

# **Technical Guide to Assam VAT**



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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Committee/Department : Indirect Taxes Committee

Email : [idtc@icai.in](mailto:idtc@icai.in)

Website : [www.idtc.icai.org](http://www.idtc.icai.org)

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# Foreword

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VAT is an internationally recognized multipoint tax system. The principle of VAT contemplates levy of tax at each stage of value addition till the point of consumption, and realization of full tax on the final sale value from the consumer. In India, VAT was introduced in most of the State from April 1, 2005. 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.

The system of VAT, on the one hand, remove the cascading effect of taxes as it allow credit of taxes paid at the earlier stages and thus benefiting the consumer. On the other hand, it increases the 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.

Considering that though the broad design of the State-level VAT is uniform across the country, every State has its own VAT legislation and procedures differ on many counts from one State to another, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) published Technical Guides to VAT in respect of 10 States in the year 2014-15. During the year, the Committee has been revising all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. I compliment CA. Atul Gupta, Chairman, CA. Shyam Lal Agarwal, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for their untiring efforts in bringing out the revised edition of *Technical Guide to Assam VAT*.

I am sure that this updated Guide would be warmly received and appreciated by the members and other interested readers.

Date: 31<sup>st</sup> July, 2015  
Place: New Delhi

**CA. Manoj Fadnis**  
President



# Preface

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Based on sound economic rationale, the system of Value Added Tax was introduced in majority of the States from April 1, 2005. The objective of bringing transparency in taxation, minimizing cascading effect of taxes and cutting trade barriers to large extent has been achieved as it allow credit of taxes paid on earlier stages and meticulous documentation is a *sine quo non* for it. Further, the requirement of maintaining tax invoices for claiming input tax credit has also increased self-compliance by the dealer and has thus resulted in increase in the total revenue of State Governments. The Country is now all set to witness another major reform i.e. introduction of GST which will integrate the principle of taxation of value added in India at the State level in the form of State VAT and at the Central level in the form of CENVAT.

In order to facilitate the members in understanding the State level VATs, the Indirect Taxes Committee in the year 2014-15 has brought out Technical Guides to VAT in respect of various States. Considering the changes made in the VAT Law through Finance Act, notifications/ circulars etc., the Committee thought it fit to revise all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. Accordingly, it has been revised. This revised guide intends to give a general guidance to the members to address the various issues that may arise in the Assam VAT.

I am extremely thankful to CA. Manoj Fadnis, President and CA. M. Devaraja Reddy, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thank CA. Omprakash Agarwalla for thoroughly revising the Guide with updated provisions of Assam VAT. I am sure that this revised publication would help the members and readers to be well equipped in effectively discharging their duties as Assam VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at [tdtc@icai.in](mailto:tdtc@icai.in).

Date: 31<sup>st</sup> July, 2015  
Place: New Delhi.

**CA. Atul Gupta**  
Chairman  
Indirect Taxes Committee



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# Glossary

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## A Few definitions

In this Act, unless the context otherwise requires,-

1. **"assessment"** means the determination of turnover of a dealer to ascertain his tax liability under this Act and includes provisional assessment, self-assessment, audit assessment and reassessment made under this Act;

2. **"business"** includes,-

- (a) any trade, commerce or manufacture;
- (b) any adventure or concern in the nature of trade, commerce or manufacture;
- (c) any transaction in connection with, or incidental to or ancillary to, trade, commerce, manufacture, adventure or concern;
- (d) any transfer of property in goods involved in execution of a works contract or transfer of the right to use any goods for any purpose or delivery of goods on hire purchase or by any system of payment by instalments;
- (e) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction,

whether or not such trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

*Explanation:* For the purpose of this clause,-

- (i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;
- (ii) any transaction of sale or purchase of capital goods pertaining to such trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business;

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- (iii) purchases of any goods, the price of which is debited in the books of accounts and sales of any goods, the proceeds of which is credited shall be deemed to be transactions comprised in business;
  - (iv) any transaction in connection with, or incidental or ancillary to, the business or commencement or closure of business shall be deemed to be a transaction comprised in business;
3. **"capital goods"** means plant, machinery, equipment, moulds and dies purchased for the purpose of manufacturing or processing of goods in the State or for use in packing of such goods excluding civil structures, and any other goods as may be notified by the Government, and used in the furtherance of any business and where the purchase thereof has been capitalized;
4. **"casual dealer"** means a person who, whether as principal, agent or in any other capacity, carries on occasional transactions in the nature of a business involving buying, selling, supplying or distribution of goods or conducting any exhibition-cum-sale in the State, whether for cash or for deferred payment or for commission, remuneration or other valuable considerations;
5. **"contractee"** means any person for whom or for whose benefit a works contract is executed;
6. **"contractor"** means any person who executes a works contract and includes a sub-contractor;
7. **"dealer"** means any person, who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration, and includes,-
- (i) a local authority, body corporate, company, any cooperative society or other society, club, firm, Hindu Undivided Family or other association of persons which carries on such business;
  - (ii) a factor, broker, commission agent, del-credere agent or any other mercantile agent, by whatever name called, who for the purposes of or in connection with or incidental to or in the course of the business, buys, sells, supplies or distributes goods belonging to any principal or principals, whether disclosed or not;

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- (iii) an auctioneer, who sells or auctions goods belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

*Explanation I:* Every person who acts within the state as an agent of a dealer residing outside the state and buys, sells, supplies or distributes goods in the state or acts on behalf of such dealer as,-

- (a) a mercantile agent as defined in the Sale of Goods Act, 1930 (Central Act 3 of 1930); or
- (b) an agent for handling of goods or documents of title relating to goods; or
- (c) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment,

shall be deemed to be a dealer for the purposes of this Act.

*Explanation II:* Every local branch or office in the State of a firm registered outside the State or a company or other body corporate, the principal office or head quarter whereof is outside the State, shall be deemed to be a dealer for the purposes of this Act;

- (iv) a person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (v) a person who carries on the business of 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;
- (vi) a person who carries on the business of delivery of goods on hire purchase or any system of payment by instalments;
- (vii) a casual dealer;
- (viii) an advertising concern or agency;
- (ix) a department of the Central Government or any State Government or a local authority, Panchayat, Municipality, Development Authority, Cantonment Board or any autonomous or statutory body or an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State

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Governments or of a local authority, if it sells, supplies or distributes goods, for cash or for deferred payment or other valuable considerations, whether or not in the course of business;

- (x) a person who, for the purposes of or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale;
- (xi) a person who, under any provisions of this Act, has been presumed to have made sales or purchase of any goods.

*Exception I:* An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer in respect of such sales within the meaning of this clause but when the agriculturist is a company, a firm or a body of persons other than a Hindu Undivided Family this exception shall not be applicable.

