only long after the Bengal Finance (Sales Tax) Act, 1941 was passed, by an amendment made in 1951. The Commercial Taxes Tribunal was set up only in 1973. The other authorities under the Act, whether executive or appellate, have no statutory status or functions. They derive their authority only as delegates of the Commissioner. Prima facie this state of the law would seem to be unsatisfactory. The Commissioner exercising such multiple functions, though through different sets of delegates, is not quite consistent with the principle of the separation of the judiciary from the executive which principle is rooted in one of the basic requirements of natural justice. Under the Income

Tax Act and the sales tax laws of many other States, the allocation of functions is spelt out in the statute itself and provision has also been made to bar any interference with the judicial discretion of an appellate authority by an executive authority. The official team, however, expressed the view that the arrangement which has worked satisfactorily for over four decades should not be disturbed. In actual fact, functional allocation has been achieved through the rules and probably not much grievance can be made of the form of the law in the abstract. Introduction of any reform in this regard will also require extensive redrafting of practically every provision of the Act. Hence, no departure has been made in the revised draft from the present pattern in regard to the provisions relating to tax authorities.

One technical infirmity in the existing pattern needs, however, to be pointed out. The power to delegate functions to the lower authorities is with the Commissioner. The Rules are, however, framed by the State government. In the rules the authorities by whom diverse functions are actually performed will have to be specified as otherwise the taxpaying public would find compliance with the requirements of the law, particularly the procedural ones, extremely difficult; but the framing of rules precedes delegation by Commissioner and not vice versa. If rules are made first it would amount to the State government exercising powers of delegation which it does not have under the statute. It may therefore be advisable to confer on the State government the power of delegating the Commissioner's powers to the lower authorities concurrently with the Commissioner himself. A provision to this effect may be made when the Bill in its final form is drafted. The Bureau of Investigation is an existing organisation. The

Settlement Commission is, however, a new concept borrowed from the Income Tax Act. The Gujarat Sales Tax Law also provides for the settlement of sales tax cases by an independent body known as the 'Settlement Commission'. The provisions in Chapter II of the draft Bill relate only to the Constitution of the Commission. The sections governing the functions of the Commission would appear in a later Chapter.

#### 4. Incidence and Levy of Tax

Chapter III of the draft containing the charging provisions is by far the most important part of the draft Bill from the conceptual angle. It is in this Chapter that the suggestions made by the Study Committee and the NIPFP team are built in and the integration of the different tax laws currently in force in West Bengal achieved. Under the existing laws, the sales tax at the last point (LP) is the most important levy though a tax at the first point (FP) is also levied on certain commodities. These apart, there are also multipoint (MP) levies, a purchase tax on certain commodities, a surcharge, an additional surcharge and a turnover tax in high turnover cases. There are also exemptions with reference to commodities, dealers and transactions. The Study Committee has recommended preservation of this scheme subject to the abolition of the surcharge and the additional surcharge and the consolidation of the multifarious rates into five or six. On the other hand, the NIPFP team has suggested that the FP tax should be the predominant form of taxation while a tax at the LP may be levied only in respect of commodities which are produced by a large number of dealers and have a high proportion of value added at the intermediate stages. Though the

NIPFP team has expressed itself against a MP levy, it has suggested as an alternative that a MP tax may be levied at a low rate. Both the Study Committee and the NIPFP team are agreed as to the need for having exemptions and the need to have reasonable exemption limits in respect of turnover; both agree on the need to have a tax on purchases in certain cases. From the procedural angle, both recognise the need for having a system of registration and declarations though the NIPFP team has expressed a preference for the exercise of administrative checks in a regular and scientific manner over the present system of insisting on furnishing of declarations on security printed forms which creates a considerable amount of harassment to the taxpayers and additional work for the administration and opens up avenues of malpractices and corruption. There is also no quarrel about the need to abolish surcharges. However, the NIPFP team is for the abolition of the high turnover tax while the Study Committee is for retaining it.

From the point of view of drafting the charging provisions, the divergence between the approach of the NIPFP team and that of the Study Committee is not very material. The charging sections will in either case have to provide for a tax at the FP on certain commodities, a tax at the LP on certain commodities, a tax at every point in the case of certain others and also a purchase tax in certain cases. Exemptions have also to be provided. The provisions have, therefore, been drafted in such a way as to fit in with either view. The divergence in views would assume importance only when the Schedules, which would list out the articles and the rates of tax applicable to them, are drafted. For that, the

identification of the commodities on which tax is to be levied at one or more points has to be done by the Administration. Similarly, a decision on the rates of tax has also to be taken by the Administration. In the present exercise, the Schedules have been drafted tentatively based on the existing classifications and rates. These will require redrafting by the Administration on the basis of decisions to be taken by the Government on the recommendations of the Study Committee and the NIPFP team. At that point of time, there might be the need for a further dialogue between the NIPFP and the Administration. Similarly, in the case of declarations, both the NIPFP team and the Study Committee recognise the need for checks to prevent fraudulent claims. The difference of views is only on the nature and extent of the checks to be provided. Here again, the law can be worded in such a way as to leave the details to the rule-making authority which would come on the scene only at a later stage.

As regards high turnover tax (HTT), it would be a self-contained provision which could be omitted if the Government decides to accept the NIPFP team's recommendation for its abolition. Pending a final decision on this, a suitable provision is incorporated in the revised draft.

An important development on the sales tax front in recent years is the Forty Sixth Amendment to the Constitution of India which received the assent of the President on 2.2.1983. As mentioned earlier in this Report, this amendment is aimed at ~~overcoming~~ overcoming certain difficulties caused by a series of decisions of the Supreme Court giving a very narrow meaning to the word 'sale' as used in entry 92A of the Union List and entry 54 of the State List in the Seventh Schedule to

the Constitution of India as a result of which several types of transactions on which some States were already charging sales tax became ultra vires of the States' legislative powers. In brief, the amendment to the Constitution brings transfers of property in goods involved in the following types of transactions within the legislative competence of the States for charging sales tax:

- (i) non-contractual transfers;
- (ii) works contract;
- (iii) hire purchase;
- (iv) transfer of right to use;
- (v) supply of goods by unincorporated clubs and associations to members; and
- (vi) supply of food and drinks in hotels and restaurants.

It may be mentioned that the amendment to the Constitution does not alter the concept of sale under the Sale of Goods Act as interpreted by the Supreme Court. It merely extends the legislative powers of the States to levy sales or purchase tax on transactions which are not strictly 'sale' or 'purchase' under the law. The constitutional amendment does not bring about an automatic charge of sales or purchase tax on these transactions. That is left to the States themselves to be achieved by a conscious enlargement of the concept of sale under their respective sales tax laws. This is why an amendment of the definition of the term 'sale' becomes necessary in the sales tax law of West Bengal. Accordingly, an enlarged definition of the term 'sale' is incorporated in the draft Bill. Corresponding changes have, also been made in the definition of 'dealer'.

Some fears have been expressed in some quarters that the levy of sales tax on the transfer of property in goods involved in a works contract might have a cascading effect when there are sub-contractors for parts of the main contract resulting in the undue inflation of project costs which might adversely affect the cost estimates of the Five Year Plan, as a large chunk of development projects is in the State sector. While there is some truth in this, it has also to be kept in mind that the immunity from sales taxation which works contracts started enjoying after the Supreme Courts decisions had thrown the doors wide open for avoidance of sales tax by giving the colour of a works contract to transactions essentially in the nature of a sale. For example, the sale of large and costly items like ships or heavy machinery or vehicles can be easily passed off as a works contract by the seller undertaking to erect the item at the site indicated by the buyer instead of supplying to the buyer the finished product. The Constitution has been amended mainly with the object of helping the States to plug this loophole in the law. If advantage is not taken of the constitutional amendment by bringing about a corresponding change in the concept of sale under the sales tax law, there would be substantial loss of revenue to the State which would no less adversely affect the planning efforts of the State. Hence, works contract cannot altogether be left out of the sales tax net. As regards the cascading effect of cumulative taxation when there are sub-contracts, the fears may turn out to be unfounded as the tax is not on the entire value of the contract or sub-contract but on the value of the goods the property in which is transferred as part of the works contract. Even when there are sub-contractors, the law of bailment would probably come to the rescue of intermediate transactions as the property in the

goods used in the works contract could be considered as passing to the contractee only when the main contract is completed. However, as at this stage it may not be possible to predict exactly as to how the executive authorities and courts would interpret such a law, it is considered desirable to build in a safeguard by providing for the set off of any tax paid in the course of the sub-contract against the tax liability which would arise when the main contract is completed. A provision to this effect has therefore been included at the appropriate place in the draft Bill.

The official team mentioned that the State Government was not in favour of taxing transactions of unincorporated clubs and associations with their members and expressed the view that the enlarged definition of 'sale' need not cover such transactions. However, after discussion, such dealings have also been included in the definition of sale for two reasons. First, certain recent decisions under the Income Tax Act seem to obliterate the distinction between incorporated clubs and unincorporated clubs and apply the principle of mutuality to both alike by invoking the ancient doctrine of piercing the corporate veil for establishing the identity between an incorporated club and its members. Difficulties might arise under the sales tax law in future, particularly if the law discriminates between incorporated and unincorporated clubs in the matter of taxing their dealings with their own members. Second, it might be more prudent from an administrative angle to rope all such transactions into the tax net in the first instance and then to proceed to grant selective exemptions by notification.



The basic charging provisions have been built into three sections in the draft Bill. Section 9 with the marginal heading 'Incidence of tax' provides the charge of tax on sales and purchases and relates liability and its cessation to the 'taxable quantum', a definition of which is included in the section itself. As suggested by the NIFPP team, the taxable quantum in respect of the general category of dealers is placed at Rs 2 lakh. Lower exemption limits, including 'nil' limits, are prescribed for special categories of dealers like importers or manufacturers and for special categories of goods like Schedule B goods or notified Schedule D goods which would be taxed at the first point of sale within the State.

Section 10 with the marginal heading 'Levy of tax' spells out the points at which goods listed in the different Schedules would suffer tax. The section also provides the detailed mechanics of determining the taxable turnover. This definition is closely linked with the general definitions of 'turnover of sales', 'turnover of purchases', 'sale price' and 'purchase price' in the definitions section (Section 2). The broad scheme of the levy as incorporated in section 10 of the draft Bill is as follows:

a. Sales tax

- (i) a FP levy on Schedule B goods;
- (ii) a LP levy on Schedule C goods, i.e., goods which are declared to be of special importance in inter-State trade or commerce under section 14 of the Central Sales Tax Act, 1956;
- (iii) a MP levy on Schedule D goods;

- (iv) a low MP levy on some of the goods liable to tax at FP (for curbing evasion of FP tax in certain evasion-prone goods);
- (v) tax on transfer of right to use; and
- (vi) tax on goods used in a works contract.

b. Purchase tax

- (i) a LP levy on purchase of Schedule E goods; and
- (ii) a purchase tax for dealing with cases of misuse of lower rate benefit.

c. Stock tax. Leviable on discontinuance, etc., for containing tax avoidance.

d. High turnover tax. As mentioned earlier, the NIPFP team has recommended abolition of this levy. A self-contained provision is included in the draft Bill which could be omitted if the State Government decides to accept the recommendation.

One point which was discussed at some length with the official team was the mechanics of avoiding levy of tax on tax by excluding the tax element from the taxable turnover. In the existing law, this is sought to be achieved by modulating the taxable turnover relating to different categories of goods liable to tax at different rates by different percentages.<sup>1/</sup> The official team admitted that this was a cumbersome procedure necessitating frequent amendments to the law. The Central Sales Tax Act seeks to achieve this by applying the following

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<sup>1/</sup> Section 5(2) of the Bengal Finance (Sales Tax) Act, 1961.

mathematical formula for reducing the taxable turnover so as to exclude the sales tax element.<sup>1/</sup>

$$\frac{\text{rate of tax} \times \text{aggregate of sale price}}{100 + \text{rate of tax}}$$

A mathematical formula looks somewhat out of place in a statute and does not fit into the traditional drafting style. In the draft Bill the same effect is, therefore, sought to be achieved in a more legalistic style in the definition of 'sale price'.

Section 11 provides the rates of tax, sub-section(1) making a reference to the detailed rate structure in the Schedules and sub-section (2) spelling out the special lower rates applicable under special circumstances. Section 12 deals with tax free goods while section 13 confers the power on the State Government to grant selective exemptions by notification in the Official Gazette. Section 14 clothes the State Government with powers to amend the Schedules which contain lists of goods taxable at different points, by adding to or omitting from any Schedule any entry or entries or by transposing an entry or entries from one Schedule to another. Such a power, which generally all sales tax laws confer on the Government, would eliminate the need to approach the legislature every time a change is contemplated. Section 15 is a new provision which casts the burden of proof on the dealer for proving his claims relating to exemption, concessional rate of tax, etc. In sub-section (2) a general provision has been included to enable the State Government to prescribe the nature

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<sup>1/</sup> Section 8A of the Central Sales Tax Act, 1956 inserted by Act 28 of 1969 with retrospective effect.

of documentary evidence which a dealer will have to furnish in support of such claims. The present system of having to furnish declarations on security printed forms seems to have cast undue burden both on the taxpayers and on the administration. The NIPFP team has recommended the elimination of the need to furnish such declarations to the extent possible. The mandatory provisions of the existing law relating to furnishing of such declarations have therefore been omitted in the draft Bill. The general provision in sub-section (2) of section 15 would enable the Government to introduce simpler systems.

#### 5. Registration of Dealers

Chapter IV consolidates and incorporates all the provisions relating to registration of dealers. The NIPFP team has observed that the facility of voluntary registration allowed to the dealers is susceptible to large scale misuse and should, therefore, be restricted to manufacturers only. The official view seems to be, however, that the withdrawal of this facility would put a large number of persons commencing business or setting up small scale industries to unnecessary hardship as they would not be able to show that they are manufacturers at that stage. It is also felt that getting potential taxpayers on the registers even before they have exceeded the normal taxable quantum would be an advantage from the administrative point of view. As pointed out by the NIPFP team itself in another context, misuse can be better dealt with through administrative checks. The provision relating to voluntary registration has, therefore, been retained in the draft Bill but the power has been given to the Commissioner to cancel the certificate of registration after enquiry. The provisions relating to furnishing of security have also been rationalised keeping in view the suggestions of the NIPFP team.

## 6. Assessment Procedures

Chapter V of the draft Bill deals with assessment procedures. The following recommendations of the NIPFP team have been given effect in the provisions included in the draft Bill:

- (i) discontinuance of the monthly and quarterly returns and having an annual return only;
- (ii) monthly tax payments to be supported only by a brief statement of turnover instead of formal return; and
- (iii) the introduction of a summary assessment procedure with provision for sample or selective scrutiny and reassessment of cases summarily assessed.

Apart from implementing the recommendations of the NIPFP team, a number of other reforms have also been introduced. The manner of signing and verifying returns is sought to be spelt out in the law itself. The provisions relating to reopening of assessments have been rationalised and streamlined. The time limit for the completion of an assessment is sought to be reduced from the present four years to three years. Eventually, it should be possible to bring it down to two years. The fear of assessments getting barred by time always haunts the assessing officers. The position under the Income Tax Act is similar and Courts have held that, if an assessment gets barred by time, even the tax already collected by way of deduction at source, advance tax or self-assessment should be refunded to the assessee. There seems to be no rationale behind refunding even the admitted tax merely for the lapse on the part of an official. In the Bombay Sales Tax Act, there is a provision which saves such situations. Taking a cue

from that, a provision has been inserted in the draft Bill providing that if no assessment is made on the basis of a return duly filed within the statutory time limit set for the completion of the assessment, the assessment shall be deemed to have been made on the basis of the return on the last day when the assessment ought to have been made under the law.

Another new provision that has been inserted in the draft Bill is one enabling the Commissioner to determine by way of composition a lump sum payment in lieu of tax instead of going through the formalities of an assessment. This power would, of course, be exercisable subject to safeguards to be provided under the Rules. A similar provision exists in the Delhi Sales Tax Act<sup>1/</sup> and the sales tax laws of some other States. A section has also been inserted conferring power on the Commissioner to rectify mistakes apparent from the record. Under the existing law, this is done by exercising the power of review,

The reduction in the time limit for the completion of assessments will help speed up the disposal of assessments. With the introduction of the summary assessment scheme and the introduction of a provision for composition of taxes and the consolidation of the several tax laws into one which would eliminate the need to make multiple assessments in the same dealer's case, it may be expected that a drastic reduction in the work load would be achieved. A reduction in the time limit for completion of assessment should not then create any serious administrative problem. The in-built safeguard in the form of a provision for the deemed completion of uncompleted assessments on the last day of the limitation period would completely eliminate the possibility of any loss of revenue.

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1/ Section 29, The Delhi Sales Tax Act, 1975.

## 7. Interest and Penalty

In the existing laws in force in West Bengal, the penal provisions are scattered through the length and breadth of the statutes.<sup>1/</sup> The interest provisions in the laws are of recent origin having been inserted by the WB Act XV of 1983 w.e.f. 1.10.1983.<sup>2/</sup> In the draft Bill, the provisions relating to charge of interest and imposition of penalties have been consolidated in one Chapter, section 28 dealing with charge of interest and section 29 dealing with penalties. The provisions relating to charge of interest have been streamlined in the light of the recommendation of the NIPFP team. The proposed provisions envisage a two-tier charge of interest, first on the short fall in the voluntary payments upto the assessment stage and second in respect of the delay in paying the assessed dues. The provisions have been so worded that interest is chargeable for completed English Calendar months only.

The rate of interest has been placed at 18 per cent per annum which roughly accords with the rate of interest charged by commercial banks on their lendings. Under the Income Tax Act, the corresponding interest rates have been recently raised from 12 per cent to 15 per cent per annum. The rate of interest chargeable under the existing sales tax law in West Bengal is 24 per cent which appears to be too high and may be construed as penal and not as compensatory interest by the Courts. Contumacious conduct on the part of the taxpayer is better dealt with by levy of a penalty than by

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1/ Sections 5A, 5B(1)(a), 5B(1)(b), 11(1), 11(2d), 11(2F), 11(2g), 11(4B) and 20A of the Bengal Finance (Sales Tax) Act, 1941.

2/ Section 10A of the Bengal Finance (Sales Tax) Act, 1941 and section 8A of the West Bengal Sales Tax Act, 1954.

charging usurious rates of interest. Orders charging interest would be non-appealable unlike penalty orders and it is necessary to preserve their compensatory character. However, there could always be cases of hardship deserving relief and for this a provision is sought to be inserted elsewhere conferring the power in the Commissioner to reduce or waive interest in appropriate cases subject to rules and guidelines to be provided. The penalty provisions have also been rationalised and rearranged. An important reform sought to be introduced is the imposition of a time limit of two years for initiation of penalty proceedings after the completion of the assessment proceedings. In the Income Tax Act the requirement is that penalty proceedings should be initiated in the course of the assessment proceedings, and this has been found to cause difficulties. Setting a time limit for completion of penalty proceedings is pointless as the assessments to which they relate would be disputed in appeals, references, etc., which may take years to reach finality. The imposition of a time limit for completion will only force the officers to go ahead with imposing penalties without waiting for the result of the appeal, etc., against the assessment. This would generate infructuous litigation and administrative work.

8. Payment, Collection, Recovery and Refund of Tax, etc.

The provisions relating to payment of tax, collection procedures, coercive recovery of tax and refund of tax have been consolidated, amended and grouped in Chapter VII of the draft Bill. The Chapter opens with section 30 which provides for the rounding off of the taxable turnover and the amount in which interest is to be charged or paid into whole multiples of one hundred rupees and tax, penalty and other sums into



whole rupees. The provisions relating to the issue of demand notice and the due date for the payment of tax and those relating to collection of tax have been rationalised. As regards coercive recovery of tax, the existing law provides for the recovery of tax in the manner provided for the recovery of arrears of land revenue under the Bengal Public Demands Recovery Act, 1913 (Act III of 1913). The recovery work is entrusted to a separate Certificate Organisation. In the Indian Income Tax Act, 1922, the recovery procedures used to be similar. The Law Commission<sup>1/</sup> was of the view that a uniform and self-contained code of recovery of taxes would be most conducive to efficient tax recovery. Accordingly, the Income Tax Act, 1961 when enacted embodied in itself a self-contained tax recovery code forming part of it as its Second Schedule. A departmental machinery was also created to operate these provisions. Of course, unlike in the case of income tax, in the case of sales tax, the problem of multiplicity of State recovery laws and recovery procedures is not there. Yet, the advantages of having the recovery provisions as part of the Sales Tax Act for both the tax administration as also the taxpayers and the tax practitioners are very clear. The Study Committee had recommended the enactment of a separate sales tax recovery code and the tax administration in the State also favours a break away from the ancient Bengal Public Demands Recovery Act. Accordingly, the provisions relating to tax recovery have been built into the draft Bill, the detailed rules for coercive recovery being incorporated in a separate Schedule - Schedule F so as not to clutter up the main sales tax enactment. The Schedule has been drafted on the basis of the income tax model as suggested by the Study Committee.

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1/ Law Commission of India - Twelfth Report, para 80.

The Study Committee has also suggested that a provision should be inserted in the law rendering void transfers of property during the pendency of proceedings. Such a provision exists in the Income Tax Act and the provisions were tightened up on the basis of the Wanchoo Committee's recommendations.<sup>1/</sup> The officers comprising the official team expressed the fear that a provision like this might render normal trade transaction difficult or suspect. Adequate safeguards are provided in the section so that honest commercial transactions are not in any way affected. First, stock-in trade is totally excluded from the purview of the provisions. Only land, buildings, machinery, plant, motor vehicles, shares, securities and FDs in banks, that is to say, fixed assets as distinct from floating assets, come within its mischief. Cash and bank accounts do not get frozen. Second, the provision does not apply when the value of the asset charged does not exceed Rs 20,000 or the tax, penalty, etc., involved does not exceed a like amount. Third, transfers for adequate consideration without the transferee having any notice of the pendency of tax proceedings against the transferor are expressly saved from the charge. And last but not the least any transaction not falling within the exceptions mentioned above can also be put through with the express permission of the Commissioner. The provision as drafted is meant to combat fraudulent transfers of property resorted to for defeating the claims of the revenue and are not capable of being put to indiscriminate misuse.

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1/ Section 281 of the Income Tax Act as amended by the Taxation Laws (Amendment) Act, 1975 w.e.f. on the basis of the recommendation No. 220 of the Direct Taxes Enquiry Committee (1971), Final Report - para 4.43.

There is a provision in section 35 of the draft Bill providing that the Tax Recovery Officer shall not entertain any objection against the certificate issued against a defaulter. Some of the officers in the official team felt that this prohibition was rather too sweeping and the Tax Recovery Officer should be given powers to review the correctness of the certificate. In certificate proceedings, the certificate officer merely carries out the mandate of the officer who issues the certificate, namely, the Commissioner. If the defaulter has any objections as to the correctness of the certificate, it is open to him to make appropriate representations to the Commissioner and have the certificate duly corrected. He cannot ask the Tax Recovery Officer to sit in judgment over the determination of liability by the Commissioner which is really the function of the appellate hierarchy. The law as drafted confers on the Commissioner the power to amend or cancel the certificate or grant time for the payment of the tax involved. Granting any power of review to the Tax Recovery Officer in respect of the certificate would only interfere with the functions of the Commissioner and the appellate authorities.

A suggestion was made that the contemplated departmental set up for tax recovery should operate only in Calcutta and in the rest of the State the Bengal Public Debt Recovery Act should continue to operate. Such duality will be hardly conducive to efficiency or effectiveness and would throw an undue burden on the officers who will have to familiarise themselves with two sets of laws and procedures.

