Value Added Tax Act, 2003

Chapter 5 - Administration and Collection of Tax

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(1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days after the end of the preceding month or any other tax period as may be prescribed.

(2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he shall furnish a revised return within six months from the end of the relevant tax period except when such revised return is on issue of a debit note under Section 30, subject to sub-section (2) of Section 72.

Section 36 - Interest in case of failure to furnish returns or to pay tax declared on returns or other amounts payable

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(1) Every dealer shall be liable to pay simple interest on any amount of tax which should have been declared on a return, but which has been omitted from it, unless that omission is corrected within three months of the omission subject to sub-section (2) of Section 72, and such interest is payable from the date the tax should have been declared, and the dealer shall declare his liability to pay that interest in such form and manner as may be prescribed.

(2) If a dealer required to furnish a return under this Act.-

(a) fails to pay any amount of tax or additional tax declared on the return, or

(b) furnishes a revised return more than three months after tax became payable, declaring additional tax, but fails to pay any interest declared to be payable under sub-section (1), or

(c) fails to declare any tax or interest which should have been declared, or

(d) fails to make a return,

such dealer shall be liable to pay interest in respect of the tax and additional tax payable as declared by him or the tax payable and interest payable under sub-section (1) for the period for which he has failed to furnish a return.

(3) Where any other amount is payable under this Act is not paid within the period specified in Section 42, interest shall be payable on such amount from such period.

(4) The interest shall also be payable under this Section during any period during which recovery of any tax or other amount payable under the Act is stayed by an order of any authority or Court in any appeal or other proceedings disputing such tax or amount.

Section 37 - Rate of interest

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(1) The rate of simple interest payable under Section 36 shall be two per cent per month:

(a) from the date the tax had become payable to the date of its payment or to the date of any assessment under this Act, whichever is earlier; and

(b) from the date on which any amount payable under this Act was due.

(2) For the purpose of this Section interest in respect of parts of a month shall be computed proportionately and month shall mean any period of thirty days.

Section 38 - Assessment of tax

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(1) Every dealer shall be deemed to have been assessed to tax based on the return filed by him under Section 35, except in cases where the Commissioner may notify the dealer of any requirement of production of accounts in support of a return filed for any period.

(2) Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or the rules made thereunder, the prescribed authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of issue of the assessment.

(3) Where an assessment has been made under sub-section (2) and the dealer subsequently furnishes a return for the period to which the assessment relates, the prescribed authority may withdraw the assessment but the dealer shall be liable to penalties and interest as applicable.

(4) Where the dealer furnishes a return under sub-section (3), such return shall be furnished within one month of issue of such assessment.

(5) The prescribed authority on any evidence showing a liability to tax coming to its notice may issue a protective assessment in the case of a dealer registered under this Act or a dealer liable to be registered under this Act, if the prescribed authority has reason to believe that such dealer will fail to pay any tax, penalty or interest so assessed and such tax, penalty or interest shall become payable forthwith.

Section 39 - Re-assessment of tax

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(1) Where the prescribed authority has grounds to believe that any return furnished which is deemed as assessed is incorrect or that any assessment issued under Section 38 understates the correct tax liability of the dealer, it,-

(a) may, based on any information available, re-assess, to the best of its judgement, the additional tax payable together with any penalty and interest ; and

(b) shall issue a notice of re- assessment to the registered dealer demanding that the tax shall be paid within ten days of the date of service of the notice after giving the dealer the opportunity of showing cause against such re-assessment in writing.

(2) Where after making a re-assessment under this Section, any further evidence comes to the notice of the prescribed authority, it may make any further re-assessments in addition to such earlier re-assessment.

Section 40 - Period of limitation for assessment

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(1) An assessment under Section 38 or re-assessment under Section 39 of an amount of tax due for any prescribed tax period shall not be made after the following time limits.-

(a) five years after the end of the prescribed tax period; or

(b) three years after evidence of facts, sufficient in the opinion of the prescribed authority to justify making of the re-assessment, comes to its knowledge,

whichever is later.

(2) If any tax is fraudulently evaded attracting punishment under Section 79, an assessment may be made as if in sub-section (1), reference to five years was a reference to ten years.