*Exception II:* An educational institution carrying on the activity of manufacturing, buying or selling of goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause;

8. **"declared goods"** means goods declared from time to time under section 14 of the Central Sales Tax Act, 1956(Central Act 74 of 1956) to be of special importance in course of inter-state trade or commerce;

9. **"document"** means title deeds, writings or inscriptions and includes electronic record and data, computer programmes, computer tapes, computer discs, photographs, video tapes and the like, that furnishes evidence;

10. **"goods vehicle"** means any kind of vehicle used for carriage of goods either solely or in addition to passengers and includes an auto vehicle, a bicycle, a rickshaw, a push cart including animal driven cart, an animal carrying load or a person carrying goods, a boat or a steamer or a vessel;

11. **"gross turnover"** means,-

- (i) for the purpose of levy of tax, the aggregate of the amount of sale price received or receivable by a dealer whether as principal, agent or in any other capacity in respect of sale of all taxable and tax-free goods, at all places of business in the State, during any prescribed

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period, including sale price in respect of sales in the course of inter-state trade or commerce or sales outside the State or sales in the course of import into or export out of the territory of India.

Explanation: The amount received by a dealer on account of price variation or price escalation in respect of sale or supply of goods shall be deemed to form part of Gross Turnover of the financial year during which it is actually received;

- (ii) for the purpose of levy of tax, the aggregate of the amounts of purchase price paid and payable by a dealer in respect of all purchases of goods made by him during any prescribed period;
- 12. **"import"** means bringing or receiving of goods in the State, whether from other State or Union Territory in the country or from outside the country, as a result of purchase or otherwise;
- 13. **"importer"** means a dealer who makes first sale of any goods after the import of such goods in the State;
- 14. **"input tax"** means the amount paid or payable by way of tax under this Act by a purchasing registered dealer to a selling registered dealer on the purchase of goods in the course of his business;
- 15. **"lease"** means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership of goods and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalments;
- 16. **"lessee"** means any person to whom the right to use any goods for any purpose is transferred under a lease;
- 17. **"lessor"** means any person by whom the right to use any goods for any purpose is transferred under a lease;
- 18. **"manufacture"** means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformations into a new and different article so understood in commercial parlance having a distinctive name, character use, but does not include such activity of manufacture as prescribed under rule 57A;
- 19. **"month"** means a month reckoned according to the English calendar;

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20. **"output tax"** in relation to a registered dealer means the tax charged or chargeable under this Act in respect of the goods sold by that dealer;
21. **"person"** includes,-
- (i) an individual;
  - (ii) a Hindu Undivided Family (HUF);
  - (iii) an association of persons or body of individuals, whether incorporated or not;
  - (iv) a firm;
  - (v) a company;
  - (vi) the Central Government or any State Government or any Union Territory in India;
  - (vii) any local authority or any autonomous or statutory body; and
  - (viii) every artificial juridical person not falling within any of the preceding sub-clauses;
22. **"place of business"** means any place where a dealer carries on the business and includes,-
- (i) any shop, ware-house, godown or other place where a dealer stores his goods;
  - (ii) any place where a dealer produces or manufactures goods;
  - (iii) any place where a dealer keeps his books of accounts;
  - (iv) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent; and
  - (v) any vehicle or vessel or any other carrier wherein the goods are stored or which is used for transporting the goods;
23. **"prescribed"** means prescribed by the rules made under this Act;
24. **"prescribed authority"** means any person appointed to assist the Commissioner under sub-section (1) of section 3 to whom all or any of the powers of the Commissioner for the levy and collection of tax conferred by or under this Act or rules framed thereunder has been delegated by the Commissioner under sub-section (9) of that section;

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25. **"raw materials"** means goods used as an ingredient in the manufacture of any other goods or any article consumed in the process of manufacture which has a direct nexus with the finished product or to which the finished product can directly be attributed but it does not include stores, fuel and lubricants required in the process of manufacture;
26. **"registered dealer"** means a dealer registered under this Act;
27. **"resale"** means a sale of purchased goods,-
- (i) in the same form in which they were purchased; or
  - (ii) without using them in the manufacture of any goods; or
  - (iii) without doing anything to them which amounts to, or results in a manufacture, and the word "re-sell" shall be construed accordingly;
28. **"reverse input tax"** means that portion of input tax of the goods for which credit has been availed of but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or use as containers or use as packing materials of taxable goods within the State;
29. **"rules"** means the rules made under this Act;
30. **"sale price"** means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery of the goods other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

*Explanation 1:* For the purpose of this clause 'sale price' includes,-

- (i) the amount of duties or fees levied or leviable on the goods under the Central Excise Act, 1944 (Central Act 1 of 1944) or the Customs Act, 1962 (Central Act 52 of 1962) or the Assam Excise Act, 1910 (Assam Act 1 of 1910) or under any other enactment whether such duties or fees are paid or payable by or on behalf of the seller or the purchaser or any other person;
- (ii) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, such amount received or receivable as consideration;
- (iii) in relation to the delivery of goods on hire purchase or any system of payment by instalments, the amount of valuable consideration payable to a person for such delivery;

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- (iv) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration received or receivable for such transfer; and

*Explanation II:* For the purpose of this clause, 'sale price' does not include,-

- (i) tax charged or chargeable under this Act;
  - (ii) any amount allowed by seller of goods to the purchaser as cash discount or commission or trade discount at the time of sale of goods subject to the condition that such discount or Commission is shown in the original invoice;
31. **"Schedule"** means the schedule appended to this Act;
  32. **"State"** means the State of Assam;
  33. **"tax"** means a tax on a sale or purchase as the case may be, payable under this Act and includes any amount payable by way of composite tax;
  34. **"tax fraction"** means the fraction calculated in accordance with the formula  $r/(100+r)$  where "r" is the rate of tax applicable to the sale;
  35. **"tax-free goods"** means goods against which the rate of sales tax is shown to be NIL in the First Schedule;
  36. **"tax invoice"** means a document listing goods sold with price, quantity, tax involved and other details as may be specified in this Act or prescribed by Rules;
  37. **"tax period"** means a calendar month, a quarter or a year, as the case may be, as may be prescribed;
  38. **"taxable goods"** means goods other than tax-free goods;
  39. **"taxable turnover"** means the turnover on which a dealer is liable to pay tax as determined after making such deductions from his gross turnover and in such manner as may be prescribed;
  40. **"transporter"** means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, or holds goods in custody for delivery to any person after transportation and includes railway, shipping company, air cargo terminal, postal service and courier service;

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41. **"Value Added Tax"** means a tax on sale of any goods at every point in the series of sales made by the registered dealer with the provisions of credit of input tax paid at the points of previous purchases thereof.

42. **"works contract"** includes any agreement for carrying out for cash, deferred payment or other payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

*Explanation:-* For the purpose of this sub-clause, construction of a building or civil structure or a part thereof, which is intended for sale, wholly or partly, by a person or any person authorized by him before or during construction (except in cases for which no sum is received from or on behalf of the prospective buyer by such person or any person authorized by him or no agreement is made between such person or any person authorized by him and prospective buyer, before completion of construction) shall be works contract".