The question was also discussed with the official team as to whether pending actions should also be transferred to the departmental recovery machinery when the new law comes into effect. It was agreed that it would be in the best interests of both the taxpayers and the administration if the pending certificates are disposed of under the old law. Transfer of certificates would entail avoidable paper work and would tend to delay recovery of tax in the relevant cases. No provision has, therefore, been made in the draft Bill for bringing over the certificates already issued under the old laws into the new scheme.

A provision has been made in the draft Bill setting a time limit of three years for commencing recovery action. Some of the officers in the official team felt that there should be no such time limit. The absence of a time limit for an administrative action would promote lethargy on the part of the administration. As the time limitation is exclusive of any stay granted by a competent authority there should be no difficulty at all in commencing some recovery action (not necessarily completing it) within the statutory time limit. In fact, three years provide more than adequate time for taking action and, in due course, it should be possible to bring down the statutory limitation period to two years. After all, the alternative, though cumbersome, procedure of resorting to civil action for tax recovery is always open to the Government for a period of sixty years. There can, therefore, be no loss of revenue arising from restricting the time limit for recovery action.

Another new provision inserted in the draft Bill seeks to confer the power to make a provisional attachment of the assets of the dealer during the pendency of proceedings, for protecting the interest of the revenue. This provision is complementary to the one discussed earlier which creates an automatic charge on certain assets when proceedings are pending. A provisional attachment will, however, be valid only for one year. For the purpose <sup>of</sup> making a provisional attachment the Commissioner is sought to be empowered to exercise all the powers of a Tax Recovery Officer under the proposed Schedule F.

The concluding sections of the Chapter deal with refunds. The new provisions would ensure that the taxpayer would be paid interest on the excess tax paid by him at the same rate and in the same manner as the interest charged by the revenue on arrears of taxes. Under the existing law interest on refunds is admissible only when the grant of refund is delayed beyond three months after an appeal or revision order. The taxpayer remains uncompensated for the long delays involved in assessments, appeal, revision and reference. On the other hand the revenue charges interest as soon as a short fall occurs. The taxpayers' forums have been making a genuine grievance out of this discriminatory treatment. The proposed provision sets right this anomaly and guarantees payment of interest right from the first day of the month next following the month in which the excess amount was actually paid by the taxpayer. A provision has also been inserted authorising the Commissioner to withhold refunds in the interest of revenue when other proceedings are pending against the refundee.

9. Appeal, Reference, Revision and Other Reliefs

Chapter VIII of the draft Bill deals with appeal, revision, reference and other reliefs. The existing provisions in the law, which provide a multiplicity of procedures, have been entirely recast and simplified. The existing procedures are:

- (i) appeal to the Assistant Commissioner/Commissioner against an order of assessment, penalty or determination of interest passed by the Commercial Tax Officer/Assistant Commissioner;
- (ii) revision on an application from a dealer by the Assistant Commissioner/Commissioner of orders other than those relating to assessment, penalty and interest passed by the Commercial Tax Officer/Assistant Commissioner;
- (iii) suo motu revision of any order under the Act or Rules by the Commissioner/Additional Commissioner/Assistant Commissioner after the expiry of the time limit for an appeal or revision on an application by the dealer but within 6 years of the order sought to be revised;
- (iv) revision by the Tribunal on an application by the dealer or the Commissioner of a final appellate or revisional order;
- (v) review by the Commissioner/Additional Commissioner/Assistant Commissioner/Commercial Tax Officer on an application by the dealer of any order passed by himself or, where the Commissioner is the reviewing authority any order passed by a predecessor in office as well;

- (vi) suo motu revision by the Commissioner/Additional Commissioner/Assistant Commissioner/Commercial Tax Officer of any order passed by himself after the expiry of the time limit for review on an application by the dealer but within 4 years from the date of the order sought to be reviewed;
- (vii) suo motu review by the Tribunal of its own order; and
- (viii) reference to High Court of any question of law arising out of the Tribunal order which affects the liability of the dealer to pay tax.

The result of such a plethora of procedures is that an order takes years to reach finality. There seems to be no justification for providing multiple remedies in respect of the same grievance. The power granted to all the authorities from the CTO upwards of reviewing his own order is also fraught with undesirable consequences. While the power to rectify obvious and apparent or arithmetical mistakes is absolutely necessary, there seems to be no justification for conferring on the officers a power generally to review their own orders when there is a hierarchy of appellate and revisionary authorities who are authorised to intervene and provide relief at the instance of either party or even suo motu. Under the Income Tax Act, the power of review of an assessment order by the assessing officer himself was strictly confined to exparte orders where satisfactory cause was shown for the alleged defaults which attracted the exparte decision. Even this limited power was found to be undesirable and prone to mischief

both by the Chokshi Committee<sup>1/</sup> and by the Jha Commission.<sup>2/</sup> Accordingly, the assessing authority's power of cancelling an *ex parte* order under the Income Tax Act has been withdrawn, from 1.10.1984.<sup>3/</sup>

In the draft Bill, the existing power of the various authorities to review their own orders is, therefore, sought to be taken away. Even in the case of *ex parte* orders, when the matter can be agitated in appeal, there seems to be no need to clothe the officer making the *ex parte* order with the power to cancel his own order. While such a power may be desirable for a judicial officer, in the case of an officer responsible for levying and collecting tax it would encourage in decision, procrastination and, may be, even corrupt practices.

The provisions relating to appeals, etc., have been rationalised in several other respects as well. Under the Income Tax Act, all appealable orders are specifically listed.<sup>4/</sup> This has been found to be cumbersome, necessitating amendments to the appellate provisions whenever a new kind of substantive order is conceived. Omission to provide appeals against certain orders has also given rise to controversies.

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1/ Direct Tax Laws Committee - Final Report - para II, 4.22.

2/ Economic Administration Reforms Commission - Report No.24 - Tax Administration and Procedures - para 19.

3/ Taxation Laws (Amendment) Act, 1984 - Section 27 making section 146 of the Income Tax Act, 1961 inapplicable w.e.f. 1.10.1984.

4/ Income Tax Act, 1961 - Section 246.



The Chokshi Committee therefore recommended that the provisions relating to appeals should be drastically simplified avoiding detailed enumeration of appealable orders and providing appeals against all final orders of the assessing authority.<sup>1/</sup> This idea has been incorporated in the draft Bill. To make matters clear, a definition of the term 'final order' has also been included. Of course, a few orders have to be kept outside the purview of the provisions relating to appeals. Accordingly, the non-appealable orders have been separately listed in the law itself. Notable among these are, a summary assessment order, an order by the Commissioner compounding the taxpayable into a lump sum, an order levying compensatory interest, a revision order of the Commissioner in favour of the dealer and the Commissioner's order giving an advance ruling.

The time limit for appeals, revision, etc., are sought to be made uniform and shorter. The procedures governing appeals, revision, etc., are spelt out in the sections themselves so as to make the law clear. The provisions as recast envisage the following procedures:

- (i) first appeal against all final orders (other than non-appealable orders) of the CTO/Assistant Commissioner to the 'prescribed authority' who may be an Assistant Commissioner or an Additional Commissioner;
- (ii) second appeal to the Additional Commissioner in respect of orders other than assessment and penalty;

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<sup>1/</sup> Direct Tax Laws Committee - Interim Report (1977) - para II.17.

- (iii) second appeal to the Tribunal in the case of assessment and penalty orders;
- (iv) first appeal to the Tribunal against assessment/ penalty orders of Additional Commissioner and Commissioner;
- (v) revision by Commissioner in favour of the taxpayer and also to safeguard revenue; and
- (vi) reference to the High Court of questions of law arising out of the Tribunal's order.

These apart, two new procedures are sought to be introduced - one granting the Commissioner the power to reduce or waive tax and penalty in cases of hardship and the other granting him the power to give advance rulings in certain matters so that the taxpayer may be sure of his ground before launching on any new venture. The Wanchoo Committee had recommended the conferment of the power to give advance rulings on the Central Board of Direct Taxes as a means of reducing litigation and imparting a certain amount of certainty to the law.<sup>1/</sup> The Chokshi Committee had endorsed the suggestion.<sup>2/</sup> In the field of sales tax also, a determination of certain disputed questions at the very first stage would help to avoid unnecessary administrative procedures and litigation. Accordingly, a provision has been inserted in the draft Bill in section 50 empowering the Commissioner to determine disputed questions in relation to certain specific matters. The rulings will bind the departmental officers.

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<sup>1/</sup> Direct Taxes Enquiry Committee - Final Report (1971) - paras 6.178 to 6.180.

<sup>2/</sup> Direct Tax Laws Committee - Interim Report (1977) - para 11.9 and para 11.10.

## 10. Settlement of Cases

The Wanchoo Committee, while suggesting strong measures to tackle tax evasion and unearth black money observed:

"This, however, does not mean that the door for compromise with an errant taxpayer should for ever remain closed. In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to the revenue while needlessly proliferating litigation and holding up collections".<sup>1/</sup>

The Committee accordingly recommended the setting up of a Direct Taxes Settlement Tribunal for settling cases finally, short circuiting the normal processes of assessment, appeal and reference.<sup>2/</sup> Implementing the recommendation, the Taxation Laws (Amendment) Act, 1975 inserted Chapter XIXA in the Income Tax Act, 1961 authorising the setting up of a high-powered and permanent body called the 'Income Tax Settlement Commission' to deal with settlement of cases under the Income Tax Act. Such a Commission has been functioning in the

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1/ Direct Taxes Enquiry Committee - Final Report (1971) para 2.32.

2/ ibid - para 2.33.

Income Tax Department for nearly a decade now and subsequent enquiring bodies like the Chokshi Committee<sup>1/</sup> and Jha Commission<sup>2/</sup> have underlined its utility and have made suggestions for further improvement. The observations of the Wanchoo Committee quoted earlier apply equally to sales tax. Gujarat has already passed the necessary legislation<sup>3/</sup> and set up a Sales Tax Settlement Commission. The West Bengal administration also favours the setting up of a similar body with similar powers for the settlement of cases under their sales tax law. Accordingly, a Chapter - Chapter IX has been included in the draft Bill containing the necessary statutory provisions spelling out the constitution and powers of a Sales Tax Settlement Commission to be set up and laying down the procedures to be followed by the Commission in the settlement of cases under the sales tax law in the State. The provisions have been modelled broadly on the pattern of the corresponding provisions in the Income Tax Act which have been adapted and adopted in the Gujarat Sales Tax Act also. The suggestions made by the Chokshi Committee and the Jha Commission for improving the functioning of the Income Tax Settlement Commission referred to earlier have been kept in view while drafting the provisions in the draft Bill.

11. Accounts, Inspection, Search and Seizure, Etc.

Chapter A of the draft Bill deals with the ancillary powers of the tax administration which help it to secure information, check malpractices and detect and deal with tax evasion and avoidance. The existing provisions in the law

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1/ Direct Tax Laws Committee - Interim Report (1977) - paras 10.1 to 10.14.

2/ Economic Administration Reforms Commission - Report No. 24 - 'Tax Administration and Procedures' - para 38.

3/ Gujarat Sales Tax Act, 1969 - Chapter VIA.

have been amplified, codified and rationalised. In brief, the Chapter encompasses the following:

- (i) maintenance of accounts and supporting documents;
- (ii) preservation of accounts;
- (iii) inspection and production of accounts, etc.;
- (iv) power to search, seize and seal;
- (v) restrictions on the movement of goods;
- (vi) power to call for information; and
- (vii) power to take evidence on oath, etc.

The Study Committee had recommended the tightening up and stream-lining of the provisions relating to search and seizure. The existing provisions of the law in this behalf are not self-contained in that one has to look to the Code of Criminal Procedure for guidance. The provisions in the law have been made self sufficient by incorporating the salient features of the Code of Criminal Procedure relating to searches and seizure. The State Government has also been empowered to frame detailed rules for the guidance of officers in the matter of carrying out searches and effecting seizure. The rules contained in the new Code of Criminal Procedure enacted in 1973 should be grafted into these rules so that the officers of the Department may not unwittingly violate the mandates of the criminal law while exercising police powers.

The NIPFP team has recommended the continuance of checkpoints and conferment of powers on the officers to check consignments at the offices of the transporters. Accordingly, in the provisions as drafted, the power to check consignments

has been extended beyond the limits of the checkpoints. For enabling the department to ensure that consignments brought into the State in the course of transit to another State are not disposed of in a clandestine manner within the State, the burden of proving that such consignments have been actually taken out of the State is sought to be placed on the transporter and if the transporter fails to discharge the burden, a statutory presumption is raised that the goods have been sold within the State and the transporter or carrier is deemed to be a dealer accountable for such sales and liable for the payment of the tax due thereon.

The provisions relating to issue of summons have been elaborated so that the officers of the department do not have to refer to the Civil Procedure Code for guidance. The power to impound documents produced in compliance with summons and the power to enforce attendance by the levy of a fine are also spelt out clearly in the provisions.

## 12. Responsibilities and Liabilities of a Dealer in Special Circumstances

Chapter AI of the draft Bill seeks to consolidate and codify the special provisions of the law meant to deal with circumstances which might lead to leakage of revenue, such as transfer or closure of business by volition or by operation of law, partition of a Hindu undivided family, dissolution of a firm or association, etc. The deficiencies in the existing law have been sought to be removed by deeming the legal representative or successor in business to be a dealer liable to pay tax under the Act and by providing clear-cut rules for the determination of liability in such cases. The provisions

relating to companies in liquidation have been elaborated and made stricter as voluntary liquidation, mergers and amalgamations are often used as tools for avoiding tax.

### 13. Offences and Prosecution

Far-reaching and important changes have been made in the provisions relating to offences and prosecution as drafted with a view to making the law enforcement machinery capable of dealing more effectively with the ever-increasing range of economic offences. A reference has been made earlier in this report to the Forty Seventh and Sixty First Reports of the Law Commission of India. In their Forty Seventh Report on Social and Economic Offences, the Law Commission had recommended stringent and deterrent punishments for certain social and economic offences. In their Sixty First Report, they have reiterated their earlier recommendations in the special context of the administration of sales tax laws. Judged according to the Law Commission's standards, the existing provisions in the sales tax law of the State are woefully inadequate for dealing with tax evasion with any degree of firmness. What little strength is left in the provisions is completely sapped up by a provision which lays down that there shall be no prosecution in a case where penalty is levied and vice versa. Such a provision would empower even a comparatively junior official to grant total immunity from prosecution even to the worst tax evader by levying a token penalty. This provision is therefore sought to be omitted. It is not that prosecution is meant to be launched in every case of suspected tax evasion. But statutory provisions have considerable deterrent effect and a law which exposes a weak-kneed attitude to serious social and economic offences will command little respect and less compliance. Thus the provisions relating to prosecution have therefore been elaborated and tightened up prescribing stiffer punishments for more serious

offences. Abetment of tax evasion and attempt to evade tax are also sought to be made punishable. The provisions relating to the vicarious liability of officers, managers, partners, etc., in the case of offences committed by incorporated and unincorporated bodies have been crystallized in the draft Bill. These changes have been to a large measure, based on the Law Commission's recommendations which have been substantially implemented in the Income Tax Act. A provision has also been inserted in the law authorising the State Government to publicize the names of tax offenders. The provisions of the Probation of Offenders Act under which Courts are often persuaded to grant probation instead of jail sentences are also sought to be specifically made inapplicable in respect of offences under the sales tax law.

#### 14. Miscellaneous Provisions

The concluding Chapter - Chapter XIII - contains certain general provisions which do not fit in elsewhere and also the usual concluding provisions in the law relating to the State's rule making authority, laying procedures, repeals and savings and transitional provisions. The provisions relating to service of notices and tax practitioners have been enlarged and clarified as suggested by the Study Committee. The section relating to <sup>rule</sup>making authority has been made exhaustive so that the administration does not have to hunt through the statutory provisions for identifying those which require rules to be framed. The procedures for laying the rules and notifications on the Table of the House of the State Legislature have been brought in line with the requirements of the Committee on Subordinate Legislation. And finally, as suggested by the Study Committee, a provision is inserted in the draft Bill authorising the State Government to frame suitable provisions for the removal of difficulties during the period of transition from the old laws to the new consolidated law.



#### IV. CONCLUSION

The draft Bill contains 98 sections and 6 Schedules. These cannot be considered as too many because some of the provisions in the existing law which are too long and unwieldy and combine not-too-closely linked subjects, have been broken up into independent sections. Some provisions which are now in the rules but which are really substantive or fundamental in nature have been brought over to the main enactment in the draft. The incorporation of some of the provisions of the Code of Civil Procedure and the Code of Criminal Procedure and, more importantly, the whole-sale integration of the recovery procedures contained in the Bengal Public Debt Recovery Act have also inevitably contributed to increasing the size of the draft Bill. In fact, taking into account the Recovery Act, the Bill consolidates the provisions of four distinct laws currently being administered or applied by the Sales Tax Department in the State, and this would by itself mean drastic simplification of the law. It is earnestly hoped that the draft Bill would enable the Government to legislate a consolidated, more logically arranged and more effective law for the administration of the sales tax in the State.

ANNEXE

DRAFT OF THE WEST BENGAL SALES TAX BILL, 1984

THE WEST BENGAL SALES TAX BILL, 1984

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DRAFT OF  
THE WEST BENGAL SALES TAX BILL, 1984

A  
BILL

to consolidate and amend the laws relating to the levy of tax on the sale or purchase of goods in the State of West Bengal.

Be it enacted in the thirtyfifth year of the Republic of India as follows:-

CHAPTER I  
PRELIMINARY

Extent and commencement

1 (1) This Act may be called the West Bengal Sales Tax Act, 1984.

(2) It extends to the whole of the State of West Bengal.

(3) It shall come into force on such date as the State Government may, by a notification in the Official Gazette, appoint and the State Government may appoint different dates for the commencement of the different provisions of this Act.

Definitions

2 In this Act, unless the context otherwise requires -

(1) "Additional Commissioner" means a person appointed to be an Additional Commissioner of Commercial Taxes under sub-section (1) of section 4;

(2) "appointed day" means the date or dates appointed for the commencement of the provisions of this Act under sub-section (3) of section (1);

(3) "assessment" means an assessment or reassessment of tax, penalty or any other sum payable under this Act;

(4) "Bureau" means the Bureau of Investigation constituted under sub-section (1) of section 6;

(5) "business" includes -

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

(ii) any transaction in connection with or ancillary or incidental to, such trade, commerce, manufacture, execution of works contract, adventure or concern;

(6) "Commissioner" means a person appointed to be the Commissioner of Commercial Taxes under sub-section (1) of section 3;

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of 1956

(7) "company" means a company as defined in section 3 of the Companies Act, 1956;

(8) "dealer" means any person who carries on the business of selling or purchasing goods in the State and includes -

- (i) Government and local authority;
- (ii) a co-operative society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members; or
- (iii) a factor, a broker, a commission agent, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of purchasing or selling goods and who has, in the customary course of business, authority to purchase or sell goods for and on behalf of, or belonging to, principals;
- (iv) a transporter or carrier to whom the provisions of sub-section (10) of section 66 apply;

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(9) "director" in relation to a company has the meaning assigned to it in the Companies Act, 1956;

(10) "earlier law" means any of the following laws:-

Ben. Act VI  
of 1941

(i) The Bengal Finance (Sales Tax) Act,  
1941;

West Ben. Act IV  
of 1954

(ii) The West Bengal Sales Tax Act, 1954;  
and

Ben. Act XI  
of 1941

(iii) The Bengal Raw Jute Taxation Act, 1941;

Act 9  
of 1932

(11) "firm, partner and partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932;

(12) "first point of sale" means the point at which the sale is effected by a manufacturer within the State of goods manufactured by him or by an importer or any other person of goods imported into the State, where such goods have not previously suffered any tax under this Act in the State;

(13) "goods" includes all kinds of movable properties other than actionable claims, stocks, shares or securities;

(14) "Government" means the Central government or the Government of any State or Union Territory in the Indian Union;

(15) "last point of purchase" means the point at which the purchase is effected of goods by a manufacturer for use as raw material in the manufacture of any goods, or the purchase by a dealer for despatch to any place outside the State by way of sale or otherwise;

(16) "last point of sale" means the point at which the sale is made to a dealer or any other person who is not registered under this Act or to a registered dealer for purposes other than resale;

(17) "manufacture", with all its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating, or adapting any goods; but does not include a works contract or such manufactures or manufacturing processes as may be prescribed;

(18) "Official Gazette" means the Calcutta Gazette or any other Official Gazette of the Government of West Bengal and includes the Commercial Gazette published by the Finance Department of the State of West Bengal;

(19) "person" includes any company or society or club or association or body of individuals, whether incorporated or not, or a Hindu undivided family and a firm;

(20) "place of business" means any place where a dealer or person sells or purchases any goods or keeps accounts relating thereto;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "principal officer", used with reference to a company, means the secretary, manager, managing agent or managing director of the company and includes any person connected with the management of the affairs of the company upon whom the Commissioner has served a notice of his intention of treating him as the principal officer thereof;

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of 1860

(23) "public servant" has the same meaning as in section 21 of the Indian Penal Code, 1860;

(24) "purchase" means any transfer of property in goods to the person making the purchase for cash or deferred payment or other valuable consideration but does not include a transfer by way of mortgage, hypothecation, charge or pledge;

(25) "purchase price" means the amount of valuable consideration payable by a person for the purchase of any goods made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof but excluding the cost of freight, delivery or installation or interest when such cost or interest is separately charged and any cash discount allowed according to ordinary trade practice;

(26) "registered" means registered under Chapter IV of this Act;

(27) "rules" means the rules framed under this Act;

(28) "sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, and includes -

- (i) any delivery of goods on hire purchase or any system of payment by instalments,
- (ii) any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,
- (iii) any supply, by way of or as part of any service or in another manner whatsoever,

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

(iv) any transfer of property in goods (whether as goods or in some other form), hereinafter referred to as contractual transfer, involved in the execution of a works contract,

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

(vi) the supply of goods by a co-operative society or a club or any association to a member thereof or the supply of goods by any such member to such co-operative society, club or association,

and such delivery, transfer or supply of any goods shall be deemed to be a sale of these goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made, but does not include a mortgage, hypothecation, charge or pledge,

Explanation - A sale or purchase shall be deemed to take place in the State if the goods are in the State -

- (a) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
- (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to the appropriation:

Provided that where there is a single contract of sale or purchase in respect of goods situated in the State as well as in places outside the State, the provisions of this Explanation shall apply as if there were a separate contract of sale or purchase in respect of the goods situated in the State.

(29) "sale price" means and includes -

- (i) in respect of any sale not falling under sub-clause (iv) of clause (28) of section 2, the amount payable to a dealer as valuable consideration for the sale including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof but excluding -
  - (a) the cost of freight, delivery, or installation or interest when such cost or interest is separately charged,
  - (b) any sum allowed as a cash discount according to ordinary trade practice, and
  - (c) the amount of any tax under this Act in respect of such sale if such tax has not otherwise been excluded from the valuable consideration for such sale;
- (ii) in respect of any sale falling under sub-clause (iv) of clause (28), the amount payable to a dealer as valuable consideration for such sale, whether or not such amount is separately shown in the works contract but excluding -



- (a) the amount of any tax under this Act, and
- (b) such portion of the valuable consideration in such cases as may be prescribed.

Explanation - For the purpose this clause, the valuable consideration in respect of any goods shall not be less than -

- (a) in respect of goods acquired by the dealer by purchase, the purchase price paid or payable by the dealer for such goods,
- (b) in respect of goods manufactured or processed by the dealer, the cost to the dealer of such goods, and
- (c) in respect of goods acquired by the dealer in any other manner, the market value of such goods on the date or dates they were so acquired,

and shall include the cost of freight or delivery as may be incurred by the dealer for transporting the goods to the place where they are used in the works contract.