(3) In computing the period of limitation specified for assessment or re-assessment, as the case may be under this Act, the period taken for disposal of any appeal against an assessment or other proceeding by the appellate authority, a tribunal or competent court shall not be taken into account in computing such period for assessment or reassessment as the case may be.

Section 41 - Power of rectification of assessment or re-assessment in certain cases

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(1) Where any assessment or re-assessment or an order of an appellate authority or a revisional authority other than a court or tribunal, is found to be erroneous in so far as it is prejudicial to the interest of the public revenue by a judgement or an order of any court, then notwithstanding anything contained in this Act, authority concerned may proceed to rectify such assessment or re-assessment or order and determine the tax payable by the dealer in accordance with such judgement or order at any time within a period of three years from the date of such judgement or order.

(2) Where any court makes an order or gives judgement to the effect that any tax assessed under this Act or any other law should have been assessed under a provision of a law different from that under which it was assessed, then in consequence of such order or judgement or to give effect to any finding or direction contained in any such order or judgement, such turnover or part thereof, may be assessed or re-assessed to tax, as the case may be, at any time within five years from the date of such order or judgement, notwithstanding any limitation period which would otherwise be applicable under the law applicable to that assessment or re-assessment.

(3) Where any proceedings for the recovery of any tax, penalty, interest or any part thereof remaining unpaid, have been commenced in a court and the amount of tax, penalty or interest is subsequently modified, enhanced or reduced in consequence of any decision made or order passed in the appeal, the prescribed authority may, in such manner and within such period as may be prescribed, inform the dealer or the person and the authority under whose order the recovery is to be made, and thereupon such proceedings may be continued with the modified, enhanced or reduced amount of tax, penalty or interest therein substituted.

(4) No order of rectification under this Section shall be passed without giving the dealer an opportunity of showing cause in writing against such rectification.

Section 42 - Payment and recovery of tax, penalties, interest and other amounts

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(1) Every registered dealer shall furnish returns to the prescribed authority, and the tax payable shall be paid in such manner as may be prescribed, within the period specified and on an application by a dealer, the Government or Commissioner may permit, subject to such conditions as may be prescribed, payment of tax or any other amount payable, in such instalments and at such intervals as may be prescribed.

(2) Every registered dealer shall, on receipt of a Notice from the prescribed authority, pay any penalty or interest due in such manner as may be prescribed.

(3) (a) The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification, defer payment by any new industrial unit of the whole or any part of the tax payable in respect of any period and also permit payment of such tax before the expiry of any deferred period, subject to the condition that in respect of such industrial unit the Government has

already notified exemption of tax or deferred payment of tax under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

(b) Notwithstanding anything contained in this Act but subject to such conditions as the Government may, by general or special order specify, where a dealer to whom incentives by way of deferment offered by the Government in its orders issued from time to time has been granted by virtue of eligibility certificate and where liability equal to the amount of any such tax payable by such dealer has been created as a loan by the Department of Industries and Commerce of the Government of Karnataka, then such tax shall be deemed, in the public interest, to have been paid.

(c) Notwithstanding anything contained in this Act, the deferred payment of tax under clause (a) shall not attract interest under sub-section (2) of Section 36, provided the conditions laid down for payment of the tax deferred are satisfied.

(4) Any other amount due under this Act shall be paid within ten days from the date of service of the order or proceedings imposing such amount, unless otherwise specified.

(5) The Commissioner or the Government may, subject to such conditions as they may specify, remit by an order the whole or any part of the interest payable in respect of any period by any person or class of persons.

(6) Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

(7) A registered dealer, furnishing a revised return in accordance with this Act which shows a greater amount of tax to be due than was paid or payable in accordance with the original return, shall pay with that revised return the tax so payable in such manner as may be prescribed.

(8) Any amount, which remains unpaid under this Act after the due date of payment, shall be recoverable from a dealer in the manner specified under this Act.

(9) Any tax due or assessed, or any other amount due under this Act from a dealer, or any other person, may without prejudice to any other mode of collection be recovered.-

(a) as if it were an arrears of land revenue; or

(b) by attachment and sale or by sale without attachment of any property of such dealer or any other person by the prescribed authority or the prescribed officer in the prescribed manner, and any prescribed certificate issued towards such sale shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(c) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), on application to any Magistrate, by such Magistrate as if it were a fine imposed by him.