43. **"year"** means the financial year beginning from 1st April and ending with 31st March;

44. **"zero-rated sales"** mean the specified sales on which no tax is chargeable but are nevertheless eligible for input tax credit.

# Chapter-1

## Introduction

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The introduction of Value Added Tax in India is a significant milestone in the fiscal reform of India. Taxation on and sales and purchases of goods, other than on the sales and purchases of goods in course of inter-state trade or course or in course of export and import, is a subject matter of the jurisdiction of State legislatures. Before introduction of VAT system, except for a few exceptions, single point sales tax system was in operation in most of the States. Unlike the erstwhile taxation system, VAT is a multi-point destination based system of taxation, with tax being levied on value addition at each stage of transaction in the production/ sales chain. VAT is a tax on every sale with the facility of input credit of tax paid on purchases and it captures the value addition at every stage of production and sales chain.

VAT is an indirect tax borne by the ultimate consumer i.e. last purchaser. This is the modern and scientific way of taxing final consumption. This system of indirect taxation has a number of merits as compared to erstwhile forms of Sales taxes. Major advantage of this taxation system may be summarized as below:-

1. It is simpler- because of fewer rates and easy to understand.
2. It prevents cascading effect- through mechanism of set- off of tax paid at the time of purchases.
3. It makes exports competitive through zero rating tax on export sales.
4. It provides a larger tax base through value addition at each stage.
5. It will reduce tax evasion and increase revenue

### **VAT in Assam**

Like many other States of the Country, in Assam also the Value Added Tax system was introduced w.e.f. 1<sup>st</sup> May, 2005. The VAT Laws in Assam is regulated by the Assam Value Added Tax Act, 2003, which was notified on 15<sup>th</sup> March, 2005 and was made effective from 1<sup>st</sup> May, 2005. The Act is supported by the Assam Value Added Tax Rules, 2005, which was notified on 26<sup>th</sup> April, 2005. The Assam Value Added Tax Act, 2003 had repealed two

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erstwhile Acts namely- (1) the Assam General Sales Tax Act, 1993 and (2) the Assam Taxation (On Luxuries) Act, 1997. Taxation on works contract and other deemed sales has also been incorporated under AVAT Act, 2003.

### **Chartered Accountants**

It has been seen that after introduction of VAT in India, Chartered Accountants are showing their stronger presence in the field of Sales taxes. At least in Assam there is a phenomenal growth in the number of Chartered Accountants who are also providing services to their clients in the field of Sales tax matters. VAT Act came with the basic idea of self- assessment procedure and thus the role of chartered Accountants as auditors became more vital. As per the Assam Value Added Tax Act, 2003, every dealer whose turnover exceeds ₹ 1 Crore is liable to get his accounts audited by a Chartered Accountant or a Cost Accountant, failing to submit the audit report within 31<sup>st</sup> October of succeeding financial year may attract a huge penalty.

## Chapter-2

# Subject Matter of Tax

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The Assam Value Added Tax Act, 2003 a tax on sales and purchases of goods and the terms 'sale' and 'goods' are defined under section 2 of the Act.

### **'Sale': Definition under section 2(47)**

**"sale"** with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another for cash or for deferred payment or other valuable consideration and includes,-

- (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire purchase or any system of payment by instalments;
- (iv) 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;
- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) 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;
- (vii) a transfer of property in goods by the Central Government or the State Government or any local authority or autonomous or statutory body for cash or for deferred payment or for any other valuable consideration, whether or not in the course of business,

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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 a purchase of those goods by the person to whom such transfer, delivery or supply is made and the words "sell" and "buy" shall be construed accordingly.

*Explanation I:* Where there is a single contract of sale or purchase in respect of goods situated in the State as well as in places outside the State, the provisions of this explanation shall apply as if there were separate contracts of sale or purchase in respect of the goods situated at each of such places.

*Explanation II:* Notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place,-

- (a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser; or
- (b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal,

if the agent is found in either of the cases aforesaid,-

- (i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or
- (ii) to have purchased the goods at one rate and passed them to his principal at another rate; or
- (iii) not to have accounted to his principal for the entire collection or deduction made by him, in the sales or purchases effected by him on behalf of his principal; or
- (iv) to have acted for a fictitious or non-existent principal;

**'Goods':- Definition under section 2(20)**

**"goods"** means all materials, commodities and articles and all other kinds of movable property, whether tangible or intangible, and includes,-

- (i) livestock;
- (ii) computer software, subscriber identification module (SIM) cards and the like;

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- (iii) all materials (whether as goods or in some other form) involved in the execution of works contracts, transfer of right to use or hire purchase or payment by instalments, or those to be used in the fitting out, improvement or repair of movable or immovable property;
- (iv) growing crops, grass, trees, plants and things attached to or forming part of the land which are agreed to be severed before the sale or under the contract of sale,

but does not include newspapers, electricity, money, actionable claims, stocks, shares and securities.

## Chapter-3

# Incidence and Levy of Tax

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### 1. Taxable quantum [Section 7(6)]

Total turnover of sales or purchases of a dealer:-

In case of an Importer	₹ Nil
In case of Contractor or a Lessor	₹ Nil
In case of a casual dealer	₹ Nil
In case of a non-resident dealer or an agent of a non-resident dealer	₹ Nil
In case of a dealer, who is liable to pay tax at the point of purchase	₹ Nil
In case of a dealer, who has more than one place of business in the State	₹ Nil
In case of other dealers	₹ 6,00,000/- <sup>1</sup>

### 2. Incidence of Tax [Section 7]

➤ Liable to pay tax:

- every dealer, who has been liable immediately before the appointed day to pay tax under earlier Act, is liable to pay tax w.e.f. appointed day; or
- every dealer, whose turnover of sales or purchases during the year exceeds the taxable quantum is liable to pay tax w.e.f. the date immediately following the day on which his turnover first exceeds taxable quantum; or
- every dealer, who is registered under the Central Sales Tax Act, 1956 and even if he is not liable to pay tax as per the aforesaid two clauses, will be liable to pay tax on intra-state sales or use in

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<sup>1</sup> Taxable Quantum for Section 7(6)(b) has been raised vide Notification No. FTX. 128/2005/Pt/54, Dated 25<sup>th</sup> June, 2013 from 4 Lakhs.

manufacturing for sale, of goods, which were purchased by him against 'C' form(s); or

- every dealer, who is registered under this Act, will be liable to pay tax.
  - Every person, who is registered under this Act and afterwards, by an order passed under this Act, it is found that such person ought not to have been so registered, then, notwithstanding anything contained in this Act, 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, as if he were a dealer.
- Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three years during which his turnover has failed to exceed the taxable quantum.
- Every dealer who has ceased to be liable to pay tax under the preceding clause shall be again liable to pay tax with effect from the first day of April of the year during which his gross turnover again exceeds the taxable quantum.