(30) "Settlement Commission" means the West Bengal Sales Tax Settlement Commission constituted under sub-section (1) of section 7;

(31) "tax" means the tax payable under this Act;

(32) "taxable goods" means and includes goods other than goods which are exempted from tax under section 12 or wholly and unconditionally exempted from tax under any rule framed under section 13;

- (33) "Tax Recovery Officer" means a person appointed by the State Government to exercise the powers of a Tax Recovery Officer under section 34 and Schedule F;
- (34) "the State" means the State of West Bengal;
- (35) "the State Government" means the Government of the State of West Bengal;
- (36) "Tribunal" means the West Bengal Commercial Taxes Tribunal constituted under sub-section (1) of section 5;
- (37) "turnover of purchases" in relation to any period means the aggregate of the purchase prices payable in respect of the purchases made during such period after deducting the amounts, if any, refunded by the seller in respect of any goods returned by the dealer within such period;
- (38) "turnover of sales" in relation to any period means the aggregate of sale prices received or receivable in respect of the sales made during such period after deducting the amounts, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period;
- (39) "warehouse" means any enclosure, building or place where a dealer or a person keeps stock of goods and includes a vessel or a vehicle;
- (40) "works contract" means any agreement for carrying out for cash or deferred payment or other valuable consideration -
- (i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, or

- (ii) the installation or repair of any machinery affixed to a building or other immovable property, or
- (iii) the overhaul or repair of -
  - a) any motor vehicle,
  - b) any sea-going vessel,
  - c) any other vessel propelled by internal combustion engine or by any other mechanical means,
  - d) any aircraft, or
  - e) any component or accessory part of any of the aforesaid items;
- (iv) the fitting out, assembling, altering, ornamenting, blending, furnishing, improving or otherwise processing, treating or adapting any goods;

(41) "year" used in relation to any particular dealer means the year by reference to which, according to a declaration made by that dealer, the accounts of that dealer are ordinarily maintained in his books, and where no such declaration is made, the financial year:

Provided that a registered dealer shall not change his year except with the previous permission of the Commissioner and except on such terms and conditions as may be determined by him.

## CHAPTER II

### TAX AUTHORITIES, BUREAU, TRIBUNAL AND SETTLEMENT COMMISSION

Commissioner  
and other  
authorities

3 (1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit and may specify the area or areas over which they shall exercise jurisdiction.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may transfer any case or matter from any person appointed under sub-section (1) to assist the Commissioner to any other person so appointed whether such other person has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in sub-section (2).

(4) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Act to any person appointed to assist him under sub-section (1).

Additional  
Commissioner

4 (1) The State Government may appoint one or more persons to be an Additional Commissioner of Commercial Taxes and may specify the area or areas over which he shall exercise jurisdiction.

(2) An Additional Commissioner shall have such of the powers and shall be entitled to perform such of the duties of the Commissioner as the State government may, by notification in the Official Gazette, direct.

(3) References to the Commissioner in this Act, shall, in respect of the powers and duties referred to in sub-section (2), be deemed to include references to an Additional Commissioner.

(4) The Commissioner may transfer to or withdraw to himself from an Additional Commissioner any case or matter with which an Additional Commissioner is competent to deal in exercise or performance of the powers or duties referred to in sub-section (2), or may transfer any such case or matter from an Additional Commissioner competent to deal with the same to another Additional Commissioner so competent.

(5) No person shall be entitled to call in question the jurisdiction of any authority appointed under sub-section (1) of section 3 or sub-section (1) of section 4 after the expiry of ninety days from the date of the receipt of any notice under this Act from such authority.

Tribunal

5 (1) The State Government shall constitute a Tribunal to be called the West Bengal Commercial Taxes Tribunal consisting of such number of members as the State Government may appoint.

(2) The State Government shall appoint one of the members of the Tribunal to be the President thereof.

(3) The qualifications, conditions of service and tenure of the members constituting the Tribunal shall be such as may be prescribed.

(4) No decision or action of the Tribunal shall be called in question merely on the ground of any vacancy in the Tribunal.

(5) The functions of the Tribunal may be discharged by any of the members sitting either singly, or in benches of two or more members, as may be determined by the President.

(6) If the members of a Bench are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the members of the Tribunal; and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it:

Provided that if at any time the Tribunal consists of only two members, the decision of the Tribunal shall be that of the President in such cases.

(7) Subject to such conditions and limitations as may prescribed, the Tribunal shall have the power to award costs in any matter decided by it and the amount of such costs awarded against a dealer shall be payable by him as if it were the tax due from him under this Act and in case of default by him, it shall be recovered from him in the manner provided in Chapter VII and the amount of such costs awarded against any authority under this Act shall be payable to a dealer by such authority in such manner as may be prescribed.

(8) Subject to the previous sanction of the State Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal, the benches or the members thereof shall sit) and providing the rules of business, make regulations consistent with the provisions of this Act and the rules made thereunder:

Provided that the regulations so made shall be published in the Official Gazette.

Bureau of Investigation

6 (1) The State Government may constitute a Bureau of Investigation, hereinafter referred to as the Bureau, for discharging the functions referred to in sub-section (3).

(2) The Bureau of Investigation shall consist of an Additional Commissioner (hereinafter referred to as the Special Officer) and such number of other persons appointed under sub-section (1) of section 3 as the State Government may deem fit to appoint.

(3) The Special Officer shall be competent to exercise all the powers which are exercisable under this Act by an Additional Commissioner appointed under section 4, and any person, appointed under sub-section (1) of section 3, when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under this Act.

(4) Notwithstanding anything contained in sub-section (1) of section 3 or sub-section (1) of section 4, the Special Officer and the other persons appointed in the Bureau under sub-section (2) shall have jurisdiction over the whole of the State.

(5) The Bureau may, on information or of its own motion, or when the State Government so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax payable under this Act as well as malpractices connected therewith and send a report in respect thereof to the Commissioner or to the State Government, as the case may be, and take other <sup>such</sup> action for carrying out the purposes of this Act in such cases as may be warranted in the interest of State revenue.

(6) The Special Officer shall assign such functions of the Bureau to such of the officers referred to in sub-section (2) as the Special Officer may think fit.



(7) Subject to the provisions of sub-section (4), the Bureau may, for the purposes of holding investigation or inquiry referred to in sub-section (3), exercise all the powers referred to in Chapter X.

(8) Notwithstanding anything contained in sub-section (4), references to the Commissioner in Chapter X shall be deemed to include references to the Special Officer as well.

(9) On receipt of a report under sub-section (5), the Commissioner may require the Bureau to transfer to him or to any person appointed under sub-section (1) of section 3 any accounts, registers, documents or vouchers seized by the Bureau relating to the said report and the Commissioner may, if it is considered expedient for the purposes of sub-section (3), require in like manner a person appointed under sub-section (1) of section 3 to transfer to the Bureau any accounts, registers, documents or vouchers seized by him; and on such transfer, such accounts, registers, documents or vouchers shall, subject to the provisions of this Act, be retained by the person or the Bureau as the case may be.

Settlement  
Commission

7 (1) The State Government may, by notification in the Official Gazette, constitute a Commission to be called the "West Bengal Sales Tax Settlement Commission" (hereinafter in this Act referred to as the "Settlement Commission") for the settlement of cases under Chapter IX of this Act.

(2) The Settlement Commission shall consist of such number of members as the State government may from time to time consider necessary to appoint for the proper discharge of the functions conferred on the Commission under this Act.

(3) The State Government shall appoint one of the members of the Commission to be the Chairman thereof.

(4) The functions of the Commission may be discharged by the members sitting in Benches of two or more members of the Commission in the manner prescribed.

(5) The qualifications of the members of the Commission shall be such as may be prescribed, and a member shall hold office for such period as the State Government may fix in his case.

(6) Subject to the previous sanction of the State government, the Commission shall, for the purpose of regulating its procedure and disposal of its business, make regulations consistent with the provisions of this Act and the rules framed thereunder.

(7) The regulations made under sub-section (6) shall be published in the Official Gazette.

Persons appointed deemed to be public servants, etc.

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8 (1) All persons appointed under sub-section (1) of section 3, sub-section (1) of section 4, sub-section (1) of section ~~352~~, sub-section (2) of section 7 and all persons referred to in sub-section (2) of section 6 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

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(2) Any proceedings under this Act before an authority referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860.

### CHAPTER III

#### INCIDENCE AND LEVY OF TAX

Incidence  
of tax

9 (1) Subject to the other provisions of this Act, every dealer liable to pay tax under any of the earlier laws shall, with effect from the appointed day for the purposes of this section, be liable to pay tax under this Act on all sales of goods other than goods specified in Schedule E and on all purchases of goods specified in Schedule E at the last point of purchase in the State.

(2) Subject to the other provisions of this Act, every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act -

- (a) on all sales of goods other than goods specified in Schedule E with effect from the date immediately following the date on which his gross turnover of sales of such goods calculated from the commencement of any year ending after the appointed day first exceeds the taxable quantum at any time within such year; and
- (b) on all purchases of goods specified in Schedule E with effect from the date immediately following the date on which his gross turnover of purchases of such goods calculated from the commencement of any year ending after the appointed day first exceeds the taxable quantum;

Provided that where in the case of a dealer different limits of taxable quantum are applicable, the liability to pay tax under this Act shall commence on the date following the date on which any of the limits is first exceeded.

(3) Every dealer who has become liable to pay tax under sub-section (1) or sub-section (2) shall continue to be so liable until the expiry of two consecutive years during each of which his gross turnover of sales of goods other than goods specified in Schedule E and his gross turnover of purchases of goods specified in Schedule E failed to exceed the taxable quantum.

(4) Every dealer whose liability to pay tax has ceased under sub-section (3) shall be liable to pay tax in the manner provided in sub-section (2) if the conditions laid down in clause (a) or clause (b) of that sub-section are again satisfied in his case in any subsequent year.

(5) If any question arises as to the date on which a dealer has become liable to pay tax under sub-section (2) or sub-section (4) or the liability of the dealer has ceased under sub-section (3), the same shall be determined by the Commissioner after making such inquiries as he may think fit and after giving the dealer an opportunity of being heard.

(6) In this Act, the expression "taxable quantum" means -

- (a) in relation to a dealer who imports into the State or manufactures in the State any goods specified in Schedule B or such goods specified in Schedule D as may be

notified by the State  
Government in the Official  
Gazette for sale - Nil;

- (b) in relation to a dealer  
who purchases at the  
last point of purchase  
in the State any goods  
specified in Schedule E  
chargeable to tax under  
clause (b) of sub-  
section (2) - Nil;
- (c) in relation to a dealer  
not falling under  
clause(a) or clause(b)  
who imports into the  
State for sale any goods - 25,000 rupees
- (d) in relation to a dealer  
not falling under  
clause(a) or clause(b)  
or clause(c) who manufac-  
tures in the State for  
sale any goods other than  
those specified in  
Schedule B or Schedule E - 50,000 rupees
- (e) in relation to any other  
dealer - 2,00,000 rupees

Levy of tax 10 (1) Every dealer liable to pay tax under section 9 shall pay a sales tax at the rates hereinafter specified, namely:-

- (a) on the taxable turnover of sales of all goods specified in the first column of Schedule B, at the first point of sale in the State;
- (b) on the taxable turnover of sales of all goods specified in the first column of Schedule C, at the last point of sale in the State;
- (c) on the taxable turnover of sales of all goods specified in the first column of Schedule D, at every point of sale in the State;
- (d) on the taxable turnover of sales of such of the goods liable to tax under clause (a) as may be specified by the State Government by notification in the official Gazette  
also at every subsequent point of sale in the State;
- (e) on the taxable turnover of sales of the nature of the transfer in the State of the right to use any goods referred to in sub-clause (ii) of clause (28) of section 2 at the point or points when the consideration for such transfer becomes payable; and
- (f) on the taxable turnover of sales of the nature of contractual transfer referred to in sub-clause (iv) of clause (28) of section 2 at the point or points of transfer of the property in goods used in the works contract in the State.

Explanation - In clauses (a), (b), (c) and (d) 'sale' does not include any sale falling under clause (e) or clause (f).

(2) Every dealer liable to pay tax under section 9 shall pay a purchase tax at the rates hereinafter specified, on the taxable turnover of purchases of all goods specified in the first column of Schedule E, at the last point of purchase in the State.

(3) Every dealer who is registered under this Act shall, in addition to any tax payable under sub-section (1), pay a purchase tax on the turnover of purchases -

✓T. sphaeroc-  
ccum,  
T. durum,  
T. aestivum

- (a) of all goods specified in Schedule C other than rice (*Oryza Sativa* L.) and wheat (*Triticum vulgare*, *T. compactum*, *T. dicoccum* L.) or goods specified in Schedule D other than gold, where such goods are purchased by him from a person or dealer not registered under this Act and intended for direct use in manufacturing goods or in raising coal in the State for sale or in generating or distributing electricity for sale, and of containers and other materials for the packing of goods so purchased or manufactured; and
- (b) of all goods purchased by him by availing the benefit of the lower rate of tax provided in clause (d) or clause (e) of sub-section (2) of section 11 on furnishing such declaration or other evidence as may be prescribed under sub-section (2) of section 15 or under a provision of any earlier law and used by him directly in the manufacture of goods in the State, or in the packing of such goods, when such manufactured goods are transferred by him to a place outside the State or disposed of by him otherwise than by way of sale in the State:



Provided that, where the purchases liable to tax under this clause can be identified fully with the goods manufactured by him and transferred by him to a place outside the State or disposed of by him otherwise than by way of sale and such purchases have been made during a period other than the period when the goods were manufactured and transferred, then, for the purpose of levy of tax, the period shall be the period during which the manufactured goods are so transferred irrespective of the period when such purchases were made and the turnover shall be the aggregate of purchase prices or parts of purchase prices of the goods so identified.

(4) (a) where a registered dealer -

(i) being an individual, dies and after his death the business is closed down by his successor, legal heir or any other person authorised by law; or

(ii) discontinues his business; or

(iii) being a firm, company, trust, society or club or other association of persons, is dissolved, liquidated, wound up or revoked; or

(iv) being a Hindu undivided family, is disrupted; or

(b) where the registration of a dealer has been cancelled under any provision of this Act,

and the stock of goods held by him immediately before such closure, discontinuance, dissolution, liquidation, winding up, revocation, disruption or, as the case may be, cancellation, includes any goods, not being goods specified in Schedule A, purchased in circumstances in which no tax is payable or tax is payable by the dealer from whom the goods were purchased at a rate lower than the rate prescribed for such goods in Schedule B, Schedule C or Schedule D, then, there shall be levied a purchase tax at tax rate hereinafter specified on the purchase price of such goods forming part of his stock whether or not such goods have undergone any process of conversion or manufacture after their purchase.

(5) Notwithstanding anything contained in any other provision of this Act, every dealer shall, in addition to any tax payable by him under any other provision of this Act, be liable to pay a turnover tax on his taxable turnover of sales (which he shall not be entitled to recover from his purchaser) with effect from -

- (a) in the case of a dealer liable to pay turnover tax under any of the earlier laws, the appointed day for the purpose of sub-section (1) of section 9; or
- (b) in the case of any other dealer whose gross turnover during any year ending after the aforesaid appointed day exceeds fifty lakhs rupees, from the first day of the year immediately following:

Provided that a dealer who has become liable to pay the turnover tax under the foregoing provision shall continue to be so liable until the expiry of two consecutive years during each of which his gross

turnover of sales failed to exceed fifty lakh rupees and, on the expiry of such two years, his liability to pay the turnover tax shall cease:

Provided further that a dealer whose liability to pay the turnover tax has so ceased shall, if his turnover of sales during any year again exceeds fifty lakh rupees, be liable to pay the turnover tax from the first day of the year immediately following such year.

Explanation - For the purposes of this sub-section, the gross turnover of sales shall not include sales of the nature referred to in sub-clause (ii) or sub-clause (iv) of clause (28) of section 2.

(6) In this Act, "taxable turnover" means -

(a) for the purpose of the levy of sales tax under clauses (a), (b), (c) and (d) of sub-section (1), the gross turnover of sales other than sales falling under clauses (e) and (f) of sub-section (1), as reduced by the turnover of sales -

(i) of goods specified in Schedule B, not being goods notified under clause (d) of sub-section (1), which are proved to the satisfaction of the Commissioner to have suffered tax at the first point of sale in the State;

(ii) to a registered dealer of goods specified in Schedule C other than rice (*Oryza sativa* L.) and wheat (*Triticum vulgare*, *T. compactum*, *T. sphaerococcum*, *T. durum*, *T. aestivum*, *T. dicoccum* L.) and covered by the certificate of registration of such dealer as being

intended for resale in the State and of containers and other materials for the packing of such goods subject to the provisions of section 15 and the rules framed thereunder;

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- (iii) of goods specified in Schedule C which are referred to in section 14 of the Central Sales Tax Act, 1956 and which are proved to the satisfaction of the Commissioner to have previously suffered tax under this Act or under any of the earlier laws;

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- (iv) of goods in the course of inter-State trade or commerce as defined in section 3 of the Central Sales Tax Act, 1956;

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- (v) of goods in the course of the import of the goods into or the export of the goods out of the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956;

- (vi) of goods which are wholly exempted from tax under section 12 or under any rule framed under section 13; and

- (vii) of lottery tickets, rice (*Oryza Sativa* L.) and wheat (*Triticum vulgare*, T. compactum, T. sphaerococcum  $\angle$ ) purchased from a registered dealer, subject to the provisions of section 15 and the rules framed thereunder.

$\angle$  T. durum,  
T. aestivum,  
T. dicoccum, L.

Provided that the deductions under clauses (i), (ii) and (vii) shall not be allowed unless the dealer selling the goods furnishes such declaration or other evidence as may be prescribed under sub-section (2) of section 15.

(b) for the purpose of levy of sales tax under clause (e) of sub-section (1), the gross turnover of sales other than sales falling under clauses (a), (b), (c), (d) and (f) of sub-section (1) as reduced by the turnover of sales -

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(i) of goods specified in Schedule C which are referred to in section 14 of the Central Sales Tax Act, 1956 and which are proved to the satisfaction of the Commissioner to have previously suffered tax under this Act or under any of the earlier laws;

(ii) of goods which are wholly exempted under section 12 or under any rule framed under section 13.

(c) for the purpose of the levy of sales tax under clause (f) of sub-section (1), the gross turnover of sales other than sales falling under clauses (a), (b), (c), (d) and (e) of sub-section (1) as reduced by the turnover relating to contractual transfer -

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of 1956

(i) of goods specified in Schedule C which are referred to in section 14 of the Central Sales Tax Act, 1956, on a prior sale whereof in the State due tax under this Act or under any earlier law is shown to the satisfaction of the Commissioner to have been paid;

- (ii) of goods, which are wholly exempted from tax under section 12 or under any rule framed under section 13;
- (iii) of goods, on the purchase of which tax is payable by him under section 6C of the Bengal Finance (Sales Tax) Act, 1941;
- Bengal Act VI of 1941
- (d) for the purpose of levy of purchase tax under sub-section (2), the gross turnover of purchases of goods specified in Schedule E as reduced by the turnover of purchases -
- (i) of goods made otherwise than at the last point in the State;
- (ii) of goods which are wholly exempted under any rule framed under section 13.
- (e) for the purpose of levy of purchase tax under sub-section (3), the gross turnover of purchases referred to in that sub-section as reduced by the turnover of purchases -
- (1) of goods specified in Schedule C which are referred to in section 14 of the Central Sales Tax Act, 1956, and which are proved to the satisfaction of the Commissioner to have previously suffered tax under this Act or under any of the earlier laws;
- (ii) of goods in the course of inter-State trade or commerce as defined in section 3 of the Central Sales Tax Act, 1956;
- Act 74 of 1956
- Act 74 of 1956

Act 74  
of 1956

(iii) of goods in the course of the import of the goods into the territory of India as defined in sub-section (2) of section 5 of the Central Sales Tax Act, 1956; and

(iv) of goods which are wholly exempted from tax under section 12 or under any rule framed under section 13:

Provided that where the goods liable to tax cannot be fully identified with the goods manufactured by the dealer and transferred by him to a place outside the State or disposed of by him otherwise than by way of sale in the State, the taxable turnover under this clause shall be determined in such manner as may be prescribed.

(f) for the purpose of the levy of turnover tax under sub-section (5), the gross turnover of sales of the dealer during any period as reduced by the turnover of sales during that period -

Act 74  
of 1956

(i) of goods specified in Schedule C which are referred to in section 14 of the Central Sales Tax Act, 1956;

(ii) of goods which are wholly exempted from tax under section 12 or under any rule framed under section 13; and

(iii) of goods falling under sub-clause (iv) or sub-clause (v) of clause (a).

Rate of Tax 11 (1) The tax payable by a dealer under this Act on the taxable turnover of sales or, as the case may be, on the taxable turnover of purchases of goods specified in the first column of Schedule B or Schedule C or Schedule D or Schedule E shall be at the rate or rates specified in the second column of that Schedule.

(2) Notwithstanding anything contained in sub-section (1), the sales tax payable by a dealer shall be levied at the rate of -

Act 64  
of 1950

- (a) four per centum of such part of his taxable turnover as represents sales of goods to Government or a Corporation or undertaking established by Government under the Road Transport Corporation Act, 1950;
- (b) four per centum of the taxable turnover in respect of sales taxable under clause (e) or clause (f) of sub-section (1) of section 10;
- (c) three per centum of such part of his taxable turnover as represents sales to a registered dealer engaged in the business of raising coal of goods of the class or classes specified in the certificate of registration of such dealer, as being required for use by him directly in connection with the raising of coal in the State for sale, and of containers and other materials for the packing of such goods;
- (d) two per centum of such part of his taxable turnover as represents sales to a registered dealer of goods of the class or classes specified in the certificate of registration



of such dealer as being intended for use by him directly in the manufacture in the State of taxable goods including newspapers and motor spirit for sale, not being any sale liable to tax under clause (e) or clause (f) of sub-section (1) of section 10, in the State, and of containers and other materials for the packing of such goods;

- (e) two per centum of such part of his taxable turnover as represents sales to a registered dealer of containers and other materials intended for use by him in the packing in the State of taxable goods, newspapers or motor spirit manufactured by him in the State for sale in the State, not being any sale liable to tax under clause (e) or clause (f) of sub-section (1) of section 10.

Explanation - For the purposes of clause (d) and clause (e) "motor spirit" shall have the meaning assigned to it in clause (b) of section 2 of the West Bengal Motor Spirit Sales Tax Act, 1974.

W.B. Act XI  
of 1974

- (f) one per centum of such part of his taxable turnover as represents sales to any undertaking supplying electrical energy under a licence or sanction granted or deemed to have been granted in accordance with the provisions of the Indian Electricity Act, 1910, or under the authority of any other law of goods required for use by it directly in the generation or distribution of such energy either wholly in the State or partly in the State and partly in any place outside the State, and of containers and other materials for the packing of such goods;

Act 9  
of 1910

- (g) one per centum of such part of his taxable turnover as represents sales to a registered dealer of goods specified in Schedule D of the class or classes specified in the certificate of registration of such dealer as being intended for resale, otherwise than by way of sale of the nature referred to in clause (e) or clause (f) of sub-section (1) of section 10, not being lottery tickets or such goods as are covered by the notification referred to in clause (a) of sub-section (6) of section 9, and of containers and other materials for the packing of such goods;
- (h) one per centum of such part of his taxable turnover as represents sales otherwise than by way of sale of the nature referred to in clause (e) or clause (f) of sub-section (1) of section 10, of goods specified in Schedule D and covered by the notification referred to in clause (a) of sub-section (6) of section 9 purchased from a registered dealer after the date on which the aforesaid notification takes effect;
- (i) one per centum of such part of his taxable turnover as represents sales of goods liable to tax under clause (d) of sub-section (1) of section 10;

Provided that the provisions of clauses (c), (d), (e), (f), (g), (h) and (i) shall not apply to any sale referred to therein unless the dealer selling the goods furnishes such declaration or other evidence as may be prescribed under sub-section (2) of section 15.