(10) Where a dealer or other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of the tax or other amount, no proceedings for recovery under this Section shall be taken or continued until the disposal of such appeal or application for revision.

(11) The High Court may, either suo motu or on an application by the Commissioner or any person aggrieved by the order, revise any order made by a Magistrate under clause (c) of sub-section (9).

Section 43 - Duties of Receivers

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(1) A receiver appointed by any court shall notify the Commissioner in writing within fourteen days after being appointed to the position of receiver or taking possession of an asset in the State whichever is earlier.

(2) The Commissioner may notify the receiver in writing of the amount which appears to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(3) A receiver shall not part with any asset in the State, which is held by the receiver in his capacity as receiver without the prior written permission of the Commissioner or any other officer authorised by him.

(4) A receiver.-

(a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under sub-section (2), or such lesser amount as may subsequently be fixed by the Commissioner;

(b) is liable to the extent of the amount set aside for the tax payable by the person who owned the asset; and

(c) may pay any debt that has priority over the tax referred to in this Section notwithstanding any provision of this Section.

(5) A receiver is personally liable to the extent of any amount required to be set aside under sub-section (4) for the tax referred to in sub-section (2) if and to the extent that, the receiver fails to comply with the requirements of this Section.

(6) In this Section, receiver includes a person, who with respect to an asset in the State is, -

(a) a liquidator of a company; or

(b) a receiver appointed out of court or by a court; or

(c) a trustee for a bankrupt person; or

(d) a mortgagee in possession; or

(e) an executor of a deceased estate; or

any other person conducting the business of a person legally incapacitated.

Section 44 - Special provisions relating to companies

(1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956),when any tax due from or assessed on a company under this Act for any period cannot be recovered, then, every person who is or was a director of the company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

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

(b) No such person referred to in clause (a) shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

(3) When two or more companies are to be amalgamated by an order of a Court or of the Central Government, and the order is to take effect from a date earlier to the date of the order, and any two or more such companies have sold or purchased any goods to or from each other in the period

commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale or purchase will be included in the turnover of the sales or purchase of the respective companies and will be assessed to tax accordingly, and the said two or more companies shall be treated as distinct companies for all periods up to the date of the said order, and the registration certificates of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

Section 45 - Recovery of tax, penalty, or any other amount, from certain other persons

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(1) The prescribed authority may at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the prescribed authority, require any person from whom money is due or may become due to the dealer or any person who holds or may subsequently hold money for or on account of the dealer to pay to the prescribed authority, either forthwith upon the money becoming due or being held at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or penalty or the whole of the money when it is equal to or less than that amount.

(2) The prescribed authority may at any time or from time to time 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 and the receipt of the prescribed authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this Section shall be personally liable to the prescribed authority to the extent of the liability discharged or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any person to whom a notice under this Section is sent, proves to the satisfaction of the prescribed authority issuing such notice or any other officer to whom the matter is referred for verification, that the sum demanded or any part thereof is not due by him to the dealer or that he does not hold any money for or on account of the dealer, then nothing contained in this Section shall be deemed to require such person to pay the sum demanded or any part thereof, to the prescribed authority.

(6) Any amount which a person is required to pay to the prescribed authority or for which he is personally liable to the prescribed authority under this Section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

(7) For the purpose of this Section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting.

Section 46 - Tax payable on transfer of business, assessment of legal representatives, etc.

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(1) When the ownership of the business of a dealer is transferred, the transferor and the transferee shall jointly and severally be liable to pay any tax or penalty or any other amount remaining unpaid at the time of transfer or that may become payable in respect of such business after the date of transfer but relating to the years up to the date of transfer and for the purpose of recovery from the transferee, such transferee shall be deemed to be the dealer liable to pay the tax or penalty or other amount due under this Act.

(2) When a firm liable to pay the tax or penalty is dissolved, the assessment of the tax and imposition of penalty shall be made as if no dissolution of the firm had taken place, and every person who was at the time of dissolution a partner of the firm and the legal representative of any such person who is deceased shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(3) Where any firm is liable to pay any tax or penalty or any other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(4) Where a partner of a firm liable to pay any tax or penalty or any other amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay any tax or penalty or any other amount remaining unpaid at the time of his retirement, and any tax or penalty or any other amount due up to the date of retirement, though unassessed.

