

Technical Guide to Mizoram VAT



The Institute of Chartered Accountants of India
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New Delhi

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Foreword

One of the important tax reforms initiated at state level since liberalization was the introduction of Value Added Tax (VAT). Introduction of uniform VAT in the States was a challenging exercise in the federal country like India, where each State Government, in terms of constitutional provision, is sovereign in levying and collecting state taxes.

With the implementation of State Level Value Added Tax (VAT), the main motive to allow input tax credit to the dealer and reduce cascading effect of taxes and price level in general to some extent, has been achieved. This has also lead to increase in collection of revenue of the State Governments due to better compliance of the VAT Law by the dealers. The country is on the verge of most ambitious and largest ever indirect tax reform i.e. introduction of Goods and Services Tax which seeks to create a common national market by bringing down fiscal barriers between the States and reduce the complexities of current tax structure.

Though the broad design of the State-level VAT is uniform across the country but every State has its own VAT legislation and procedures differ on many counts from one State to another. Considering the importance of all State VAT Laws, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has taken an initiative to bring out state wise technical guides. In this regard, the Committee has come out with "Technical Guide to Mizoram VAT". The Guide explains the concepts relating to Mizoram VAT laws in a very exhaustive manner.

I congratulate CA. Atul Gupta, Chairman, CA. Nihar Niranjan Jambusaria, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for successfully completing the task.

I am sure that members will find this Guide very useful in their day to day practice in respect of Mizoram VAT.

Date: 20th January, 2015
Place: New Delhi

CA. K Raghu
President

Preface

VAT, considered as a path-breaking reform in the area of indirect taxation, was introduced in majority of the States from April 1, 2005 with the objective of making accounting more transparent, cutting trade barriers, boosting tax revenues and most important of all doing away with the cascading effect of taxes. However, the State of Mizoram introduced VAT with effect from 1st April, 2005. During these years, VAT system has not only been able to successfully achieve all these objectives but has also increased self-compliance by the taxpayers.

In order to facilitate in understanding the State level VATs, the Indirect Taxes Committee has taken an initiative to prepare State Wise "Technical Guides to VAT" for all States. One of the product of such initiative is "Technical Guide to Mizoram VAT". An attempt has been made in this Guide to cover all the aspect of Mizoram VAT provision such as basic principles, procedure for registration, payment, assessment, refund, penalties, input tax credit, import and exports of goods etc., and is intended to give a general guidance to the chartered accountants to address the various issues that may arise in the Mizoram VAT.

I am extremely thankful to CA. K Raghu, President and CA. Manoj Fadnis, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thanks to CA. Harsh Satish Udeshi for preparing basic draft of the publication. I must also compliment and appreciate the substantial assistance provided by the Indirect Taxes Committee Secretariat to bring this publication to its being.

I am sure that this publication would help the members and readers to be well equipped in effectively discharging their duties as Mizoram VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at dtc@icai.in.

Date: 20th January, 2015
Place: New Delhi.

CA. Atul Gupta
Chairman
Indirect Taxes Committee

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Glossary/Important Definitions

- (1) "Act" means the Mizoram Value Added Tax Act, 2005.
- (2) "Appointed day", in relation to any provision of this Act, means the date on which such provision came into force as per the provision of subsection (3) of section 1.
- (3) "Assessee" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him.
- (4) "Assessing Authority" means any person not below the rank of Superintendent of Taxes or by any authority empowered by the Government by notification to make any assessment under this Act.
- (5) "Assistant Commissioner" means any person appointed to be an Assistant Commissioner of Taxes under this Act.
- (6) "Business" includes, -
 - (a) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce, manufacture, whether or not such trade, commerce, manufacture, adventure, concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and
 - (b) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.
- (7) "Commissioner" means the Commissioner of Taxes appointed by the Government.
- (8) "Capital goods" means plant, machinery and equipment used in the process of manufacturing excluding civil structures.
- (9) "Casual trader" means a person who whether as principal, agent or in any other capacity, has occasional transactions involving buying, selling, supplying or distributing goods in the State, whether for cash or for deferred payment, or for commission, remuneration, or other valuable consideration.

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- (10) "Contractual transfer price", in relation to any period, shall mean the aggregate of the amount received or receivable by a dealer during such period for the transfer of property in goods used by way of accretion or accession in Mizoram in execution of a works contract, whether or not the amount received or receivable for such transfer is shown separately in the works contract, and shall comprise the value of such goods purchased, manufactured, processed or procured otherwise, by the dealer and the cost of freight or delivery as may be incurred by such dealer for carrying such goods to the place where such goods are used in execution of such works contract, but shall not include such portion of the amounts as aforesaid as may be prescribed.
- (11) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or any system of payment by instalment; transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes :
- (a) a casual trader;
 - (b) a commission agent, a broker or a del credere agent or an auctioneer or any other mercantile agent, by whatever name called,
 - (c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;
 - (d) a person who, whether in the course of business or not, -
 - (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
 - (ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;
 - (iii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or

Glossary/Important Definitions

not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration.

- (12) "Declared goods" means goods declared to be of special importance in inter-State trade or commerce under section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).
- (13) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Taxes under this Act.
- (14) "Deputy Commissioner (Appeals)" means any person appointed to be a Deputy Commissioner (Appeals) under this Act.
- (15) "Goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale.
- (16) "Government" means the Government of Mizoram.
- (17) "Input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business for resale or for the manufacture of taxable goods or for use as containers or packing material or for the execution of works contract.
- (18) "Joint Commissioner" means any person appointed to be a Joint Commissioner under this Act.
- (19) "Manufacture" with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes printing, but does not include any such process or mode of manufacture.
- (20) "Output tax" in relation to any period means the tax payable by a dealer under this Act in respect of any sale or purchase of goods by that dealer during that period in the course of his business.
- (21) "Person" includes -
 - (a) an individual;

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- (b) a joint family;
 - (c) a company;
 - (d) a firm;
 - (e) an association of persons or a body of individual; whether incorporated or not;
 - (f) the Central Government or the Government of Mizoram or the Government of any other State or Union Territory in India;
 - (g) a local authority.
- (22) "Place of business" means any place where a dealer carries on the business and includes-
- (a) any warehouse, go-down, or other place where a dealer stores or processes his goods;
 - (b) any place where a dealer produces or manufactures goods;
 - (c) any place where a dealer keeps his books of accounts;
 - (d) the "place of business" of an agent where a dealer carries on business through such agent (by whatever name called);
 - (e) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods.
- (23) "Prescribed" means prescribed by Rules made under this Act.
- (24) "Purchase" with all its grammatical variations and cognate expressions shall be construed from the word "sale".
- (25) "Registered dealer" means a dealer registered under this Act.
- (26) "Reverse tax" means that portion of input tax of the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials within the State.
- (27) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods, other than by way of mortgage, hypothecation, charge or pledge, by one person to another in the course of trade or business for cash, deferred payment or other valuable consideration and includes :-

Glossary/Important Definitions

- (a) transfer, otherwise than in pursuance of a contract, of property, in goods for cash, deferred payment or other valuable consideration;
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) delivery of goods on hire purchase or any other system of payment by instalments;
- (d) a transfer of the right to use any goods for any purpose, whether or not for specified period, for cash, deferred payment or any other valuable consideration;
- (e) a transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration;
- (f) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;
- (g) a 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, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanation :

- (a) A sale or purchase of goods shall not be deemed to have taken place inside the State if the goods are sold -
 - (i) in the course of inter-State trade or commerce ; or
 - (ii) outside the State of Mizoram; or
 - (iii) in the course of import of the goods into or export out of the territory of India;

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there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this Explanation shall apply as if there were separate contract in respect of the goods at each of such places.

- (28) "Sale price" means the amount of valuable consideration received or receivable by a dealer for the sale of any goods less any sum allowed as cash discount, commission or other commercial rebates on the value of such goods at the time of or before delivery of such goods, but inclusive of any sum charged for anything done by the dealer in respect of the goods or services at the time of or before delivery thereof, excise duty, special excise duty or any other duty or taxes except the tax imposed under this Act.
- (29) "State" means the State of Mizoram.
- (30) "Superintendent of Taxes" means any person appointed to be a Superintendent of Taxes under this Act.
- (31) "Tax" means the tax payable under this Act.
- (32) "Tax invoice" means an invoice in such form and containing such particulars as may be prescribed and included a statement of account, bill, cash register, slip, receipt or similar record, regardless of its form.
- (33) "Taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed.
- (34) "Turnover of sales" in relation to any period, means the aggregate of the sale prices or parts of sale prices received or receivable by a dealer during such period after deducting therefrom the amounts, if any, refunded by the dealer in respect of any goods returned or rejected by the purchaser within three months from the end of such period;

Explanation :

- (i) The turnover of sales in respect of delivery of goods on hire purchase or on any system of payment by instalment shall be the market price of the goods so delivered;
- (ii) The turnover of sales in respect of the transfer of the right to use any goods shall be the aggregate amount received or receivable by the dealer as consideration for such transfer;

Glossary/Important Definitions

- (35) "turnover of purchases" in relation to any period, means aggregate of the purchase prices or parts of purchase prices paid or payable by a dealer during such period in respect of purchases liable to tax under section 9, after deducting there from the amount, if any, refunded to the dealer by the seller in respect of any such purchase of goods returned to the seller.
- (36) "Value added tax" means a tax on sales or purchases levied under this Act.
- (37) "Vehicle" includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers.
- (38) "Vessel" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner.
- (39) "Works contract" means any agreement for carrying out -
- (a) the construction, fitting out, improvement or repair of any building, road, bridge, dam or other immovable property; or
 - (b) the installation, fabrication, assembling, commissioning or repair of any plant or machinery, whether or not affixed to any building or other immovable property; or
 - (c) the overhauling or repairing or dismantling of -
 - (i) any motor vehicle; excavator, loader or earthmover,
 - (ii) any seagoing vessel;
 - (iii) any other vessel propelled by mechanical means;
 - (iv) any aircraft; or
 - (iv) any equipment or necessary part of any of the aforesaid items;
 - (d) the fitting out or fabrication, assembling, altering, or reassembling, blending, furnishing, improving, processing or otherwise treating or adapting any goods.

Explanation :

All contracts including sub-contracts in relation to the same works, for the supply of goods or provision of services by any person shall whether they are between the same or different persons and whether any consideration is stipulated or not, be deemed to be a single

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contract constituting the works-contract and the provisions of this Act relating to taxation of the transfer of property in goods involved in a works-contract (whether as goods or in some other form) shall apply accordingly;

- (40) "Year" means the financial year beginning from 1st April and ending with 31st March.
- (41) "Zero-rating" in relation to sale of goods means a tax levied at the rate of zero on such goods specified in Schedule-II of this Act.

Chapter-1

Introduction to VAT

Concept of VAT in India

The concept of VAT was introduced first of all in France in 1954. Initially, it applied only to transactions undertaken by manufacturers and wholesalers, and was extended to cover sectors such as energy and construction during the next decade.

It was introduced in India as Central Excise Duty w.e.f. 01st March 1986 and at that time it was called MODVAT (Modified Value Added Tax) but afterwards its name was changed to CENVAT (Central Value Added tax).

In 2002, CENVAT was also made available under the Service Tax Laws. Central Excise Duty and Service Tax were charged by Central Government and its credit was called CENVAT.

The concept of tax credit was introduced in Sales tax in the year 2005 and Sales Tax was being charged by the State Government and accordingly every State Government has its own Value Added Tax Act. As per Entry 54 in List II (State List) of Schedule VII to Constitution of India, States are empowered to levy tax on sale or purchase of goods other than newspaper.

What is VAT?

VAT means Value Added Tax i.e. tax on value added to the commodity, at each stage of production and distribution of the commodity. This may be due to the fact that the product passes through various hands in the channel of distribution or due to the value added in its price in the event of some activity undertaken in relation to the commodity. Under the VAT system, a dealer collects tax on his sales, retains tax paid on his purchases and pays the balance to the State Government. The tax paid by the dealer is passed on to the buyer. Hence, VAT is a multipoint tax system with the provision for the payment of tax on purchases at each point of sale.

Example

A person purchases 10 units for ₹ 10 each and pays tax @ 10 % thereon. The purchase price shall be ₹ 110 including a tax of ₹ 10 paid on purchases. If he sells these goods at ₹ 12 each and charges tax @ 10 %, the sale price shall be ₹ 120 and tax payable shall be ₹ 12. Since the person has already paid a tax of ₹ 10 at the time of purchase, his net tax shall be ₹ 12 minus ₹ 10 that is ₹ 2 only.

The net tax can also be calculated by applying the rate of tax on value addition i.e. difference of purchase and sale price which is ₹ 120 minus ₹ 100 that is ₹ 20. The VAT @ 10% on value addition of ₹ 20 is ₹ 2.

Merits/Benefits of VAT

1. Prevents cascading effect of taxation – VAT doesn't form part of cost, therefore the VAT system prevents double taxation and also avoid cascading effect.
2. Reduction in prices – Due to availability of credit of VAT paid on inputs against VAT payable on sales, cost of production is reduced and the retail sale price gets reduced.
3. Better Accounting – As maintenance of records and purchase invoices is a necessary pre-condition for availment of credit on purchases, it results in better accounting of business transaction
4. Avoidance of tax evasion – Evasion of tax is minimized as proper records are maintained and as such there cannot be any suppression of purchases/production.
5. Better and stable revenue collection – Since tax credit is given only on production of evidence as to tax payment at earlier stage, there are lesser chances of revenue leakages and the government gets the actual tax due on the final product.

To Sum Up

1. VAT is a tax on the sale of goods
2. It is imposed on intra state sale i.e. sales of goods within the State

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3. Since, it is imposed only on the amount of value addition made, it is known as Tax on Value Added or Value Added Tax
4. VAT is imposed only on the amount of value addition measured by deducting purchase price from sale price. This is done by providing set off of tax paid on purchases against tax payable on sales.

Mizoram VAT

The VAT Act of the State of Mizoram received the assent of the Governor of Mizoram on 30/03/2005 along with most of the States and adopted the VAT from that date.

Chapter-2

Incidence, Levy and Rate of Tax

Incidence of tax (Section 7)

The liability to VAT arises when there is a sale. Sale means transfer of property or ownership for a price. The tax payable by a dealer is calculated in accordance with the turnover of the business of a dealer. Turnover is the aggregate or total of the sale price of the goods.

Section 7 (1) Every dealer shall be liable to tax, -

- (a) whose gross turnover of sales or contractual transfer price during the current year exceeds the taxable limit or who has been liable to pay tax under section 3 of the Mizoram Sales Tax Act, 1989 (Act No. 8 of 1989) or under section 7 of the Central Sales Tax Act, 1956,
- (b) The above clause, shall not apply to a dealer –
 - (i) whose gross turnover of sales or contractual transfer price first exceeds the taxable limit during any period of twelve consecutive months, or
 - (ii) who has become liable to pay tax under the Central Sales Tax Act, 1956, or
 - (iii) who is registered as a dealer under the Central Sales Tax Act, 1956 or under this Act at any time after the commencement of this Act, and he shall be liable to pay tax in accordance with the provisions of this Act.

Section 7 (2) Every dealer shall be liable to pay tax on purchases and sales effected by him -

- (a) from the date of commencement of business;
- (b) from the date immediately following the day on which his gross turnover first exceeded the taxable limit during a period of any twelve consecutive months.
- (c) from the date of registration or the date on which he becomes so liable whichever is earlier.