(3) The purchase tax payable by a dealer under sub-section (3) of section 10 shall, notwithstanding anything contained in sub-section (1), be levied at the rate of three per centum of his taxable turnover of purchases:

Provided that in respect of so much of the taxable turnover of purchases as relates to goods specified in section 14 of the Central Sales Tax Act, 1956, tax shall be leviable at the rate of two per centum of such turnover.

(4) The purchase tax payable by a dealer under sub-section (4) of section 10 shall be levied at the rates at which sales tax would have been levied on the sales of the relevant goods under sub-section (1) of section 11:

Provided that the tax so levied shall be reduced by the amount of tax, if any, recovered from him separately by the selling dealer at the time of the purchase of such goods.

(5) The turnover tax payable by a dealer under sub-section (5) of section 10 shall be levied at the rate of -

(a) one percentum of the taxable turnover if the gross turnover of the dealer exceeds one crore rupees during the year in respect of which or part of which the turnover tax is levied;

(b) one-half of one percentum of such part of the taxable turnover in cases not following within clause (a):

Provided that the tax payable by a dealer under clause (a) shall not exceed a sum equivalent to the aggregate of one-half of the tax payable by him in accordance with the said clause and ten percentum of the amount by which the above gross turnover exceeds one crore rupees.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), if any sale falls under more than one entry in any Schedule referred to sub-section (1) or under more than one clause in sub-section (2), tax shall be leviable at the rate which is the lowest.

Tax free goods

12 No tax shall be payable under this Act on the sales or purchases of any goods specified in the first column of Schedule A, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof.

Power to grant exemption

13 Notwithstanding anything contained in section 10 or section 11 /10, the State Government may, if it is satisfied that it is necessary so to do in public interest, exempt by rules framed in this behalf, any specified dealer or category of dealers or any specified goods or category of goods or any sales to or purchases from any specified person or category of persons of any goods, from the payment of the whole or any part of any tax chargeable under this Act, subject to such conditions and restrictions as may be specified in such rules.

Power to amend schedules

14 The State Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose an entry or entries from one Schedule to another and thereupon the Schedule or Schedules shall be deemed to have been amended accordingly:

Provided that no such amendment shall be made unless the State Government has by notification in the Official Gazette given notice of not less than seven days of its intention to do so;

Provided further that no such amendment shall be made which will have the effect of enhancing the rate of tax on any goods or authorising the levy of tax on the sale or purchase of any goods exempted from tax under section 12.

Burden of  
proof

15 (1) The burden of proving that, in respect of any sale or purchase effected by a dealer, he is not liable to pay tax under this Act or is liable to tax at a lower rate of tax, or that he is entitled to a deduction in determining the taxable turnover under sub-section (6) of section 10 or that a sale made by him is or is not the first point of sale or the last point of sale in the State or that a purchase made by him is or is not the last point of purchase in the State, shall be on him.

(2) Without prejudice to the generality of the foregoing provisions, the State Government may, in respect of the matters falling under sub-section (1), by rules prescribe the type of transactions in relation to which and the circumstances and manner in which and the conditions and restrictions subject to which a dealer shall have to furnish documentary evidence by way of a declaration in the prescribed form obtained in the prescribed manner, or otherwise.

CHAPTER IV  
REGISTRATION OF DEALERS

Registration  
of dealers

16 (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered under this Act and possesses a certificate of registration:

Provided that a dealer liable to pay tax under this Act shall be allowed two months time from the date from which he is first liable to pay tax to get himself registered:

Provided further that the provisions of this subsection shall be deemed not to have been contravened if the dealer applies for registration under this Act in the manner specified in subsection (2) within -

- (a) such period after the appointed day for the purpose of subsection (1) of section 9 as may be prescribed in the case of a dealer holding a valid certificate of registration granted under any earlier law immediately before such appointed day, or
- (b) the aforesaid period of two months in the case of any other dealer,  
date  
till the / of the final disposal of such application.

(2) Every dealer required by subsection (1) to be registered shall make an application in this behalf in the prescribed manner to the Commissioner and such application shall be accompanied by a declaration

in the prescribed form, signed and verified in the prescribed manner specifying the class or classes of goods for the purposes of subclause (ii) of clause (a) of subsection (6) of section 10 or clause (c) or clause (d) or clause (g) of subsection (2) of section 11.

(3) If the Commissioner is satisfied that an application for registration made under subsection (2) is in order, being in conformity with the provisions of this Act and the rules made thereunder, he shall, in accordance with such rules as may be prescribed, and after making such enquiries as he may deem fit, register the applicant and grant him a certificate of registration which shall specify the class or classes of goods for the purposes of subclause (ii) of clause (a) of subsection (6) of section 10 or clause (c) or clause (d) or clause (g) of subsection (2) of section 11 and contain such other particulars as may be prescribed.

(4) If the Commissioner is not satisfied that the application for registration is in order, he shall allow the applicant a reasonable opportunity of removing the defects therein within a specified time and if the defects are so removed to the satisfaction of the Commissioner, the Commissioner shall proceed to register the applicant and grant him a certificate of registration in the manner provided in subsection (3) or, if the defects are not so removed, reject the application by an order in writing stating the reasons for the rejection:

Provided that no application shall be rejected under this subsection unless the dealer has been allowed a reasonable opportunity of being heard.



(5) The certificate of registration granted under the foregoing provisions shall be effective from the date of commencement of the liability of the dealer to tax under this Act if the application for registration is made within the time allowed under sub-section (1) and such application is found to be in order and, in other cases, from the date such an application is made, or the date of commencement of liability, whichever is later.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), a certificate of registration granted under any earlier law and remaining valid immediately before the appointed day for the purpose of sub-section (1) of section 9 shall continue to remain valid, if the dealer applies for registration under this Act in the manner and within the time as aforesaid, till the date of final disposal of such application.

Voluntary registration

17 (1) Notwithstanding that a dealer is not liable to pay tax under this Act, he may, if his gross turnover of sales of goods other than goods specified in Schedule E in any year exceeds twenty thousand rupees, apply to the Commissioner in the prescribed form and in the prescribed manner for registration.

(2) The provisions of sub-sections (3) and (4) of section 16 shall, so far as may be, apply to an application made under sub-section (1).

(3) A dealer registered under this section shall be liable to pay tax from the date of registration and shall remain so liable so long as his registration remains in force.

Amendment of  
Certificate of  
Registration

18 The Commissioner may, of his own motion or on an application made by the dealer, after consideration of any information furnished by the dealer or otherwise received by him, amend from time to time any certificate of registration granted under this Act:

Provided that no amendment which is likely to affect the dealer adversely shall be made unless the dealer is given a reasonable opportunity of being heard.

Cancellation of  
Certificate of  
Registration

19 (1) The Commissioner may cancel any certificate of registration granted under this Act -

thous and

(a) on an application made in this behalf by the dealer if he is satisfied that the dealer has discontinued his business or otherwise ceased to be liable to pay tax under this Act or in the case of a certificate of registration granted under section 17 if he is satisfied that his gross turnover of sales of goods other than goods specified in Schedule E failed to exceed twenty rupees during each of the two consecutive years next following the grant of such certificate;

(b) of his own motion if he is satisfied that the dealer has discontinued his business or otherwise ceased to be liable to pay tax under this Act:

Provided that the Commissioner shall not, of his own motion, cancel the certificate of registration of a dealer unless he has given the dealer a reasonable opportunity of being heard:

Provided further that the order cancelling the certificate of registration of a dealer shall be in writing and shall record the reasons for such cancellation.

(2) A dealer whose certificate of registration has been cancelled under the foregoing provisions shall forthwith surrender the certificate of registration to the Commissioner.

(3) The cancellation of a certificate of registration shall not affect the liability of the dealer to pay tax for any period prior to such cancellation whether such tax is assessed before the cancellation or is assessed thereafter.

Security  
to be  
furnished  
in  
certain  
cases

20 (1) The Commissioner may, as a condition of the grant of registration to a dealer or at any time after such grant, for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, require the dealer to furnish in the prescribed manner and within the prescribed time such security or such additional security as may be specified by him if it appears to him to be necessary <sup>so</sup> to do

- (a) for the proper and timely payment of the amount of any tax or other sum payable by the dealer under this Act; or
- (b) for the proper use and safe custody of any declaration furnished to or any form prescribed under sub-section(2) of section 15 supplied to the dealer under this Act.

(2) The Commissioner may by order, for good and sufficient cause and after giving the dealer an opportunity of being heard, forfeit the whole or any part of the security furnished by a dealer for the recovery of any amount referred to in clause(a) of sub-section(1) remaining unpaid by the dealer or of any loss caused to the Government by any negligence or wilful default on his part in ensuring the proper use or safe custody of the declaration or forms referred to in clause (b) of sub-section (1).

(3) Where, by reason of an order under sub-section (2) the security furnished by a dealer is forfeited in whole or is rendered insufficient, he shall furnish fresh or further security of the requisite amount or shall make up the deficiency as the case may be, in such manner and within such period as may be specified in the order.

## CHAPTER V

### RETURN, ASSESSMENT, RE-ASSESSMENT AND RECTIFICATION

#### Payment of tax and return

21 (1) Tax payable under this Act shall be paid in such manner and at such intervals as may be prescribed:

Provided that different intervals may be prescribed for different categories of dealers.

(2) Any payment of tax made under sub-section (1) shall be accompanied by a statement in the prescribed form of the turnover of sales or of purchases in respect of which the tax is paid.

(3) Every registered dealer, and every other dealer who may be required so to do by the Commissioner by notice issued in the prescribed manner, shall furnish, in addition to the statement or statements, if any, furnished under sub-section (1), an annual return in the prescribed form accompanied by such statements as may be prescribed within such time as may be prescribed.

(4) If any dealer has not furnished a return within the time allowed under sub-section (3) or, having furnished a return under that sub-section, discovers any omission or other errors therein, he may without prejudice to the charge of any interest

or penalty under Chapter VI, furnish a return or a revised return, as the case may be, at any time before the assessment is made and such return shall be accompanied by a receipt showing payment of tax due, if any, on the basis of such return.

(5) Every return under this section shall be signed and verified in the prescribed manner -

- (a) in the case of an individual, by the individual himself, and where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (b) in the case of a Hindu undivided family, by the Karta, and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
- (c) in the case of a company or local authority, by the principal officer thereof;
- (d) in the case of a firm, by any partner thereof,
- (e) in the case of any other association, by any member of the association or the principal officer thereof; and
- (f) in the case of any other person, by that person or by some person competent to act on his behalf.

Assessment 22 (1) The amount of tax payable by a dealer under this Act shall ordinarily be assessed separately for each year:

Provided that the Commissioner may, if he considers it necessary so to do, make an assessment of the <sup>tax</sup> due from any dealer for a part of the year.

(2) Where a return has been furnished under section 21, the Commissioner may, in the case of such classes of registered dealers as may be prescribed and subject to such conditions as may be prescribed, make an assessment of the tax payable by the dealer on the basis of the return furnished by him and the documents accompanying such return, without requiring the presence of the dealer or the production by him of any evidence in support of the return.

(3) The Commissioner may -

- (a) in a case where an assessment has been made under sub-section (2), subject to such conditions as may be prescribed, and
- (b) in a case not falling under sub-section (2) whether a return has been furnished or not,

serve on the dealer a notice in the prescribed form requiring him, on the date and at the place specified therein, to appear before him and to produce or to cause to be produced, any evidence on which he may

rely in support of his return, or produce or cause to be produced such accounts or documents as the Commissioner may specify in such notice.

(4) On the day specified in the notice issued under sub-section (3), or as soon afterwards as may be, after considering such evidence as the assessee may produce and such other evidence on specified points as the Commissioner may, in the course of the hearing, require, and after taking into account all relevant material which he has gathered, make an assessment or, in a case where an assessment has been made under sub-section (2), a fresh assessment of the tax payable by the dealer.

(5) If any dealer fails to comply with all the terms of a notice issued under sub-section (3), the Commissioner may, after taking into account all relevant material on record, make an assessment to the best of his judgment, of the tax payable by the dealer.

(6) If upon information which has come into his possession, the Commissioner is satisfied that any dealer who is liable to pay tax under this Act for any period has failed to get himself registered in the manner provided in Chapter IV or otherwise has remained unregistered, he may, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of tax due from such dealer for such period.

Turnover  
escaping  
assessment

23 (1) Where, after a dealer has been assessed under section 22 for any year or part thereof, the Commissioner has reason to believe that the whole or any part of the turnover of a dealer in respect of any period has escaped assessment to tax or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable, or any exemption or deduction has been wrongly allowed, the Commissioner may-

- (a) in a case where the dealer has concealed, omitted or failed to disclose fully and truly the particulars of such turnover, within eight years from the end of the year in which an assessment under section 22 was first made in his case; and
- (b) in any other case, within four years from the end of the year in which an assessment under section 22 was first made in his case,

serve a notice on the dealer and, after giving the dealer an opportunity of being heard and making such inquiry as he considers necessary, proceed to determine to the best of his judgment, the amount of tax due from the dealer in respect of such turnover:

Provided that, in respect of an assessment under section 22 made by a person appointed to assist the Commissioner under sub-section (1) of section 2 in exercise of powers delegated to him by the Commissioner under sub-section (4) of that section, no such notice shall be issued in a case falling under clause (a) after the expiry of four years from the year in which an assessment under section 22 was first made in his case unless the Commissioner is satisfied on the reasons recorded that it is a fit case for the issue of such notice:



Provided further that, notwithstanding anything contained in sub-section (4) of section 3, the powers of the Commissioner to accord sanction for the issue of a notice as aforesaid shall not be delegated by him to any person appointed to assist him under sub-section (1) of section 3.

Provided also that a notice under the foregoing provisions may be issued at any time for the purpose of giving effect to any finding or direction contained in an order passed in any proceeding under this Act by way of appeal, revision or reference.

Explanation

For the purposes, of this section, production before the Commissioner of account books or other evidence from which material evidence could with due diligence have been discovered by the Commissioner will not necessarily amount to disclosure within the meaning of this section.

(2) A notice issued under sub-section (1) may contain all or any of the requirements which may be included in a notice under sub-section (3) of section 21; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Time limit  
for  
completion  
of assess-  
ments and  
reassessments

24 (1) No assessment shall be made under section 22 after the expiry of three years from the end of the year in respect of which or part of which the assessment is made or, in a case where the dealer has furnished a return or a revised return under subsection (4) of section 21, after the expiry of one year from the end of the year in which such return is received by the Commissioner, whichever is later:

Provided that, in a case falling under subsection (6) of section 22 the assessment may be made at any time before the expiry of eight years from the end of the year in respect of which or part of which the assessment is made under that sub-section.

(2) No re-assessment under section 23 shall be made -

- (a) in a case falling under clause (a) of that section, after the expiry of three years; and
- (b) in a case falling under clause (b) of that section, after the expiry of one year,

from the end of the year in which the notice under that section is served on the dealer.

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(3) Nothing contained in sub-section (1) or sub-section (2) shall apply in a case where the assessment, re-assessment or re-computation is made to give effect to any order in appeal, revision or reference.

Explanation - In computing the period of limitation for the purposes of sub-section (1) or sub-section(2), the following shall be excluded, namely:-

- (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; and
- (ii) in a case where an application made before the Settlement Commission is rejected or not allowed to be proceeded with by it, the period commencing from the date on which the application for settlement to the Settlement Commission is made and ending with the date on which the order of the Settlement Commission rejecting the application or, as the case may be, not allowing the application to be proceeded with, is received by the Commissioner.

Composition  
of tax-  
payable

25 The Commissioner may, in such cases or classes of cases and subject to such conditions and restrictions as may be prescribed, permit any dealer to pay in lieu of the amount of the tax payable by him under any of the foregoing provisions, a lump sum determined in the prescribed manner, by way of composition and such determination shall be deemed to be an assessment duly made under this Act.

Assessment  
deemed to be  
made in  
certain cases

26 Where a return has been furnished by a dealer for any period and no assessment has been made under any of the foregoing provisions within the time limits specified in section 24 then, notwithstanding anything contained in that section, the assessment for that period shall be deemed to have been completed on the last day on which an assessment could have been made in respect of the return under the provisions of that section and the provisions of this Act shall, so far as may be, apply accordingly.

Rectification  
of mistake

27 (1) The Commissioner or the Additional Commissioner or any person appointed to assist the Commissioner under sub-section (1) of section 3 may, at any time within four years from the date of any order passed by him, rectify any mistake in such order which is apparent from the record of his own motion or on the mistake being brought to his notice by any person affected by such order:

Provided that no such rectification shall be made which has the effect of enhancing the tax or other sum payable by any dealer or other person or of reducing the amount of any refund due to any dealer or other person unless the person likely to be affected by such order is given a reasonable opportunity of being heard.

(2) The Tribunal or the Settlement Commission may, in like manner, rectify a mistake apparent from the record in any order passed by it, of its own motion or on the mistake being brought to its notice by the Commissioner or by any person affected by such order.

## CHAPTER VI

## CHARGE OF INTEREST AND IMPOSITION OF PENALTY

Interest payable by dealer

28 (1) Where a registered dealer fails to pay the full amount of the tax payable by him in accordance with the statements furnished by him under sub-section (2) of section 21 on or before the date or dates on which such payments were due to be paid under sub-section (1) of that section, he shall pay simple interest at the rate of one and one-half per centum for each month on the amount of the tax remaining so unpaid at the commencement of each such month from the first day of the month next following the date on or before which such tax was payable upto the end of the month immediately preceding the month in which such amount is paid in full or upto the end of the month immediately preceding the month in which an assessment is made whichever is earlier.

(2) Where a dealer fails to make payment of the full amount of the tax due on the basis of a notice of demand issued under sub-section (1) of section 31 on or before the date fixed for its payment under sub-section (2) of that section, he shall pay simple interest at the rate of one and one half per centum for each month on so much of such tax

as remains unpaid at the commencement of each such month from the first day of the month next following the aforesaid due date upto the month immediately preceding the month in which the full amount of the assessed tax is paid, or upto the month preceding the month in which any proceeding under sub-section (1) of section 33 is commenced, whichever is earlier, whether or not the payment of such tax has been stayed or time for its payment allowed by a court or by any authority under this Act.

Explanation - In this section 'month' means the month according to the English Calendar.

(3) Where any interest is payable by any dealer under the foregoing provisions is not paid in full, the Commissioner shall determine the amount payable by an order in writing:

Provided that no such order shall be made in respect of interest payable under sub-section (1) after the expiry of twelve months from the end of the month in which the assessment is made.

(4) If, as a result of any proceeding under this Act, the amount of tax in respect of which interest is payable by the dealer under the

foregoing provisions is varied, the Commissioner shall correspondingly reduce or enhance, as the case may be, the interest so payable.

Penalties  
imposable

29 (1) If a person or dealer -

- (a) being liable to pay tax under this Act, fails to get himself registered; or
- (b) not being a registered dealer, represents, when purchasing goods, that he is a registered dealer; or
- (c) being a registered dealer, represents when purchasing goods or class of goods not covered by his certificate of registration that such goods are covered by such certificate; or
- (d) fails to submit without reasonable cause any return/as required under section 21 in the prescribed manner and within the prescribed time; or
- (e) fails to pay without reasonable cause the tax payable by him under sub-section (1) of section 21 or under any notice of demand issued under section 31 within the time allowed for such payment; or
- (f) conceals any sales or any particulars thereof or furnishes

/ or statement

incorrect particulars of his sales in any return or statement submitted under section 21 with intent to reduce the amount of the tax payable by him under this Act; or



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- (g) transports any goods specified in Schedule B or such goods specified in Schedule D as are covered by the notification referred to in clause (a) of sub-section (6) of section 9 in contravention of the provisions of sub-section (1) of section 66.

the Commissioner may, after giving such person or dealer, a reasonable opportunity of being heard, by an order in writing setting forth such particulars as may be prescribed, direct that he shall, in addition to any tax or interest payable by him, pay by way of penalty a sum -

- (i) in a case falling under clause (a), not exceeding the amount of the assessed tax;
- (ii) in a case falling under clause (b) or clause (c) or clause (f), not exceeding one and one-half times the amount of tax sought to be thereby evaded;
- (iii) in a case falling under clause (d), not exceeding one-half of the amount of assessed tax; / the
- (iv) in a case falling under clause (e), not exceeding the amount of tax remaining unpaid on the expiry of the time allowed for its payment; and

- (v) in a case falling under clause (g), not exceeding twenty five per centum of the value determined by him in accordance with the rules made under this Act of goods transported in contravention of the provisions of section 66.

Explanation - For the purpose of this section 'assessed tax' means the amount of tax determined as payable on the basis of an assessment or reassessment made under this Act.

(2) No proceeding for the levy of penalty for any default under this section shall be commenced after the expiry of two years from the date of the completion of the proceedings in the course of which the Commissioner is satisfied that such default has been committed.

## CHAPTER VII

### PAYMENT, COLLECTION, RECOVERY AND REFUND OF TAX OR OTHER SUMS

#### Rounding off tax, interest and penalty

30 (1) For the purposes of calculation of tax, the taxable turnover, and where different portions of the taxable turnover are liable to tax at different rates, each such portion, shall be rounded off to the nearest multiple of one hundred rupees and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

(2) The tax payable under this Act in respect of any period 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.

(3) In calculating interest payable to or by the State Government, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

Notice of  
demand and  
payment

31 (1) When any tax, interest, penalty or any other sum is payable in consequence of any order passed under this Act, the Commissioner shall serve upon the dealer or person liable to pay such tax, interest, penalty, or other sum a notice of demand in the prescribed form specifying the amount <sup>or amount<sup>s</sup></sup> so payable.

(2) Any amount specified as payable in the notice of demand issued under sub-section (1) shall be paid within the time specified in such notice and in such manner and at such place as may be prescribed:

(3) On an application made before the expiry of the due date under sub-section (2), the Commissioner may, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the time for payment or allow payment by instalments or grant stay subject to payment of <sup>interest</sup> under sub-section (3) of section 28 and, on such terms and conditions as the Commissioner may think fit to impose in the circumstances of the case.

(4) If the amount specified in the demand notice is not paid within the time specified in sub-section (2) or extended under sub-section (3), as the case may be, the dealer or the person liable therefor shall be deemed to be in default in respect of that amount.

(5) In a case where payment by instalments is allowed under sub-section (3) and the dealer or the person liable for such payment commits default in paying any one of the instalments within the time fixed under that sub-section, the dealer or the

person aforesaid shall be deemed to be in default in respect of the whole of the amount then outstanding and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

Special mode  
of recovery

32 (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require any person including the Government or a local authority,

- (a) from whom any amount of money is due, or may become due, to a dealer or person liable on whom notice has been served under sub-section (1) of section 31; or
- (b) who holds or may subsequently hold money for or on account of such dealer or person liable,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the dealer or person liable in respect of the arrears of tax payable under this Act, or the whole of the money where it is equal to or less than that amount.

Explanation - For the purposes of this sub-section, the amount of money due to a dealer or person from, or money held for or on account of a dealer or person by, any person, shall be calculated by the

Commissioner after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer or person liable to such person.