(5) When an undivided Hindu family or Aliyasanthana family liable to pay the tax or penalty is partitioned, the assessment of the tax and the imposition of penalty shall be made as if no partition of the family had taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(6) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax, penalty or fee assessed as payable by any such dealer or any tax, penalty or fee, which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

Section 47 - Payment and disbursement of amounts wrongly collected by dealer as tax

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(1) Subject to Section 30, where any amount is collected by way of tax or purporting to be way of tax from any person by any dealer, whether knowingly or not, such dealer shall pay the entire amount so collected, to the prescribed authority within twenty days after the close of the month in which such amount was collected, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under this Act.

(2) If default is made in payment of the amount in accordance with sub-section (1), -

(a) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the dealer;

(b) the dealer liable to pay the amount shall pay interest at the rate of two per cent of such amount for each month of default and

(c) the whole of the amount remaining unpaid along with the interest calculated under clause (b) of this sub-section shall be recoverable in the manner specified in Section 42.

(3) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any amount paid or payable by any dealer under sub-section (1), shall, to the extent it is not due as tax be forfeited to the Government and be recovered from him and such payment or recovery shall discharge him of the liability to refund the amount to the person from whom it was collected.

(4) Where any amount is paid or recovered by or from any dealer under sub-section (1) or (3), a refund of such amount or any part thereof can be claimed from Government by the person from whom, it was realized by way of tax provided an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. On receipt of any such application, the Commissioner shall hold such inquiry as he deems fit and if the commissioner is satisfied that the claim is valid and admissible, and that the amount so claimed as refund is actually paid or recovered, he shall refund the amount or any part thereof, which is found due to the person concerned.

Section 48 - Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, penalty or interest or any amount which a dealer is required to pay or deduct from payment or for which he is personally liable to the Government shall be a first charge on the property of the dealer or such person, as the case may be.

Section 49 - Period of limitation for recovery of tax

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(1) Notwithstanding anything contained in any law for the time being in force, no proceedings for the recovery of any amount under this Act shall be initiated after the expiry of twelve years from the end of the relevant tax period or from the date of the relevant assessment, provided that when an appeal or application for revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

(2) The period of limitation specified under sub-section (1) shall not apply to any case in which, during the course of recovery proceedings initiated under any clause of sub-section (3) of Section 42 or under Section 45, any other fresh proceedings are initiated.

Section 50 - Payment of interest on refunds

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(1) Where any amount refundable to any person under an order made, or proceedings taken, under any provision of this Act or Rules made thereunder is not refunded to him within thirty five days,

(a) of the date of such order, if that order is made by the refunding authority, or

(b) of the date of receipt of such order by the refunding authority, if that order is made by an authority other than the refunding authority,

the refunding authority, being any officer of the Commercial Taxes Department authorized to make any refund under this Act, shall pay such person simple interest at the rate of twelve percent per annum on the said amount from the day immediately following the expiry of the said thirty five days to the day of the refund.

(2) The interest calculable under sub-section (1) shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, interest or other amount due under this Act, for any year by the person on the date from which such interest is calculable.

(3) In computing the period of thirty five days referred to in sub-section (1), such periods as may be prescribed shall be excluded.

(4) The interest payable for a part of month shall be proportionately determined.

Section 51 - Power to withhold refund in certain cases

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(1) Where an order giving rise to a refund is the subject matter of an appeal or any other proceedings under this Act, the prescribed authority may, if, to the best of its judgement it is of the opinion that the grant of a refund is likely to prejudice the public revenue, withhold the refund until such time as it deems proper.

(2) The dealer shall be paid interest under sub-section (1) of Section 50 on the amount of refund ultimately determined to be due to the dealer as a result of such proceedings for the period commencing from the expiry of thirty five days from the date of the order referred in sub-section (1) to the date of refund.

Section 52 - Production and inspection of documents and powers of entry, search and seizure

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(1) Any officer authorised by the Commissioner in this behalf shall have the power.-

(a) to enter and inspect the place of business of any dealer, or any other place, where it is believed by such Officer that business is being carried on or accounts including documents are being kept by such dealer.

(b) to direct such dealer to produce at such time and at such place accounts, registers and documents relating to his business activities for examination.