### **3. Certain Sales and Purchases not liable to Tax [Section 4]**

Assam VAT Act or rules made there under shall not apply to the following transactions of sales or purchase:

- (a) in the course of inter-State trade or commerce; or
- (b) outside the State; or
- (c) in the course of the import of goods into or export of goods out of the territory of India.

### **4. Exemption from levy of VAT under section 9**

Following sales and purchases are exempted from levy of tax under this Act:

- The sale of goods listed in the First Schedule, subject to conditions and exceptions, if any, set out therein. [Section 9(1)]
- Any sale of goods made by a unit located in a Special Economic Zone (SEZ) or an Export Oriented Unit (EOU) to another unit located in another Special Economic Zone (SEZ) or to another export oriented unit. [Section 9(5)]

## **5 Exemption from levy of VAT [Section 54]**

- The Government may, if it is necessary so to do in the public interest, exempt by way of appropriate Schemes or otherwise, in conformity with the provisions of this Act, 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, and any notification issued under this section may be issued so as to be retrospective to any date and such exemption shall take effect from the date of publication of the notification in the Official Gazette or such other earlier or later date as may be mentioned therein. The Government may also by notification in the Official Gazette, exempt a part of sale price specified in the said notification from payment of tax payable under the provision of Ac. The Government may withdraw such exemption at any time as it may think fit and proper. In case exemption is granted in the form of remission, the dealer shall be entitled to retain the part or whole of tax collected by way of subsidy from the Government subject to maximum permissible monetary limit and/ or time limit and other conditions as may be prescribed in the appropriate scheme.

Following exemptions have so far been announced by the Government under this section:-

- Exemption (conditional) under section 54(1) has been provided to the Oil Companies from payment of part of tax payable on sales of petrol and diesel within the State of Assam @` 1/- per litre on and from 7<sup>th</sup> June, 2008, vide Notification no. FTX.70/2007/Pt/34. The said exemption is withdrawn vide Notification no. FTX.70/2007/Pt/46 dated & w.e.f. 20/12/2008.
- Exemption to M/s. Brahmaputra Cracker & Polymer Limited has been provided vide Notification no. FTX.110/2005/104 dated & w.e.f. 21/10/2009.
- A few Exemptions under this section have been granted to Canteen Stores Department (CSD), Government of India vide Notification no. FTX.55/05/26 dated 8<sup>th</sup> August, 2005 w.e.f. 9<sup>th</sup> August, 2005. The said notification was substitute vide a fresh Notification no. FTX.70/2007/5 dated 15/11/2007 w.e.f. 15/11/2007. The Notification no. FTX.70/2007/5 substituted/amended vide Notification no. FTX.70/2007/22 dated & w.e.f. 27/02/2009. Notification

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no. FTX.70/2007/22 further substituted/amended vide Notification no. FTX.70/2007/30 dated 11<sup>th</sup> March, 2010, w.e.f. 01/04/2010.

- Bamboo based industries have been exempted (conditional) for specific classes of goods vide Notification no. FTX.55/05/66 dated 30<sup>th</sup> March 2007 under this section for three years. Thereafter, vide Notification no. FTX.55/2005/80 dated 28/09/2010, bamboo based industries have been exempted (conditional) for the period 31/03/2010 to 31/03/2012 and thereafter the exemptions were further granted for the period up to 31/03/2014 vide Notification No. FTX.55.2005/82.
- M/s. Topcem India, Gauripur, Silasundari Ghopa, Amingaon has been exempted from liability to pay VAT in respect of sale of finished goods produced by them in Assam subject to some restrictions as notified in Notification No. FTX.46/2010/79 dated 04/09/2014.
- M/s. Cement Manufacturing Company Limited, Chamata Pathar, Sonapur has been exempted from liability to pay VAT in respect of sale of finished goods produced by them in Assam subject to some restrictions as notified in Notification No. FTX.255/2013/134 dated 22/10/2014.
- Schemes for refund of tax paid by the manufacturer of traditional indigenous fireworks in the State has been notified vide Notification no. FTX.55/2005/Pt-II/104 dated 31/05/2010 w.e.f. 1<sup>st</sup> April, 2010.
- The Assam Industries (Tax Exemption for Pipeline Units) Order, 2005, introduced vide Notification no. FTX.81/05/Pt/2 on 28/07/2005. One corrigendum was also made vide Notification no. FTX.81/05/Pt/17 on 9/09/2005. Amendments in such notifications were made vide Notification no. FTX.81/2005/59 w.e.f. 29/12/2005. The order was again amended vide Notifications no. FTX.81/2005/64 dated 27/06/2007 and FTX.55/2005/Pt-II/127 dated 18/03/2011.
- The time limit of 31<sup>st</sup> March, 2008 was further extended to 30<sup>th</sup> September, 2008 vide Notification no. FTX.81/2005/64 dated 27/06/2007.
- Partial exemption of ₹ 14/-per cylinder with net weight of 14.2Kg of LPG for domestic use is granted w.e.f. 21/07/2011 vide Notification no.FTX.-55/2005/Pt-IV/59.
- The Assam Industries (Tax Exemption) Scheme, 2009 has been notified vide Notification no. FTX.66/2009/2 dated 3<sup>rd</sup> November, 2009.

The said scheme has been amended vide Notification no. FTX.55/2005/Pt-II/121 dated 18/03/2011. The said scheme has been further amended vide Notification no. FTX.66/2009/117 dated 26<sup>th</sup> December, 2011 (re. Bank Guarantee and forms of returns).

- Notification no. FTX.25/2008/32 dated and w.e.f. 16/11/2011 has exempted Construction Committees, executing schemes under various Government departments where the total aggregate value of works involved in such schemes received or receivable by such Committee does not exceed rupees four lakhs, from the liability to pay tax under the Assam Value Added Tax Act, 2003.

## **6. Zero rated Sales Exemption from levy of VAT [Section 9 & 54]**

Following sales shall be treated as Zero Rated Sales:

- The sale of goods listed in the First Schedule shall be exempt from tax subject to conditions and exceptions, if any, set out therein. [Section 9(1)]
- The sales of goods in the course of export out of the territory of India falling within the scope of Section 5 of the Central Sales Tax Act, 1956. [Section 9(2)] Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to a unit located in a Special Economic Zone (SEZ). [Section 9(3)]
- Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to an Export Oriented Unit (EOU). [Section 9(4)]
- Any sale of goods made by a unit located in a Special Economic Zone (SEZ) or an Export Oriented Unit (EOU) to another unit located in another Special Economic Zone (SEZ) or to another export oriented unit. [Section 9(4)]
- The sale of goods to any person or international organisations as specified in the Eighth Schedule appended to the Act shall be zero-rated. (Section 54)

“Zero-rated sales” mean the specified sales on which no tax is chargeable but are nevertheless eligible for input tax credit.