(2) The Commissioner may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer or, person liable and the receipt thereof by the Commissioner shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer or person liable after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer or person liable for tax,

whichever is less and the provisions of this Act shall so far as may be apply as if such person were a dealer in default.

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

(6) Any amount of money which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as an arrear of tax payable under this Act.

(7) The Commissioner may apply to the court in whose custody there is money belonging to the dealer or person liable for payment to him of the entire amount of such money or, if it is more than the amount of tax, penalty or other sum due, an amount sufficient to discharge such amount:

Provided that any dues or property exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 shall be exempt from any requisition made under this section,

(8) Where a security other than in the form of a surety bond has been furnished by a dealer under sub-section (1) of section 20, the Commissioner may, for good and sufficient reasons in writing, realise any amount of tax, interest, penalty or other sum remaining unpaid as aforesaid or part thereof by ordering forfeiture of the whole or any part of such security.

33 (1) When a dealer or person liable is in default or is deemed to be in default in making a payment of tax, the Commissioner may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from such dealer or person, and the Tax Recovery Officer, on receipt of such certificate, shall

Act 5  
of 1908

Certificate to  
Tax Recovery  
Officer

proceed to recover from such dealer or person the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in Schedule F -

- (a) attachment and sale of the movable property of such dealer or person;
- (b) attachment and sale of the immovable property of such dealer or person;
- (c) arrest of such dealer or person and his detention in prison; and
- (d) appointing a receiver for the management of the movable and immovable properties of such dealer or person.

(2) The Commissioner may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

(3) For the purpose of this Chapter and Schedule F, the State Government may appoint such number of Tax Recovery Officers as it may deem fit and specify, by notification in the Official Gazette, the jurisdiction in respect of which they shall perform their functions.

x Recovery  
Officer to  
whom  
certificate  
is to be  
sent

34 (1) The Commissioner may forward the certificate referred to in section 33 to -

- (a) the Tax Recovery Officer within whose jurisdiction such dealer or person carries on his business or within whose jurisdiction the principal place of his business is situate; or
- (b) the Tax Recovery Officer within whose jurisdiction such dealer or person resides or any movable or immovable property of such dealer or person is situate.

(2) Where such dealer or person has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer to whom a certificate is sent by the Commissioner -



- (a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction, or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction such dealer or person resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or the copy thereof had been the certificate sent to him by the Commissioner.

Validity of  
certificate,  
and  
amendment  
thereof

35 (1) When the Commissioner sends a certificate to a Tax Recovery Officer under section 33, it shall not be open to the defaulter to dispute before the Tax Recovery Officer the correctness of the assessment, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Tax Recovery Officer, the Commissioner shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(3) The Commissioner shall intimate to the Tax Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) of this section or any amendment made under sub-section (4) of section 36.

Stay of proceedings under certificate and amendment or withdrawal thereof

36 (1) Notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax, the Commissioner may grant time for the payment of the tax and thereupon, the Tax Recovery Officer shall stay the proceeding until the expiry of the time so granted.

(2) Where a certificate for the recovery of tax has been issued, the Commissioner shall keep the Tax Recovery Officer informed of any tax paid or time granted for payment subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Commissioner shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of tax has been issued and, subsequently, the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the

Commissioner shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Recovery of penalty, fine, interest and other sums

37 Any interest, penalty or other sum payable under the provisions of this Act shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

Period for commencing recovery proceedings

38 Save as otherwise provided, no proceedings for the recovery of tax, interest, penalty or other sum payable under this Act shall be commenced after the expiration of three years from the last day of the financial year in which the dealer or person liable is deemed to be in default.

Explanation - 1 In computing the aforesaid period of three years, any period during which the payment of the tax, interest, penalty or other sum is stayed by an order of a court or by any authority under this Act shall be excluded.

Explanation - 2

A proceeding for the recovery of any tax, interest, penalty or other sum shall be deemed to have been commenced within the meaning of this section if some action is taken to recover the whole or any part of such tax, interest, penalty or other sum within the period hereinbefore referred to.

Recovery by suit or under other law not affected

39 The several modes of recovery specified in this Chapter shall not affect in any way -

- (a) any other law for the time being in force relating to the recovery of debts due to the State Government; or

- (b) the right of the State Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Commissioner or the State Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax, interest, penalty or other sum due is being recovered from the assessee by any mode specified in this Chapter.

Certain  
transfers  
to be  
void

40 (1) Where, during the pendency of any proceeding for the determination of any liability in respect of tax, interest, penalty or other sum payable by him under this Act or after the completion thereof but before the service of notice under rule 2 of Schedule F, any dealer or person liable to pay any tax, interest, penalty or any other sum creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of such tax, interest, penalty or other sum payable by such dealer or person as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void if it is made -

- (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax, interest, penalty or other sum payable by such dealer or person; or
- (ii) with the previous permission of the Commissioner.

(2) This section applies to cases where, in the opinion of the Commissioner the amount of tax, interest, penalty or other sum payable or likely to be payable or the value of the assets charged or transferred exceed, twenty five thousand rupees in value.

Explanation - In this section, "assets" means land, building, machinery, plant, motor vehicles, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.

Provisional attachment to protect revenue in certain cases

41 (1) Where, during the pendency of any proceeding for the assessment of tax in respect of any turnover which has escaped assessment, the Commissioner is of the opinion that for the purposes of protecting the interest of the revenue it is necessary so to do, he may, by order in writing, attach provisionally any property belonging to the dealer in the manner provided in Schedule F and, for this purpose, the Commissioner shall have all the powers conferred by that Schedule on a Tax Recovery Officer.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Refunds

42 (1) The Commissioner shall in the prescribed manner refund to the dealer the amount of any tax, interest, penalty or other sum paid by such dealer in respect of any period in excess of the amount due from him under this Act for that period, either by cash payment or by deduction or adjustment of such excess from the amount of tax, interest, penalty or other sum due from him in respect of any other period.

(2) Where any tax is levied under this Act on the sale or purchase of any goods referred to in section 14 of the Central Sales Tax Act, 1956 and such goods are subsequently sold in the course of inter-State trade or commerce, the dealer paying tax on such sales under that Act shall be entitled to get the amount of tax paid under this Act refunded to him on application by him to the Commissioner in the prescribed manner within one year from the date of such sale and the Commissioner shall, if the application is in order, refund the amount in such manner as may be prescribed.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to empower the Commissioner to amend, vary or rescind any assessment or to amend, vary or rescind any order passed in any other proceedings under this Act or to confer on a dealer any relief in addition to what has been allowed to him in the assessment or other proceedings.

43 Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or, where any other proceeding under this Act is pending and the Commissioner is of the opinion that the grant of refund is likely to adversely affect the revenue, he may withhold the refund till such time as may be deemed necessary by him:

Provided that a person appointed to assist the Commissioner under sub-section (1) of section 3 of this Act shall not withhold any refund under this Act except with the previous approval of the Commissioner and for such period as the Commissioner may determine.

Act 74  
of 1956

Powers to  
withhold  
refunds in  
certain  
cases

Interest  
on  
refunds

44 (1) Any person entitled to a refund of tax under sub-section (1) or sub-section (2) of section 42 shall be entitled to receive simple interest from the State Government at the rate of one and one-half per centum on the amount of the refund for each month calculated:

(a) in a case where such refund relates <sup>to</sup> any excess paid before or at the time of furnishing the return under sub-section (3) of section 21 from the first day of the month next following the month in which such return is actually furnished, and

(b) in ~~a case in~~ any other <sup>Case</sup> from the first day of the month next following the month in which such payment was actually made upto the month immediately preceding the month in which the refund is actually granted to him.

(2) If, as a result of any proceeding under this Act, the amount in respect of which interest is payable by the State Government under the foregoing provisions is varied, the Commissioner shall correspondingly enhance or reduce, as the case may be, the interest so payable.

## CHAPTER VIII

### APPEAL, REFERENCE, REVISION AND OTHER RELIEFS

Appeal to  
prescribed  
authority  
and T.

45 (1) A dealer or a person aggrieved by any final order passed by a person appointed to assist the Commissioner under sub-section (1) of section 3 in exercise of powers conferred on him by or under this Act may appeal to the authority prescribed under sub-section (2) (hereinafter in this Act referred to as the 'prescribed authority') against such order.

Explanation - In this sub-section and in sub-sections (3) and (4) "final order" means an order, not being in the nature of an administrative order or interlocutory order, which determines the issues arising under this Act before the authority passing the order finally in so far as that authority is concerned.

(2) For the purposes of sub-section (1), the State Government shall by rules prescribe the authority or authorities to whom an appeal under sub-section (1) shall lie and the State Government may prescribe different authorities in respect of orders passed under different sections of this Act or by different authorities under this Act.

Additional

(3) An appeal shall lie to the ~~the~~ Commissioner / having jurisdiction in this behalf against every final order of the prescribed authority not being an order against which an appeal lies to the Tribunal under sub-section (4).



Commissioner or by the Additional Commissioner, in so far as such order relates to the assessment of turnover or the tax payable or to the imposition of any penalty under this Act; and

- (b) by a dealer or a person or the Commissioner aggrieved by any final order passed in appeal by the prescribed authority in so far as such order relates to the assessment of turnover or the tax payable or to the imposition of any penalty under this Act.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4), no appeal shall lie against -

- (a) an assessment made under sub-section (2) of section 22; or
- (b) a determination of tax made under section 25; or
- (c) an order levying interest under section 28; or
- (d) an order withholding a refund under section 43; or
- (e) an order in revision made by the Commissioner under sub-section (2) of section 48; or
- (f) an order passed by the Commissioner under section 49; or
- (g) an order of the Commissioner determining a disputed question under section 50; or
- (h) an order pertaining to the seizure or retention of account books, registers and other documents under section 65; or
- (i) an order under section 66; or
- (j) an order sanctioning prosecution under any provision of this Act or compounding or refusing to compound any offence, under section 90.

(6) Every appeal under sub-section (1) or sub-section (3) or sub-section (4) shall be presented within sixty days of the date on which the notice of the order sought to be appealed against is served on the person filing the appeal, and shall be in the prescribed form and verified in the prescribed manner and shall be accompanied by such documents as may be prescribed:

Provided that the prescribed authority or, as the case may be, the Additional Commissioner or the Tribunal may admit an appeal after the expiration of the aforesaid period if <sup>he or</sup> it is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(7) No appeal under sub-section (1) or sub-section (4) against an order of assessment of tax with or without penalty or against an order imposing penalty shall lie unless such appeal is filed accompanied by satisfactory proof of the payment of tax including penalty, if any, which is admitted to be due and twenty per cent of the amount of tax including penalty, if any, which is disputed in the appeal, as the case may be:

Provided that the prescribed authority or the Tribunal may, if it thinks fit, for reasons to be recorded in writing, admit an appeal against such order with part payment or without any payment of the disputed amount of tax including penalty, if any, required under this sub-section, with a view to mitigating undue hardship which is likely to be caused to the dealer or person if the payment of such disputed amount either in full or in part is insisted on.

(8) The authority before whom an appeal is pending may, during the pendency of such appeal and subject to the provisions of sub-section (7), stay recovery of the balance amount of tax or penalty which is not admitted by the appellant to be due from him on such terms and such conditions as may be specified in the order granting such stay.

(9) Any party to an appeal before the prescribed authority may, within sixty days of the receipt of a notice that an appeal against the order of the prescribed authority has been preferred by the other party to the Tribunal, file a memorandum of cross objections in the prescribed manner against any part of the order passed by the prescribed authority and such memorandum shall be disposed of by the Tribunal as if it were an appeal.

Procedure  
in appeal

46 (1) The prescribed authority, or, as the case may be, the Additional Commissioner or the Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to both the parties to the appeal.

(2) The prescribed authority, or, as the case may be, the Additional Commissioner or the Tribunal may, at the hearing of the appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal or to produce any evidence, whether oral or documentary, not produced at any earlier stage in the proceedings in so far as such ground or evidence does not relate to any facts not furnished to or to any claim not made before the lower authority if it is satisfied that the omission

of the ground in the form of appeal or the failure to produce the evidence at the earlier stage was not wilful or unreasonable.

(3) In disposing of an appeal against any order, the prescribed authority or, as the case may be, the Additional Commissioner or the Tribunal may -

- (a) summarily reject the appeal unless the requirements of section 45 and any rules framed thereunder have been duly complied with; or
- (b) confirm or annul the order; or
- (c) vary the order so as either to enhance or reduce the tax, penalty or any other sum payable by the dealer; or
- (d) set aside the order and issue directions for a fresh order to be made; or
- (e) pass such other order as he or it thinks fit.

(4) The order of the prescribed authority or, as the case may be, the Additional Commissioner or the Tribunal, shall be in writing and state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the prescribed authority or, as the case may be, the Additional Commissioner or the Tribunal shall communicate the order passed by him or it to both the parties to the appeal:

Statement  
of case to  
High Court

47 (1) The Commissioner or the dealer or person affected by an order passed by the Tribunal under sub-section (4) of section 46 may, within ninety days of the date of such order, by application in the prescribed form and accompanied, where the application is made by the dealer or person, by a fee of one hundred rupees, require the Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the time specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub-section (1), the Tribunal refuses to state the case on the ground that no question of law arises, the Commissioner or the dealer or person, as the case may be, may, within ninety days from the date of communication of such refusal, apply to the High Court and the High Court may, if it is not satisfied with the correctness of the decision of the Tribunal, require the Tribunal to state the case and to refer it, and, on receipt of any such requisition, the Tribunal shall state the case and refer it to the High Court accordingly.

(3) If the High Court is of the opinion that the statement of the case as drawn-up by the Tribunal is not sufficient to enable it to determine the question raised, the Court may refer the case back to the Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

(4) The High Court, upon hearing both the parties, shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the Tribunal a copy of such judgment under the seal of the Court and the signature of the Registrar, and thereupon the Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(5) Notwithstanding that a reference has been made to the High Court, tax shall be payable in accordance with the assessment made in the case.

vision of  
der by the  
missioner

48 (1) The Commissioner may call for and examine the records of any proceeding under this Act and, if he considers that any order passed therein by any person appointed under sub-section (1) of section 3 to assist him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the dealer or the person to whom the order relates an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order as the circumstances of the case justify, including an order enhancing or modifying the assessment of tax or penalty or cancelling such order and directing that a fresh order should be made:

Provided that no order under this sub-section shall be made after the expiry of four years from the date of the order sought to be revised.

Explanation - The provisions of this sub-section shall apply, notwithstanding that the order sought to be revised has been made the subject of any proceedings by way of appeal, in respect of matters not actually considered and decided in such proceedings.

(2) In the case of any order passed by a person appointed to assist the Commissioner under sub-section (1) of section 3, not being an order to which sub-section (1) applies, the Commissioner may, either of his own motion or on an application made in the prescribed manner within two years of the date of such order by the dealer or person affected by such order, call for the record of any proceedings under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such orders thereon, not being an order prejudicial to the dealer or person to whom the order relates, as he thinks fit:

Provided that the Commissioner shall not of his own motion revise any order under this sub-section if the order has been made more than two years previously.

Waiver of  
interest and  
penalty by  
Commissioner

49 (1) Where an order has been made charging interest or levying penalty under any provision of this Act, the Commissioner may, subject to such conditions and restrictions as may be prescribed, of his own motion or on an application made by the dealer or the person affected by such order, within two years from the date of such order and after recording his reasons for so doing, waive or reduce the amount of interest or penalty payable by such dealer or person, if he is satisfied that -

- (i) to do otherwise would cause genuine hardship to such dealer or person having regard to the circumstances of the case; and
- (ii) such dealer or person has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(2) Every order made under this section shall be final and shall not be called into question by any Court or any other authority.

Determination  
of disputed  
questions

50 (1) If any question arises, otherwise than in any proceedings before a Court, or before the Commissioner has commenced assessment or re-assessment of a dealer under section 22 or 23, whether, for the purposes of this Act -

- (a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer; or
- (b) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term; or
- (c) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, therefor; or
- (d) any particular dealer is required to be registered; or
- (e) any tax is payable in respect of any particular sale or purchase or, if tax is payable, the rate thereof,

the Commissioner shall make an order determining such question.



Explanation - For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment or re-assessment of a dealer under section 22 or section 23 when the dealer is served with any notice by the Commissioner under sub-section (3) of section 21 or, as the case may be, sub-section (2) of section 23.

(2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, as respects any sale or purchase effected prior to the determination.

(3) If any such question arises from any order already passed under this Act or any earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against, or by way of revision of, such order.

(4) Notwithstanding anything contained in sub-section(4) of section 3, the Commissioner shall not delegate the powers conferred on him by or under sub-section (1) to any officer appointed to assist him under sub-section (1) of section 3.

Exclusion  
of time  
taken  
copy

51 In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the notice of the order complained of was served and, if the dealer or person aggrieved by the order was not furnished with a copy of the order when the notice of the order was served upon him, the time required for obtaining a copy of such order, shall be excluded.

Bar to  
certain  
proceedings

52 Save as provided in this Chapter and in Chapter IX, no assessment made and no order passed under this Act or the rules made thereunder shall be called in question before any Court and no prosecution, suit or other proceeding shall lie against the State Government or any officer thereof for anything in good faith done or intended to be done under this Act.

## CHAPTER IX

### SETTLEMENT OF CASES

#### Settlement of cases by Settlement Commission

53 (1) Where any dealer or person desires to have his liability under this Act or any earlier law in respect of tax, penalty or other sum settled by the Settlement Commission at any stage in the course of any proceedings before any authority under this Act, or before the commencement or after the completion of such proceedings, he may apply to the Settlement Commission in such form and containing such particulars as may be prescribed to have such liability so settled.

(2) Every application 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) Where the application under sub-section (1) is made during the pendency of any appeal before the ~~as the case may be, the Additional Commissioner or prescribed authority or the Tribunal or of any~~ revision application before the Commissioner, the dealer or person shall, on the application under sub-section (1) being allowed to be proceeded with by the Settlement Commissioner, be deemed to have withdrawn such appeal or revision application.

(5) Where any accounts, registers, documents or vouchers belonging to dealer or person are seized under section 65 or any goods belonging to a dealer or person are seized under section 66, such dealer

or person shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and twenty days from the date of such seizure.

(6) No application under sub-section (1) shall lie unless the aggregate amount of tax payable for the periods in respect of which the application is made as is admitted by the applicant to be payable is not less than fifty thousand rupees and such tax has been fully paid before such application is made.

Procedure on receipt of application

54 (1) On receipt of an application under section 5 the Settlement Commission shall call for a report from the Commissioner and, on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, may by order allow the application to be proceeded with or reject the application:

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

Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of turnover of sales or turnover of purchases on the part of the applicant or perpetration of fraud by him for evading any tax, penalty or interest chargeable or imposable under this Act has been established or is likely to be established in relation to the case and the Settlement Commission is satisfied with the objections of the Commissioner.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and the Commissioner.

(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and, after examination of such records, if the Settlement Commission is of the opinion that any further inquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further inquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(4) After examination of the records, and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3) and after giving an opportunity to the applicant and to the Commissioner to be heard either in person or through a representative duly authorised in this behalf, and after examining such further evidence 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 Commissioner under sub-section (1) or sub-section (3).

(5) The materials brought on record before the Settlement Commission shall be considered by all the members thereof before passing any order under sub-section (4) and in the case of a difference of opinion among the members, the opinion of the majority shall prevail and such order shall be expressed in terms of the views of the majority.

(6) Every order passed under sub-section (4) 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.

(7) Where a settlement becomes void as provided under sub-section (6) 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 Commissioner or the authority before whom the proceedings were pending at the time the application for settlement was made, 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 becomes void.

(8) Where the Settlement Commission is of the view that the applicant has been delaying the conduct of the proceedings before it or has not been fully cooperating in such proceedings, the Settlement Commission may, after giving the applicant a reasonable opportunity of showing cause, reject the application.

Power of Settlement Commission to re-open completed proceedings

55 If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to re-open any proceeding connected with the case but which has been completed under the earlier law or under this Act, by any sales tax authority before the application under section 53 was made, it may re-open such proceeding and pass such other order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be re-opened by the Settlement Commission under this section after the expiry of a period of eight years from the end of the year to which such proceeding relates.

Powers and procedures of Settlement Commission

56 (1) In addition to the powers conferred under this Chapter, the Settlement Commission shall have all the powers which are vested in the Commissioner under this Act.

(2) Where an application made under section 53 has been allowed to be proceeded with under section 54 the Settlement Commission shall, until an order is passed under sub-section (4) of section 54, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of the Commissioner under this Act in relation to the case:

Provided that, for the purpose of making any enquiry or investigation as directed by the Settlement Commission under sub-section (3) of section 54, the Commissioner may exercise all the powers conferred on him by or under this Act in respect of matters relevant to such enquiry or investigation.

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect, --

(a) the operation of the provisions of this Act requiring the applicant to pay tax under sub-section (1) or sub-section (4) of section 21 in relation to the matters before the Settlement Commission;

(b) the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission; or

(c) the operation of such other provisions of the Act as the Settlement Commission may, having regard to the facts of the case and after hearing the

applicant and the Commissioner in this behalf, by order specify in relation to such periods as may be specified in such order.

(4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure (including the fixation of places and times of its meetings) and may act notwithstanding that any of its members is not present at any of its meetings.

Inspection,  
etc., of  
reports

57 No person shall be entitled to inspect, or obtain copies of, any reports made by the Commissioner to the Settlement Commission:

Provided that for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof as relevant for the purpose:

Provided further that the Settlement Commission may, in its discretion, furnish copies of such reports to any person on an application made to it in this behalf and on payment of the prescribed fee.

Power of  
Settlement  
Commission  
to grant  
immunity from  
prosecution  
and penalty

58 (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 53 has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his



turnover of sales or turnover of purchases, grant to such person, subject to such conditions as it may think fit <sup>to</sup> impose, immunity from prosecution for any offence under this Act or under any earlier law or under the Indian Penal Code or under any other law for the time being in force and also from the imposition of any penalty or interest under this Act <sup>or under any earlier law</sup> with respect to the case covered by the settlement.

(2) Any immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person has not complied with the conditions subject to which the immunity was granted or that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence for which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty or interest under this Act <sup>or under any earlier law</sup> to which such person would have been liable, had not such immunity been granted.

Order of settlement to be conclusive

59 Every order passed under sub-section (4) or sub-section (8) of section 54 shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be re-opened in any proceeding under this Act or under any other law for the time being in force.

Recovery of  
sums due  
under order of  
settlement

60 Any sum specified in an order of settlement passed under sub-section (4) of section 54, may, subject to such conditions, if any, as may be specified therein, be recovered, (and any penalty or interest for default in making payment of such sum may be imposed and recovered) in accordance with the provisions of Chapters VI and VII.

Bar on  
subsequent  
application  
for  
settlement  
in certain  
cases

61 Where --

(i) an order of settlement passed under sub-section (4) of section 54 provides for the imposition of a penalty or interest on the person who made the application under section 53 for settlement, on the ground of concealment of particulars of any transaction; or

(ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XII in relation to that case, then, he shall not be entitled to apply for settlement under section 53 in relation to any other matter.

## CHAPTER X

### ACCOUNTS, INSPECTION, SEARCH AND SEIZURE, RESTRICTIONS ON MOVEMENT OF GOODS AND POWER TO CALL FOR INFORMATION

Maintenance of  
accounts and  
other  
documents

62 (1) Every dealer liable to pay tax under this Act shall keep at his place of business a true account of the value and quantity of goods purchased or sold by him or held in stock and, if the Commissioner considers that such account is not sufficiently clear and intelligible to enable him to make a proper determination of such dealer's liability to tax, he may require such dealer by notice in writing to keep such account (including the records of purchases, sales and <sup>stock</sup>) as may be specified therein.