(c) to enter and inspect the goods in the possession of the dealer or in the possession of any other person on behalf of such dealer, wherever such goods are kept.

(d) to enter and search such places including the dealers place of residence, and including the search of the dealer or person acting on behalf of the dealer found there, where concealment of facts relating to the business are suspected.

(e) to seize any accounts, registers or documents from the dealer, where he has reason to suspect that a dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner, after recording such reasons in writing, and give the dealer or any other person from whose custody such accounts, records or documents are seized, a receipt for and, if requested, copies of the same and may retain them in his custody for examination, inquiry, prosecution or other legal proceedings for such period as he considers necessary.

(f) to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or taxable goods are suspected to be kept or stored, where the owner or the person-in-charge of the business or any other person-in-charge of the business or any other person-in-occupation either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so.

(g) to break open the receptacle, godown or building or part of the godown or building where the owner or the person-in-charge of the business or the person in occupation leaves the premises or, after an opportunity having been given to him to do so, fails to open the receptacle, godown or building or part of the godown or building, and to prepare a list of the goods and documents found therein.

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

(i) to take samples of goods from the possession of any dealer, where he considers it necessary to protect the revenue against mistake or fraud, and provide a receipt for any samples so taken, and the samples shall, except where an offence is found, be returned to the dealer or be disposed of by the Commissioner with the consent of such dealer.

(j) to seize any stock of goods liable to tax, which are found in possession of a dealer or in the possession of any person on behalf of a dealer and which are not accounted for in his accounts, records or documents maintained in the course of his business, the value of which shall not exceed his tax liability and any penalty, including interest, and a list of goods so seized shall be prepared by such officer and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.

(k) in circumstances where it is not possible to seize the accounts, records or documents under sub-section (1) or the goods under sub-section (3), to serve on the owner or the person who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the prior consent of such Officer, and after serving such order to take such steps as are deemed necessary to secure the items referred to in the order.

(l) to issue an protective assessment as specified in sub-section (5) of Section 38.

(2) Where the records and accounts under Sections 31 and 33 are maintained by electronic means, the dealer shall provide such access to such accounts and records as may be required by the officer authorised under sub-section (1).

(3) The powers conferred on the officer under clauses (d) to (g), (i) and (j) of sub-section (1) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1973, (Central Act 2 of 1974) and the power to enter a dealers place of residence shall be authorized by an officer not below the rank of a Joint Commissioner.

(4) The accounts, registers, records, including computer hardware and software, and other documents seized under sub-section (1) shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him, in writing and the approval of the next higher authority is obtained and such approval in any case shall not be for more than sixty days at a time.

(5) There shall be a presumption in respect of goods, accounts, registers or documents found at any place of business that they relate to that business, unless the contrary is proved by the dealer whose business occupies that place.

(6) The dealer or person from whom goods have been seized under clause (j) of sub-section (1) shall have a period of seven days to appeal against seizure of the goods.

(7) Subject to sub-section (6), after the expiry of the prescribed period, if any tax assessed or penalty or interest due is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards any such amount due, and the excess amount shall, after deducting the charges incurred by the State, be refunded in the manner prescribed.

Section 53 - Establishment of check posts and inspection of goods in movement

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(1) If the Government or the Commissioner considers it necessary, with a view to prevent or check evasion of tax under this Act in any place or places in the State, it or he may, by notification, direct the establishment of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person in charge of a goods vehicle or a boat, ship or similar vessel shall:

(a) carry with him a goods vehicle record, a trip sheet or a log book, as the case may be; and

(b) carry with him a tax invoice or a bill of sale or a delivery note or such other documents as may be prescribed, in respect of the goods carried in the goods vehicle or boat, ship or similar vessel; and

(c) produce the documents referred to in sub-clauses (a) and (b) before any officer-in-charge of check post or barrier, or any other officer as may be empowered by the Government in this behalf, and obtain the seal of such officer affixed thereon, and, in respect of a bill of sale, give one copy thereof and, in respect of a delivery note, give a copy marked as original, to such officer and carry and retain with him the other copy until termination of movement of the goods; and

(d) on entering the State limits, report at the first situated check post or barrier and, on leaving the State limits, report at the last situated check post or barrier and give a declaration containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, ship or similar vessel, before any officer-in-charge of the check post or barrier or any other officer as may be empowered by the Government in this behalf; and

(e) stop the vehicle or boat, ship or similar vessel, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat, ship or similar vessel and inspect all records relating to the goods carried, which are in the possession of such driver or other person-in-charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat, ship or similar vessel.