## **7. Certificate of Export [Rule 37]**

- (1) The exporter who wants to purchase goods for export out of the

territory of India from a registered dealer free of tax shall obtain from the Prescribed Authority a blank form of Certificate of export in Form-56 for furnishing the same to the selling dealer. In case where the exporter cannot obtain the Form specified in this rule from any Prescribed Authority on the ground that he is not liable to registration under the Act or has no place of business in the State, he may obtain the Form from such Prescribed Authority as may be specified by the Commissioner and all the provisions of the Act and rules shall apply accordingly to the said exporter.

- (2) The Certificate in form-56 referred to in sub-rule (1) shall be issued in triplicate. Two copies duly filled in and signed by the purchasing exporter shall be furnished to the selling dealer and the other one retained by the purchasing exporter. One of the two copies of the certificate furnished to the selling dealer shall be submitted by the selling dealer as specified in sub-rule (1).
- (3) As per sub-rule (1), the selling dealer who sells free of tax to exporter and claims tax exemption for sales in course of export within the meaning of sub-section (3) of section 5 of the CST Act, 1956 shall furnish to the Prescribed Authority at the time of assessment, a Certificate of export in Form-56 (one out of two received by him) duly filled and signed by the exporter along with the evidence of export of such goods.
- (4) As per sub-rule (3), every such exporter shall maintain in a register in Form-57 due account of every certificate of Export received from the Prescribed Authority and if any such certificate is lost or destroyed or stolen he shall report the same to the Prescribed Authority immediately and shall make appropriate entry in the remark column of the register in Form-57 and take such other steps to issue public notice of the loss, destruction or theft as the Commissioner may direct.

The register in Form-57 shall be kept in the place of business of the exporter and shall at all reasonable time be open to inspection by the Commissioner or by any of the Officers appointed under Section 3 of the Act to assist the Commissioner.

- (5) Unused certificates remaining in stock with an exporter on the termination or cancellation or fulfillment of his agreement of export shall be surrendered to the Prescribed Authority immediately thereafter.

- (6) A certificate in respect of which a report has been received by the Prescribed Authority under sub-rule (3) shall not be valid for the purpose of sub-rule (1).
- (7) The Commissioner may, by notification, declare the Certificate of export of a particular series, design or colour shall be deemed obsolete and invalid with effect from such date as may be specified in the notification.
- (8) When a notification declaring forms of a particular series, design or colour obsolete and invalid is published every exporter shall, on or before the date with effect from which the certificates are so declared obsolete and invalid, surrender to the Prescribed Authority all unused certificates of that series, design or colour which may be in his possession and obtain in exchange such new certificates as may be substituted for the certificates declared obsolete and invalid. New certificates shall not be issued to exporter until he has rendered account of the old certificate lying with him and returned the balance, if any, in his hand to the Prescribed Authority.

## **8. Levy of Tax on Sales and purchases and rate of Taxes [Sections 10, 12]**

- Rate of tax on sales and purchase of goods have been exhibited in five different schedules i.e. first schedule, second schedule, third schedule, fourth schedule and fifth schedule. First schedule contains list of exempted goods, second schedule contains list of goods taxable @ 5%, third schedule contains the list of goods taxable at special rates, fourth schedule contains the list of goods which are taxable at the first point of sale in the State and fifth schedule contains tax rates on sales of residuary items (14.5%), works contract (14.5%) and lease transactions (5%).
- Every dealer, who is liable to pay tax for any year under section 7, shall pay output tax on his taxable turnover for such year,—
  - (a) in respect of goods specified in the Second, Third and Fifth Schedule, at every point of sale of such goods within the State, at the rate or rates specified therein; and
  - (b) in respect of goods specified in the Fourth Schedule, at the first point of sale of such goods within the State, at the rate or rates specified therein: [Section 10(1)]

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- Provisions relating to Oil Companies:
  - ✓ Sales and purchases of petroleum products (other than crude oil) between the specified Oil Companies in the State for re-sale by the purchasers, shall not be deemed to be the first point of sale in the State and sales made by such companies to another person shall be deemed to be the first point of sale in the State for the purpose of levy of tax. The purchasing oil company shall pay tax on the sale of such goods under this Act or under the Central Sales Tax Act, 1956 as the case may be.
  - ✓ If, in any case, after purchase of such goods for resale within the State, the Purchasing Oil Company dispatches any portion of the goods to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, then notwithstanding anything contained in this Act, for that portion of the goods, the Purchasing Oil Company shall be deemed to be the last purchaser within the State and it shall be liable to pay tax on such portion of goods at the rate of 4% on the gross turnover of purchases of such goods.
- Provisions relating to sale and purchases of Liquors:
  - ✓ In case of potable liquor mentioned in the 4<sup>th</sup> Schedule, except country spirit, the licensee of the bonded warehouse who sells these items to a wholesaler or to a retailer, shall be deemed to be the first point seller, irrespective of whether he imports such items from outside the State or he purchases such items from a manufacturer or a bottling unit or another bonded warehouse within the State. The retail license holder while depositing the excise duty shall also deposit the tax payable under this Act into the Government Account by a separate challan and hand over one copy of the challan to the bonded warehouse.
  - ✓ In case of country spirit mentioned in the 4<sup>th</sup> Schedule, the Officer in-charge of the country spirit warehouse who sells or supplies such items to a licensed retail vendor shall be deemed to be the first point seller who shall be liable to pay tax on the sale price of the item as defined in section 2(44) including excise duty, vend fee, bottling charges and any other duty or fee, by whatever name called, payable thereon. The retail vendor while depositing the cost price and excise duty shall also deposit the tax payable under this Act into the Government

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Account by a separate challan and handover one copy of the challan to the Officer in-charge of such warehouse.

- ✓ The retail 'on' license holder for potable liquor mentioned in the 4<sup>th</sup> Schedule, except country spirit, shall pay output tax on sale made by him at the rate of 6% without any set off of the tax paid by him at the time of purchase of such potable liquor from bonded warehouse in the State, subject to the condition that such potable liquor are purchased locally from bonded warehouse in the State.<sup>2</sup>
- Provisions related to sale and purchases of Tea:
  - ✓ Tax @ 0.50% shall be payable in respect of all teas sold in auction at Guwahati Tea Auction Centre or any other such Tea Auction Centre constituted by the Government. Further, in respect of all teas sold through a broker by private arrangement if such teas were lying in the warehouses recognized by such Tea Auction Centre and was for sale through auction the tax rate will be 2%<sup>3</sup> (w.e.f. 13/05/2015). However, no tax shall be payable in respect of sale of orthodox tea sold through auction or by private treaty sales as above. The tax shall be payable by the broker through whom the tea is sold in auction.
  - ✓ A dealer, who purchases tea through such tea auction Centre and then sells such tea inside the State, shall be deemed to be the first point seller and he shall not be entitled to get set off of the amount of tax paid on purchase, from the amount of tax payable by him on sale under this Act. as tea comes in the Fourth Schedule of the Act.
  - ✓ CST Sale of Tea brought from auction to the registered dealers shall be taxed at 0.25% and CST Sale of Tea brought outside auction to the registered dealers shall be taxed at 2% as usual.
  - ✓ Since Tea comes under the Fourth Schedule, the first point seller, other than the GTAC and/or broker shall be the only dealer on which tax will be leviable and all other subsequent dealers in the chain will be exempted from the payment of tax.