(2) The State Government may, by rules framed in this behalf, direct any class of dealers generally to keep such accounts (including records of purchases, sales and stock) in such manner and such form and subject to such conditions and restrictions as may be specified in such rules.

(3) If a registered dealer -

- (a) sells goods to another registered dealer, or
- (b) makes sales in the course of inter-State trade or commerce, or  
in any one transaction
- (c) sells any goods/exceeding in value such amount as may be prescribed  
in respect any class or classes of goods or class or classes of dealers,

he shall issue to the purchaser a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent and showing therein his name and address and such other particulars as may be prescribed and he shall keep a duplicate or copy of such bill or cash memorandum duly signed and dated.

Preservation  
of accounts,  
documents,  
etc.

63 All books of account and documents referred to in sub-section (1) or sub-section (2) or sub-section (3) of section 62 and all declarations or other documents prescribed under sub-section (2) of section 15 shall be preserved by the dealer for a period of not less than twelve years from the end of the year to which they relate:

Provided that, where an assessment, re-assessment, appeal, reference, revision or any other proceeding under this Act in-respect of any period is pending at the end of the aforesaid period of twelve years, such books of account, documents and declarations shall be preserved till such pending proceedings are finally disposed of.

Inspection  
and  
production  
of accounts  
and other  
documents

64 (1) All books of account, registers, vouchers and documents relating to the stock of goods of, or purchases, sales and deliveries of goods by, any dealer, and all goods kept in any place of business or warehouses of any dealer, shall, at all reasonable times, be open to inspection by the Commissioner or by any person appointed to assist the Commissioner under sub-section (1) of section 3 and the

Commissioner or such person may take or cause to be taken such copies or extracts of the said books of accounts, registers, vouchers or documents and such inventory of the goods found as appear to him necessary for the purposes of this Act.

(2) The Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, subject to such conditions as may be prescribed, require any dealer or person -

(a) to appear and produce before him such books of accounts, registers or documents, or

(b) to furnish such information relating to the stocks of goods of, or purchases, sales or deliveries of goods by, the dealer or any other information relating to his business,

as may be deemed necessary for the purposes of this Act.

Power to  
search,  
seize and  
seal

65 (1) If the Commissioner or the person appointed to assist the Commissioner under sub-section (1) of section 3, upon information received or otherwise, has reason to suspect that a dealer or person is attempting to evade payment of any tax under this Act or abetting such evasion, he may, subject to such restrictions and conditions as may be prescribed and after recording his reasons for so doing -

- (a) enter and search any place of business, warehouse or any other place where he has reason to believe that such dealer or person keeps or is for the time being keeping any accounts, registers, documents or records of his business or any stock of goods for sale;
- (b) seize such accounts, registers, documents or vouchers as may be considered necessary for the purpose of determination of any liability under this Act; or
- (c) seal any room, warehouse, almirah, safe, box or container in which he has reason to believe that the dealer keeps or is for the time being keeping any accounts registers, vouchers or documents of his business or any stock of goods for sale.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, either before entering and searching or in the course of search of any place of business or warehouse of any dealer or any other place as referred to in clause (a) of sub-section (1), if he considers it necessary so to do, break open such room, warehouse, almirah, safe, box or container <sup>clause (c) of sub-section (1).</sup> as is referred to in/

(3) The Commissioner or the person appointed to assist the Commissioner under sub-section (1) of section 3 may, requisition the services of any police officer or any other officer of the State Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (2) and it shall be the duty of every such officer to comply with such requisition.

(4) The Commissioner or any person appointed to assist the Commissioner under sub-section (1) of section 3 shall grant a receipt for any of the accounts, registers, vouchers or documents, seized by him under sub-section (1) and retain them for such period as may be necessary for examination thereof or for prosecution or for any other purposes of this Act:

Provided that -

(a) the Commissioner shall not retain any of the accounts, registers, documents or vouchers seized by him under sub-section (1) for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefor; and

(b) any person appointed to assist the Commissioner under sub-section (1) of section 3 shall not retain any of the accounts, registers, documents or vouchers seized by him under sub-section (1) for a period exceeding one year from the date of seizure unless he records his reasons for so doing in writing and obtains the sanction in writing of the Commissioner in respect thereof.

(5) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizure shall apply, so far as may be, to searches and seizure under this section.

(6) The State Government may make rules in relation to any search or seizure under this section and, in particular and without prejudice to the generality of such power, such rules may provide for the procedure to be followed by the officers carrying out the search -

- (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available; or
- (ii) for ensuring the safe custody of any books of account or other documents or goods seized.

Restrictions  
on the  
movement  
of goods

66 (1) No person shall transport or authorise the transport from any railway station, steamer station, airport, post office or any other place whether of a similar nature or otherwise notified in this behalf by the State Government, any consignment of any goods specified in Schedule B or goods specified in Schedule D and covered by the notification referred to in clause (a) of sub-section (6) of section 9, exceeding such quantities and except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of any tax payable under this Act.

(2) For the purposes of sub-section (1) the State Government may, by notification in the Official Gazettee, set up a check-post or barrier or both at such place or places with such boundaries as may be specified in such notification.

(3) The Commissioner may, for the purpose of verifying whether any goods referred to in sub-section (1) are being transported in contravention of the provisions of that sub-section, and subject to such restrictions as may be prescribed -



- (a) intercept, detain and search any road vehicle, aircraft, rivercraft or any load carried by a person at the check-post or barrier referred to in sub-section (2) or at any other place; and
- (b) seize any such goods which he has reason to believe are being transported in contravention of the provisions of sub-section (1), together with any container or other materials for the packing of such goods.
- (c) require any transporter or carrier claiming that the goods referred to in sub-section (1) are in transit through the State to another State to furnish evidence in such manner and in such form as may be prescribed in support of such claim.

(4) The provisions of sub-sections (3), (5) and (6) of section 65 shall apply, so far as may be, in respect of any interception, detention, search or seizure under sub-section (3).

(5) Any goods seized under clause (b) of sub-section (3) shall be released only in the prescribed manner and on payment of any penalty that may be imposed under clause (g) of sub-section (1) of section 29.

(6) If the penalty imposed under clause (g) of sub-section (1) of section 29 is not paid by the date specified for such payment, the Commissioner may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods seized under clause (b) of sub-section (3) in open auction and remit the sale proceeds in such manner as may be prescribed.

(7) Notwithstanding anything contained in sub-section (5), the appellate or revisional authority, pending final disposal of an appeal or application for refision against an order for imposition of penalty referred to therein, or the Commissioner,

for reasons to be recorded in writing, may direct release of the goods seized under <sup>clause (b) of</sup> sub-section (3) on such terms and conditions as it or he may consider fit and proper.

(8) Notwithstanding anything contained in sub-section (5) or sub-section (6), the Commissioner may, subject to such rules as may be made in this behalf, where the goods seized under <sup>clause (b) of</sup> sub-section (3) are -

(a) of perishable nature; or

(b) required to be used by a specified date,

sell such goods in open auction after the expiry of such period as he may consider fit and proper, if he is of opinion that such goods may become unusable or unsaleable on detention, or destroy such goods if they become unusable before the sale in open auction actually takes place.

(9) The proceeds of sale of the goods referred to in sub-section (6) or sub-section (3) shall be applied in the prescribed manner for payment in the following order of priority -

(a) firstly, for incidental charges, if any, relating to the auction sale;

(b) secondly, for expenses if any, for storage of the goods seized under sub-section (3); <sup>clause (b) of</sup>

(c) thirdly, for penalty imposed under clause (g) of sub-section (1) of section 29,

and the balance, if any, shall be paid to the owner of the goods if his particulars are available or, if such particulars are not available, to the person from whom the goods were seized under clause (b) of sub-section (3), upon application made in the prescribed manner within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to his satisfaction.

(10) Where any transporter or carrier fails to furnish evidence to the satisfaction of the Commissioner in the manner and form required by or under clause (c) of sub-section (3) he shall be deemed to have sold the goods within the State and all the provisions of this Act shall, so far as may be, apply as if such transporter or carrier were a dealer within the meaning of clause (8) of section 2.

Power to  
call for  
informa-  
tion

67 (1) For carrying out the purposes of this Act, the Commissioner may, subject to such restrictions and conditions as may be prescribed and subject to the provisions of any other law for the time being in force, require any person, including a banking company or post office or railway or any transporter or carrier or clearing, forwarding or transporting agent, to furnish such information or statement as may be useful for or relevant to any investigation of or the enquiry into any alleged or suspected evasion of any tax payable under this Act by any dealer or person or to any proceedings under this Act or examine any accounts, registers, documents or other records in the possession of such person.

(2) The State Government may by rules require a carrier or a clearing, forwarding or transporting agent to obtain a licence in the prescribed manner and to furnish to the Commissioner from time to time such information as may be prescribed.

Power to  
take  
evidence  
or oath,  
etc.

Act 5  
of 1908

68 (1) The authorities specified in Chapter II of this Act and any person appointed to assist the Commissioner under sub-section (1) of section 3 to whom the powers of the Commissioner in this behalf are delegated under sub-section (4) of that section shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath or affirmation;
- (c) compelling the production of books of accounts or other documents; and
- (d) issuing commissions.

(2) Without prejudice to any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of accounts or other documents at a certain place and time, intentionally fails to attend or produce the books of accounts or documents at the place or time, the authority referred to in sub-section (1) may impose upon him such fine not exceeding five hundred rupees as he thinks fit.

(3) Subject to any rule made in this behalf, any authority referred to in sub-section (1) may impound or retain in his custody for such periods as he thinks fit any books of account or other documents produced before him in any proceedings under this Act;

Provided that a person appointed to assist the Commissioner under sub-section (1) of section (3) shall not -

- (a) impound any books of account or other documents without recording his reasons for so doing; or
- (b) retain in his custody any such books or documents for a period exceeding thirty days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

## CHAPTER XI

### RESPONSIBILITIES AND LIABILITIES OF A DEALER IN SPECIAL CIRCUMSTANCES

Furnishing  
information  
regarding  
change in  
the  
business

69

If any dealer liable to pay tax -

- (a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any other change in the ownership of the business; or
- (b) transfers his business by way of lease; or
- (c) discontinues his business or changes his place of business or the location of his warehouse or opens a new place of business or warehouse; or
- (d) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which, in the case of a registered dealer is or are specified in his certificate of registration; or
- (e) succeeds to any business by bequest, inheritance or otherwise; or
- (f) being a company incorporated under a statute, effects any change in the constitution of its Board of Directors,

he or it shall, within the prescribed time and in the prescribed manner, inform such authority as may be specified in the rules in writing accordingly, and if any dealer dies, his legal representative shall in like manner inform the said authority.

Information regarding officers responsible for the affairs of the business

70 Every registered dealer shall in the prescribed manner and within the prescribed time send to such authority as may be specified in the rules a declaration in the prescribed manner and form stating the names of the principal officer, manager and of all officers of other designation who are responsible for ensuring compliance with the provisions of this Act for and on behalf of such dealer.

Transfer of business

71 (1) Where the business of a dealer registered under this Act is transferred by sale, gift, bequest, inheritance or otherwise or is transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall for all purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the certificate of registration of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall be entitled to apply to the Commissioner within the prescribed time for the amendment of the certificate of registration accordingly:

(2) Where the business of a dealer not registered under this Act is transferred by any of the modes referred to in sub-section (1) the transferee or lessee, as the case may be, whether he is a registered dealer or not, shall be liable to pay any tax, interest, penalty or other sum payable by the transferor which remains unpaid on the date of such transfer (except liabilities under this Act already discharged by the transferor) and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) In a case to which the provisions of sub-section (1) or sub-section (2) apply, the transferor shall also, jointly and severally with the transferee, be liable to pay the tax, interest, penalty or other sum, if any, payable for the period upto the date of such transfer, whether such tax, interest, penalty or other sum has been assessed before or after such transfer.

Legal  
representative  
of deceased  
person

72 (1) Where a dealer or person dies, his legal representative shall be liable to pay any tax, interest, penalty or other sum which the deceased would have been liable to pay if he had not died, in like manner and to the same extent as the deceased and all the provisions of this Act shall, so far as may be, apply as if such legal representative were a dealer or person liable to pay tax under this Act.



(2) For the purpose of sub-section (1) —

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased; and

(b) any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative.

(3) Every legal representative shall be personally liable for any tax, interest, penalty or other sum payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of, or parted with.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate is capable of meeting the liability.

Explanation - In this section 'legal representative' has the meaning assigned to it in clause (11) of section 23 of the Code of Civil Procedure, 1908 and includes an executor, administrator or other person administering the estate of a deceased person.

Assessment  
after  
partition of  
Hindu  
undivided  
family,  
disruption  
or dissolution  
of a firm or  
an association  
of persons

73 Subject to the provisions of section 71, where a dealer is a Hindu undivided family, firm or other association of persons, and such family, firm or association is partitioned or disrupted or dissolved, as the case may be, -

(a) the tax, interest, penalty or any other sum payable under this Act by such family, firm or association of persons for the period up to the date of such death, partition, disruption or dissolution shall be assessed or imposed as if no partition, disruption or dissolution had taken place, and all the provisions of this Act shall apply accordingly, and

(b) every person who was at the time of such partition, disruption or dissolution a member or partner of the Hindu undivided family, association of persons or firm and the legal representative of any such person who is deceased shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment of the tax, interest, penalty or other sum payable under this Act by such family, firm or association of persons for the period upto the date of such partition, disruption or dissolution, whether the assessment of such tax or the levy of such interest, penalty or other sum is made prior to or after such death, partition, disruption or dissolution.

Company in  
Liquidation

74 (1) Subject to the provisions of any other law for the time being in force, every person —

(a) who is the liquidator of any company which is being wound up, whether under the orders of court or otherwise; or

(b) who has been appointed the receiver of any assets of a company (hereinafter referred to as the liquidator),

shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Commissioner who is entitled to assess the company.

(2) The Commissioner shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Commissioner, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator —

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Commissioner under subsection (2); and

(b) on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting reasonable costs and expenses of the winding up of the company.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

## CHAPTER XII

### OFFENCES AND PROSECUTION

Failure to furnish security, maintain or preserve accounts, furnishing information, etc.

75 (1) Whoever —

(a) carries on business as a dealer without furnishing the security required to be furnished under section 20; or

(b) fails to comply with the provisions of section 62 or section 63 or any rule framed in that behalf; or

(c) refuses to comply with any requisition made under section 64; or

(d) neglects to furnish any information required to be furnished under section 67 or section 69,

shall be punishable with simple imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or with both.

Failure to get registered, etc.

76 (1) Whoever —

(a) being liable to pay tax under this Act, fails to get himself registered; or

(b) not being a registered dealer represents, when purchasing goods, that he is a registered dealer; or

(c) being a registered dealer represents, when purchasing goods or class of goods not covered by his certificate of registration, that such goods are covered by such certificate; or

(d) obstructs or prevents any authority under this Act from making an inspection under section 64 or exercising the power to search, seize or seal under section 65 or contravenes the provisions of section 66 or any requirement or condition of any rule framed under section 64 or section 65 or section 66,

shall be punishable with imprisonment of either description for a term which may extend to one year or with fine or with both.

Failure to  
furnish  
return

77 If a dealer or person wilfully fails to furnish in due time the return which he is required to furnish under sub-section (1) or sub-section (3) of section 21 and pay the tax due thereon, he shall be punishable, -

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

- (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three<sup>years</sup> and with fine:

Provided that a dealer or person shall not be proceeded against under this section if -

- (a) the return is furnished by him before the expiry of one year from the end of the year in which it was due and the tax due thereon has been paid; or
- (b) the tax payable by him determined on assessment does not exceed three thousand rupees.

False statement in verification, etc.

78 If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement or return which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, -

- (i) in a case where the amount of tax, which would have been evaded if the statement or account or return had been accepted as true, exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Wilful attempt to evade tax, etc.

79 (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable -

- (i) in a case where the amount sought to be evaded exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the Court, also be liable to fine.

Explanation - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person -



- (i) has in his possession or control any books of account, declarations or other documents (being books of account, declarations or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account, declarations or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account, declarations or other documents; or
- (iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

Abetment of  
false return

80 If a person abets or induces in any manner another person to make and deliver an account or a statement or return or declaration relating to any tax payable under this Act which is false and which he either knows to be false or does not believe to be true<sup>or</sup> to commit an offence under section 79, he shall be punishable -

- (i) in a case where the amount of tax, penalty or interest which would have been evaded if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Punishment for second and subsequent offences

81 If any dealer or person convicted of an offence under section 77 or section 78 or section 79 or section 80 is again convicted of an offence under any of the aforesaid provisions he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Punishment for continuing offence

82 If a dealer or person liable to/<sup>be</sup>convicted for an offence under section 75 or section 76 or section 77 which is of a continuing nature continues to default, the fine imposable on him under the aforesaid provisions shall be a sum calculated at a rate which shall not be less than fifty rupees or more than one-hundred rupees for every day during which the default continues.

Offences by  
Hindu  
undivided  
families

83 (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof 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 subsection shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by  
companies

84 (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company as well as the company 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 subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (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 is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or 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 a body corporate, and includes -

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to -

(i) a firm, means a partner in the firm; and

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

Prosecution  
to be at  
instance of  
Commissioner

85 (1) No person or dealer shall be proceeded against for an offence under any of the foregoing provisions except at the instance of the Commissioner.

(2) A dealer or person shall not be proceeded against for an offence under this Chapter in relation to a default in respect of which the penalty imposed or imposable has been waived under section 49.

Cognizance  
of offences

86 No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

Certain  
offences  
to be  
cognizable  
and  
non-bailable

87 The offences punishable under clause (d) of section 76, section 77, section 78, section 79 and section 80 shall be cognizable and non-bailable while the offences under the other provisions of any of the foregoing sections shall be cognizable and bailable.

Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply

88 Nothing contained in section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

Presumption  
as to books  
of account,  
mental state,  
etc.

89 (1) Where any books of account, other documents or stock are or is found in the possession or control of any person in the course of a search, it may be presumed -

- (i) that such books of account, other documents, or stock belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any prosecution for an offence under any of the foregoing provisions require a culpable mental state on the part of the accused, the court shall presume the existence of such culpable mental state until the contrary is proved.

Explanation - In this sub-section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

Compounding of offences

90 (1) The Commissioner may, subject to such conditions as may be prescribed, compound an offence under any of the foregoing provisions either before or after the institution of proceedings by requiring the person proceeded against to pay by way of composition a sum not exceeding such sum as may be prescribed.

(2) On payment of the full composition money under sub-section (1) -

(a) no proceedings under any of the foregoing provisions shall be commenced against such person; or

(b) if any such proceedings have already been commenced they shall not be further proceeded with.

Disclosure by public servant

91 (1) If a public servant furnishes any information or produces any document in contravention of the provisions of sub-section (1) of section 93, he shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine not exceeding one thousand rupees.

(2) No prosecution shall be instituted under this section except with the previous sanction of the State Government.

## CHAPTER XIII

### MISCELLANEOUS

#### Service of notice

92 (1) Any notice which is issued under the provisions of the Act or the rules or which is required to be issued for carrying out the purposes of the Act may be served on a dealer or a person by any of the following methods, namely -

- (i) personally upon the addressee, if present;
- (ii) by messenger; and
- (iii) by registered post:

Provided that if the authority issuing the notice is satisfied that an attempt has been made to serve a notice by any one of the above mentioned methods and the dealer is avoiding service or that for any other reason the notice cannot be served by any of the above mentioned methods, the said authority may, after recording his reasons for so doing, cause such notice to be served by affixing a copy thereof in some conspicuous place in his office and also upon some conspicuous part of the last notified place of business of the dealer or person, and a notice so served shall be deemed to have been duly served.



(2) When a notice is sent by registered post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered letter in transit unless the contrary is proved.

(3) Where a Hindu undivided family has been partitioned, any notice under this Act in respect of the business of the Hindu undivided family shall be served on the person who was the last manager of the Hindu undivided family or, if such person is dead, then on any adult member who was a member of the Hindu undivided family immediately before the partition.

(4) Where a firm or other association of persons is dissolved, notices under this Act in respect of the business of the firm or association may be served on any person who was a partner of the firm or member of the association, as the case may be, immediately before its dissolution.

Returns,  
etc., to be  
confidential

Act 1  
of 1872

93 (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act or any earlier law, other than proceedings before a criminal court shall, save as provided in sub-section (2), be treated as confidential and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as aforesaid, require any authority under this Act to produce before it any such statement, return, account, document or record or any part thereof or to give evidence before it in respect thereof.

(2) Nothing in this section shall apply to the disclosure of any of the particulars referred to in sub-section (1) -

- Act 45  
of 1860,  
Act 2  
of 1947
- (a) for the purposes of prosecution under this Act or any earlier law, the Indian Penal Code, the Prevention of Corruption Act, 1947 or any other enactment for the time being in force or for any preliminary enquiry or investigation for ascertaining whether such prosecution lies;
  - (b) to a civil court in any suit or proceeding to which the Government or any authority under this Act or any earlier law is a party and which relates to any matter arising out of any proceeding under this Act or any earlier law;
  - (c) in connection with an inquiry concerning allegations of corruption or official misconduct against any Government servant or for the purpose of taking disciplinary action against such Government servant;
  - (d) in connection with an inquiry into charges of misconduct in the course of any proceedings under this Act or any earlier law against a legal practitioner or chartered accountant or other person entitled to appear before the authorities under this Act or any earlier law, to the authority competent to take disciplinary action against such legal practitioner, chartered accountant or other person;
  - (e) to an officer of the Central Government or of a State Government as may be necessary for the purpose of levy or realisation of any tax, duty or penalty imposed by it;

- (f) to an officer of the Central Government or the State Government for the audit of receipts and refunds of the tax, interest, penalty or other sum imposed under this Act or any earlier law;
- (g) to any officer of the State Government to enable such officer to perform his executive functions relating to the affairs of the State;
- (h) in connection with the publication in any established law journal of a part or the whole of any judgement or order passed by the Tribunal under this Act or any earlier law;
- (i) to any person where such disclosure is necessary for the purposes of this Act or any earlier law; and
- (j) to any person for purposes, other than those referred to in clauses (a) to (i), if the State Government, by a general or special order, directs such disclosure in the public interest.

(3) Notwithstanding anything contained in subsection (1), the Commissioner may publish or cause to be published in the Official Gazette and in such other manner as he may deem fit such particulars as may be prescribed of dealers -

- (a) who are granted registration or whose certificate of registration has been amended or cancelled under any provision of this Act; or
- (b) who are convicted of any offence under this Act or any earlier law; or
- (c) whose turnover or the tax payable by whom under this Act exceeds prescribed limits.

Appearance by  
authorised  
representative

94 (1) A dealer or a person who is entitled or required to appear before an authority in connection with any proceedings under this Act, otherwise than when required under section 68 to attend personally for examination on oath or affirmation, may attend by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised in writing by such dealer or person to appear on his behalf, being -

- (a) a relative or a person regularly employed by him; or
- (b) a legal practitioner who is entitled to practice in any civil court in India; or
- (c) an accountant; or
- (d) a person who has acquired such educational qualifications as may be prescribed and has been registered by the Commissioner as a sales-tax practitioner in the prescribed manner.

Explanation - In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 and includes a person who by virtue of the provisions of sub-section (2) of section 126 of the Companies Act, 1956 is entitled to be appointed to act as an auditor of companies registered in the State.