(3) Where any goods vehicle is intercepted by the officer empowered at any place other than a check post or barrier, such officer may, if he deems it necessary, direct the owner or person-in-charge of the goods vehicle to take it to the nearest check post or police station, and such owner or person-in-charge of the goods vehicle shall comply with such direction.

(4) (a) Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where, before delivery is taken from him, a carrier or bailee to whom goods are delivered for transmission keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place, any officer empowered as aforesaid shall have power to enter into and search such office, shop, godown, vessel, receptacle, vehicle, other place of business or building or place and to examine the goods and inspect all goods relating to such goods.

(b) The carrier or bailee or the person-in-charge of the goods and records shall give all facilities for such examination or inspection and, if so required, produce the bill of sale or delivery note or other documents referred to in sub-section (2), giving a declaration containing such particulars as may be prescribed regarding the goods, together with his name and address and the name and address of the carrier or the bailee and the consignee.

(c) The power conferred by clause (a) shall also include.-

(i) the power to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or taxable goods are suspected to be kept or stored, where the carrier or bailee or person in charge of the place of business either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so; and

(ii) the power to break open any box or receptacle, godown or building or part of the godown or building where the carrier or bailee or the person in charge of the place of business leaves the premises or, after an opportunity has been given to him to do so, fails to open the box, receptacle, godown or building or part of the godown or building.

(d) The officer acting under item (ii) of sub-clause (c) shall prepare a list of the goods and documents found in such box, receptacle, godown or building or part of the godown or building.

(5) (a) If any officer, empowered to enter into and search any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place where a carrier or bailee keeps the goods delivered to him for transmission, has reason to suspect that such carrier or bailee has colluded with the owner of the goods in evading payment of any tax, he may, for reasons to be recorded in writing, seize accounts, registers, records or other documents of the bailee or carrier as he may consider necessary and shall give a receipt for the same. The account, registers, records and other documents seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(b) The accounts, registers, records and other documents so seized shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him in writing and the approval of the next higher authority is obtained, and such approval in any case shall not be for more than sixty days at a time.

(c) Where such officer, upon examining the accounts registers, records or other documents seized under clause (a), has reason to believe that any dealer has attempted to evade payment of any tax, he may issue a protective assessment on such dealer in accordance with sub-section (5) of Section 38.

(6) All searches and seizures under sub-section (4) or (5) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(7) No person shall tamper with any seal put under sub-clause (i) of clause (c) of sub-section (4).

(8) Where the officer-in-charge of the check post or barrier, or the officer empowered as aforesaid, on interception of the goods vehicle or on inspection of any godown, is of the opinion that further verification is necessary with respect to either the accuracy of the particulars furnished in the documents accompanying the goods under transport or in transit, or as to the sufficiency and the cause adduced in respect of any contravention of sub-section (2), he may verify the particulars himself or, if it is necessary to cause it to be verified by referring the matter to any other officer and if such verification is not likely to be completed within a reasonable time, he may direct, in writing, the carrier or the person in charge of the goods vehicle or the godown not to deliver the goods until permitted to do so by him or such other officer to whom the matter is referred for verification, and allow the intercepted vehicle, if any, to pass through.

(9) The verification under sub-section (8) shall be completed within a period of fifteen days from the date of the direction issued under that sub-section and, where such verification cannot be completed within the aforesaid period, the officer who has issued such direction or, as the case may be, the officer to whom the matter is referred for verification, shall obtain the permission in writing of the next higher authority to extend such period for completion of the verification. However, such extension shall not be permitted for a period exceeding fifteen days at a time.

(10) Where such officer or other officer to whom the matter is referred, upon such verification, is of the opinion that there is a non-compliance with sub-section (2), punishable under sub-section (12), he may proceed, in respect of such goods in the custody of the carrier or the person-in-charge of the vehicle or the godown, in accordance with sub-sections (12) and (14).