Incidence, Levy and Rate of Tax

Section 7 (3) Every dealer who has become liable to pay tax, shall continue to pay until the expiry of three years during which his turnover has remained below the thresholds of turnover.

Section 7 (4) Every dealer who has ceased to be liable under sub-section (3) shall be again liable to pay tax under this Act with effect from the date immediately following a period not exceeding twelve consecutive months during which his gross turnover again exceeds the taxable quantum.

Section 7 (5) Taxable limit has been expressed in relation to any dealer as who is:

Type of dealer	Amount
Imports for sale any goods into the State of Mizoram on his own behalf or on behalf of his principal	Nil
Manufacturer or producer	₹ 2,00,000
For execution of works contract	₹ 3,00,000
Engaged in any other business other than above	₹ 3,00,000

Explanation:

In the case of works contract, the above taxable limit of ₹ 3,00,000 will relate to the contractual transfer price of goods of the works contractor.

Section 7 (6) The Government may, by issue of notification, revise any taxable limit as stated above in sub-section (5) of Section 7 and this taxable limit shall be deemed to have been revised accordingly.

Section 7 (7) Gross turnover of a dealer shall be include all sales and purchases whether taxable or not and even includes the sale and purchases of exempted goods.

Further, gross turnover shall include sale and purchases of goods which are sold by an agent or on behalf of some other principal, whether disclosed or not.

Section 7 (8) Where an order has been passed stating that a person registered as a dealer ought not to have been so registered, then, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, assuming him to be a dealer covered under the Act.

Levy of tax on sale (Section 8)

Section 8 (1) A dealer shall be liable to pay tax on his taxable turnover of sales or the contractual transfer price, as the case may be.

Section 8 (2) Levy of tax shall be on "taxable turnover of sales" as computed below :-

Details	Amount
Gross Turnover of Sales	XXXX
Less :	
(a) sales of goods which are not liable for any tax specified in Schedule I (declared as exempted goods) and II (Zero rated Goods).	XX
(b) sales of goods not taken place in Mizoram	XX
(c) sale in the course of inter-State trade <i>or</i> commerce	XX
(d) sale in the course of import/export of the goods	XX
e) labour and non-material cost incurred during the execution of Works Contract ***	XX
Taxable Turnover of Sales	XXXX

Explanation to (a) The sale of zero-rated goods shall be eligible for input tax credit when the goods are sold in the course of export or sold to Special Economic Zones (SEZ)/Export Oriented Units (EOU) by Domestic Tariff Area (DTA).

*** If the actual cost of labour and non-material are not given, then a percentage of the turnover is deducted to arrive at the Taxable Turnover of Sales. The percentage of the turnover is stated under column 3 of Schedule III.

Levy of tax on purchases (Section 9)

Generally, tax under the VAT Act shall be levied on the sales only. However, tax shall be levied on purchases, if the Government stands to lose revenue due to the violation of certain conditions, stipulations or requirements.

Incidence, Levy and Rate of Tax

Every dealer who purchases or receives any goods –

- (a) from a registered dealer, in the circumstances in which no tax under section 8 is payable by that registered dealer on the sale price of such goods, or
- (b) from any other person, shall be liable to pay tax on the purchase price, if after such purchase, the goods are not sold
 - within the state of Mizoram
 - in the course of inter-State trade and commerce
 - in the course of export outside India

but are –

- (i) sold or disposed of otherwise, or
- (ii) consumed or used in the manufacture of exempted goods or
- (iii) after their use or consumption in the manufacture of goods, the manufactured goods are disposed of otherwise than by way of sale within Mizoram or in the course of inter-State trade and commerce or export outside India; or
- (iv) used or consumed otherwise (i.e. in contraventions of the stipulated conditions)

Levy of tax on containers and packing material (Section 10)

Containers and packing materials shall be taxed at the same rates as that charged on the contents or goods that are packed in them. No tax shall be charged on containers or packing materials of exempted goods when they are sold/purchased together. However, when such empty containers or packing materials are sold separately they are taxable.

Rate of tax (Section 11)

Section 11 (1) A dealer shall be liable to pay tax on his taxable turnover of sales at such rates as specified in the Schedule II and subject to conditions as imposed by the Government on time.

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Section 11 (2) The tax payable by a dealer on his taxable contractual transfer price, shall be at the rate as specified in Schedule III.

Section 11 (3) The State Government may, by issue of notification, add to or omit from any Schedule any entry or entries or transpose any entry or entries from one Schedule to another or modify or vary any entry of entries or the rate or rates or the stage or stages of levy of tax or the deductions specified in any Schedule and, thereupon, such Schedule or Schedules shall be deemed to have been amended accordingly.

Exemptions (Section 12)

Subject to the conditions and exceptions as specified under Schedule – I, the sale of goods specified in the said Schedule shall be exempted from tax.

Tax payable (Section 13)

Section 13 (1) The net tax payable by a registered dealer for a tax period will be the difference between the output tax and the input tax. The dealer is required to pay tax on sales, which is his output but since he has already paid tax under VAT on his purchases which is his input, he will be allowed a deduction or credit for the input tax.

For determining at the Net Tax Payable amount, the following formula can be used:

$$\text{Net tax payable} = (O + P - I)$$

Where 'O' - Output tax payable,

'P' - Purchase tax paid by a registered dealer and

'I' - Input tax paid or payable

Section 13 (2) A dealer who is liable to pay tax but not registered under this Act, shall be liable to pay tax equal to the output tax payable.

Section 13 (3) Where the Net Tax Payable amount derived by using the above formula is negative -

- (a) the same shall be adjusted against the tax liability under the CST Act and only the balance amount shall be payable; or
- (b) if VAT credit exceeds the tax payable on sales, the excess credit may be carried over to the future period.

Input tax credit (Section 14)

It is the amount for which a dealer is allowed to claim a credit. Net tax is the difference between output tax and tax credits that are allowed to claim in a given tax period. It could be positive or negative amount. The negative amount represents tax credits in excess of output tax for a given period.

Section 14 (1) It is the credit or deduction available to a registered dealer for the tax paid or payable on inputs from the tax he is liable to pay on his taxable turnover during the tax period.

Section 14 (2) The input tax credit to which the registered dealer is entitled shall be the amount of tax paid by the registered dealer to the seller, on his turnover of purchases made during the tax period. The purchases should be for the purposes and subject to the conditions as specified below in sub section (3),(4) & (5).

Section 14 (3) In certain situations, input tax credit may be allowed partially or in a phased manner, in respect of certain goods or class of dealers or other cases subject to conditions and restrictions as notified by the Government.

Section 14 (4) The Input tax credit shall be allowed for tax paid on purchase of goods from a registered dealer, holding valid certificate of registration under Mizoram VAT Act and where the goods are purchased with the purpose of –

- (a) sale or resale by him in the State of Mizoram; or
- (b) use as inputs as raw material or capital goods, in the manufacturing and processing of goods other than those which are exempt from tax.
- (c) sale in the course of export out of the territory of India; or
- (d) for use as containers for packing of goods other than those exempt from tax under VAT, for sale or resale inside the State of Mizoram.

If the purchases are used partially for the purposes of VAT, input tax credit shall be allowed proportionately.

Section 14 (5) Input tax credit on capital goods shall be limited to plant and machinery directly connected with the manufacturing or processing of the finished products. Input credit shall be adjusted or deducted from tax payable on output over a period of three years.

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However, in case the business is closed before the commencement of commercial production, no input tax credit shall be allowed, and if any input tax credit is to be carried forward, it shall be forfeited.

Section 14 (6) The original 'Tax Invoice' is the proof required to claim input tax credit. No dealer shall claim input tax credit, unless he is in possession of the original copy of the tax invoice, signed and issued by the selling registered dealer containing the comprehensive/ entire particulars of sale.

The Commissioner, may on having good and sufficient reasons, allow such credit subject to fulfillment of conditions and restrictions as may be specified.

Section 14 (7) A registered dealer shall be required to maintain accounts and other records to claim the input tax credit in respect of the purchase and sales made by him in state of Mizoram.

Section 14 (8) No input tax credit under sub-section (1) shall be claimed by or be allowed to a registered dealer-

- (a) in respect of any taxable goods purchased by him from another registered dealer, for resale, but given away as free sample or gift, as Government gets nothing as output tax;
- (b) who has been permitted by the Department to pay turnover tax at a percentage of the turnover of sales in under section 18;
- (c) in respect of capital goods ;other than those directly used for manufacturing or processing of goods for sale;
- (d) for tax paid in other states in respect of goods brought from outside the State;
- (e) who closes down business, in respect of stock remaining unsold at the time of closure;
- (f) in respect of goods not sold on account of theft, damage and destruction though tax has been paid on the purchase of such goods
- (g) where the tax invoice is -
 - (i) not available with the dealer, or
 - (ii) there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased;

Incidence, Levy and Rate of Tax

- (h) in respect of goods purchased from a dealer, whose registration certificate has been suspended;
- (i) in respect of goods used for transfer of stock other than by way of sale outside the State of Mizoram;
- (j) in respect of sales of exempted goods and ;
- (k) in respect of raw materials used in manufacture or processing of goods, where the finished products are exempt from tax under VAT.

However, in respect of the case above enumerations, where the raw materials are used directly in manufacture of finished goods, the input tax credit may be allowed on the tax paid in excess of 4%

Section 14 (9) If goods purchased are intended for use specified under sub-section (4) or in respect of loss of goods arising out of theft or destruction for any reason or the stock of goods remaining unsold at the time of closure of business and are subsequently used, fully or partly, for purposes other than those specified under the said sub-section, the input tax credit availed at the time of such purchase shall be reduced from the tax credit for the period during which the said utilization has taken place.

If the goods purchased are partly utilized for taxable purpose and partly for exempted purpose, the amount of reverse tax credit shall be proportionately calculated in a manner that is just and reasonable.

Section 14 (10) A registered dealer is expected to be fair, appropriate and reasonable in determining the input tax credit or else Department may, reject the method adopted by the dealer, for reasons to be recorded and recalculate the input tax credit after giving him an opportunity of being heard.

Input tax credit exceeding tax liability (Section 15)

Section 15 (1) In case the registered dealer is not an exporter, the surplus input tax credit, shall be set off against any outstanding tax, penalty or interest under this Act.

Section 15 (2) If, even after set off of surplus input tax credit still remains unabsorbed, this credit shall be carried forward as input tax credit of the next tax period or subsequent periods.

Section 15 (3) In case where input tax credit is carried forward, a quarterly credit statement may be forwarded to the dealer concerned and the claims shall be reconciled accordingly.

Adjustment of input tax credit (Section 16)

If as a consequence of the above circumstances, the input tax credit availed by a purchasing dealer in any period in respect of which the purchase of goods relates is charged i.e. is decreased or increased, he shall make due adjustment of such amount of decrease or increase in credit, by adjusting the amount of tax credit allowed to him, for the tax period in which the credit note or debit note has been issued or goods have been returned.

Burden of proof (Section 17)

The burden of proof lies on the dealer to show that he is not liable to pay tax u/s 8 & 9 or he is eligible to input tax credit on the purchases and sales effected by him.

Levy of presumptive tax on registered retailers (Section 18)

There is a presumptive tax scheme under Mizoram VAT Act, for small retailers.

A Dealer who is not a manufacturer or a person selling or dispatching goods outside the State who does not purchase or receive any goods other than by way of purchase from outside the State and who ordinarily sells his goods to consumers are defined as "Retailers".

The scheme which is optional is applicable for all registered retailers whose gross turnover does not exceed rupees ten lakhs. They are not required to pay tax as specified, at normal rates like other dealers. They are also not entitled to avail input tax credit. They have to pay tax at a fixed percentage of the entire taxable turnover of such sales.

Turnover tax is not required to be paid by a registered dealer who imports goods from outside the State for the purpose of carrying out his business;

If any retailers opts to pay tax under this provision, then he has to pay tax as specified under section 8 or section 9 of this Act in lieu of the provisions of this section.

Power of Government to amend Schedules (Section 19)

The State Government has the power to amend Schedule to the Act, by way of issuing notifications.

Credit notes and Debit notes (Section 20)

Section 20 (1) Where a taxes charged under the tax invoice, which exceeds the tax payable under VAT, the registered dealer issues a credit note to the purchasing dealer containing the requisite details of the amount being refundable on account of difference in tax.

Section 20 (2) Where a taxes charged under the tax invoice , which is less than the tax payable under VAT, the registered dealer issues a debit note to the purchasing dealer containing the requisite details of the amount being payable on account of difference in tax.

Section 20 (3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer containing particulars of amount of tax being payable/refundable to the dealer .

The credit note and debit note referred above should contain the following particulars :

- (a) serial number
- (b) bill/memo/invoice and challan number bearing date therein of purchase or sale, as the case may be
- (c) mode of payment for the purchase or sale and details thereof
- (d) signature of proprietor or partner or director of issuing party.

Chapter-3

Registration Requirements and Procedures

Compulsory registration of dealers (Section 21)

Registration is the process for obtaining certificate of registration from the VAT authorities. A dealer registered under the VAT Act is called a registered dealer.

Section 21 (1) Every dealer of goods who is liable to pay tax should get himself registered by making an application in Form 1 within 1 month to the Assistant Commissioner or the Superintendent under the Mizoram VAT Act, 2005. A dealer is required to get himself registered within two months from the date on which he becomes liable to pay tax under the Mizoram VAT Act, 2005 (Rule 5 of the Mizoram VAT Rules, 2005).

Example :

A non-registered dealer sold taxable goods on 01st January 2015. The dealer is liable to pay tax on the goods sold. As per above provision, the dealer is required to make an application for registration in Form 1 within 1 month from the date of liability i.e. within 1st February 2015.

Further, Rule 5 of the Mizoram VAT Rules, 2005 states that the dealer who has given an application should get himself registered within 2 months from the date of liability to pay tax. Considering the above example, we can state that the dealer should complete all the registration procedure and get the registration certificate within 1st March 2015 i.e. within 2 months from the date of liability i.e. from 1st January 2015.

Any dealer including each partner of a partnership firm and each shareholder of a registered company who is required to obtain an Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873 for entering into the State of Mizoram shall, before granting certificate of registration under this Act, comply with the conditions laid down in the said Regulation or any other Regulation being in force in the State or in any part of the State or by an order passed by the Government under section 83 as the case may be.

Documents/Information required to be submitted with the application for registration :

- Online application form
- Nature of Business
- Class/classes of item sale/purchase
- Evidence of possession of premises i.e. address proof of premises to be registered
- List of machinery, if any
- Copy of PAN Card
- Copy of registration certificate, if registered under any other Act
- First Sale/Purchase Bill
- Passport/Ration Card/Election Card of the authorized signatory and Director or Proprietor
- Memorandum and Article of Association, Certificate of Incorporation in case of a Company
- Resolution authorizing the principal officer to deal with the Government officials
- List of Directors of the company
- Photographs of directors and authorized signatory
- Security deposit as stated by the Department

Section 21 (2) A dealer can obtain registration under the Mizoram VAT Act, 2005 by making an application in Form 1 alongwith the required documents with the authority competent to grant registration. The application fee is required to be paid by challan into a designated bank.