Act 38  
of 1949

Act  
of 1959

Act 1  
of 1956

(3) No person -

- (a) who has been dismissed or removed from Government service; or
- (b) who has been convicted for an offence connected with any proceedings under Act 43 of 1961 this Act or under any earlier law or under the Income-tax Act, 1961; or
- (c) who being a person referred to in clause (b) or clause (c) of sub-section (1) has been found guilty of misconduct by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or
- (d) who being a sales tax practitioner registered under clause (d) of sub-section (1) is found by the Commissioner, after enquiries conducted in the prescribed manner, guilty of misconduct in connection with any proceedings under this Act or under any earlier law; or
- (e) who has become an insolvent,

shall be qualified under sub-section (1) to represent a dealer or a person for a period of five years from the date of dismissal, removal, conviction or order adjudging a person guilty of misconduct or as insolvent, as the case may be.

(4) No order of disqualification shall be made by the Commissioner in respect of a person under clause (d) of sub-section (2) unless he is given a reasonable opportunity of being heard.

(5) Notwithstanding anything contained in sub-section (3), the Commissioner may, upon an application made to him in this behalf and for reasons to be recorded in writing, reduce the period of disqualification as referred to in sub-section (3) by such period as he considers fit.

(6) Notwithstanding anything contained in this section, a person who was formerly employed as an authority under this Act, not below such rank as may be prescribed, and who has retired or resigned from such employment, shall not be entitled to represent a dealer or a person for a period of one year from the date of his retirement or resignation, as the case may be.

Power to make rules 95 (1) The State Government may make rules with prospective or re-trospective effect for carrying out the purpos s of this Act.

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

- (i) the manufactures or the manufacturing processes to be excluded under clause (17) of section 2;
- (ii) the portions of the valuable consideration to be excluded while determining the sale price under clause (30) of section 2;
- (iii) the restrictions and conditions subject to which the Commissioner may delegate his powers under sub-section (4) of section 3;

- (iv) the qualifications, conditions of service and tenure of the members constituting the Tribunal under sub-section (3) of section 5;
- (v) the conditions and limitations of the power of the Tribunal to award costs and the manner in which the costs awarded against any authority under this Act under sub-section (7) of section 5 may be paid;
- (vi) the manner in which the functions of the Settlement Commission may be discharged by its members under sub-section (4) of section 7;
- (vii) the qualifications of the members of the Settlement Commission under sub-section (5) of section 7;
- (viii) the manner in which purchase tax shall be calculated on the turnover of purchases of goods under clause (e) of sub-section (6) of section 10;
- (ix) the exemptions to be allowed under section 13 and the conditions subject to which such exemptions are to be allowed;
- (x) the form in which documentary evidence by way of declarations or otherwise are to be furnished under sub-section (2) of section 15, the particulars to be contained in such declarations or documents and the circumstances and the manner in which, the time within which and the conditions and restrictions subject to which such declarations or documents are to be furnished;
- (xi) the time within which a dealer holding a valid certificate of registration granted under any earlier law shall apply for registration under section 16;

- (xii) the forms of application and accompanying declaration and the manner of signing and verifying an application for registration under section 16 or section 17;
- (xiii) the procedure for grant of registration under section 16 or section 17;
- (xiv) the manner in and the intervals at which the tax under this Act shall be payable by different categories of dealers under sub-section (1) of section 21;
- (xv) the form of the statement of turnover of sales or of purchases referred to in sub-section (2) of section 21;
- (xvi) the form of and the statements to accompany the return to be furnished under sub-section (3) or sub-section (4) of section 21, the manner in which such return is to be verified under sub-section (5) of that section and the date by which the return under sub-section (3) of that section shall be furnished;
- (xvii) the classes of registered dealers in respect of whom, the conditions subject to which and the manner in which an assessment may be made on the basis of the return under sub-section (2) of section 22;
- (xviii) the form of the notice to be issued under sub-section (3) of section 22 and the conditions subject to which such notice may be issued in a case where an assessment has been made under sub-section (2) of section 22;
- (xix) the class or classes of cases in which and the conditions and restrictions subject to which a dealer may be permitted to pay a lump sum in lieu of the tax payable by him under section 25;
- (xx) the particulars to be set forth in an order imposing penalty under sub-section (1) of section 29;



- (xxi) the determination of the value of goods transported for the purpose levy of penalty under clause (v) of sub-section (1) of section 29;
- (xxii) the form of a notice of demand to be issued under sub-section (1) and the manner in and the place or places at which the payment of the amount specified therein is to be made under sub-section (2) of section 31;
- (xxiii) the manner in which a copy of the certificate is to be sent by the Tax Recovery Officer to whom it is sent, to another Tax Recovery Officer under sub-section (2) of section 34;
- (xxiv) the manner in which a refund under sub-section (1) or sub-section (2) of section 42 shall be made;
- (xxv) the authority or authorities to which an appeal may be preferred under section 45;
- (xxvi) the form and manner in which any appeal or cross objection may be filed under section 45 and the fee, if any, payable in respect thereof;
- (xxvii) the form of application to be made under section 47 requiring the Tribunal to refer any question of law arising out of its order to the High Court;
- (xxviii) the conditions and restrictions subject to which the Commissioner may waive or reduce the amount of interest or penalty under section 49;
- (xxix) the form and the manner in which an application to the Settlement Commission may be made under section 53;
- (xxx) the fees payable by a person applying for a certified copy of the report of the Commissioner to the Settlement Commission under section 57;

- (xxxix) the manner and form of keeping accounts and the conditions and restrictions subject to which such accounts are to be kept by any class of dealers under sub-section (2) of section 62;
- (xxxii) the value of goods on the sale of which in any one transaction a registered dealer shall issue a bill or cash memorandum as provided in sub-section (3) of section 62;
- (xxxiii) the conditions subject to which the Commissioner may require any dealer or person to produce books of accounts or furnish any statement or information under section 64;
- (xxxiv) the restrictions and conditions subject to which a search may be carried out under section 65;
- (xxxv) the procedures to be followed in carrying out a search or effecting a seizure under section 65;
- (xxxvi) the quantities of goods and the conditions and restrictions referred to in sub-section (1) of section 66;
- (xxxvii) the conditions subject to which the Commissioner may intercept and search any road vehicle, rivercraft or any load carried by any person and seize any goods under clause (a) or (b) of sub-section (3) of section 66;
- (xxxviii) the manner and form in which a transporter or carrier may be required to furnish evidence in support of his claim that the goods are in transit through the State under clause (c) of sub-section (3) of section 66;
- (xxxix) the restrictions and conditions subject to which the Commissioner may direct release of seized goods or put such goods to public auction or destroy them under sub-section (5) or sub-section (6) or sub-section (7) or sub-section (8) of section 66;

- (xl) the manner in which the proceeds of sale of the goods may be applied or an application made under sub-section (9) of section 66;
- (xli) the restrictions and conditions subject to which information may be called under sub-section (1) of section 67;
- (xlii) the manner in which a licence may be obtained and the nature of information to be furnished under sub-section (2) of section 67;
- (xliii) the restrictions and conditions and the procedure governing impounding and retention of books under sub-section (3) of section 68;
- (xliv) the authority to which and the time within which information shall be furnished under section 69;
- (xlv) the authority to which, the time within which and the form and manner in which information shall be furnished under section 70;
- (xlvi) the time within which an application to the Commissioner shall be made under section 71;
- (xlvii) the conditions subject to which the Commissioner may accept composition money under sub-section (1) of section 90;
- (xlviii) the particulars of dealers which may be published under sub-section (3) of section 93;
- (xlix) the educational qualifications and the manner of registration of sales tax practitioners and the procedure for conducting enquiries against such practitioners under section 94; and
- (1) the rank of the authority referred to in sub-section (6) of section 94.

laying of the  
rules and  
notifications  
before the  
State  
Legislature

96 The State Government shall cause every rule made and every notification issued under this Act to be laid, as soon as may be, after it is made or issued before the House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one or more sessions immediately following and, if before the expiry of the session in which it is so laid or the session immediately following, the House agrees in making any modification in the rule or notification or agrees that the rule or notification should not be made, the rule or the notification shall thereafter have effect only in so much as is not so modified 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 the rule or notification.

Repeals and  
amendments

97 (1) The following laws are hereby repealed:

Bengal Act VI of 1941 (i) The Bengal Finance (Sales Tax) Act, 1941;  
Bengal Act XI of 1941 (ii) The Bengal Raw Jute Taxation Act, 1941; and  
W.B. Act IV of 1954 (iii) The West Bengal Sales Tax Act, 1954.

(2) Notwithstanding the repeal of the aforesaid laws by this Act and save as otherwise provided in sub-section (3), the repealed laws (in this Act referred to as the earlier laws) and all rules, notifications, registrations, forms and notices made or prescribed or issued thereunder which were in force immediately before the appointed day for the purpose of sub-section (1) of section 9, shall continue to have effect in respect of any period ending before such appointed day, and all proceedings for or arising from the assessment or re-assessment of any dealer or person in respect of such period may be taken or continued as if this Act had not been passed.

(3) Notwithstanding anything contained in sub-section (2), in respect of the following matters relating to any period ending before the appointed day for the purpose of sub-section (1) of section 9, the provisions of this Act shall apply, namely:

- (a) an appeal or application for refund, rectification, revision, reference or settlement in respect of any period ending before such appointed day shall be under this Act if no such appeal or application had been made and the time limit for such appeal or application had not expired before such appointed day;
- (b) any proceedings by way of rectification or revision in respect of any period ending before such appointed day may be commenced and disposed of under this Act if the time limit for such rectification or revision had not expired before such appointed day;
- (c) where any return, statement or account relating to any period ending before such appointed day is delivered furnished or produced on after such appointed day, or where any proceedings have been taken under Chapter X on or after such appointed day, the provisions of this Act relating to offences and prosecution in Chapter XII shall apply;
- (d) where any tax levied under any of the earlier laws remains unpaid on such appointed day, the provisions of sub-sections (2), (3) and (4) of section 28 of this Act relating to charge of interest shall, so far as may be, apply in relation to such tax;

(e) any tax, interest, penalty or other sum remaining unpaid on such appointed day may be collected or recovered under the provisions of Chapter VII and Schedule F of this Act and, for this purpose, any proceedings taken under the Bengal Public Demands Recovery Act, 1913 shall be deemed to be proceedings taken under section 33 and Schedule F of this Act and continued and disposed of by the Tax Recovery Officer accordingly;

(f) where any tax relating to any period ending before such appointed day is refundable on or after such appointed day, the provisions of sections 42, 43 and 44 shall, so far as may be, apply in relation to such refund.

Power to  
remove  
difficulties

98 (1) If any difficulty arises in giving effect to the provisions of sub-section (2) or sub-section (3) of section 97, the State Government may, by order published in the Official Gazette, make such provisions or give such direction, not inconsistent with the provisions of this Act, as appear to be necessary or expedient for the purposes of removing that difficulty.

(2) No order under sub-section (1) shall be made after the expiry of two years from the appointed day for the purpose of sub-section (1) of section 9.

Important Note

The lists of goods contained in Schedules A, B and D are rough and tentative as final decisions are yet to be taken by the State Government on the recommendations of the Study Committee and the NIPFP team relating to exemptions and taxation of goods different points. These Schedules have been drafted on the basis of the existing classifications information regarding which is probably neither complete nor upto-date. The draft Schedules have not been scrutinised by the officers of the department nor discussed with them. They have been inserted only to serve as models for the final drafting of the Schedules to be done by the Government.

SCHEDULE A

(See Section 12)

List of goods on which no tax is payable

<u>Description of goods</u>	<u>Exceptions, if any</u>
1. All cereals and pulses including broken particles and husk and bran thereof, but excluding rice ( <i>Oryza sativa</i> L.) and wheat ( <i>Triticum vulgare</i> , <i>T. compactum</i> , <i>T. sphaerococcum</i> , <i>T. durum</i> , <i>T. aestivum</i> , <i>T. dicoccum</i> , L.)	Except when sold in sealed containers.
2. Wheat flour including atta and suji.	
3. Bread.	
4. Meat which has not been cured or frozen.	
5. Fresh fish.	

<u>Description of goods</u>	<u>Exceptions, if any</u>
6. Vegetables, green or dried, commonly known as Sabji, tarkari or sak (other than dry chillies).	Except when sold in sealed containers.
7. Cooked foods, other than cakes, pastries, biscuits and sweetmeats, sold at one time to a person at a price of not more than ten rupees.	Ditto
8. Gur and molasses.	
9. Sugar and sugar candy.	
10. Salt.	
11. Milk (, other than powdered or condensed milk).	
12. Livestock, including poultry.	
13. Agricultural implements	Except tractors, power-tillers and other implements operated by power and spare parts, accessories and component parts thereof.
14. Cotton yarn and silk yarn.	
15. Tobacco other than cigarettes but including tobacco-paste ready for use in hookah.	
<u>Explanation</u> - In this entry 'tobacco' has the same meaning as attributed to it in the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944).	
16. Cinchona alkaloids and their salts.	
17. Periodicals and books including text-books approved for primary classes I-IV and such sacred books as may be prescribed.	



<u>Description of goods</u>	<u>Exceptions, if any</u>
18. Water, but not aerated or mineral waters when sold in bottles or sealed containers.	
19. Electrical energy.	
20. Motor spirit, that is to say, any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for any form of motor vehicle or stationary internal combustion engine.	
21. Raw jute.	
22. Plain paper, commonly known as "cartridge paper" sold by Government Treasuries through the agency of licensed stamp vendors.	
23. Eggs.	
24. Sago and tapioca globules.	
25. Charkha.	
26. Cotton.	
27. Handloom woven -	
(a) Gamchas.	
(b) Khaddar or Khadi as defined in the West Bengal Khadi and Village Industries Board Act, 1959, except those made from silk yarn.	
(c) Garments made of Khaddar or Khadi referred to in sub-item (b).	
28. Newspapers.	
29. Mustard seed and rape seed.	
30. Flowers and plants.	
31. Vegetable seeds.	

<u>Description of goods</u>	<u>Exceptions, if any</u>
32. Hosiery goods, other than woollen hosiery goods irrespective of proportion of woollen content.	
33. Kerosene oil.	
34. Furnace oil.	
35. Country liquor (including Tari and Pachwai), Ganja, opium and Bhang.	
36. Potable foreign liquor (including medicated wines) and brandy, whisky, gin, rum, liqueur, cordials, and other similar potable alcoholic preparations containing Indian-made spirit and Indian-made rectified spirit intended for the manufacture of brandy, whisky, gin, rum, liqueurs, cordials and other similar potable alcoholic preparations.	
37. Lac and shellac.	
38. Exercise books, laboratory note books, drawing books, graph books, ruled paper and graph paper.	
39. Flower seeds.	
40. Fodder seeds, green manure seeds and grass seeds.	
41. Betel leaves including packing materials.	
42. Charcoal for fuel.	
43. Hand made paper.	
44. Poultry food.	
45. Cattle and pig feed.	
46. Writing slates and slate pencils.	

<u>Description of goods</u>	<u>Exceptions, if any</u>
47. Household articles of brass and bell metals.	
48. Flour, suji, dalia and atta made from maize.	
49. Barley products, viz., flour, suji, atta and dalia.	Except when sold in sealed containers.
50. Candles.	
51. Methylated and rectified spirit.	
52. Lead pencils, mathematical instrument boxes and maps.	
53. Worm eggs and silk worm eggs.	
54. Bamboo and cane articles.	
55. Conch shell products.	
56. Glass bangles and also those made of rubber plastics or celluloid.	
57. Organic manure.	
58. Bio-gas plants.	
59. Orthopaedic footwear, crutches and artificial limbs.	
60. Hearing aids.	
61. Bee-keeping apparatus.	
62. Honey.	
63. Papad.	
64. All varieties of combs of rubber, plastics or celluloid.	

<u>Description of goods</u>	<u>Exceptions, if any</u>
65. Chloroquine phosphate tablets.	
66. Aluminium bangles plain (i.e., without decorations or stones).	
67. Saplings.	
68. Paddy seeds and wheat seeds.	
69. Jute seeds, mesta seeds and sunhemp seeds.	
70. Tapioca globules as specified in notification No. 2485 FT dated the 23rd November, 1955.	
71. Pure silk yarn.	

SCHEDULE B

[ See Section 10(1)(a) ]

List of Goods on which tax is payable at the first point of sale in the State

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
1. (i) Aerated water and non-alcoholic beverages, (as specified in notification No.3945-F.T., dated the 26th August, 1977) other than soda water.	15
(ii) Soda water as specified in notification No.3945-F.T., dated the 26th August, 1977.	11
2. Aluminium foils including aluminium foils backed or inter-leaved with any substance, other than paper, (as specified in notification No.4584-F.T., dated the 9th September, 1980).	8
3. Aluminium wares, as specified in notification No.1914-F.T., dated the 10th May, 1963.	8
4. Ayurvedic (including Siddha) and Unani drugs, as defined in clause (a) of section 3 of the drugs and Cosmetics Act, 1940 (23 of 1940), but excluding such items of the said drugs as are covered by notification No.1658-F.T., dated 1st August, 1956, as specified in notification No.3574-F.T., dated the 27th September, 1982.	4
5. Betelnuts and turmeric, as specified in notification No.885-F.T., dated the 1st May, 1955.	8
6. Black and white pepper, cloves, cinnamon and casino.	11
7. Biscuit, as specified in notification No.106-F.T., dated the 15th January, 1955.	11

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
8. Binoculars, telescope and opera glasses, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
9. Transparent cellulose film, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended.	11
10. Cosmetics of all varieties, as specified in notification No.3123-F.T., dated the 15th July, 1975, as amended.	15
11. Coffee and chicory in whole or powdered form including instant coffee, as specified in notification No.3945-F.T., dated the 26th August, 1977.	15
12. Cigarette cases and lighters, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
13. Coir rope, as specified in notification No.1892-F.T., dated the 5th April, 1975.	11
14. Crockery, as specified in notification No. 3945-F.T., dated the 26th August, 1977 whether manufactured from porcelain, glazed earthenware other than stone-ware, or glass or manufactured from stone-ware.	15
15. Cushions, mattresses, pillows and other articles made wholly or partly of rubber foam, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
Explanation - For the purpose of this entry the expression "other articles" shall include sheets in any form or description.	
16. Cushions, mattresses, pillows and other articles made wholly or partly of artificial or synthetic resins and plastic foam, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
Explanation - For the purpose of this entry, the expression "other articles" shall include sheets in any form or description.	
17. Drugs and patent or proprietary medicines, as specified in notification No.1658-F.T., dated the 1st August, 1956, as subsequently amended.	4
18. Dry cells and dry cell batteries, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended.	15
19. Electrical appliances, as specified in notification No.3945-F.T., dated the 26th August, 1977, as subsequently amended but excluding fans, exhaust fans and air circulators.	15
20. Electric fans, exhaust fans and air circulators as specified in notification No.3945-F.T. dated the 26th August, 1977, as subsequently amended.	11
21. Fertilisers, as specified in notification No. 1338-F.T., dated the 21st March, 1978.	5
22. Fire works, as specified in notification No. 3945-F.T., dated the 26th August, 1977.	15
23. Vacuum flasks, as specified in notification No.235-F.T., dated the 17th January, 1978.	15
24. Fluorescent tube and mercury vapour lamps, etc., as specified in notification No.3945-F.T., dated the 26th August, 1977.	15
25. Dry or preserved fruits, as specified in notification No.2252-F.T., dated the 9th June, 1969, as amended.	15
26. Furniture made wholly or principally of aluminium, as specified in notification No. 235-F.T., dated the 17th January, 1978.	15

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
27. Furniture made wholly or principally of iron or steel, as specified in notification No.235-F.T., dated the 17th January, 1978.	15
28. Liquefied petroleum gas, as specified in notification No.1205-F.T., dated the 26th March, 1979.	15
29. Gramophones and component parts thereof and records, as specified in notification No. 1151-F.T., dated the 1st April, 1974, as amended.	15
30. Hair oil, as specified in notification No. 3123-F.T., dated the 15th July, 1974, as amended.	8
31. Ice and ice-creams of all varieties including ice candy, as specified in notification No. 3945-F.T., dated the 26th August, 1977.	15
32. Incense sticks locally known as Dupkathi, Dhupbati or Agarbati including semifinished sticks thereof, as specified in notification No.1267-F.T., dated the 31st March, 1977.	4
33. Iron and steel safes and almirahs, as specified in notification No.235-F.T., dated the 17th January, 1978.	15
34. Lime	7
35. Laminated sheets like formica, sunmica, etc., as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
36. Linoleum, as specified in notification No. 235-F.T., dated the 17th January, 1978.	15
37. Lozenges, hard boiled sugar confectionery, toffees, caramels, chocolates, etc., as specified in notification No.459-F.T., dated the 6th February, 1967.	8



<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
38. (i) Lubricating oils and greases, as specified in notification No.1151-F.T., dated the 1st April, 1974, when sold to any undertaking supplying electrical energy under a licence or sanction granted or deemed to have been granted in accordance with the provisions of the Indian Electricity Act, 1910 (19 of 1910), or under the authority of any other law.	3
(ii) Lubricating oils and greases, as specified in notification No.1151-F.T., dated the 1st April, 1974, when sold to others.	11
39. Matches, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended.	7
40. Cured or frozen meat and fish, as specified in notification No.3945-F.T., dated the 26th August, 1977.	15
41. Shoe polish	11
42. (i) Powdered or condensed milk, as specified in notification No.886-F.T., dated the 1st May, 1955, as amended, which are principally used as food for babies and sold under various trade names and descriptions, such as Glaxo, Lactogen, Ostermilk or any other name or description whatsoever.	7
(ii) Powdered or condensed milk, as specified in notification No.886-F.T., dated the 1st May, 1955, as amended, other than those in item (i).	11
(iii) Skimmed milk powder when sold to Mother Dairy, Calcutta.	4
43. Powders for food drinks having cocoa or chocolate and malt as major ingredients, as specified in notification No.790-F.T., dated the 2nd April, 1957.	11

	<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
44.	(i) Omnibuses and goods vehicles, as specified in notification No.1338-F.T., dated the 21st March, 1978.	11
	(ii) Motor cars, as specified in notification No.1338-F.T., dated the 21st March, 1978.	11
	(iii) Motor scooters, mopeds, motorised cycle rickshaws, motor cycles and motor cycle combinations of any kind, as specified in notification No.1338-F.T., dated the 21st March, 1978.	11
	(iv) Motor vehicles including motorettes, but excluding those mentioned in items (i), (ii) and (iii), as specified in notification No.1338-F.T., dated the 21st March, 1978.	11
	(v) Chassis or bodies of the commodities mentioned in items (i), (ii), (iii) and (iv), as specified in notification No. 1338-F.T., dated the 21st March, 1978.	11
45.	(i) Paper, as specified in notification No. 1914-F.T., dated the 10th May, 1963, as amended, other than dye-line base paper and art paper, bank paper, bond paper, duplicating paper and cigarette tissue paper.	8
	(ii) Dye line base paper, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended.	8
	(iii) Art paper, bank paper, bond paper, duplicating paper and cigarette tissue paper, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended.	8

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
46. (i) Carbon paper, stencil paper, paper commonly known as continuous stationery mainly used in computers, all types of sensitised paper, as specified in notification No.1025-F.T., dated the 26th March, 1979, as subsequently amended.	8
(ii) Aluminium foiled paper, as specified in notification No.1205-F.T., dated the 26th March, 1979, as subsequently amended.	8
(iii) Specially processed paper, as specified in notification No.1205-F.T., dated the 26th March, 1979, as subsequently amended, other than those referred to in item (i) and item (ii).	8
47. Paper board and straw board, as specified in notification No.1914-F.T., dated the 10th May, 1963.	4
48. Parambulators including push chair for babies, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
49. Pesticides	4
50. Radio, Radio-gramophones, etc., as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
51. Refined, bleached and deodorised palm oil, as specified in notification No.5094-F.T., dated the 14th September, 1979.	11
52. Sanitary wares and sanitary fittings, as specified in notification No.3945-F.T., dated the 26th August, 1977.	13
53. Shaving sets including safety razors and razor blades, as specified in notification No.3123-F.T., dated the 15th July, 1975, as amended.	11

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
54. Soap, as specified in notification No.2346-F.T., dated the 1st December, 1954, as amended.	8
55. General purpose washing powder containing synthetic detergents, as specified in notification No. 1010-F.T., dated the 17th May, 1955.	8
56. Ships liable to be registered under the Merchant Shipping Act, 1958 (44 of 1958), all types of tugs, floating docks, floating cranes, dredgers and barges.	4
57. Storage batteries, as specified in notification No.1344-F.T., dated the 21st March, 1978.	15
58. Surgical dressings, as defined in notification No.1658-F.T., dated the 1st August, 1956.	4
59. Television sets, as specified in notification No.1338-F.T., dated the 21st March, 1978.	15
60. Roofing tiles	7
61. Tooth paste, etc., as specified in notification No.3123-F.T., dated the 15th July, 1975, as amended.	8
62. P.V.C. tiles sold under various trade names and descriptions such as Merblex, as specified in notification No.1314-F.T., dated the 31st March, 1981.	15
63. (i) Tractors, as specified in notification No. 3945-F.T., dated the 26th August, 1977.	11
(ii) Power tillers, as specified in notification No.3945-F.T., dated the 26th August, 1977.	3
64. Fork lift trucks, as specified in notification No.1314-F.T., dated the 31st March, 1981.	15

<u>Description of goods</u>	<u>Rate of duty</u> (Per cent)
65. Tyres and tubes for motor vehicles, motor cycles, motorettes and scooters, as specified in notification No.1914-F.T., dated the 10th May, 1963.	11
66. Flaps of tyres and tubes for motor vehicles, as specified in notification No.1233-F.T., dated the 6th April, 1964.	11
67. Vanaspati, as specified in notification No. 1160-F.T., dated the 1st June, 1954.	11
68. Video cassette recorders and video cassette players.	15
69. Voltage stabiliser, as specified in notification No. 1205-F.T., dated the 26th March, 1979.	15
70. Weighing machines, as specified in notification No.1205-F.T., dated the 26th March, 1979.	15
71. (i) All non-cotton yarn, as specified in notification No.1914-F.T., dated the 10th May, 1963, as amended, other than coir yarn and pure silk yarn.	2
(ii) Coir yarn.	7
72. All commodities notified or to be notified from time to time, when sold to Government or a corporation or undertaking established by Government under the Road Transport Corporation Act, 1950 (64 of 1950).	