(11) Where the officer-in-charge of the check post or any empowered officer has issued a notice for contravention of any of the provisions of this Section, further proceedings in pursuance to such notice may, subject to such conditions and in such manner as may be prescribed, be continued by any other officer empowered by the Commissioner in this behalf, from the stage at which it is pending.

(12) (a) The officer in charge of a check post or a barrier or any other officer in respect of any contravention of, or noncompliance with, the provisions of sub- section (2), for which sufficient cause is not furnished, levy a penalty which, -

(i) shall not be less than the amount of tax leviable but shall not exceed one and half of the amount of tax leviable in respect of the goods under transport in contravention of clause (e) and clause (d) of sub-section (2), if a dealer registered under the Act accepts that he is the consignor or consignee of the goods,

(ii) in cases other than those falling under item (i), shall not be less than double the amount of tax leviable but not exceed three times the amount of tax leviable in respect of the goods under transport .

(b) Where the amount of penalty leviable is more than the value of the goods, the amount of penalty leviable shall be restricted to such value.

(c) In proceedings under sub-section (10), where the penalty levied is not paid, the carrier or bailee or person-in-charge of the goods vehicle shall jointly and severally be liable to pay such penalty.

(d) Before levying any penalty under this sub-section, the officer shall give the person-in-charge of the goods vehicle or boat, ship or similar vessel, the carrier, the bailee, or dealer registered under the Act, as the case may be, a reasonable opportunity of being heard.

(13) Where the destination of the goods to be delivered in the State is not less than one hundred kilometers from the check post or barrier or any other place at which the goods vehicle or boat, ship or similar vessel is intercepted, a period of not less than ten days shall be given to the person concerned to show cause against the proceedings initiated under sub-section (12).

(14) (a) Where the penalty levied is not paid, the officer levying the penalty shall have power to take possession of so much of the goods as in his opinion would be sufficient to meet the amount of penalty levied and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(b) Where it is not practicable to take possession of only so much of the goods as would be sufficient to meet the amount of penalty levied for the reason that the goods vehicle is a tanker carrying goods in liquid or gaseous form or that the goods form a single unit not separable into any part or parts thereof, the officer levying the penalty shall have power to take possession of the goods vehicle or the entire goods, as the case may be, and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(c) After the expiry of the period of ten days, if the penalty is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards penalty, and the excess amount shall, after deducting the charges incurred by the State Government, be refunded in the manner prescribed.

(d) Before taking possession, or within ten days after taking possession, of the goods or the goods vehicle, as the case may be, if the owner or person-in-charge of the goods vehicle or the dealer registered under the Act, furnishes for the amount of penalty a Bank Guarantee, having validity until realization of the penalty or disposal of an appeal, if any, made under Section 62, the officer taking such possession shall forthwith return the goods or the goods vehicle to the person furnishing such Bank Guarantee.

(e) In the case of perishable goods, the officer may dispose of the same before the expiry of the period of ten days, if in his opinion such disposal is necessary.

(15) Any person aggrieved by the levy of penalty under this Section may appeal within thirty days from the date on which the order of penalty was served on the person to the prescribed authority.

Section 54 - Transit of goods by road through the State and issue of transit pass

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(1) Where a vehicle is carrying goods taxable under this Act,

(a) from any place outside the State and bound for any place outside the State and passes through the State ; or

(b) imported into the State from any place outside the country and such goods are being carried to any place outside the State,

the driver or any other person-in-charge of such vehicle shall furnish the necessary information and obtain a transit pass in duplicate containing such particulars as may be prescribed, from the officer-in-charge of the first check post or barrier after his entry into the State or after movement has commenced from the State, as the case may be, or from the officer empowered for the purposes of sub-section (3) of Section 52, upon interception of the goods vehicle after its entry into the State or after movement has commenced, as the case may be.

(2) The driver or the person-in-charge of the vehicle shall deliver within the stipulated time a copy of the transit pass obtained under sub-section (1) to the officer-in-charge at the last checkpost or barrier before his exit from the State.

(3) (a) If for any reason the goods carried in a goods vehicle are after entry into the State, or after commencement of movement, as the case may be, not moved out of the State within the time stipulated in the transit pass, the owner of the goods vehicle shall furnish to the officer empowered in this behalf the reasons for such delay and other particulars, if any, thereof and such officer shall after due enquiry extend the time of exit by suitably amending the transit pass.