An application for registration shall, amongst other particulars, specify (Rule 6 of the Mizoram VAT Rules, 2005)

1. the name and style, location and branches, if any, of the business
2. the class or classes of goods ordinarily purchased for the purpose of resale in the state

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3. the class or classes of goods, if any, manufactured for sale in the State
4. the class or classes of goods imported from outside the state for the purpose of sale in the state
5. the gross turnover of the business during the preceding twelve months
6. the language in and the year for which accounts are maintained

An application for the registration shall be signed and verified as under (Rule 7 of the Mizoram VAT Rules, 2005)

- in the case of individuals, by the proprietor of the business
- in the case of an association of persons, by an adult member or the principal officer
- in the case of a firm, by the managing partner or an adult partner of the firm
- in the case of a Hindu Undivided or joint Family, by the manager or karta or any adult member of the family
- in the case of a company, by the managing director, or any director of the Company or Secretary, Manager or a Principal Officer or Chief Executive Officer of the Company in India
- in the case of any Government Department, by the head of the Office

The person making an application for registration shall specify the capacity in which the application is made, signed and verified. (Rule 8 of the Mizoram VAT Rules, 2005)

If necessary, the Department may conduct an enquiry and on being satisfied that the Applicant is a bonafide dealer, it shall register the dealer and grant the Registration Certificate in Form 2. (Rule 9 of the Mizoram VAT Rules, 2005)

The particulars to be specified in the certificate shall, so far as possible, be described in the same terms as are used in the application for registration. (Rule 10 of the Mizoram VAT Rules, 2005)

Each certificate shall bear a unique number to be known as TIN. (Taxpayers Identification Number)The number shall be represented by 11 digits figure. The unique registration numbers to be entered on a certificate shall be such

Registration Requirements and Procedures

as may be assigned by the Commissioner for each Zonal/District/Circle Office. (Rule 11 of the Mizoram VAT Rules, 2005)

A certificate shall be issued for such place of business and it shall be kept at the place of business to which it relates. (Rule 12 of the Mizoram VAT Rules, 2005)

Section 21 (3) The certificate shall specify the class or classes of goods dealt in or manufactured by the dealer and also mention the date of commencement of his liability to pay tax.

Section 21 (4) The certificate of registration being granted by the authority is applicable from the date of filing the application for registration.

Where the application is made by a dealer within thirty days from the date of liability to pay tax, the certificate of registration shall be applicable from the date of commencement of his liability to pay tax.

A register of certificate of registration and a General Index Register of dealer shall be maintained by the Assistant Commissioner or the Superintendent, in Form 3 and Form 4 respectively. (Rule 16 of the Mizoram VAT Rules, 2005)

Section 21 (5) If the registering authority is satisfied on his own information that the registration certificate requires amendment it may amend the registration certificate after giving an opportunity of hearing to the dealer. A registered dealer can also make an application for making amendments in the Registration Certificate to the Assistant commissioner or the Superintendent, and submit the certificate for amendment (Rule 14 of the Mizoram VAT Rules, 2005)

Section 21 (6) The registration certificate of a dealer may be cancelled on any of the following grounds,

- (a) if it is found that the dealer has no business at the place of business declared in the application of registration
- (b) if the dealer has ceased to pay tax due from him
- (c) an incorporated body is closed down or if it otherwise ceases to exist; or
- (d) the owner of a proprietorship business dies leaving no successor; or
- (e) in case of dissolution of a firm or association of persons, or
- (f) a person or dealer is registered by mistake, or

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(g) a dealer fails to furnish return, pay tax and interest as required

Section 21 (7) The cancellation of registration will take effect from the end of the period in which it is cancelled unless it is to take effect from a different date as ordered by Commissioner.

Section 21 (8) When a dealer fails to pay any tax, penalty or interest or has failed to furnish return, the certificate of registration of such dealer may be suspended by the Department after giving him a notice to show cause against such suspension and specifying or date in that notice ordinarily not earlier than 14 days from the date of receipt of the notice for compliance. (Rule 15 of the Mizoram VAT Rules, 2005)

On receipt of an application by a dealer within 15 days, the Commissioner may extend the period to furnish the return and pay tax, penalty or interest by such date as specified in the notice.

Section 21 (9) Where a dealer pays the full amount of tax, penalty or interest payable due from him under this Act and has furnished overdue returns within 45 days from the date of suspension of certificate of registration, he can make an application to the assessing authority for restoration of his certificate of registration.

Section 21 (10) If a certificate of registration of a dealer is suspended or if the suspension is withdrawn, the information shall be given through publication in Official Gazette and insertion of notice in Newspapers

Imposition of penalty for failure to get registered (Section 22)

Section 22 (1) A dealer who is liable to pay tax under the provisions of the Act, but does not get himself registered within two months from the date when he is liable, shall have to pay a penalty between ₹ 5,000/- to ₹ 10,000/- per month of default. Penalty shall be levied after giving an opportunity of hearing to the dealer. However, penalty shall not be imposed on the dealer, who has been prosecuted under the Act.

Section 22 (2) On determining the penalty, the assessing authority shall issue a notice to the dealer directing him to pay such penalty within 15 days from the date of service of such notice. However, the assessing authority may extend the period of date of payment of penalty or allow the dealer to make payment in installments subject to reasons recorded in writing.

Registration Requirements and Procedures

The penalty so imposed shall be paid by the dealer on or before the date so specified, into a Government Treasury or the State Bank of Mizoram or any other bank, as may be notified by the Government.

Chapter-4

Returns

Periodical returns and payment of tax (Section 23)

Section 23 (1) Every registered dealer should furnish a true and complete return in Form 5 on or before the due date alongwith relevant statement stating details about his transactions relating to sales, purchases, receipts and dispatches of goods to the Assistant Commissioner or the Superintendent of Taxes. (Rule 17 of the Mizoram VAT Rules, 2005)

The returns during the first year of the operation of the Act shall be furnished on a quarterly basis, on or before the end of the month following the end of the quarter as stated below: (Rule 18 of the Mizoram VAT Rules, 2005)

1	For the quarter ending on 31 st March	30 th April
2	For the quarter ending on 30 th June	31 st July
3	For the quarter ending on 30 th September	31 st October
4	For the quarter ending on 31 st December	31 st January

The Commissioner may, subject to conditions and restrictions, exempt any such dealer from furnishing such returns or permit any such dealer –

- (a) to furnish them for such different periods; or
- (b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State of Mizoram for the said period or for such different periods and to such authority, as he may direct.

Submission of Statement of Consignees

A dealer who claims exemption on account of the transfer of goods to his head office or branches or commission agents shall furnish a statement vide Form 6 alongwith the return. (Rule 19 of the Mizoram VAT Rules, 2005)

Submission of Statement of Consignors

A dealer who has obtained goods from outside the State shall submit Form- 7 along with return. (Rule 20 of the Mizoram VAT Rules, 2005)

Section 23 (2) The Department may call upon the dealer to file a return if it comes to a conclusion that the dealer is liable to pay tax. Hence, if the department has reasons to believe that the gross turnover of a dealer is likely to exceed or has exceeded the taxable limit, it may require such dealer to furnish return by serving a notice in Form 8 to him. (Rule 22 of the Mizoram VAT Rules, 2005)

Section 23 (3) If a dealer who has filed returns discovers any omission or wrong statement therein, he may file a revised return at any time within 3 months following the tax period to which the original return relates.

Section 23 (4) The dealer is required to pay the full amount of tax into the Government Treasury alongwith the Challan in Form 26 The receipt of proof of such payment showing full payment of the tax has to be furnished with the return

Section 23 (5) Every return under this section shall be signed and verified –

- (a) in case of an individual, by the individual himself, and where the individual is absent, by some person duly authorised by him in this behalf;
- (b) in the case of a Hindu Undivided family, by the Karta;
- (c) in the case of a company or local authority, by the principal officer or Chief Executive Officer thereof;
- (d) in the case of a firm, by any partner thereof not being minor;
- (e) in the case of any other association, by the person competent to act on behalf of the association.

Explanation:-

For this purpose the expression “principal officer” shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961.

Return defaults (Section 24)

Section 24 (1) If a dealer required to file return –

- (a) fails without sufficient cause to pay the amount of tax due as per the return for any tax period; or
- (b) furnishes a revised return showing a higher amount of tax to be due than was shown by him in the original return; or
- (c) fails to furnish return ;

such dealer shall be liable to pay interest in respect of, -

- (i) the tax payable by him according to the return; or
- (ii) the difference of the amount of tax according to the revised return; or
- (iii) the tax payable for the period for which he has failed to furnish return;

at the rate of 2% per month from the date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Explanation:-

For the purpose of this section, the expression "month" shall mean thirty days and the interest payable in respect of a period of less than one month shall be computed proportionately.

Section 24 (2) If a registered dealer fails to pay the amount of tax due and interest along with return or revised return, the Commissioner may, levy a penalty at the rate of 2% per month on the tax and interest so payable from the date it had become due to the date of its payment or to the date of order of assessment, whichever is earlier, in addition to tax and interest due from him. A reasonable opportunity of being heard shall be given to the dealer before the penalty is imposed.

Section 24 (3) If a registered dealer or any other dealer required to furnish return –

- (a) fails to comply with the requirements of the notice issued under sub-section (2) of section 23; or
- (b) fails to furnish any return within the date specified in notice issued in Form 8 as required under sub-section (2) of section 23; or

Returns

- (c) being required to furnish revised return, fails to furnish the revised return within 3 months following the tax period to which the original return relates under sub-section (3) of section 23; or
- (d) having paid the tax payable according to a return in time, fails to furnish along with the return proof of payment made in accordance with sub-section (4) of section 23;

the Commissioner may, levy a penalty of a sum of rupees not exceeding one hundred per day of default subject to a maximum of rupees ten thousand. . A reasonable opportunity of being heard shall be given to the dealer before the penalty is imposed.

Section 24 (4) Any penalty imposed under this section shall be without prejudice to any prosecution for any offence under this Act.

Section 24 (5) Any return signed by a person who is not authorized to sign, shall be treated as if no return has been filed.

Collection of tax only by registered dealers (Section 25)

Section 25 (1) A dealer who is liable to pay VAT, should collect the exact amount of tax on goods which has been sold by him. A dealer who is not liable to pay VAT, shall not collect any tax in respect of any sale of goods by him.

Section 25 (2) A registered dealer, who has been permitted by the Commissioner to pay presumptive tax under section 18, shall not collect any sum by way of tax on the sale of goods during the period to which such payment relates.

Rounding off of the amount of tax or penalty (Section 26)

The amount of tax, interest or penalty payable or refundable shall be rounded off to the nearest rupee. (Rule 27 of the Mizoram VAT Rules, 2005)

Scrutiny of returns (Section 27)

Section 27 (1) Each and every return shall be subject to scrutiny by the Assessing Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.

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Section 27 (2) If any mistake is detected as a result of such scrutiny, the Assessing Authority shall serve a notice in Form 11 on the dealer to make payment of such extra amount of tax along with the interest as per the provisions of this Act, within 30 days from issue of the said notice. (Rule 28 of the Mizoram VAT Rules, 2005)

Tax audit (Section 28)

Section 28 (1) The Commissioner or any other officer appointed by him, shall undertake tax audit of the records, stock in trade and the related documents of the dealer, who are selected for the purpose of tax audit.

The selection shall be done by the 31st day of January every year, where not less than 25 % of the registered dealers for tax audit shall be selected through draw of lots either mechanically or with the use of computers. (Rule 29 of the Mizoram VAT Rules, 2005)

Section 28 (2) The tax audit shall be generally taken up in the office, business premises or warehouse of the dealer.

Section 28 (3) The Commissioner or any other officer appointed by him, shall examine the correctness of return or the returns filed and admissibility of various claims including input tax credit by the dealer.

Chapter-5

Assessment

Self assessment (Section 29)

Section 29 (1) The amount of tax due during the year shall be deemed to have been assessed, if the return has been filed within the due date and it is found to be in order.

Section 29 (2) If a registered dealer has failed to furnish return or returns in respect of any tax period or periods, the Commissioner shall proceed to make provisional assessment under section 30 and pass such order in Form 9 and 10. (Rule 25 of the Mizoram VAT Rules, 2005)

Section 29 (3) If a registered dealer has filed the return in respect of any tax period within the due date and the return so filed is found to be in order, it shall be accepted as self assessment subject to adjustment of any arithmetical error apparent on the face of the said return.

Provisional assessment (Section 30)

Section 30 (1) Where a registered dealer fails to furnish the return for a tax period within the due date of filing of return the Commissioner shall proceed to assess the dealer provisionally for the period for such default. A reasonable opportunity of being heard shall be given to the dealer by issuing a notice in Form 12 for fixing a date of hearing which shall be atleast after 14 days from the issue of notice. (Rule 30 (1) of the Mizoram VAT Rules, 2005)

Section 30 (2) The provisional assessment shall be made on the basis of past returns or past records. However, where no such past records are available, the Commissioner shall make assessment on the basis of information received by him and shall direct the dealer to pay the amount of tax assessed within 14 days from the issue of demand notice in Form 13. (Rule 30 (2) of the Mizoram VAT Rules, 2005)

Section 30 (3) If the dealer furnishes return along with evidence showing full payment of tax, interest, penalty, if any, on or before the date of payment specified under sub-section (2), a provisional assessment made shall stand revoked to the extent of the tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.

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Section 30 (4) Nothing shall prevent the Commissioner from making assessment under section 31. Any amount of tax, interest or penalty paid against provisional assessment shall be adjusted against tax, interest and penalty payable on final assessment under that section.

Audit assessment

Section 31 (1) Where -

- (a) a registered dealer has failed to furnish any return under section 23 (1) in respect of any period; or
- (b) a registered dealer is selected for audit assessment by the Commissioner on the basis of any criteria or on random basis; or
- (c) the Commissioner is not satisfied with the correctness of any return filed under section 23; or bona fides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or
- (d) the Commissioner has reasons to believe that detailed scrutiny of the case is necessary,

the Commissioner may, serve a notice in Form 14 on the dealer, requiring him to appear on a date and place specified therein, which may be in the business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice. (Rule 31(1) of the Mizoram VAT Rules, 2005)

Section 31 (2) A dealer is required to give full cooperation and assistance to the Commissioner to conduct the proceedings under this section at his business premises.

Section 31 (3) If proceedings are to be conducted at the business premises of the dealer and it is found that the dealer or his authorized representative is not available or not functioning from such premises, the Commissioner shall assess to the best of his judgement the amount of tax due from him.

Section 31 (4) If the Commissioner is prevented from conducting the proceedings, then he may demand by issue of notice in Form 15, a sum

Assessment

equal to the amount of tax so assessed, by way of penalty. (Rule 31(2) of the Mizoram VAT Rules, 2005)

Section 31 (5) The Commissioner shall, after considering all the evidence produced in course of the proceedings or collected by him, proceed to assess the dealer on the basis of such evidence.

Section 31 (6) If any dealer –

- (a) has not furnished returns in respect of any period within the due date or
- (b) has furnished incomplete and incorrect returns for any period; or
- (c) has failed to comply with any notice under sub-section (1) or subsection (3); or
- (d) has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting;

the Commissioner shall assess to the best of his judgement the amount of tax due from such dealer.

Section 31 (7) If the Commissioner is satisfied that the dealer, in order to evade or avoid payment of tax –

- (a) has failed to furnish without reasonable cause, returns in respect of any period within the due date ; or
- (b) has furnished incomplete and incorrect returns for any period; or
- (c) has availed tax credit to which he is not entitled to or
- (d) has employed such method of accounting which does not enable the Commissioner to assess the tax due from him;

he shall, levy penalty which shall be a sum not exceeding twice the amount of tax assessed on account of the said reasons under this section.