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<sup>2</sup> Section 10 Substituted vide Notification No. LGL.6/2003/112 dated 17/06/2015 [Assam VAT (Amendment) Ordinance, 2015]

<sup>3</sup> Rate Substituted vide Notification No. FTX.55/2005/Pt-VI/100, Dated 12/05/2015. Earlier this rate was 1%

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- Provisions related to sale of Packing Materials with goods:

Notwithstanding anything contained in this section, where goods packed in any container or packing materials are sold, the containers or materials in which the goods are so packed shall be deemed to have been sold along with the goods and the tax shall be leviable on such sale of the container and packing materials at the rate of tax, if any, as applicable to the sales of the goods themselves. In case the goods contained in container or packed in packing materials are tax free, the sale of such container or packing materials shall also be exempt from tax.

- Provisions relating to levy of Purchase Tax: (Section 12)

Every dealer who in the course of his business purchases any taxable goods from any person, who is not registered under the Act, shall be liable to pay tax on the gross turnover of purchase of such goods, if after such purchase, the goods are

- (a) used or disposed of in any manner other than by way of sale in the State; or
- (b) consumed or used in the manufacture of tax free goods specified in the First Schedule; or
- (c) consumed or used in the manufacture of taxable goods, and such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of interstate trade and commerce or export out of the territory of India; or
- (d) dispatched to a place outside the State other than as a result of sale in the course of inter-state trade or commerce or export out of the territory of India.

Such tax shall be levied at the same rate at which tax under section 10 would have been levied on the sale of such goods within the state on the date of such purchase.

- Amendment in Schedules: (Section 17)

The Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose any entry or part of entry from one Schedule to another or vary any entry or entries or the rate or rates or the point or points of levy or otherwise amend or modify any Schedule, prospectively or retrospectively, and thereupon

the Schedule shall be deemed to have been amended accordingly. However, the Government shall not vary the rate of tax so as to enhance it, in any case, exceeding forty paise in a rupee.

## **9. Determination of Taxable Turnover [Sections 11]**

For determination of "Taxable turnover" in relation to a dealer liable to pay tax on sale of goods, the following deductions are to be made from the dealer's gross turnover (aggregate of sales prices received or receivables):-

1. Turnover of Sales of goods specified in Schedule-1. [Section 11(a)]
2. Turnover of Sales in the course of inter-State trade or commerce; or outside the State; or in the course of the import of goods into or export of goods out of the territory of India. [Section 11(b)]
3. Turnover of sales of the goods specified in the 4<sup>th</sup> Schedule, the turnover of goods which is shown to the satisfaction of the Prescribed Authority to have been subjected to tax in the State. [Rule 9(a)]
4. Turnover of the sales made to the international organizations as mentioned in section 54 and specified in schedule-8. [Rule 9(g)]
5. Turnover of zero rated sales or exempted sales of the nature referred to in sub-sections (3), (4) and (5) of section 9. [Rule 9(h)]
6. Amount of Interest charged separately in the case of a hire-purchase transaction or any system of payment by installments. [Rule 9(c)]
7. Amounts allowed to purchasers in respect of goods returned by them to the dealer within a period of six months from the date of delivery. No claim of return of goods sold to any person shall be admissible, if the claim is not made in the tax return of the tax period in which the goods have been returned. Further, such claim shall be allowed only on the basis of debit note issued by the purchaser for the goods returned.[Rule 9(d)]
8. In case of a dealer who is the owner of tea sold in auction held at Guwahati under the auspices of the committee constituted under Government of Assam Notification No. MI.168/86/17, dated 6th June, 1986 and as reconstituted from time to time, his turnover on such tea (including containers thereof) (subject to the condition of producing specified documents etc. on demand). [Rule 9(e)]
9. Though the explanation to the definition of 'Sale price' itself excludes tax charged or chargeable under AVAT Act from 'Sale price', rule 9(f)

specifically allows the deduction of tax fraction in case the gross turnover includes tax element as in case of retail sales.

## **10. Determination of Taxable Turnover in case of Works Contract [Sections 11]**

1. As per section 11(c) read with rule 10, in order to determine the taxable turnover, the following charges towards "labour, services and other like charges" shall be deducted from Gross Turnover/value of the works contract.

- (a) labour charges for execution of the works;
- (b) Omitted
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of the works contract;
- (f) cost of establishment of the contractor to the extent it is relatable to the supply of labour and services;
- (g) other similar expenses relatable to the supply of labour and services; and
- (h) profit earned by the contractor to the extent it is relatable to the supply of labour and services;
- (i) the value of the land, as specified in the contract or if no value is specified in the contract then the value of land mentioned in land documents available or if such land documents are not available then the value of land calculated at the rate declared by appropriate Revenue Authority in case of construction of a building or civil structure or a part thereof, which is intended for sale.

2. As per proviso to aforesaid section and 6<sup>th</sup> schedule, in case where the contractor does not maintain proper accounts or the amount actually incurred towards charges for labour and other services and profit relating to supply of labour and services are not ascertainable from the accounts maintained by him, the amount of such charges for labour and services and such profit may, for the purposes of deductions, be determined on the basis of such

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percentage of the value of the works contract as specified below.