SCHEDULE C

[See Section 10(1)(b)]

List of List of goods on which tax is payable at the last point of sale in the State at the rate of 4 per centum.

Description of goods

1. Cereals, that is to say -
  - (i) Paddy (*Oryza sativa* L.);
  - (ii) rice (*Oryza sativa* L.);
  - (iii) wheat (*Triticum vulgare*, *T. compactum*, *T. sphaerococcum*, *T. durum*, *T. aestivum*, *T. dicoccum*, L.);
  - (iv) jowar or milo (*Sorghum vulgare Pers*);
  - (v) bajra (*Pennisetum typhoideum*, L.);
  - (vi) maize (*Zea mays* L.);
  - (vii) ragi (*Eleusine coracana Gaertn*);
  - (viii) kodon (*Paspalum scropiculatum* L.);
  - (ix) kutki (*Panicum miliare* L.);
  - (x) barley (*Hordeum vulgare* L.);
  
2. Coal, including coke in all its forms, but excluding charcoal:

Provided that during the period commencing on the 23rd day of February, 1967 and ending with the date of commencement of section 11 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted.
  
3. Cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste.
  
4. Cotton fabrics, as defined in Item No.19 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944).

Description of goods

5. Cotton yarn, but not including cotton yarn waste.
6. Crude oil, that is to say, crude petroleum oils and crude oils obtained from bituminous minerals (such as shale, calcareous rock sand), whatever their composition, whether obtained from normal or condensation oil deposits or by the destructive distillation of bituminous minerals and whether or not subjected to all or any of the following processes:-
  - (i) decantation;
  - (ii) de-salting;
  - (iii) dehydration;
  - (iv) stabilisation in order to normalise the vapour pressure;
  - (v) elimination of very light fractions with a view to returning them to the oil deposits in order to improve the drainage and maintain the pressure;
  - (vi) the addition of only those hydrocarbons previously recovered by physical methods during the course of the above mentioned processes; and
  - (vii) any other minor process (including addition of pour point depressants or flow improvers) which does not change the essential character of the substance.
7. Hides and skins, whether in the raw or dressed state.
8. Iron and steel, that is to say -
  - (i) pig iron and cast iron including ingot moulds bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;
  - (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
  - (iii) skelp bars, tin bars, sheet bars, hoe bars and sleeper bars;
  - (iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

## Description of goods

- (v) steep structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);
  - (vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;
  - (vii) plates both plain and chequered in all qualities;
  - (viii) discs, rings, forgings and steel castings;
  - (ix) tool, alloy and special steels of any of the above categories;
  - (x) steel melting scrap in all forms including steel skull, turnings and borings;
  - (xi) steel tubes, both welded and seamless, of all diameters and lengths including tube fittings;
  - (xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
  - (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails - heavy and light crane rails;
  - (xiv) wheels, tyres, axles and wheel sets;
  - (xv) wire rods and wires - rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
  - (xvi) defectives, rejects, cuttings or end pieces of any of the above categories.
9. Jute, that is to say, the fibre extracted from plants belonging to the species *corchorus capsularis* and *corchorus olitorius* and the fibre known as mesta or bimli extracted from plants of the species *Hibiscus cannabinus* and *Hibiscus sabdariffa*-*var. altissima* and the fibre known as Sunn or Sunnhemp extracted from plants of the species *Crotalaria juncea* whether baled or otherwise,
10. Oilseeds, that is to say -
- (i) groundnut or peanut (*Arachis hypogaea*);
  - (ii) sesamum or til (*Sesamum orientale*);



Description of goods

- (iii) cotton seed (*Gossypium* Spp.);
- (iv) soyabean (*Glycine soja*);
- (v) rapeseed and mustard -
  - (a) toria (*Brassica campestris* var toria);
  - (b) rai (*Brassica juncea*);
  - (c) jamba-taramira (*Eruca sativa*);
  - (d) sarson, yellow and brown (*Brassica campestris* var sarson);
  - (e) banarsi rai or true mustard (*Brassica nigra*);
- (vi) linseed (*Linum usitatissimum*);
- (vii) castor (*Ricinus communis*);
- (viii) coconut (i.e., copra excluding tender coconuts) (*Cocos nucifera*);
- (ix) sunflower (*Helianthus annuus*);
- (x) niger seed (*Guizotia abyssinica*);
- (xi) neem, vepa (*Azadirachta indica*);
- (xii) mahua, illupai, ippe (*Madhuca indica* M. *Latifolia*, *Bassia*, *Latifolia* and *Madhuca longifolia* syn., M. *Longifolia*);
- (xiii) karanja, pongam, honga (*Pongamia pinnata* syn., P. *Glabra*);
- (xiv) kusum (*Schleichera oleosa*, syn., S. *trijuga*);
- (xv) punna, undi (*Colophyllum inophyllum*);
- (xvi) kokum (*Corcinia indica*);
- (xvii) sal (*Shorea robusta*);
- (xviii) tung (*Aleurites fordii* and A. *montana*);
- (xix) red palm (*Elaeis guinensis*); and
- (xx) safflower (*Carthamus tinctorius*).

Description of goods

11. Pulses, that is to say -
  - (i) gram or gulab gram (*Cicerarietinum*, L.);
  - (ii) tur or arhar (*Cajanus cajan*);
  - (iii) moong or green gram (*Phaseolus aureus*);
  - (iv) masur or lentil (*Lens esculenta* Moench, *Lens culinaris medic*);
  - (v) urad or black gram (*Phaseolus mungo*);
  - (vi) moth (*Phaseolus aconiti-folius jacq*); and
  - (vii) lakh or kesari (*Lathyrus sativus*, L.).
12. Rayon or artificial silk fabrics, as defined in Item No.22 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944).
13. Sugar, as defined in Item No.1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944).
14. Tobacco, as defined in Item No.4 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944).
15. Woollen fabrics, as defined in Item No.21 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944).
16. Such other goods as may be included in section 14 of the Central Sales Tax Act, 1956 from time to time.

SCHEDULE D

[See Section 10(1)(c)]

List of goods on which tax is payable at every point of sale within the State.

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
1. Gold	1
2. Gold ornaments	3
3. Fertilisers	2
4. Mustard oils rape oil and mixtures of mustard and rape oil.	2
5. Packing materials of newspapers	2
6. All arms including rifles, revolvers and pistols, ammunition for the same and hunting knives and swords.	11
7. Cinematographic equipment including Cameras, projectors and sound recording and reproducing equipment and spare parts, accessories and component parts thereof; lenses, films and parts and accessories required for use therewith.	11
8. Photographic and other cameras and enlargers and spare parts, accessories and component parts thereof; lenses, films and plates, paper and cloth and other parts and accessories required for use therewith.	11
9. All clocks, time pieces and watches and parts thereof.	11
10. Sound transmitting equipment including telephones and loud speakers and spare parts thereof.	11
11. Type writers, tabulating machines, calculating machines, duplicating machines and address printing machines and parts thereof.	11
12. Articles other than utensils made wholly or principally of stainless steel.	11

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
13. Carpets of all varieties and descriptions.	11
14. Lifts whether operated by electricity or steam and spare parts, accessories and component parts thereof.	11
15. Pearls-real, artificial, cultured.	11
16. Marble chips, marble or mosaic floor and wall tiles, and articles made of marble and mosaic.	11
17. Perfumes.	11
18. All kinds of paints including acrylic and plastic emulsion paints lacqueres, distempers, cement colours or paints, enamels, liquid paints, stiff paste paints, powder paints whether ready for use or not.	11
19. Ornaments set with diamond or stones (real or artificial) or with pearls (real, artificial or cultured).	11
20. Varnishes, vegetable paint removers and stainers of all kinds.	11
21. Footwears of all descriptions when sold at a price exceeding fifty rupees per pair.	11
22. Lottery tickets.	20

SCHEDULE E

[See Section 10(2)]

List of goods on which purchase tax is payable at the first point of purchase in the State.

<u>Description of goods</u>	<u>Rate of Tax</u> (Per Cent)
1. Raw jute.	

PROCEDURE FOR RECOVERY OF TAX

(See section 33)

PART I

General Provisions

Definitions 1 In this Schedule, unless the context otherwise requires -

- (a) "authorised officer" means a person authorised by the Tax Recovery Officer to make an attachment or sale under this Schedule;
- (b) "certificate" means a certificate received by the Tax Recovery Officer from the Commissioner for the recovery of arrears under this Schedule;
- (c) "defaulter" means the dealer or person liable mentioned in the certificate;
- (d) "execution" in relation to a certificate, means recovery of arrears in pursuance of the certificate;
- (e) "movable property" includes growing crops;
- (f) "rule" means a rule contained in this Schedule; and
- (g) "share in a corporation" includes stock, debenture-stock, debentures or bonds.

Issue of notice

2 Where a certificate has been received by the Tax Recovery Officer from the Commissioner for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

When certificate may be executed

3 No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property;

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

Modes of recovery

4 If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:-

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;

- (c) by arrest of the defaulter and his detention in prison;
- (d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

Interest,  
costs and  
charges  
recoverable

5 There shall be recoverable, in the proceedings in execution of every certificate, -

- (a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (3) of section 28;
- (b) all charges incurred in respect of -
  - i. the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and
  - ii. all other proceedings taken for realising the arrears.

Purchaser's  
title

6 (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale have become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff

7 (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. "

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Disposal of proceeds of execution

8 (1) Whenever assets are realised by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner -

- (a) there shall first be paid to the Commissioner the costs incurred by him;
- (b) there shall, in the next place, be paid to the Commissioner the amount due under the certificate in execution of which the assets were realised;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the Commissioner therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realised; and
- (d) the balance, if any, remaining after the payment of the amount, if any, referred to in clause (c) shall be paid to the defaulter.



(2) If the defaulter disputes any claim made by the Commissioner to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

General bar to jurisdiction of civil courts, save where fraud alleged

9 Except as otherwise expressly provided in this Act, every question arising between the Commissioner and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises;

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

Property exempt from attachment

10 (1) All such property as is by the Code of Civil Procedure, 1908, (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

Investigation by Tax Recovery Officer

11 (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim.

Provided that no such investigation shall be made where the tax Recovery Officer considers that the claim or objection was disignedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that -

- (a) in the case of immovable property, at the date of the service of the notice issued under this Schedule to pay the arrears, or
- (b) in the case of movable property, at the date of the attachment, he had some interest in or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some

other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is referred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, the order of the Tax Recovery Officer shall be conclusive.

Removal of attachment on satisfaction or cancellation of certificate

12 Where -

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

Authorised  
officer to  
attach and  
sell

13 The attachment and sale of movable property and the attachment and sale of immovable property may be made by the authorised officer.

Defaulting  
purchaser  
answerable  
for loss  
on resale

14 Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the Officer holding the sale, and shall, at the instance of either the Commissioner or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

Adjourn-  
ment or  
stoppage  
of sale

15 The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the Officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

Private  
alienation  
to be void  
in certain  
cases

16 (1) Where a notice has been served on a defaulter under rule 2, the defaulter, or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachments, shall be void as against all claims enforceable under the attachment.

Prohibition  
against  
bidding or  
purchase by  
officer

17 No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Prohibition  
against sale  
on holiday

18 No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to be held.

Assistance  
by police

19 The authorised officer or any officer authorised to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

PART II

Attachment and Sale of Movable Property

ATTACHMENT

Warrant

20 Except as otherwise provided in this Schedule, when any movable property is to be attached, the authorised officer shall be furnished by the Tax Recovery Officer, or other officer empowered by him in that behalf, a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

Service of  
copy of  
warrant

21 The authorised officer shall cause a copy of the warrant to be served on the defaulter.

Attachment

22 If, after service of the copy of warrant, the amount is not paid forthwith, the authorised officer shall proceed to attach the movable property of the defaulter.

Property in  
defaulter's  
possession

23 Where the property to be attached is movable property, other than agricultural produce, in the possession of the defaulter, the attachment shall be made by actual seizure, and the <sup>authorised</sup> officer shall keep the property in his own custody or the custody of one of his sub-ordinates and shall be responsible for due custody thereof.

Provided that when the property seized is subject to speedy and natural decay or when the expenses of keeping it in custody is likely to exceed its value, the <sup>authorised</sup> officer may sell it at once.

Agricultu-  
ral  
produce

24 Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment -

- (a) where such produce is growing crop, - on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered - on the threshing floor or place for trading out grain or the like, or fodder-stock, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain; the produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

Provisions as  
to agricul-  
tural produce  
under  
attachment

25 (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and the Commissioner shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in



the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and any other act necessary for maturing or preserving it; and if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Debts,  
shares,  
etc.

26 (1) In the case of -

- (a) a debt not secured by a negotiable instrument,
- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of any court,

the attachment shall be made by a written order prohibiting, -

- (i) in the case of the debt - the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer,
- (ii) in the case of the share - the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (iii) in the case of the other movable property (except as aforesaid) - the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property, except as aforesaid, to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entieled to receive the same.

Attachment  
of decree

27 (1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until -

(i) the Tax Recovery Officer cancels the notice, or

(ii) the Commissioner or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the Commissioner or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The Commissioner shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Share in  
movable  
property

28 Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

Salary of  
government  
servants

29 Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48, order 21 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and the provisions of the said rule shall, for the purposes of this rule apply subject to such modifications as may be necessary.

Attachment  
of negotiable  
instrument

30 Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Recovery Officer and held subject to his order.

Attachment  
of property  
in custody  
of court or  
public  
officer

31 Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Commissioner and any person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of  
partnership  
property

32 (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, purchase the same.

Inventory

33 In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

Attachment  
not to be  
excessive

34 The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

Seizure  
between sun-  
rise and  
sun-set

35 Attachment by seizure shall be made after sun-rise and before sun-set and not otherwise.

Power to  
break open  
doors, etc

36 The officer may break open any inner or outer door or window of any building and enter in any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission not given. He shall, however, give all reasonable opportunity to women to withdraw.

Sale

37 The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

Issue of  
proclamation

38 When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

Proclamation  
how made

39 (1) Such proclamation shall be made by beat of drum or other customary mode, -

(a) in the case of property attached by actual seizure -

(i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized, and

(ii) at such other places as the Tax Recovery Officer may direct;

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Sale after  
Fifteen  
days

40 Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the Office of the Tax Recovery Officer.

Sale of  
agricultural  
produce

41 (1) Where the property to be sold is agricultural produce, the sale shall be held, -

- (a) if such produce is a growing crop - on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered - at or near the threshing floor or place for treading out grain or the like, or fodder-stock, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale, -

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

- (b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day.

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops

42 (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g., as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale to be by auction

43 The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property the sale shall be immediately stopped with respect to the remainder of the lots.



Sale by  
public  
auction

44 (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate, specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity  
not to vitiate  
sale, but any  
person  
injured may sue

45 No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or, if such other person is the purchaser, for the recovery of the specific property and for compensation in default of such recovery.

Negotiable  
instruments  
and shares  
in a  
corporation

46 Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Order for  
payment of  
coin or  
currency  
notes to the  
Commissioner

47 Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Commissioner.

PART III

Attachment and Sale of Immovable Property

ATTACHMENT

Attachment

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

Attachment to relate back from the date of service of notice

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale and proclamation of sale

52 (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of  
proclamation

53 A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered;
- (d) the reserve price, if any, below which the property may not be sold; and
- (e) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of  
making  
proclamation

54 (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

Time of sale

55 No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

Sale to be  
by auction

56 The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (d) of rule 53.

Deposit by  
purchaser  
and re-sale  
in default

57 (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in  
default of  
payment

58 In default of payment within the period mentioned in the preceding rule, and deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority  
to bid

59 (1) Where the sale of a property, for which a reserve price has been specified under clause (d) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for the Commissioner to bid for the property on behalf of the State Government at any subsequent sale.

(2) All persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority and in default their bids shall be rejected.

Application  
to set aside  
sale of  
immovable  
property on  
deposit

60 (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside

- (a) for payment to the Commissioner, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one per centum per month calculated from the date of the proclamation of sale to the date when the deposit is made; and
- (b) for payment to the purchaser, as penalty, a sum equal to five per centum of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity

61 When immovable property has been sold in execution of a certificate the Commissioner, the defaulter, or any person whose interest are affected by the sale, any, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale;

Provided that -

- (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

- (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

Setting aside  
sale where  
defaulter has  
no saleable  
interest

62 At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

Confir-  
mation  
of sale

63 (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall, if the full amount of the purchase-money has been paid, make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to persons effected thereby.

Return of  
purchase  
money in  
certain  
cases

64 Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.



Sale  
certificate

65 (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

Postponement  
of sale to  
enable de-  
faulters to  
raise amount  
due under  
certificate

66 (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease, or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh procla-  
mation before  
re-sale

67 Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.

Bid of  
co-share  
to have  
preference

68 Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Acceptance of  
property in  
satisfaction  
of amount due  
from the  
defaulter

69 (1) Without prejudice to the provisions contained in this Part, the Commissioner may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of ~~as~~ rule 59, at such price as may be agreed upon between the Commissioner and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Commissioner and on the date the possession of the property is delivered to the Commissioner, the property shall vest in the State Government and the State Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the Commissioner to the defaulter within a period of three months from the date of delivery of possession of the property and where the Commissioner fails to pay such excess within the period aforesaid, the State Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at one and one-half per centum per month to the defaulter on such amount.

PART IV

Appointment of Receiver

Appointment  
of receiver  
for business

70 (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

Appointment  
of receiver  
for immovable  
property

71 Where immovable property is attached, the Tax Recovery Officer may, instead of directing attachment of the property, appoint a person as receiver to manage such property.

Powers of  
receiver

72 Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property shall after defraying expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal  
of  
management

73 The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, when the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

Arrest and Detention of the Defaulter

Notice to  
show cause

74 (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied -

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or
- (b) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(4) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.

(5) Every person arrested in pursuance of a warrant of arrest under this rule shall be brought before the Tax Recovery Officer issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey);

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

#### Explanation

For the purposes of this rule, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter;

#### Hearing

75 When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 74, the Tax Recovery Officer shall

proceed to hear the Commissioner and take all such evidence as may be produced by him in support of execution by arrest and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

Custody  
pending  
hearing

76 Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such Officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of  
detention

77 (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.



Detention in  
and release  
from prison

78 (1) Every person detained in the civil prison in execution of a certificate may be so detained -

- (a) where the certificate is for a demand of an amount exceeding two thousand and five hundred rupees - for a period of six months, and
- (b) in any other case - for a period of six weeks:

Provided that he shall be released from such detention -

- (i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison; or
- (ii) on the request of the Commissioner who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 79 and 80:

Provided that where he is to be released on the request of the Commissioner, he shall not so be released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears: but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

Release

79 (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in

execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 78.

Release on  
ground of  
illness

80 (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 78.

Entry into  
dwelling  
house

81 For the purposes of making an arrest under this Schedule -

- (a) no dwelling house shall be entered after sun-set and before sun-rise;
- (b) no outer door of a dwelling shall be broken upon unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refused or in any way prevents access thereto; but, when the person executing any such warrant had duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;
- (c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition  
against  
arrest of  
women or  
minors, etc.

82 The Tax Recovery Officer shall not order arrest and detention in the civil prison of -

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

PART VI

Miscellaneous

Officers  
deemed to  
be acting  
judicially

83 Every Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

Power  
to take  
evidence

84 Every Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

Continuance  
of  
certificate

85 No certificate shall cease to be in force by reason of the death of the defaulter.

Procedure  
on death of  
defaulter

86 If at any time after the issue of the certificate by the Commissioner to the Tax Recovery Officer the defaulter dies, the proceedings under this Schedule, except arrest and detention, may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

Appeals

87 (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Additional Commissioner specified in this behalf by <sup>the State Government by</sup> notification in the Official Gazette.

(2) A second appeal shall lie against every order of the Additional Commissioner passed in appeal under sub-rule (1) to be Board of Revenue.

(3) Every appeal or second appeal under this rule must be presented within thirty days from the date of the order appealed against.

(4) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

Review

88 Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

Recovery  
from surety

89 Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

Penalties

90 Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code, (45 of 1860).

Subsistence allowance

91 (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Commissioner.

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding;

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

Forms

92 The State Government may prescribe the form to be used for any order, notice, warrant or certificate to be issued under this Schedule.

Power to make rules

93 (1) The State Government may make rules consistent with the provisions of this Act, regulating the procedure to be followed by Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provided for all or any of the following matters, namely:-

- (a) the area within which Tax Recovery Officers may exercise jurisdiction;
- (b) the manner in which any property sold under this Schedule may be delivered;
- (c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;
- (d) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;
- (e) the fees to be charged for any process issued under this Schedule;
- (f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;
- (g) recovery of poundage fee;
- (h) the maintenance and custody, while under attachment, of live-stock or other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock or property, and the disposal of proceeds of such sale;
- (i) the mode of attachment of business;
- (j) the forms to be used in the course of proceedings under this Schedule.

Saving  
regarding  
charge

94 Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

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