A reasonable opportunity of being heard shall be given to the dealer before any penalty is being levied.

Assessment of dealer who fails to get himself registered (Section 32)

Section 32 (1) If there is reason to believe, that any dealer who is liable to pay tax has failed to apply for registration or having applied for registration

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has failed to furnish information required under the provisions of the Act, the assessing authority, to the best of its judgment, may assess the amount of tax from the dealer for such period and all subsequent periods.

For the purpose of making an assessment of a dealer under section 32 of the Act in respect of any period, the assessing authority shall issue a notice in Form – 16 directing the dealer to produce the books of accounts and documents specified in the said notice for that period on a date not earlier than 14 days from the date of service of the said notice.(Rule 32(1) of the Mizoram VAT Rules, 2005).

After making an assessment under Section 32 of the Act, a Notice of demand shall be issued in Form – 17 to the dealer directing him to make payment of the assessed dues within a specified date which shall not be less than 30 days from the date of receipt of the demand notice.(Rule 32(2) of the Mizoram VAT Rules, 2005) .

Section 32 (2) Penalty shall be levied, in addition to the amount of tax so assessed, being a sum of ten thousand rupees or the amount equal to tax assessed, whichever is greater, for the period during which the dealer failed to apply for registration or failed to furnish information required under the provisions of the Act.

No assessment after five years (Section 33)

Section 33 (1) No assessment proceedings shall be carried out, after a period of five years from the end of the tax period to which the assessment relates.

In case of an offence for which proceeding for prosecution has been initiated, the limitation of five years shall not apply.

Section 33 (2) Any assessment made, interest levied or penalty imposed under this section shall be without prejudice to any action which is or may be taken as prosecution

Turnover escaping assessment (Section 34)

Section 34 (1) Where the Commissioner has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has,

- (a) escaped assessment; or
- (b) been under- assessed; or

- (c) been assessed at a rate lower than the rate at which it is assessable;
- (d) been wrongly allowed any deduction therefrom; or
- (e) been wrongly allowed any credit therein,

the Commissioner may serve a notice on the dealer and proceed to assess to the best of his judgement, the amount of tax due from the dealer in respect of such turnover.

A dealer shall be given a reasonable opportunity of being heard before the assessment is made.

Section 34 (2) No order of assessment and reassessment shall be made after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

Exclusion of time period for assessment (Section 35)

The time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded in computing the period of limitation.

Power of reassessment in certain cases (Section 36)

Section 36 (1) Where any order passed by the Commissioner is found to be erroneous or prejudicial to the interest of revenue, he may proceed to reassess 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 the judgement or order.

Section 36 (2) Where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order, such turnover and part thereof, may be assessed or reassessed, as the case may be, to a tax at any time within five years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to the assessment or reassessment made.

Chapter-6

Recovery and Refund of Tax

Payment and recovery of tax, penalty and interest (Section 37)

Section 37 (1) A dealer should within 30 days of the end of every quarter in which the return is filed, shall deposit the amount of tax payable to the Government.

For example, The return for the quarter ending on 31st December is required to be filed on or before 31st January (1 month). In terms of above provision, the time period within which the amount of tax payable is required to be deposited to the Government is within 30 days from the end of the quarter, i.e. within 30th January (30 days) from 31st December.

A dealer should pay the amount of tax due, interest and penalty, if any, into the designated bank by a Challan in Form 26 (Rule 56(1) of the Mizoram VAT Rules, 2005)

Challan should be filed in quadruplicate. The original and duplicate copies should be returned to the dealer and the other two copies should be kept by bank. One copy shall be sent to the Assessing Authority by the bank on the next day of payment. (Rule 56(2) and Rule 56(3) of the Mizoram VAT Rules, 2005)

The Bank prepares a scroll stating the name of the dealers, challan number, dates and the amount paid by them. It sends the scroll to the Treasury officer on the 05th day of every next month alongwith copy of the challan. The Treasury Officer sends an advice list to the Assessing Authority of the area showing the same details as given in the scroll.(Rule 57 of the Mizoram VAT Rules, 2005)

Rule 60 – Every Assistant Commissioner of Taxes or Superintendent of Taxes shall record the receipt of challans in his Daily Collection Register indicating the number, date and amount of each Challan. The Daily Collection Register shall be maintained in Form 27.

Recovery and Refund of Tax

Rule 61 – Every Assistant Commissioner of Taxes or Superintendent of Taxes shall maintain Demand, Assessment and Collection Register in Form 28.

Section 37 (2) The amount of tax, interest or penalty assessed by the department, shall be required to be deposited in the Government Treasury or by any other mode within 30 days from the date of service of notice issued in Form 17. (Rule 58(2) of the Mizoram VAT Rules, 2005)

Section 37 (3) A registered dealer furnishing a revised return, which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the different amount in the manner provided in sub-section (2).

Section 37 (4) (a) The amount of tax-

- (i) due where returns have been filed without full payment of tax due or
 - (ii) assessed under section 30, section 31 and section 32 less the sum already paid in respect of such period together with interest, if any, required to be paid and the penalty, if any, imposed under subsection (4) of section 31 or sub-section (7) of section 31 or subsection (2) of section 32.
- (b) the amount of penalty imposed under any provision of this Act not covered under sub-clause (ii) of clause (a); or
- (c) any other dues under this Act, shall be paid by the dealer within 1 month from the date that the tax was payable .

Section 37 (5) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act, the Commissioner shall levy a penalty, for a sum equal to 2% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the due date on which such amount was to be paid.

An opportunity of being heard shall be given to the dealer before the penalty has been levied.

Section 37 (6) The amount that remains unpaid after the due date of payment in pursuance of notice issued under sub-section (4) and sub-section (5) shall be recoverable as arrears of land revenue.

Section 37 (7) Where any proceeding for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, has been commenced and such amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal, revision or rectification, the Commissioner may, inform the dealer and the authority by whom or under whose order the recovery is to be made and there upon such proceeding may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, had been substituted for the tax, penalty, interest or any other amount which was to be recovered under sub-section (6).

Special mode of recovery (Section 38)

Section 38 (1) The Commissioner may at any time or from time to time, by notice in writing require any person who holds or may subsequently hold any money for, or on account of such dealer, to pay into Government Treasury in the manner specified in the notice, so much of the money as is sufficient to pay the amount of tax due from the dealer or penalty or both, or the whole of the money when it is less than that amount.

Section 38 (2) The Commissioner may, amend or revoke any such notice or extend the time for making such payment, to the Department.

Section 38 (3) Any person making any payment in compliance with a notice shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall construe a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

Section 38 (4) Any person discharging liability to the dealer after service of notice issued to him under sub-section (1), shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax or penalty, or both, whichever is less, if the tax has not been paid within the time stated in the notice.

Section 38 (5) Where a person on whom a notice is served, proves to the satisfaction of the Commissioner that the money demanded or any part thereof were not due to the dealer, or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof is likely to become due to the dealer or be held for on account of the dealer, then such person shall not be liable to pay into Government's Treasury any such money or part thereof.

Recovery and Refund of Tax

Section 38 (6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable under sub-section (4), shall, if it remains unpaid, be recoverable as arrears of land revenue.

Provided that nothing in this section shall operate to affect any action taken or prevent any action that may be or is being taken under section 39 for recovery from the dealer the amount due from him.

Collection of tax by dealer (Section 39)

Section 39 (1) If any person -

- (a) not being a dealer liable to pay tax under this Act, collects any sum by way of tax; or
- (b) being a registered dealer, collects any amount by way of tax in excess of the tax payable by him,

Then he shall be liable to a penalty of an amount equal to twice the sum so collected by way of tax, in addition to the tax, interest and penalty due from him.

The assessing authority imposes any penalty and /or forfeits any sum, he shall issue a notice in form 19 to the dealer specifying a date for payment which shall not be less than 30 days from the date of receipt of the notice. (Rule 33(2) of the Mizoram VAT Rules, 2005).

Section 39 (2) If the Commissioner, in the course of any proceeding or otherwise has reason to believe that any person has become liable to a penalty or forfeiture, or both, he shall issue a notice in Form - 18 directing him to appear and show cause as to why penalty or forfeiture or both of any sum as provided under Section 39(1) of the Act should not be imposed on him. He shall also fix a date for such compliance which should not be less than 14 days from the date of service of the notice. (Rule 33(1) of the Mizoram VAT Rules, 2005).

Section 39 (3) The Commissioner shall, hold an inquiry, if it feels necessary and shall make such order as he deems fit.

Sales not liable to tax (Section 40)

Section 40 (1) VAT shall not be imposed under this Act, where such sale or purchase takes place in the course of -

- (a) inter State trade and commerce; or

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(b) import/export of goods in India.

Section 40 (2) For the purpose of this section whether a sale or purchase takes place-

(a) outside the State of Mizoram; or

(b) in the course of inter State trade and commerce; or

(c) in the course of imports/exports in India,

shall be determined as per the provisions of the Section 3, Section 4 and Section 5 of the Central Sales Tax Act, 1956.

Tax to be first charge on property (Section 41)

Any amount payable by a dealer on account of tax, penalty or interest or any amount which a person is required to pay under this Act, shall be a first charge on the property of the dealer or such person.

Period of limitation for recovery of tax (Section 42)

No proceeding for recovery of any amount shall be initiated after the expiry of five years from the date of the relevant assessment:

However, when an appeal or revision has been filed, the period of limitation shall be taken from the date on which the amount due is finally determined.

Refund (Section 43)

Rule 62 An application for refund shall be made to the Assistant Commissioner of Taxes or Superintendent of Taxes and shall include the following –

(a) The name and style of the business together with number of the certificate of registration

(b) Period of assessment for which refund is claimed

(c) The amount of dues already paid together with Challan No. and the date of payment, and

(d) The amount of refund claimed and the grounds thereof

Rule 63 – An application for refund shall be signed, verified and presented as in the case of an application for registration.

Recovery and Refund of Tax

Rule 64 – No claim to any refund shall be allowed unless it is made within 3 years from the date of the original order of assessment or within 3 years of the final order passed on appeal, revision or reference, in respect of such assessment.

Rule 65 – When the Assistant Commissioner of Taxes or Superintendent of Taxes is satisfied that the refund claimed is due wholly or in part, he shall, subject to the provision of rule 68, record an order sanctioning the refund.

Section 43 (1) The Commissioner shall, refund to a dealer the amount of tax, penalty and interest, if any, paid by such dealer in excess of the amount due from him in Form 29 in favour of the claimant. (Rule 66 of the Mizoram VAT Rules, 2005)

Section 43 (2) Where a refund is due to a dealer, according to return furnished by him for any period, such refund may provisionally be adjusted by the dealer against tax due or tax payable as per return filed or later for any subsequent period. (Rule 67 of the Mizoram VAT Rules, 2005)

The amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the date of such adjustment, shall first be deducted from such refund before adjustment

Section 43 (3) Where any refund is due to any dealer for any period on account of sale of zero-rated goods, such refund may be granted to the dealer or be adjusted by way of input tax credit set off against the tax due or tax payable as per return and interest if any due to the dealer within 3 months from the end of the quarter for which the refund was claimed or confirmed. (Rule 68 of the Mizoram VAT Rules, 2005)

Section 43 (4) Where any refund or reimbursement is due on account of purchases made by foreign diplomatic missions/consulate or UN agencies including their personal purchases, such refund or reimbursement may be granted on production of original copy of tax invoice and the refund or reimbursement shall be made in cash by the Commissioner of Taxes or any officer authorised by him on his behalf.

Rule 70 – A register shall be maintained in Form 30 wherein the details of the dealers who has made application for refund and the orders passed thereon shall be entered

Rule 71 – When the amount to be refunded exceeds two thousand rupees, the applications together with relevant documents evidencing the claim of

refund shall be submitted to the Deputy Commissioner for orders.

Provisional refund (Section 44)

Section 44 (1) If a registered dealer has filed any return and it shows any amount to be refundable on account of sales in course of exports, then the dealer may apply for grant of provisional refund pending audit and investigation to establish the correctness of the claim and consequent assessment, if any, before the Commissioner.

Section 44 (2) The Commissioner may require the dealer to furnish a Bank Guarantee or other security deposit for an amount equal to the amount of refund and on receipt of such guarantee or other security, he shall grant the dealer a provisional refund that may be determined as refundable.

Section 44 (3) The Commissioner may direct the assessment under section 34 of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment.

Section 44 (4) If, on assessment, the provisional refund granted is found to be in excess, then such refund shall be recovered as if it is tax free from the dealer under this Act.

Section 44 (5) Interest will be charged on such excess amount at the rate of 2% per month from the date of grant of provisional refund till the date of assessment.

Interest (Section 45)

Section 45 (1) Where the refund arises to a registered dealer as a result of an assessment order under section 30, section 31 or section 32 or section 34 or any order of any Court, then simple interest @ 6 % per annum shall be paid to the registered dealer for the period commencing after 90 days after the receipt of the order till the date on which the refund is granted. (Rule 69 of the Mizoram VAT Rules, 2005)

Section 45 (2) If any tax, interest or penalty is due from the dealer and the same is adjusted from the refund, then interest on refund as mentioned above shall be calculated on the balance amount only.

Section 45 (3) It may be possible that in cases of further proceedings, the amount of refund may be enhanced or reduced, as a result of any further orders. In such cases, the interest on the refund shall be increased or reduced accordingly

Recovery and Refund of Tax

Section 45 (4) When a dealer fails to make payment of tax under section 30, 31 and section 32 or section 34, he shall be liable to pay simple interest on such amount at the rate of 2 % per month from the date of such default for so long as he continues to default in the payment of the said tax.

Section 45 (5) If the amount of tax or interest is reduced by the effect of final order, the interest, if any payable on that account which has been paid on the reduced amount shall be refunded.

Section 45 (6) If the amount of tax or interest is enhanced by the effect of final order, the interest shall be payable on the amount by which tax is enhanced, after the expiry of a period of 3 months from the date of final order

Section 45 (7) If the realization of any amount remains stayed by any Court or other competent authority and if the order is subsequently vacated, then the interest shall also be payable for the period of stay during which the operation was stopped.

Section 45 (8) The interest payable shall be deemed to be tax due under this Act.

Power to withhold refund in certain cases (Section 46)

Section 46 (1) Where an order giving rise to 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 such refund is likely to adversely affect the Revenue and that it may not be possible to recover the amount later, the Commissioner may, withhold the refund till such time as he may determine.

Section 46 (2) Where a refund is withheld under the above provisions, the dealer shall be entitled to interest @ 8 % per annum (as provided sub-section (1) of 45, if as a result of the appeal or further proceeding or any other proceeding he becomes entitled to the refund.

Exemption of certain sales and purchase (Section 47)

Section 47 (1) The Government may, if it is necessary so to do in public interest, by issue of notification, exempt any sales or purchases made to or by a class of dealers or persons specified in the said notification from payment of the whole or any part of any tax payable under the provisions of this Act.

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Such exemption shall be effective from the date of publication of the notification or such other earlier or later date not earlier than the 1st April, 2005 as may be mentioned therein.

Section 47 (2) Where any dealer or person has purchased any goods under a declaration or certificate given by him under any notification issued under this section and –

- (a) any of the conditions subject to which such exemption was granted, or
- (b) any of the recitals or the conditions of the declaration or certificate are not complied with for any reason whatsoever, then such dealer or person shall be liable to pay tax on the sale price of the goods at the rate given in the Schedules.