<b>Sl. No.</b>	<b>Description of works contract</b>	<b>Percentage of deduction under Section 11(c) not more than</b>
1.	Fabrication and installation of plants and machinery	15%
2.	Fabrication and erection of structural works, including fabrication, supply and erection of iron trusses, purlines etc.	20%
3.	Fabrication and installation of cranes and hoists	15%
4.	Fabrication and installation of elevators (lifts) and escalators.	15%
5.	Fabrication and installation of rolling shutters and collapsible gates.	15%
6.	Civil works like construction of building, bridges, road, rail road etc.	25%
7.	Installation of doors, doorframes, windows, window frames and grills.	25%
8.	Supplying and fixing of tiles, slabs, stones and sheets.	30%
	(i) Supplying and fixing of Mosaic tiles	
	(ii) Supplying and fixing of marble slab, polished granite stone and tiles (other than mosaic tiles)	20%
	(iii) Supply and fixing of slabs, stones and sheets other than those specified at item (i) and (ii) above	20%
9.	Supplying and installation of air-conditioning equipments including deep-freezers, cold storage plants, humidification plants and dehumidifiers.	20%
10.	Supplying and installation of air-conditioner and air-coolers.	20%
11.	Supplying and fitting of electrical goods, supply and installation of electrical equipment including	10%

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<b>Sl. No.</b>	<b>Description of works contract</b>	<b>Percentage of deduction under Section 11(c) not more than</b>
	transformers.	
12.	Supplying and fixing of furniture and fixtures, partitions including contracts for interior decoration.	15%
13.	Construction of railway coaches on under-carriage Supplied by railway.	20%
14.	Ship and boat building including construction of barges, ferries, tugs, trawlers and dredgers.	20%
15.	Sanitary fitting for plumbing for drainage etc.	15%
16.	Printing and polishing.	15%
17.	Construction of bodies of motor vehicles and construction of trailers.	25%
18.	Insulation and lining of equipment, plant and machinery instruments, appliances of buildings	15%
19.	Providing and laying of pipes for purposes other than those specified in serial number 15 of this schedule.	15%
20.	(i) Providing and laying pipes (other than steel pipes) for purposes other than those specified in serial number 15 of this schedule	15%
	(ii) Providing and laying of steel pipes for purpose other than those specified in serial number 15 of this schedule	15%
	(iii) Providing and boring, drilling and fitting of all types of pipes.	30%
21.	Programming and providing of computers software.	15%
22.	Fabrication, testing and reconditioning of metallic gas cylinders	20%
23.	Tyre re-treading	15%
24.	Processing and supplying of photograph, photo prints, photo negatives (including photographing with	15%

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<b>Sl. No.</b>	<b>Description of works contract</b>	<b>Percentage of deduction under Section 11(c) not more than</b>
	camera, X-ray and other scanning materials).	
25.	Supplying and installation of electronic instruments, equipment, apparatus, appliances & devices.	10%
26.	Supplying and installation of firefighting equipment and devices.	10%
27.	Electroplating and anodising.	25%
28.	Bowling, canning and packing of goods.	25%
29.	Lamination, rubberisation, coating and similar process.	25%
30.	Printing and block making.	20%
31.	Supply and erection of weighing machines and weigh bridges.	15%
32.	Supply and installation of submersible and centrifugal pump sets.	20%
33.	Dyeing and printing Textiles.	20%
34.	Construction on tankers on motor vehicles, chassis.	20%
35.	Supply and fixing of door and window curtains including Venetian blinds and nets.	15%
36.	Works contract not covered by serial number 1 to 35	20%
37.	Composite contracts involving two or more of the above categories	25%

**11. Deemed time of sale of goods [Section 18 (1)]**

Notwithstanding anything contained in the Sale of Goods Act, 1930, the time of sale of goods shall be deemed to be the earliest of the following,—

- (a) issue of the tax invoice;
- (b) receipt of payment, in full or in part;
- (c) transfer of title or possession of the goods or incorporation of the

goods in the course of execution of any works contract.

## **12. Deemed place of sale of goods [Section 18 (2)]**

A sale or purchase shall be deemed to have taken place in the State,—

- (a) in a case of works contract, if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of the works contract, notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State;
- (b) in a case of lease transaction (transfer of right to use), if the contract for the lease has been executed inside the State; or
- (c) in any other case, if the goods are within the State,
  - (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
  - (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior to or subsequent to such appropriation.

## **13. Adjustment in output Tax [Section 13]**

1. Adjustments as provided under this section shall be made where, in relation to a sale of taxable goods by any registered dealer,—

- (a) the sale has been cancelled; or
- (b) the nature of that sale has been fundamentally varied or altered, resulting in a change in the rate of tax applicable to that sale; or
- (c) the goods or part of the goods sold have been returned to the seller within six months from the date of sale,

and as a result of the occurrence of any one or more of the above-mentioned events, if,—

- (i) the amount of tax shown as charged in the tax invoice issued by a seller in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale; or
- (ii) the amount of output tax as accounted for and disclosed in the return filed by the dealer in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale.

2. Where a seller has accounted for either in the tax invoice or in the return an incorrect amount of output tax as contemplated in sub-section (1), such seller shall make an adjustment in calculating the tax payable by him in the return for the tax period during which it has become apparent that the output tax is incorrect. Such adjustment shall be made in the following manner,;—

- (a) if the output tax properly chargeable in relation to that sale exceeds the output tax actually accounted for by the seller, the amount of that excess shall be deemed to be tax charged by such seller in relation to a taxable sale attributable to the tax period in which the event referred to in sub-section (1) occurred, and shall not be attributable to any prior tax period; or
- (b) if the output tax actually accounted for exceeds the output tax properly chargeable in relation to that sale, such seller shall reduce the amount of output tax, attributable to the tax period in which the event referred to in sub-section (1) occurred, in terms of section 10 by that excess amount of tax:

Provided that the said deduction shall not be made where the excess tax has been borne by a purchaser of goods, and unless the amount of the excess tax has been repaid by the seller to the purchaser, whether in cash or by way of a credit against any amount owing to the seller by the purchaser.

3. (a) The amount of cash discounts, commission or trade discount shall not form part of 'sale price', gross turnover and taxable turnover, only if such cash discounts, commission or trade discount has been allowed by seller at the time of sale of goods and such discounts etc. are shown in the original invoice. In other words, discounts etc. allowed by the selling dealer after the sales shall not affect the 'sale price'.

(b) after issuing invoice, any amount is allowed by a selling dealer to a purchaser as cash discount or commission or trade discount or sales incentive or otherwise and such amount is adjusted through credit note issued by such selling dealer to the purchaser or by any other means, the selling dealer shall not be allowed to reduce his output tax liability on account of such deduction.

# Chapter-4

## Input Tax Credit

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### 1. Conditions for allowance of Input Tax Credit [Section 14]

1. Subject to other provisions of this section ITC shall be allowed to the extent of the amount of tax paid by the purchasing registered dealer as per valid Tax Invoice showing VAT amount separately on his intra-state purchase of taxable goods other than the goods specified in the 4<sup>th</sup> Schedule, from a registered dealer, which are intended for the purpose of,—

- (a) Sale or re-sale by him in the State; or
- (b) sale in the course of inter-state trade or commerce; or
- (c) sale in the course of export out of the territory of India; or
- (d) use as raw material in the manufacture and processing of taxable goods other than the goods specified in the 4<sup>th</sup> Schedule, intended for sale;
- (e) use as Capital goods in the manufacture and processing of taxable goods other than the goods specified in the 4<sup>th</sup> Schedule, intended for sale. [Section 14(3)].

Provided that if purchases are used partially for the purposes specified in this sub-section, the input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.

2. Tax Credit other than on Capital Goods can be claimed not before the end of the tax period, during which Tax Invoice is received.