(b) Where the goods carried by a vehicle are, after their entry into the State, or after commencement of movement, as the case may be, transported outside the State by any other vehicle or conveyance, the onus of proving that the goods have actually moved out of the State shall be on the owner of the vehicle who originally brought the goods into the State.

(4) If the driver or any other person-in-charge of the vehicle does not comply with sub-section (2), it shall be presumed that the goods carried thereby have been sold within the State by the owner of the vehicle and shall, irrespective of whether he is a taxable person, be assessed to tax by the officer empowered in this behalf in the prescribed manner.

(5) If the owner of the vehicle, having obtained the transit pass as provided under sub-section (1), fails to deliver the same as provided under sub-section (2), he shall be liable to pay by way of penalty a sum not exceeding twice the amount of tax leviable on the goods transported.

(6) The amount of tax and the penalty levied under this Section shall be recovered in the prescribed manner.

(7) Where the owner of the vehicle who is assessed to tax under sub-section (4), is carrying after such assessment, any goods taxable under this Act in a goods vehicle from any place outside the State, or from within the State, as the case may be, and bound for any other place outside the State and is passing through the State, the prescribed authority may demand from such owner an amount equivalent to twice the amount of tax leviable on such goods under this Act as security.

(8) The prescribed authority after being satisfied that the goods carried in the goods vehicle in respect of which the security amount under sub-section (7) was collected, has passed through the State, shall refund such security amount to the owner.

(9) The prescribed authority may by an order adjust the whole or any part of security amount towards any amount of tax or penalty payable under this Section by such owner.

(10) In case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall for the purpose of this Section, be deemed to be the owner of the vehicle.

Section 55 - Penalty in case of under-valuation of goods

(1) Where, in respect of goods liable to tax under this Act carried in a goods vehicle or boat, ship or similar vessel, or held in stock by any dealer or on his behalf by any other person, or held in the custody of any transporter, the prescribed authority, or any officer empowered under Section 53, has reason to believe that the value shown in the document accompanying the goods in transit or in the purchase invoice is lower than the prevailing market price or Maximum Retail Price, by a difference of thirty per cent or more, such authority or officers, for reasons to be recorded in writing and after allowing the person or dealer a reasonable opportunity of being heard, may impose a penalty of a sum not exceeding twice the amount of the tax due on such goods.

(2) The amount of tax and the penalty levied under this Section shall be recovered in the manner specified under sub-Section (14) of Section 53.

(3) The value of goods in transit shall be the total price as mentioned in the invoice, challan, delivery note, or any other related document, plus the cost of transportation of the goods incurred up to the time of its interception.

(4) In determining whether or not the price shown in the invoice, challan, delivery note, or any other related document involves under-valuation, in the case of owner of the goods other than an owner carrying on business in packaged goods, the authority exercising the power under sub-section (1) shall apply the prevailing market price or fair market value and in the case of an owner carrying on business in packaged goods, shall apply the Maximum Retail Price.

(5) Any person objecting to an order affecting him under this Section may appeal to the prescribed authority.

(6) Such appeal shall be dealt with as if it were an appeal filed under Section 62 or Section 64, as the case may be, and all the provisions of those Sections shall mutatis mutandis apply to such appeal.

Section 56 - Liability to furnish information by certain agents

(1) Every person or a clearing or forwarding house or agency, transporting agency, shipping agency, shipping-out agency or steamer agency or air-cargo agency or courier agency engaged in the business of transporting taxable goods in the State shall furnish to the prescribed authority information relating to any taxable goods cleared, forwarded, transported or shipped by him or it during any period or relating to any dealer as may be required by the prescribed authority.

(2) The authority prescribed in this behalf, shall have the power to call for and examine the books of account or other documents in the possession of such person or agency with a view to verify the correctness of the information furnished under sub-section (1).

(3) Any person failing to comply with the provisions of sub-sections (1) and (2) without valid reason shall be liable to penalty under Section 75.

Section 57 - Special evidential requirements relating to banks

The prescribed authority may require any bank or any officer thereof to furnish such information, document or statement for the purpose of any proceedings under this Act, and any person failing to comply with such requirement without valid reason shall be liable to penalty under Section 75.