The dealer or the person who has become liable to pay tax shall file a return in Form 5 to the Department within the due date time and shall include the sale price of such turnover in his return and pay the tax on it. The tax due from any such dealer or person shall be assessed and recovered as if the person or dealer is a dealer liable to be proceeded against under the provisions of this Act.

Section 47 (3) If the Commissioner has reason to believe that any person or dealer is liable to pay tax under sub-section (2), then he shall assess the amount of tax so due from him.

A reasonable opportunity of being heard shall be given to the dealer before the amount of tax due has been assessed by the Commissioner.

Composition of tax (Section 48)

Section 48 (1) There is scheme for dealers who are doing business of selling at retail any goods or merchandise to pay composition tax.

Section 48 (2) A dealer will be considered to be engaged in the business of selling at retail if 9/10th of his turnover of sales consists of sales made to persons who are not dealers and if any question arises as to whether any particular dealer is a retailer, then the officer in charge of the case shall refer the question to the Commissioner who shall after hearing the dealer if necessary, decide the question.

Section 48 (3) This section will not apply to a dealer who is a manufacturer or an importer or who has purchased any goods from a registered dealer whose sales of the said goods are not liable to tax under the provisions of this Act.

Chapter-7

Accounts and Records

Maintenance of accounts and records etc (Section 49)

Section 49 (1) Under the Mizoram VAT Act a registered dealer, as well as any other dealer to whom a notice has been served by the Department to furnish a return under sub-section (2) of Section 23, is required to maintain a true and upto-date account of the goods

- purchased or received otherwise than by way of purchases i.e. received on stock transfer/branch transfer, in the purchase or input register (Form 22) (Rule 35(1)of the Mizoram VAT Rules, 2005)
- sold or dispatched outside the state, on stock transfer/branch transfer, in the sales or output register (Form 21) (Rule 35(1)of the Mizoram VAT Rules, 2005)
- held as stock in the stock register

Section 49 (2) A registered dealer shall maintain a VAT account register in Form 23 and keep all accounts, registers and documents at his place of business as recorded in the Registration Certificate.(Rule 35 of the Mizoram VAT Rules, 2005)

Section 49 (3) If a dealer has branch offices of his business in the State, other than the principal place of business, all relevant accounts, registers and documents in respect of each such branch shall be kept at the branch office itself.

Section 49 (4) If the Commissioner is of the opinion that the accounts maintained by any dealer or class of dealers do not sufficiently enable him to verify the returns filed by them under section 23(1) or not able to make the assessment, the authority can direct the dealer or class of dealers, to maintain the accounts, in a particular form and manner, which direction will however be subject to the Mizoram VAT Rules.

Section 49 (5) If the Commissioner is satisfied that any dealer is not in a position to maintain accounts as aforesaid, it may exempt such dealer from maintaining accounts for reason to be recorded in writing.

Tax Invoice (Section 50)

Section 50 (1) Every registered dealer making a taxable sale to another dealer, shall provide him with a tax invoice at the time of sale in Form 41. (Rule 106 of the Mizoram VAT Rules, 2005) The Tax invoice should contain such particulars as specified below.

Section 50 (2) A registered dealer shall not issue tax invoice in the following circumstances, -

- (a) a retail registered dealer is paying compounding tax in lieu of VAT
- (b) the sale in the course of export
- (c) the sale in the course of inter State trade and commerce
- (d) the sale of exempted goods

Section 50 (3) The selling dealer shall not issue more than one tax invoice for any taxable sale

Section 50 (4) Under the VAT Act, the tax invoice should contain the following particulars on the original as well as copies thereof:

- (a) the word 'Tax Invoice' in bold letter at the top or any prominent place;
- (b) the name, address and registration certificate number of the selling registered dealer;
- (c) the name, address and registration certificate number of the purchasing registered dealer;
- (d) an individual serialised number and the date on which the tax invoice is issued;
- (e) description, quantity, volume and value of goods sold and amount tax charged thereon indicated separately;
- (f) signature of the selling dealer or his servant, manager or agent, duly authorised by him;
- (g) the name and address of the printer, and first and last serial number of tax invoices printed and supplied by him to the dealer

Section 50 (5) when a registered dealer sells any goods to a registered dealer and Tax Invoice cannot be issued ; he shall issue a retail invoice to the purchaser in Form 42. (Rule 106 of the Mizoram VAT Rules, 2005)

Section 50 (6) The retail invoice shall contain the following particulars:

- (a) the words 'Retail Invoice' or 'Cash Memorandum' or 'Bill' in bold letters at the top or in a prominent place;
- (b) the name, address and registration certificate number of the selling registered dealer;
- (c) in case the sale is in the course of export out of the territory of India, the name, address and registration number, if any, of the purchasing dealer/foreign buyer and the type of statutory form, if any, against which the sale has been made;
- (d) individual serialised number and the date on which the retail invoice is issued;
- (e) description, quantity, volume and value of goods sold inclusive of tax, charged thereon;
- (f) signature of the selling dealer or his servant, manager or agent, duly authorised by him;
- (g) the name and address of the printer, and last serial number of retail invoices printed and supplied by him to the dealer.

Section 50 (7) The Tax Invoice shall be issued in triplicate. The original and first copy shall be issued to the purchaser or person taking delivery of the goods and the second copy shall be retained by the selling dealer.

Section 50 (8) The Retail invoice shall be issued in duplicate. The original shall be issued to the purchaser and the duplicate copy shall be retained by the selling dealer.

Section 50 (9) A dealer is required to preserve his books of account including tax invoices and retail invoices until the expiry of five years after the end of the year to which they relate. If assessment proceedings are going on, they have to be maintained till the assessment reaches its finality.

Section 50 (10) If a dealer is a party to any appeal or revision, whether filed by the Department or the dealer, the accounts, documents and records pertaining to the subject matter of the appeal or revision, has to be maintained till the appeal or revision is disposed of.

Automation (Section 51)

Section 51 (3) A dealer who is required to maintain accounts and records can also do it electronically. However, he shall have to retain them in the form of electronic records for the period of five years.

Requirement to provide information (Section 52)

The Commissioner has powers to require, by notice, any person to furnish, any information or additional information, including a return, or any document including electronic records, within a reasonable time as may be specified in the notice.

Audit of accounts (Section 53)

Section 53 (1) If the gross turnover of a dealer exceeds ₹ 30 lakh, in any particular year, the dealer will have to get his accounts audited by a Chartered Accountant within 6 months from the end of that year. The dealer will have to obtain within this period an Audit Report in Forms 44, 45 and 46, duly signed and verified by the Chartered Accountant. (Rule 107 of the Mizoram VAT Rules, 2005)

Section 53 (2) A true copy of Audit Report shall be furnished by the dealer to the Commissioner by the end of the month following the period of 6 months, as aforesaid.

Section 53 (3) If the dealer –

- who is liable to get his accounts audited, fails to furnish a true copy of the audit report he shall be liable to pay penalty equal to 0.1% of the turnover as determined by the Commissioner. (after giving an opportunity of hearing)

Dealer to declare the name of his business manager (Section 54)

Section 54 (1) If a dealer is an HUF or an AOP, club or society, firm or company or who is engaged in business as the guardian or trustee or otherwise on behalf of another person, and liable to pay tax under the provisions, he should within the period of 30 days from the date of registration, furnish a declaration stating the name of the person or persons

Accounts and Records

who shall be deemed to be manager or managers of such dealer's business.(Rule 37 of the Mizoram VAT Rules, 2005)

Section 54 (2) The declaration of such person should be made at the time of registration. A dealer may revise the name of the representative by furnishing a declaration in Form 24 from time to time. (Rule 37 of the Mizoram VAT Rules, 2005)

Section 54 (3) The declaration furnished by the dealer should contain the information of the person like name, address and designation. Any notice/documents issued to the person shall be taken as being issued to the dealer. The dealer shall be bounded under the provisions of the Act.

Chapter-8

Liability in Special Cases

Liability to pay tax in case of death (Section 55)

Section 55 (1) (a) If business is continued –

If a dealer, who is liable to pay tax under VAT, dies, and the business is carried on by his legal representative or any other person, then he shall be liable to pay tax including any penalty, sum forfeited and interest due of the deceased dealer whether it may be assessed, levied or imposed prior to the dealers' death or subsequently

(b) If business is discontinued –

If a dealer, who is liable to pay tax under VAT, dies, and the business is discontinued, his legal representative or any other person, shall be liable to pay out of the estate of the deceased, to the extent the estate is capable of meeting the charge, the tax including any penalty, sum forfeited and interest due of the deceased dealer whether it may be assessed, levied or imposed prior to the dealers' death or subsequently

Section 55 (2) and (3) Where a dealer is a Hindu undivided family, firm or other association of persons, and such family, firm or association is partitioned, disrupted or dissolved, as the case may be then,-

- (a) the tax, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption shall be assessed, imposed or determined as if no such 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 of the Hindu divided family, partner of a firm or member of an association of persons 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, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution, whether assessment of such

Liability in Special Cases

tax, imposition of such penalty or determination of such interest is made prior to, or after, such partition disruption or dissolution.

Section 55 (4) If a dealer who is liable to pay tax under this Act, transfers his business wholly or partly, the transferor and the transferee, shall be jointly and severally liable to pay the tax including any penalty, sum forfeited and interest due from the dealer, up to the time of such transfer.

Section 55 (5) Where the dealer, liable to pay tax under this Act, -

(a) is the guardian of a ward on whose behalf the business is carried out by the guardian or

(b) is trustee who carry on the business under a trust for the beneficiary;

then, if the guardianship or the trust is terminated, the ward or the beneficiary shall be liable to pay the tax including any penalty, sum forfeited and interest due from the dealer up to the time of the termination of the guardianship or trust, whether such tax including any penalty, sum forfeited and interest has been assessed before the termination of the guardianship or trust, but has remained unpaid, or is assessed thereafter.

Section 55 (6) If a dealer is succeeded in the business by any person, then the successor shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of such succession and shall (unless he already holds a certificate of registration) within sixty days thereof apply for registration.

Certain agents liable to tax for sales on behalf of principal (Section 56)

Section 56 (1) If a dealer sells or purchases any taxable goods on behalf of his principal, then such person and his principal shall both be jointly and severally liable to pay taxes on the turnover of such sales or purchases.

Section 56 (2) If the principal, on whose behalf the commission agents has sold or purchased any goods, shows to the satisfaction of the Commissioner that tax has been paid by such Commission agents, the principal shall not be liable to pay the tax on the same transaction.

Section 56 (3) Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of a non resident dealer in the State, then the non-resident dealer and the manager or agent residing in the State, shall be

jointly and severally liable to pay tax on the turnover of such sales or purchases :

If the non-resident dealer shows to the satisfaction of the Commissioner that the tax has been paid by the manager or agent, then the non-resident dealer shall not be liable to pay tax on the same transaction.

Liability of Partners (Section 57)

Section 57 (1) If the partnership firm is liable to pay any tax including penalty under the VAT Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payments. This means that the Department can recover its dues from the firm only or collectively from the firm and the partners or from partners jointly or even from some or even any one of the partners as it likes.

Section 57 (2) In law, a retiring partner remains liable for the liabilities of the partnership firm till his retirement, if he gives public notice about his retirement and is not liable for the liabilities incurred after his retirement.

He shall be liable to pay the tax including penalty, upto the date of retirement, if it has not been assessed on such date.

Amalgamation of Companies (Section 58)

Section 58 (1) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the 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 and purchase will be included in the turnover of the sales or of purchases of the respective companies and will be assessed to tax accordingly.

Section 58 (2) The said two or more companies will be treated as distinct companies for all periods up to the date of the said order and the registration certificates of the said companies will be cancelled, with effect from the date of the said order.

Section 58 (3) Words and expressions used in this section, but not defined, will have the respective meanings assigned to them in the Companies Act 1956.

Chapter-9

Inspection of Accounts, Documents, Search of Premises and Establishment of Check Posts

Production and inspection of accounts and documents and search of premises (Section 59)

Section 59 (1) The Commissioner has powers to require any dealer or any other person to -

- (a) produce books of accounts, registers or documents
- (b) furnish any information relating to stock of goods, purchases, sales or deliveries of goods or any other information relating to business
- (c) explain the accounts, registers or documents produced before them

such that it shall not disturb the business of the dealer or work of his staff any more than is necessary for the purpose of ascertaining the required information. (Rule 76 of the Mizoram VAT Rules, 2005)

Section 59 (2) All books of account, registers and documents relating to the above should be kept in any place of business and shall at all reasonable times be open for inspection by the Department. The Commissioner shall give a reasonable notice in writing to the dealer for inspection of accounts, registers, documents or stock of goods and fix a date, time and place which shall be convenience of the dealer. (Rule 77 of the Mizoram VAT Rules, 2005)

The Commissioner may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appears to him necessary for the purpose of this Act.

Section 59 (3) If, at the time of inspection, Commissioner has reason to suspect that the dealer is attempting to evade tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents and give a receipt of the seizure and may retain them in custody for examination, for a

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period not longer than 3 months without the written sanction of the commissioner. (Rule 78 of the Mizoram VAT Rules, 2005)

Section 59 (4) If the officer is of the opinion, or has information with him or otherwise, then he may enter and search any place of business of a dealer where he believes that accounts, registers, documents or records of his business or any stock of goods for sale are being kept.

Section 59 (5) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search, it shall be presumed, unless the contrary is proved, that such books of accounts, other documents, money or goods belong to such person.

Survey (Section 60)

Section 60 (1) In order to identify dealers who are liable to pay tax under the VAT Act, but have remained unregistered, a survey of unregistered dealers shall be undertaken from time to time.

Section 60 (2) The Commissioner, by way or general or special notice, can collect information by requiring other dealers who have purchased goods or sold goods to such unregistered dealers to furnish the information which shall enable the Department to compute the turnover.

Section 60 (3) The Commissioner may also call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies or any person which may be relevant or useful. The Department can also publish the results of the survey from time to time.

Section 60 (4) The VAT authorities can enter any place where a person is engaged in business, but is not registered or has not applied for registration. Such a place may or may not be the principal place of business. The authorities can require any person, whether he may be the owner or not, including an employee, who may be attending to or helping in the business, to produce the books of accounts or other documents maintained in the course of his business at such place and furnish such information which may be useful for or relevant to any proceeding under the VAT Act.

The authorities shall also have the power to survey any other place, when the person attending to the business as mentioned above states that any of the books of accounts or other documents or any part of the cash, stock or other valuable article or things relating to the business are kept in such other premises.

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Section 60 (5) Survey can be conducted where the person is carrying on business only during the hours at which such place is open for business and in case of any other place, only after sunrise and before sunset.

The Commissioner may make or cause to be made extracts or copies from the books of accounts and other documents inspected by him.

The search officials can make an inventory of any cash, stock or other valuable article or things checked or verified by them and record the statement of any person, according to them may be useful for proceeding under VAT Act.

Section 60 (6) The Commissioner on no account, can remove or cause to be removed from the place where he has entered any books of accounts other documents or any cash, stock or other valuable article or thing.

Establishment of check posts for inspection of goods in transport (Section 61)

Section 61 (1) Monitoring and checking of goods while being transported and at check posts especially at the State borders have been an effective tool for the Government. With the objective to check evasion of tax such establishment of check posts at various places is being made. When a check post is set up on a thoroughfare or road, barriers may be erected across the thoroughfare or road in the form of the contrivance to enable traffic to be intercepted, detained and checked. (Rule 96 (1) of the Mizoram VAT Rules, 2005)

Rule 96 (2) of the Mizoram VAT Rules, 2005:Officer appointed under the provisions of the Act and for the time being on duty at a check-post shall be deemed for the purpose of the said section 61 to be the Officer-in-charge of such check-post and all the provisions of the Act and the Rules shall apply accordingly.

Explanation :

The following Officers who shall be deemed to be "on duty" at a check-post for the purpose of sub-rule (2).

- (a) the Commissioner,
- (b) any other officer appointed to assist the Commissioner and exercising jurisdiction over the area where the check-post is located.

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- (c) any officer appointed in any capacity to assist the Check-post shall at any time when he is physically present at the Check-post be deemed for the purpose of these rules to be Officer-in-charge of the Check-post. Where at any time more than one such officer is present, the senior most among them shall be deemed to be the Officer-in charge of the Check-post.

Section 61 (2) It is the duty of the driver or person in charge of a vehicle or carrier of goods in movement to –

- (a) carry with him the records of the goods including Challan, bills of Sale or dispatch memos and declaration form in Form 32 stating the application for the transport of certain goods or way bill duly filled in and signed by the consignor of goods carried in the vehicle;
- (b) stop the vehicle or carrier at every check post set up under sub section (1) or at any other place by an officer authorised by the Commissioner in this behalf;
- (c) produce all the documents including the way bill in Form 33 relating to the goods before the officer in charge of the check post or the authorised officer;
- (d) give all the information in his possession relating to the goods;
- (e) allow inspection of the goods for search of the vehicle by the officer in charge of the check post or any authorised officer.

Section 61 (3) If any goods are in transit within the territory of the State, an officer may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and the driver or other person shall discharge his obligations accordingly. (Rule 98 of the Mizoram VAT Rules, 2005)

Section 61 (4) If any goods are in transit and no documents are submitted or documents produced appear to be false or forged, the officer in charge of the check post or the officer may-

- (a) direct the driver or the person in-charge of the vehicle or carrier of the goods not to part with the goods in any manner including by transporting or re-booking, till a verification is done or an enquiry is made;

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- (b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods to the person from whose possession or control they are seized.

Procedure for disposal of goods seized under Section 61(4)(b) or under any other provision of the Act by public auction (Rule 100A of the Mizoram VAT Rules, 2005)

The authority seizing the goods shall cause to be published in the notice board of his office specifying the details of goods seized - intended for sale and specifying the place, date and the hour at which the goods will be sold in open auction.

The sale shall take place only after 15 days from the date on which the notice was issued unless the goods are subject to speedy and natural decay.

Bidders who are interested in the auction are required to deposit 5 % of the estimated value of goods as earnest money. The bid shall be knocked down to the highest bidder and earnest money deposited by the unsuccessful bidders shall be refunded within 7 days from the date of auction.

The full value of the goods shall be paid by the auction purchaser and a receipt shall be issued for receipt of such payment by the officer.

If the purchaser, fails to pay the full value, the goods shall be resold in the auction and the above procedure shall be followed for consequent auction.

If an order of detention is set aside due to appeal or revision, the goods shall be released and if the same has been sold, the proceeds there of shall be paid to the owner after deducting the expenses incurred from the time of detention to the time when they are sold in auction.

If there is any surplus, after deducting the amount of penalty, interest and tax, the same shall be refunded to the person concerned on receipt of an application.

Section 61 (5) Penalty shall be levied on a dealer who has violated the provisions of clause (a) of sub section (2) or for submission of false or forged documents or way bill, which shall be equal to five times of the tax leviable on such goods or 20% of the value of goods, whichever is higher.

Section 61 (6) During the pendency of the penalty proceeding as above, if any one prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the officer, may if satisfied, permit him to

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be so impleaded and thereafter, all provisions of Mizoram VAT Act, applicable to goods in transit shall apply to him.

Section 61 (7) After payment of the penalty by the dealer, the officer in charge of the check post or the authorized officer, may release the goods to the dealer which were seized.

Section 61 (8) Where the driver or person in charge of the vehicle or the carrier is found guilty for violation of other duties and obligations as discussed above, the officer may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person in charge of the goods or the carrier, may impose a penalty on him as mentioned above.

Section 61 (9) Where a transporter, while transporting goods, is found to be in collusion with a dealer to avoid or evade tax, the officer shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with approval in writing of the Commissioner, may seize and confiscate such vehicle or carrier.

Restriction on movement of the Goods (Section 62)

Section 62 (1) To ensure that there is no evasion of tax, no person shall transport any goods outside the State by way of any mode except on fulfillment of conditions.

Section 62 (2) On fulfillment of the conditions and making an appropriate application in Form 32, the goods may be transported within the State by any person.

Rule 97 of the Mizoram VAT Rules, 2005 No person other than the registered dealer shall take delivery or transport from any railway station, steamer station, post office, air port, carrier delivery point or any other place, whether of similar nature or otherwise in Mizoram any consignment of taxable goods dispatched from outside Mizoram except after filing before the Officer-in-charge of the check-post Way Bill in Form 33 which may be obtained from the Superintendent of Taxes or the Assistant Commissioner of Taxes by an application in Form 32 .

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The above restriction shall not apply to any consignment which does not exceed the following –

1	In the case of goods sold in quintal and kilogram	5 kilogram in weight
2	In the case of goods sold in litres	5 litres in weight
3	In the case of goods sold in metres	5 metres in length
4	In the case of goods sold in pieces	1 in number
5	In the case of goods sold in gross	1 gross in number
6	In the case of goods sold in dozen	1 dozed in number
7	In the case of goods sold in pair	1 paid
8	In the case of precious stones, namely diamonds, emeralds, rubies, real pearls and sapphires, synthetic or artificial precious stones, pearls – artificial or cultured	1 gram in weight

An application for way bill has to be made to the Assistant Commissioner or Superintendent of Taxes by a dealer who wants to import any goods, other than goods being exempt under Schedule I, in excess of the quantity or measure as stated above.

An application should be made in Form 34 for importing taxable goods to Mizoram for personal use and a payment of ₹ 5 should be made as fees per application.

Section 62 (3) No such conditions shall be applicable, where the goods are being transported by or on behalf of -

- (a) Government or a local authority,
- (b) a diplomatic or consular office, any organization or specialized agency of the United Nations,
- (c) a Charitable Institution for charitable purposes recognized by Government.

Section 62 (4) The Commissioner may, for the purpose of verifying any consignment of taxable goods are not being transported in contravention of the provisions -

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- (a) intercept, detain and search at any place, a road vehicle or river craft or any load carried by a person, or
- (b) search at any warehouse or at any other place in which, according to his information, such goods so transported or have been stored, or
- (c) intercept, detain and search at any check post or at any other place, any vehicle.

Section 62 (5) A penalty of a sum not exceeding 25 % of the value of such goods on the dealer who transports any goods shall be levied in contravention of the restrictions or conditions as stated under section 62. An opportunity of being heard shall be given to the dealer, before the penalty has been imposed.

Power to collect statistics (Section 63)

Section 63 (1) The Commissioner, may by issue of notification, direct that statistics be collected relating to any matter which he considers for better administration of this Act.

Section 63 (2) The person authorized to collect statistics may

- o by issue of notification collect information or
- o give notice in newspaper or any other manner whereby the attention of dealers may be taken on such matter or
- o call upon the dealers to furnish information or returns

It may also notify the form in which such information or returns should be furnished and the particulars which they should contain. It shall also provide the period within which such information or returns should be furnished.

Section 63 (3) The Government may, by rules, provide that every registered dealer or any class dealer shall furnish, an annual return in Form 5, within the date specified and to such authority as stated in the Rules .

Disclosure of information by a public servant (Section 64)

Section 64 (1) The information provided by the dealer to the authorities shall be treated as confidential and no court shall be entitled to require any servant of the Government 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.

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Section 64 (2) If any servant of the Government discloses any such statement, return, account, document or record or any part thereof, he shall be punished with imprisonment which may extend to six months or with fine or with both.

However, no prosecution shall be initiated without the approval of the State Government.

Section 64 (3) Nothing contained in this section shall apply to the disclosure -

- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988, or this Act, or any other law for the time being in force, or
- (b) of any such particulars to the State Government or to any person acting in the execution of this Act or to any person for the purposes of this Act; or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or
- (d) of any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or
- (e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or
- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Tax Department to any person or persons appointed as Commissioner under the Commission of Enquiry Act, 1952 or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its function in relation to any matter arising out of such inquiry; or
- (g) of such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) of any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons

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authorised under sub-section (2) of section 68 as may be necessary for enabling the Director or such person or persons to carry on their official duties.

- (i) of any such particulars to an officer of the Central Government or any State Government as may be necessary for the administration of any law in force in India.

Failure to furnish information or return as required under section 64 (Section 65)

Section 65 (1) Without the written consent of the owner, no information shall be published in any manner as to enable any particulars to be identified as referring to a particular dealer. Such information should also not to be used for the purpose of any proceedings under the Act.

Section 65 (2) No such person, other than person authorized to collect statistics should be permitted to see or access any information or individual return been submitted by the dealer.

Section 65 (3) A fine, which may extend to one hundred rupees, shall be imposed on a person who

- (a) willfully refuses or without lawful excuse neglects to furnish such information or return as may by that section be required, or
- (b) willfully furnishes or causes to be furnished any information or return which he knows to be incorrect or false,

In case of a continuing offence, a further fine may be imposed, which may extend to one hundred rupees for each day after the first day during which the offence continues.

Section 65 (4) If any person engaged in connection with the collection of statistics, willfully discloses any information or the contents of any return given or made under that section, then he shall on conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Section 65 (5) If the Commissioner is of the opinion that it is desirable in the public interest to disclose such information, he it may get it published.

Publication and disclosure of information pertaining to dealers and other persons in public interest (Section 66)

Section 66 (1) If the State Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.

Section 66 (2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the appropriate appellate authority has expired without an appeal having been presented or the appeal, if presented has been disposed of.

In the case of a firm, company or other association of person, the names of the partners of the firms, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Government, the circumstances of the case justify it.

Chapter-10

Appeal and Revision

Appeal (Section 67)

Section 67 (1) A dealer who is aggrieved by an order may file an appeal to the Deputy Commissioner of Taxes (Appeals) within 60 days from the receipt of notice of demand. (Rule 40 of the Mizoram VAT Rules, 2005) An Appeal against an original order of the Deputy Commissioner of Taxes shall lie to the Commissioner. (Rule 41 of the Mizoram VAT Rules, 2005)

The dealer shall present a memorandum in Form 25 in duplicate to the Appellate Authority by the appellant or by an agent or it may be sent by post. Delay in filing of appeal may be condoned if there is sufficient cause. (Rule 42 and Rule 43 of the Mizoram VAT Rules, 2005)

The memorandum of appeal shall contain the following particulars :

- (a) the date of order appealed against
- (b) the name and designation of the officer who passed the order
- (c) grounds of appeal briefly but clearly set out
- (d) the date of receipt of notice of demand referred in clause (b) of the Explanation to section 73 in respect of the order appealed against
- (e) the amount of tax and interest admitted to be due from the appellant
- (f) prayer of the appellant for remedy of the grievance expressed in the grounds of appeal
- (g) such amount of tax and interest as the appellant admits to be due from him and has been paid
- (h) that the facts stated are true and to best of his knowledge

The Memorandum of appeal shall be accompanied with –

- (i) a copy of the order of assessment against which the appeal is filed
- (ii) court fee stamp for the amount of fee for presenting an appeal as stated in Rule 86

(Rule 44 of the Mizoram VAT Rules, 2005)

Appeals and Revisions

No appeal shall be entertained by an appellate authority, unless it is accompanied by satisfactory proof of payment of the tax in respect of which an appeal has been filed.

Section 67 (2) Every appeal should be presented in the Form 25 and shall be verified and signed by the appellant or his agent to the effect

- that the tax and interest admitted to be due has been paid, and
- that to the best of his knowledge and belief the facts set out in the memorandum are true

(Rule 45 of the Mizoram VAT Rules, 2005)

Section 67 (3) The appellate authority shall fix a day and place for hearing of the appeal and may from time to time adjourn the hearing and make, or cause to be made, such further enquiry as may be deemed necessary.

Where an appellant does not comply with any of the requirements of Rules 41, 42 and 43 in presenting an appeal, it may be summarily rejected. (Rule 46 of the Mizoram VAT Rules, 2005)

Section 67 (4) The Appellate Authority may after hearing the Appellant and making enquiries as required -

- (a) confirm, reduce, enhance or annul (declare as void) the assessment
- (b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.
- (c) confirm, reduce or annul the order of penalty.

(Rule 47 of the Mizoram VAT Rules, 2005)

Revision by the Commissioner (Section 68)

Section 68 (1) The Commissioner [or any subordinate authority to whom this power has been delegated] has powers to revise, on his own, any order passed under VAT by his subordinate authorities, if he feels the order is prejudicial to the Revenue or in other words, less tax, interest or penalty has been assessed than actual.

The Commissioner shall not delegate his powers to any officer below the rank of Deputy Commissioner. (Rule 82 of the Mizoram VAT Rules, 2005)

The Officer to whom powers have been delegated shall exercise the powers in respect of the persons or classes of persons and in respect of such cases

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and areas as the Commissioner may direct. (Rule 83 of the Mizoram VAT Rules, 2005)

The powers to call for returns, to make assessments, to cancel or rectify them, to impose a penalty, to compound offences and to order maintenance of accounts shall not be delegated to any officer below the rank of Superintendent of Taxes. (Rule 84 of the Mizoram VAT Rules, 2005)

The Department can revise the orders within a period of 5 years, from the date of its passing. The reasons for revision have to be recorded in writing. An opportunity of hearing shall be given to the dealer or any other person, before the order is revised, if it prejudicially affects the dealer or person. (Rule 52 of the Mizoram VAT Rules, 2005)

Section 68 (2) In the case of any order other than an order passed in respect of above sub-section (1), passed by any subordinate authorities, the Commissioner may, either of his own motion or on a petition by a dealer for revision, call for the record of any proceeding under which such order has been passed and after making such enquiry, may pass such order thereon, not being prejudicial to the dealer, as he thinks fit.

A petition for revision shall contain the following particulars –

- a statement of the facts of the case
- a reference to the particular order in respect of which the revision is applied for
- the grounds on which the petition has been filed, and
- the date of the service of the order objected to

(Rule 49 of the Mizoram VAT Rules, 2005)

Section 68 (3) The revision for petition must be made within 90 days from the date on which the order in question was communicated to dealer or the date on which he otherwise came to know of it, whichever is earlier. It shall be accompanied by a copy of the order objected to and by the fee as stated in Rule 86. (Rule 50 of the Mizoram VAT Rules, 2005)

If there is sufficient cause for the delay in filing the petition for revision, the Commissioner may, on being satisfied with the reasons, admit it after the expiry of the period of 90 days.

Appeals and Revisions

A petition for revision may be summarily rejected where the requirements of rules 49 and 50 are not complied with in representation of the petition. (Rule 51 of the Mizoram VAT Rules, 2005)

Section 68 (4) The Commissioner shall not revise any order under this section in the following cases:-

- (a) where an appeal against the order lies under section 67 but has not been made and the time within which such appeal may be made has not expired; or
- (b) where the order is pending on appeal under section 67.

An order by the Commissioner declining to interfere shall, for the purpose of this section be deemed not to be an order prejudicial to the dealer.

Reference to High Court (Section 69)

Section 69 (1) The dealer may move to High Court to challenge the order of the Appellate Authority or Commissioner within 60 days of the receipt of the order. A copy of the notice seeking revision shall also be served on the Department.

Section 69 (2) A revision to the High Court may be made only on the grounds of any question of law or an erroneous decision or failure to decide a question of law that will be raised in the revision.

Section 69 (3) The Commissioner shall be taken as a party to the proceedings by the High Court, where revision is filed by the dealer or other person.

Section 69 (4) The High Court may on receipt of an application from either of the parties, review any order passed by it provided such application is made within one year from the date of receipt of the judgement.

Power to rectify error apparent on the record (Section 70)

Section 70 (1) An assessing, appellate or revisional authority may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record:

If the authority passing the order to rectify a mistake in an order, finds that such amendment shall be prejudicial to the dealer, which means it enhances the assessment or increases the liability of the dealer to pay tax, interest or penalty, he must give the dealer an opportunity of hearing to the dealer.

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Section 70 (2) Where such rectification has the effect of enhancing the tax liability or penalty, the Assessing Authority shall give the dealer or other person a notice of assessment or penalty and the dealer or other person shall pay the tax to the Government Treasury or to designated bank given in notice and when such rectification has the effect of reducing the tax liability or penalty the Assessing Authority shall make refund of the excess tax paid, if any.

Chapter-11

Offences and Penalties

Offences and penalties (Section 71)

There are various kinds of offences specified under the Mizoram VAT Act, which can be divided into various categories, on the basis of the punishment provided for them.

Sl. No.	Section	Defaults	Penalty
1	71 (1)	If a person, who is not a registered dealer, falsely represents that he is or was a registered dealer at the time when he sells or buys goods	Rigorous imprisonment for a term of not less than six months, which may extend to three years and may be accompanied with fine
2	71(2)	If a dealer knowingly furnishes a false return	<ul style="list-style-type: none">— In cases where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds ₹ 10,000/-, rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine— In any other case, with rigorous imprisonment for a term, which shall not be less than three months but which may extend to one year and with fine.

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Sl. No.	Section	Defaults	Penalty
3	71 (3)	If the dealer knowingly produces before the Commissioner, a false bill, cash-memorandum, voucher, declaration, certificate or other document for evading tax payable under this Act	<ul style="list-style-type: none"> — In cases where the amount of tax which could have been evaded, if the documents referred to above had been accepted as true, exceed ₹ 50,000/- during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. — In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.
4	71 (4)	If a dealer knowingly keeps false accounts of value of the goods purchased or sold by him in contravention of the provisions of this Act	Rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and may be accompanied with fine.
5	71 (5)	Where a dealer knowingly produces false accounts, registers or documents or knowingly furnishes false information	— In cases where the amount of tax which could have been evaded, if the accounts, registers or documents or information referred to above had been

Offences and Penalties

Sl. No.	Section	Defaults	Penalty
			<p>accepted as true, exceeds ₹ 50,000 during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;</p> <p>— In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.</p>
6	71 (6)	<p>If a dealer issues to any person a certificate or declaration under the Act, rules or notifications or a false bill, cash-memorandum, voucher, delivery Challan, lorry receipt or other document which he knows or has reason to believe to be false</p>	<p>Rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and may be accompanied with fine.</p>
7	71 (7)	<p>If a dealer willfully attempts to evade any tax leviable under this Act</p> <p>If a dealer willfully attempts, in any manner whatsoever, to evade any payment of any tax, penalty or interest</p>	<p>— In cases where the amount involved exceeds ₹ 50,000 during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but</p>

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Sl. No.	Section	Defaults	Penalty
		or all of them under this Act	which may extend to three years and may be accompanied with fine. — In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and may be accompanied with fine.
8	71 (8)	Whoever aids or abets or induces any person in commission of any act specified in sub-section (1) to (7) of Section 71	Rigorous imprisonment which shall not be less than three months but which may extend to one year and may be accompanied with fine.
9	71 (9)	If a dealer – (a) is engaged in business as a dealer without being registered in willful contravention of section 21 (b) fails without sufficient cause to furnish any returns as required by section 23 within the due date and in Form 5 . (c) fails without sufficient cause, when directed so, to keep any accounts or records, in accordance with the provisions of this Act (d) fails without sufficient	Imprisonment for a term which may extend to one year and may be accompanied with fine.

Offences and Penalties

Sl. No.	Section	Defaults	Penalty
		<p>cause, to comply with any requirements made of him under section 59</p> <p>(e) voluntarily obstructs any officer in carrying out an inspection or search or seizure under section 59</p>	
10	71 (10)	Whoever fails, without sufficient cause, to furnish any return within the due date	<p>Simple imprisonment for a term which may extend to one year and may be accompanied with a fine, which shall not be less than. –</p> <p>(a) ₹ 2,000, if the tax due for the period covered by the return does not exceed ₹ 20,000;</p> <p>(b) ₹ 5,000, if the tax due for the period covered by the return exceeds ₹ 20,000 but does not exceed ₹ 1 lakh ;</p> <p>(c) ₹ 10,000, if the tax due for the period covered by the return exceeds ₹ 1 lakh.</p>
11	71 (11)	If a dealer commits any of the acts specified in sub-sections (1) to (10) and the offence is a continuing one	A fine of ₹ 100 per day during the period of continuance of the offence
12	Rule 92(1)	Whoever signs and verifies an application for registration or a return or an application for refund	A fine shall be levied, which may extend to ₹ 1000

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Sl. No.	Section	Defaults	Penalty
		otherwise than in conformity with Rule 7, 21 and 64	
13	Rule 92(2)	Where a dealer acts against rules or fails to comply with any rules	A fine shall be imposed which may extend to ₹ 1000 If the offence is a continuing one, a fine of ₹ 25 per day during the period of continuance of the offence
14	Rule 92(3)	When a dealer does not furnish information regarding change of jurisdiction of his place of business within the 14 days of the occurrence of the event	A fine shall be imposed which may extend to ₹ 1000 If the offence is a continuing one, a fine of ₹ 25 per day during the period of continuance of the offence

Section 71 (12) No person shall be proceeded against these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than ₹ 200 during the period of a year.

Section 71 (13) If a dealer is accused of an offence as specified in the above sub-sections, the person deemed to be the manager of the business shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

Offences by Companies (Section 72)

Section 72 (1) Where an offence under this Act or the rules 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

Offences and Penalties

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act 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.

Section 72 (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or 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 purpose of this section -

- (a) “company” means a body corporate, and includes a firm or other association of individuals; and
- (b) ‘director’ in relation of a firm means a partner in the firm.

Section 72 (3) 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 sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence:

Provided further that, 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 adult 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.

Cognizance of offences (Section 73)

Section 73 (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or rules made thereunder shall be cognizable and bailable.

Section 73 (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall be lawful for the Magistrate of the First Class to pass on any person convicted of an offence under sections 63 or 66 of this Act, a sentence of fine as provided in the relevant section, in exercise of his powers under section 29 of the said Code.

Investigation of offences (Section 74)

Section 74 (1) The Commissioner may, subject to certain conditions, authorize either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

Section 74 (2) Every officer so authorized shall, in the conduct of such investigation, exercise the power conferred by the Code of Criminal Procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

Compounding of offences (section 75)

Compounding legally means to settle by mutual concession. It means to forbear from prosecution for consideration or any private motive or to settle with a creditor. The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement to abstain from a prosecution.

Section 75 (1) The Commissioner may for compounding an offence, either before or after the institution of proceedings of any offence, accept by way of composition, a sum not exceeding double the amount of tax which would have been payable on the sale or purchase turnover to which the offence relates, whichever is greater. A register in Form 31 shall be maintained showing the prosecution instituted and offences compounded under the Act. (Rule 72 of the Mizoram VAT Rules, 2005)

When an order is recorded, accepting any sum, by way of compounding of the offence from any dealer the order shall specify the

Offences and Penalties

- time within which the money is to be paid into the Government Treasury
- date by which the proof of such payment is to be produced
- authority before whom such proof is to be produced.

(Rule 73 of the Mizoram VAT Rules, 2005)

The sum referred above, shall be paid by the dealer in the Government Account with the quadruplicate copies under the head of account 0040 – Sales Tax, 102 – State Sales Tax as given in Rules 57, 58 and 59 and a copy of the challan be produced by him as proof of payment. (Rule 58(1) and 74 of the Mizoram VAT Rules, 2005)

Section 75 (2) On payment of such sum as may be determined by the Commissioner, no proceedings shall be taken against the accused person in respect of such offence and any proceedings, if already taken, shall not be proceeded further.

Chapter-12

Miscellaneous

Court fee on appeal and certain other applications (Section 76)

The following court fees are applicable in case of appeals and certain other applications (Rule 86 of the Mizoram VAT Rules, 2005)

Sl. No.	Description	Amount of fee
1	Upon a petition for revision of any other order or upon any other order or upon any other miscellaneous petitions	₹ 100
2	Upon a memorandum of appeal against or upon a petition for revision of an order of assessment of an appellate order on assessment	5 % of the amount of tax in dispute subject to a minimum of ₹ 10 and to the maximum of ₹ 100
3	Upon a memorandum of appeal against an order of penalty or upon a petition for revision of an appellate order or on appeal against an order of penalty	₹ 100
4	For a duplicate copy of a certificate of registration	₹ 10

The following fees shall be payable for certified copies: (Rule 90 of the Mizoram VAT Rules, 2005)

Sl. No.	Description	Amount of fee
1	An application fee	₹ 5
2	Authentication fees for every 360 words	₹ 10
3	One impressed folio for not more than 150 words and extra folio for every 150	₹ 10

	additional words or less	
4	Urgent fee, if an applicant requires his copy to be furnished on the same day of the submission of the application	₹ 10
5	An additional fee to cover the cost of postage if the applicant wants his copy to be sent to him by post	₹ 10
6	A searching fee if the applicant wants a copy of the order or documents which are more than a year old	₹ 10

Application of sections 4 and 12 of Limitation Act (Section 77)

In computing the period of limitations under Chapter IX i.e Appeal and Revision, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

Appearance before any authority in proceedings (Section 78)

Section 78 (1) Any person who is entitled or required to attend before any authority in connection with any proceeding under this Act, otherwise than when required to attend personally for examination on oath or affirmation, may attend –

- (a) by a relative or a person regularly employed by him, or
- (b) by a legal practitioner or a Chartered Accountant who is not disqualified under the provisions of Act or
- (c) by a sales tax practitioner who possesses the requisite qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not under the provision of Act.
- (d) any person who, immediately before the commencement of this Act was a sales tax practitioner under any earlier law,

only if such relative, person employed, legal practitioner, Chartered Accountant, or sales tax practitioner is authorized by such person in the

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Form 24, and such authorization may include the authority to act on behalf of such person in such proceedings.

Section 78 (2) The Commissioner may, by order in writing and for reasons to be recorded, disqualify from attending before any such authority, any legal practitioner, Chartered Accountant, or sales tax practitioner for a period stated in the order –

- (a) who has been removed or dismissed from Government service, or
- (b) who being a sales tax practitioner, a legal practitioner or a Chartered Accountant is found guilty of misconduct in connection with any proceedings under this Act by the Commissioner or by an authority, if any, empowered to take disciplinary action against the member of the profession to which he belongs.

Section 78 (3) A reasonable opportunity of being heard, shall be given to the person before an order of disqualification has been passed.

Section 78 (4) A person against whom a disqualification order has been passed, may within one month of the date of order, appeal to the Department for cancellation or modification of the order. The order of the Commissioner shall not take effect until expiry of one month of the passing thereof or when an appeal is preferred until the appeal is decided.

Section 78 (5) The Commissioner may, at any time suo-motu or on application made to him in this behalf, revoke or modify any order made against any person and thereupon such person shall cease to be disqualified subject to such conditions or restrictions that may be contained in such order.

Declaration of stock of goods held on the appointed day (Section 79)

The Commissioner, may by issue of notification, require any dealer to declare such details regarding the stock of goods held by them on the day immediately preceding the appointed day in such a manner and with such particulars and to such authority, as may be notified in this behalf.

Transitional provision (Section 82)

Section 82 (1) A registered dealer who would have continued to be so liable to pay tax under the repealed Act had this Act not come into force and who

Miscellaneous

makes an application for registration in terms of this Act, shall be deemed to be a registered dealer till a fresh registration is granted to him under this Act.

Section 82 (2) Notwithstanding anything contained elsewhere in this Act –

- (a) any person appointed as the Commissioner, Joint Commissioner or Deputy Commissioner or Assistant Commissioner or Superintendent of Taxes or any person appointed to assist the Commissioner, under the repealed Act and continuing in the office immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be appointed
- (b) any dealer liable to furnish any return under the repealed Act shall be liable to furnish return, in respect of tax payable for sales or purchases made up to the day immediately before such appointed day and pay tax under the repealed Act. He shall furnish a separate return in respect of the remaining part of the period which commences on such appointed day and shall pay tax due on such return for sales or purchases.
- (c) any order delegated to the subordinates by the Commissioner, under the Act or Rules made thereunder, shall from the appointed day, continue in force until the Commissioner, amends, varies or rescinds such order after such appointed day under this Act;
- (d) any dealer, who is no longer liable to pay tax under the repealed Act and whose account, registers or documents has been seized under that Act, shall continue to be retained in accordance with provision of that Act or after the appointed day;
- (e) all forms of transport permit under the repealed Act or the rules made thereunder shall continue in force and be used mutatis mutandis for the purpose for which they were being used before such appointed day until the State Government directs, by notification, the discontinuance of the use of such forms till such time as the State Government may, by notification, specify in this behalf;
- (f) all rules, regulations, notifications or orders made or issued under any of the repealed Act shall continue to be in force on until they are repealed or amended;
- (g) any transport permit obtained or obtainable by the dealer from Department or any declaration furnished or to be furnished by or to the

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dealer under the Act so repealed or the rules made thereunder in respect of any sale of goods shall be valid where such transport permit is obtained or such transport permit is furnished on or after such appointed day;

- (h) any application for revision, review or reference arising from any order passed or any appeal arising from any assessment of tax or determination of interest made or any application for refund or for transport permit, under the repealed Act, shall be disposed of in accordance with the provisions of the repealed Act;
- (i) the Commissioner or any other officer to whom power has been delegated by the Commissioner under the repealed Act may on its or his own motion, review or revise any order passed before the appointed day in accordance with the provision of that Act;
- (j) any application for the permit for the transport of the goods into the State, shall be deemed to have been made under this Act and shall be disposed of in accordance with the provisions of this Act;
- (k) any tax assessed, interest determined or penalty imposed under the repealed Act in respect of sales or purchases made before the appointed day, shall be payable or recoverable in accordance with the provisions of the repealed Act.

Chapter-13

Tax Deduction at Source

TDS Deduction at source from payment to a dealer against execution of works contract (Section 84)

Section 84 (1) Any person responsible for paying any sum to any dealer for execution of a works contract, wholly or partly in pursuance of a contract between such dealer and –

- (a) the Government;
- (b) a local authority;
- (c) a corporation or a body established by or under any law for the time being in force;
- (d) a company incorporated under the Companies Act, 1956, (Act No. 1 of 1956), including a Government undertaking;
- (e) a co-operative society;
- (f) an educational institution, or
- (g) a promoter

shall, at the time of payment of such sum in cash or by issue of a cheque or draft or any other mode of payment, deduct an amount towards tax equal to 2 % of such sum being paid in respect of such works contract .

No such deduction shall be made where –

- (a) the payment is made as advance prior to the commencement of the execution of such works contract ;
- (b) no transfer of property in goods (whether as goods or in some other form) is involved in the execution of such works contract, or
- (c) where the dealer produces a certificate from the Commissioner that he has no liability to pay tax under this Act or that he has paid tax payable by, or due from him under this Act:

In respect of that part of payment to a dealer which represents his contractual transfer price of goods referred to in section 14 of the CST Act,

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1956 and where such dealer declares in writing to the effect that on a prior sale of such goods in Mizoram due tax under this Act has been paid.

Explanation :

For the purposes of this sub-section "promoter" means a person who constructs, reconstructs, converts, renovates or extends or causes to be constructed, reconstructed, converted, renovated or extended a building (including a flat or apartments or a resort) on a plot of land for the purpose of transfer of such building by sale or otherwise to any other person or to a company, firm, co-operative society or any association of persons, and includes –

- (a) his assignee, if any,
- (b) the person who develops or reclaims the land, the person who constructs, reconstructs, converts, renovates or extends, and the person who transfers such building, if such persons are different ;
- (c) any firm, board or other association of persons, established by or under any law for the time being in force, but excluding those referred to in clause (a) to (f) of this sub-section.

Section 84 (2) Where deduction of an amount is made –

- (a) the person making such deduction shall deposit the amount so deducted into a Government Treasury within 10 days from the expiry of English Calendar month, under the appropriate head of account through challan during the immediately preceding month (Rule 103 (1) of the Mizoram VAT Rules, 2005)
- (b) in the case of a person who adopts "public works system of accounting" and makes such deduction, he shall transfer the amount so deducted to the appropriate head of account through account statement, which is required to be sent periodically to the Accountant General, Mizoram, etc., and such transfer shall be deemed to be a deposit of the amount so deducted by the person making such deduction on the basis of such statement.

Section 84 (3) After the deposit of the amount, the person who makes the deduction, shall within 15 days from the date of such deposit, issue to the dealer a certificate in the Form 39 for each deduction separately and send a copy of the receipted challan or a copy of the account statement, to the Commissioner along with the relevant certificate of

Tax Deduction at Source

deduction and such document as required to show the tax deducted at source (Rule 104 of the Mizoram VAT Rules, 2005)

Rule 105 Scroll for deposit or transfer of the amount deducted at source to be sent to the Commissioner

The deductee is required to send the information to the Commissioner within 45 days from the date immediately after the expiry of the calendar month in which such deduction is made

A scroll stating the following details should be submitted in Form 40 to the Commissioner :

- name and address of the dealer
- number of certificate of registration, if any
- serial number and date of certificate of deduction
- the amount deducted from the dealer

Alongwith this, the following documents are also to be submitted :

- (a) A copy of the certificate of deduction issued to each dealer, and
- (b) A copy of the receipted challan in proof of payment of the amount deposited into the Government Treasury or a copy of the monthly divisional account statement

Section 84 (4) On receipt of a certificate of deduction, the deposit of an amount on account of dealer shall be adjusted by the Commissioner towards the tax liability of the dealer and shall constitute a good and sufficient discharge of the liability of the person deducting such amount to the dealer to the extent of the amount deducted and deposited.

Section 84 (5) Where any person, while, paying any sum to a dealer, contravenes the provisions, he shall be personally liable for such contravention and the Commissioner may, impose a penalty, not exceeding twice the amount required to be deducted and deposited by him into the Government Treasury. A reasonable opportunity of being heard shall be given to a dealer before the penalty is being imposed.

Section 84 (6) Where the dealer from whose account any amount has been deducted under sub-section (1) and deposited under sub-section (2) proves to the satisfaction of the Commissioner that he is not liable to pay tax under section 7 and such amount was not wholly or partly payable by him under

this Act, the Commissioner shall refund or adjust the amount refundable to the dealer.

Clearance Certificate (Section 85)

Section 85 (1) No Government department, local authority, educational institution, or corporation or body corporate established by or under a Central or State Act or company incorporated under the Companies Act, 1956 or co-operative society shall -

- (a) place order with, or make purchases of any goods from, any dealer or make any payment to such dealer for such purchases, or
- (b) enter into any works contract with any dealer for execution by him of such works contract and shall make payment to such dealer for execution of works contract.

Unless the Commissioner certifies that such dealer –

- (i) has no liability to pay tax or has not defaulted in furnishing any return or returns together with the receipted challan or challans showing payment of all taxes payable under this Act or the Central Sales Tax Act, 1956
- (ii) has not defaulted in making payment of tax otherwise payable by, or due from, him under this Act or the Central Sales Tax Act, 1956 or
- (iii) has made satisfactory provision for securing the payment of tax by furnishing bank guarantee in favour of the Commissioner or otherwise, as the case may be

These provisions shall not apply to any payment referred to in clause (b) where any amount is deductible from such payment under sub-section (1) of section 84.

Section 85 (2) Where an application is made by a dealer in Form 35, the Commissioner, after making such enquiry as he deems fit and proper, may, if he is satisfied, issue a certificate in Form 36 to the effect that such dealer is not liable to pay tax or that he has paid tax payable by or due from him under that section; and payment may, be made to such dealer for execution by him of a works contract on production by him of such certificate of the Commissioner. (Rule 101 of the Mizoram VAT Rules, 2005)Section 85 (3) The application for the certificate shall be made by the dealer to the Commissioner in Form 35 and shall contain such particulars stating that he

has no liability to pay tax for execution of works contract or he has paid such tax due from him.

Rule 102 – Manner of issue of clearance certificate to dealers for purposes other than that of Rule 101

A dealer is required to file an application in Form 37 in duplicate to the assessing authority for issue of clearance certificate for purposes other than the purposes of receiving payment from the contractee without deduction of any amount at source for execution of works contract. It shall declare that no tax is due and return has been filed within the due date.

The assessing authority after getting satisfied with the application shall issue the clearance certificate in Form 38 which shall be valid for a period of 12 months from the date of issue.

The application can be rejected within 15 days by the assessing authority stating the reasons for rejection. An opportunity of being heard shall be given before the application is being rejected.

Chapter-14

FAQs on Works Contract

Q. 1. How to account for VAT when executing Works Contracts?

Ans. You can either account for VAT on the goods involved in the contract by identifying the value of the goods transferred in the course of execution of a works contract and pay tax at the appropriate VAT rate or you can opt to pay tax by way of composition. In both cases, you can claim set-off of the VAT paid on the purchase of the goods.

You can calculate the sale price of the goods by deducting the following items from the total value of the contracts

- (a) labour charges for the execution of works
- (b) amount paid by way of price for subcontract, work (if it is subjected to VAT separately)
- (c) charges for planning, designing and architects fees
- (d) hire charges for machinery and tools
- (e) costs of consumables such as water, electricity, fuel used in the execution of the works contract
- (f) cost of the establishment of the contractor to the extent to which it is relatable to the supply of labour and services.
- (g) other similar expenses relatable to the supply of labour and services
- (h) profit earned by the contractor to the extent it is relatable to the supply of labour and services

The net figure arrived at by deducting the above amounts from the total value of the contract is the notional sale price of the goods included in the contract on which you have to account for VAT at the rate specified for the goods in the Mizoram VAT Act, 2005.

Q. 2. How to account for VAT if we have not opted for composition and fail to keep the records necessary to reduce the value of the contract to arrive at a sale value for the goods?

Ans. In such a case, the Department may impose a lumpsum deduction based on a percentage of the contract price. This percentage will be applied after deducting from the total contract price any amounts paid for sub-contractors, if such sub contractors pay VAT separately on their sub contract value. The amount so arrived at will be the sale price for the goods on which VAT has to be calculated and paid.

Q. 3. If we have not opted for composition, can we claim set-off for the VAT which has been charged on the purchase of the goods to be transferred to the works contract or on capital assets purchased for use in the works contract?

Ans. Yes, you can claim full set-off of the VAT paid on the purchase of all goods, including capital assets.

Q. 4. Can we claim set-off for the VAT that has been charged on the purchases of the goods to be transferred to the works contract or on capital assets purchased for use in the works contract where no tax has to be charged ?

Ans. It is not permissible to claim set off in the case of works contracts executed outside the State of Mizoram.

Q. 5. What is the position regarding VAT if we employ a sub-contractor in a works contract which has been awarded?

Ans. Either the contractor or the sub-contractor can account for VAT and claim set-off. The person not accounting for VAT must possess an exemption certificate issued by the person accounting for VAT.

Q. 6. How to account for VAT if we opt to pay VAT by way of composition in respect of a contract?

Ans. VAT has to be accounted for at the rate of 8% of the total value of the contract. We can claim set-off calculated at the rate of 16/25 of the VAT which has been charged on the purchase of all goods including capital goods purchased for use in the execution of the works contract.

Q. 7. What are the advantages of opting to account for VAT by way of composition?

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Ans. It simplifies the record keeping required and the calculation of the value on which VAT has to be charged. You should assess each works contract to judge whether paying VAT by way of composition would be to your advantage.

Q. 8. What is the position regarding tax deduction at source?

Ans. Persons carrying out works contracts will be notified by the Department if they are required to deduct tax at source. The rate of tax to be deducted would be 2 %. The person deducting the tax is required to deposit the tax with the Department. A Tax Deduction Certificate shall be given by the Contractee for the amount of tax deducted. You can deduct this amount from the VAT which you are liable to pay on the works contract at the time when you file VAT returns. A works contractor can apply to the Department for a certificate limiting the amount of tax to be deducted at source in cases where the dealer can establish that the tax to be deducted will exceed the tax due.

Q. 9. Do we have to account for VAT on works contracts entered into before 1 April 2005?

Ans. Yes. However, you are not required to pay more tax after 1 April, 2005 than would have been payable under the Mizoram VAT Act, 2005

Appendix-1

VAT Authorities

Tax Authorities (Section 3)

Section 3 (1) There shall be the following Taxing Authorities to assist the Commissioner, namely (Rule 3 of the Mizoram VAT Rules, 2005)

- (1) Joint Commissioner of Taxes,
- (2) Deputy Commissioner of Taxes,
- (3) Deputy Commissioner of Taxes (Appeals),
- (4) Assistant Commissioner of Taxes,
- (5) Superintendent of Taxes,
- (6) Inspector of Taxes

Section 3 (2) The State Government, shall appoint as many officers as they think fit to perform the functions under this Act. They may include any number of officers stated above. The duty shall be carried out by the officers within the local limit/area being assigned to them.

Section 3 (3) All officers and persons employed shall observe and follow the orders, instructions and directions of the officers superior to them.

No orders, instructions or directions shall be issued by the officers –

- (a) so as to require any assessing authority to make a particular assessment or to dispose of a particular case in a particular manner otherwise than in accordance with provision of the Act, or
- (b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) in the exercise of his appellate functions.

Powers and functions of the Commissioner (Section 4)

Section 4 (1) The Commissioner shall have all the powers and shall perform all the duties conferred or imposed upon him by or under this Act.

Section 4 (2) The Commissioner shall have superintendence over all officers and persons employed in the execution of this Act and the Commissioner may –

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- (a) call for returns from such officers and persons;
- (b) make and issue general rules and specify forms for regulating the practice and proceedings of such officers and persons;
- (c) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.

Section 4 (3) By passing an order, the Commissioner may :-

- (a) transfer any case(s) relating to any dealer pending before an Assessing Authority to another Assessing Authority having jurisdiction to deal with such case(s) or
- (b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case (s) relating to any dealer.

Where any case is transferred to an assessing authority, such assessing authority may deal with the case either de-novo or from the stage at which it was transferred.

Subject to such restrictions and conditions, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act and the Rules made thereunder to any person appointed under sub-section (1) of section 3. (Rule 4 of the Mizoram VAT Rules, 2005)

Persons appointed under section 3 to be public servants (Section 5)

The Commissioner and all officers appointed under section 3 shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code.

Indemnity (Section 6)

No suit, prosecution or other legal proceedings shall lie against any Government servant employed for implementation of the provisions of this Act and Rules made thereunder for anything which is in good faith done or intended to be done thereunder.

Appendix-2

VAT Forms List

Sl. No.	Details	Form No.
1	Application for New Registration	1
2	Certificate of Registration	2
3	Register of Certificate Issued	3
4	General Index Register of Dealers	4
5	Return Form	5
6	Submission of Statement of Consignees	6
7	Submission of Statement of Consignor	7
8	Notice	8
9	Assessment Order Sheet	9
10	Assessment Order	10
11	Notice of Demand	11
12	Notice of Hearing for Provisional Assessment	12
13	Notice of Demand	13
14	Notice of Hearing for Audit Assessment	14
15	Notice of Demand for Audit Assessment	15
16	Notice u/s 32 (1)	16
17	Notice of Demand	17
18	Notice u/s 39 (2)	18
19	Notice for Imposition of penalty and forfeiture of Tax u/s 39	19
20	Notice of demand of Tax/ Penalty/ Interest by way of Modification of Appeal /Revision /Review under Mizoram Value Added Tax Act,2005	20

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Sl. No.	Details	Form No.
21	Output Register	21
22	Input Register	22
23	VAT Account Register	23
24	Declaration in respect of manager or other officer of the registered dealer	24
25	Form of Appeal u/s 67 of the Mizoram VAT Act, 1989	25
26	Challan	26
27	Register of daily collection	27
28	Register of demand, assessment and collection	28
29	Refund voucher	29
30	Refund register	30
31	Register for Prosecution and Compositions	31
32	Application for way bill for the transport of certain Goods under Mizoram Value Added Tax Act, 2005	32
33	Way bill	33
34	Application for issue of way bill for importing taxable goods to Mizoram for Personal Use	34
35	Application for Issue of clearance certificate for receiving payment without deduction at source for execution of works contract under Mizoram Value Added Tax Act, 2005	35
36	Clearance Certificate for a Works Contract	36
37	Application for Clearance Certificate u/s 85 (2)	37
38	Application for Clearance Certificate u/s 85 (2)	38
39	Certificate of deduction from payment for execution of a works contract u/s 84 (3) of the Mizoram Value Added Tax Act, 2005	39
40	Scroll for deposit or transfer of amount deducted at source	40
41	Tax Invoice	41

VAT Forms List

Sl. No.	Details	Form No.
42	Retail Invoice	42
43	Form of Indemnity Bond	43
44	Audit Report	44
45	Audit Report	45
46	Statement of Particulars	46
47	Composition Scheme for Work Contract	WC I
48	Permission to pay Composition Amount	WC II
49	Form of return to be furnished by a contractor opting for Composition Scheme	WC III

Appendix-3

Schedule and Annexure

Schedule I – List of Exempted Goods

Schedule II –

Part 'A' – List of Zero-Rated Goods

Part 'B' – List of Goods Taxable At 1%

Part 'C' – List of Goods Taxable At 5%.

Part 'D' – List of Goods Taxable At 13.5%

Part 'E' – Goods sold by Canteen Store Department (CSD) run by Army, Assam Rifles, Para Military Forces and Project Pushpak stationed in the State of Mizoram.

Schedule III – All Kinds of Work Contract-13.50%

Schedule III A–Percentage of deduction under Work Contract

Annexure I – List of Information and Technology Products

Annexure II – Industrial Inputs