### 2. Input tax Credit on Capital Goods [Section 14(5)]

Input tax credit on capital goods is admissible on capital goods other than the goods enumerated in 7<sup>th</sup> schedule of the Act and such claim will be allowed in 36 equal monthly installments from the date of commencement of commercial production. However in case of closure of business before the period specified above, no further input tax credit shall be allowed and input tax credit carried forward, if any, shall be forfeited.

### **3. Input tax Credit not admissible in few cases [Section 14]**

In the following cases, claim of ITC will not be admissible;

- (a) Tax paid on the purchases of goods used in the exploration, extraction, manufacture, processing or packing of goods specified in the 1<sup>st</sup> and 4<sup>th</sup> Schedules.
- (b) Tax paid by any Oil Refinery on the purchase of any goods including crude oil used in the refining, manufacturing, processing or packing of any petroleum products specified in any Schedule.
- (c) Tax paid on goods purchased from any unregistered dealer or from a dealer provisionally registered or from a dealer whose certificate of registration has been suspended or from a registered dealer who has been allowed or who has opted for composition schemes under section 20.
- (d) Tax paid on purchases of goods used as free samples or gift, or for personal consumption.
- (e) Tax paid on goods purchased for re-sale but not sold because of any theft, loss or destruction or any reason including natural calamity.
- (f) Tax paid on purchases of capital goods specified in the 7<sup>th</sup> Schedule.
- (g) Tax paid on purchase of goods which remains in stock at the time of closure of business.
- (h) Tax paid on purchases of goods which are used as fuel in generation of energy.
- (i) Tax paid on automobiles of any type including commercial vehicles, two and three wheelers, and spare parts for repair and maintenance thereof, food, beverages and tobacco products, air-conditioning units unless, the dealer is in the business of dealing /supplying of such goods.
- (j) A registered dealer who purchases goods specified in the Second, Third and Fifth Schedules of the Act within the State of Assam and manufactured by an industrial unit eligible for tax remission under Industrial schemes and sells such goods in the course of inter-state trade/commerce or in the course of export out of the territory of India or transfers such goods to other States not amounting to sale, shall not be entitled to input tax credit for the amount of tax shown to have

been charged in the corresponding tax invoice issued by the eligible industrial unit in respect of such sale or transfer.<sup>4</sup>

#### **4. Input tax Credit partly admissible or to be reversed partly [Section 14]**

1. Tax paid on purchases of goods dispatched to a place outside the State not as a direct result of sale in the course of inter-state trade is allowable only for the tax paid in excess of the amount of tax that would have been leviable had the goods been sold in the course of inter-state trade or commerce to a registered dealer. In case the ITC has already been claimed, the differential amount is to be reversed<sup>5</sup>.

2. Tax paid on purchases of goods used as raw material for manufacture of goods dispatched outside the State otherwise than by way of sale is allowable only for the tax paid in excess of the amount of tax that would have been leviable had the goods been sold in the course of inter-state trade or commerce to a registered dealer. In case the ITC has already been claimed, the differential amount is to be reversed.<sup>6</sup>

#### **5. Input tax Credit to be reversed [Section 14]**

1. Input tax credit already availed of shall stand reversed in the following circumstances (during the tax period in which such circumstances arise)—

- (i) if the dealer discontinues his business and holds the stock of taxable goods at the time of such discontinuance; or
- (ii) if the registration certificate granted to a dealer is cancelled and at the time of such cancellation, he holds the stock of taxable goods; or
- (iii) where excess input tax credit has been claimed; or
- (iv) if the purchased goods are returned to the selling dealer; or
- (v) if the credit note has been received from the selling dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act.
- (vi) If after claiming ITC the goods are stolen, lost or destroyed or used as free samples, gifts or used for personal consumption or for providing facilities to the employees including any residential accommodation.

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<sup>4</sup> Notification No. FTX. 71/2014/93-Dated 3<sup>rd</sup> July 2015

<sup>5</sup> Proviso inserted vide Notification No. LGL.6/2003/112, Dated 17<sup>th</sup> June 2015 [Assam VAT (Amendment) Ordinance Act 2015]

<sup>6</sup> Same as 5 above

(vii) If the goods were purchased with intention to use for allowable uses and later on such goods, fully or partly, have been used for the purposes on which input tax credit is not allowable. Section 14(12) further specifies that the methods that are used by a dealer to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied in the course of making taxable sales shall be fair and reasonable and the Commissioner may reject the method adopted by the dealer and calculate the amount of tax credit.

2. Where any purchaser, being a registered dealer, has been issued with a credit note or debit note or if he returns or rejects goods purchased, as a consequence of which the input tax credit availed of by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such shortfall or excess by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.

## **6. Determination of amount of Input Tax Credit [Section 14(11)]**

A registered dealer (subject to conditions mentioned earlier) may avail of the amount of net tax credit, which shall be determined in the following manner, namely:—

$$\text{Net Tax Credit} = A + B - C$$

(Where, "A" represents the amount of input tax credit the dealer is entitled to, "B" represents outstanding credit brought forward from the previous tax period, and

"C" represents reverse input tax credit)

## **7. Input tax Credit exceeding tax liability [Section 15]**

1. If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India for a period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act.

2. The excess input tax credit after aforesaid adjustment may be carried over to the subsequent period or periods. However, if a registered dealer has

an excess tax credit for 24 consecutive months, he shall make an application for refund of such unadjusted input tax credit and the Prescribed Authority shall ordinarily refund him the excess credit within 3 months of the receipt of the application.

## **8. Determination of Tax Payable [Section 16]**

1. In case of a registered dealer:

- The quantum of net tax payable for a tax period shall be the amount determined by adding Tax payable on purchases to the output tax payable on sales and deducting the aggregate amount of input tax credit for the said period and carried forward unutilized amount of input tax credit carried forward from previous period.
- If the amount so calculated is a negative quantum, the same may be adjusted at the option of the dealer against the tax liability for the said period under the Central Sales Tax Act, 1956. The resultant negative balance will be unutilized input tax credit and will be carried forward to next year.

2. In case of an unregistered dealer:

The quantum of tax payable for a tax period shall be equal to the output tax payable for the said period.

### **Example**

(1)	Say Eligible intra-state purchases during a particular tax period	₹ 80000/-
	Tax paid (Input tax credit)	₹ 11600/-
	Sales during the said period	₹ 100000/-
	Output Tax on sales	₹ 14500/-
	Tax Payable (14500-11600)	₹ 2900/-
(2)	Say Eligible intra-state purchases during a particular tax period	₹ 80000/-
	Tax paid (Input tax credit)	₹ 11600/-
	Sales during the said period	₹ 50000/-
	Output Tax on sales	₹ 7250/-
	Input Tax Credit carried forward (11600-7250)	₹ 4350/-

## Chapter-5

# Composition Scheme-Payment of Tax in lump sum

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### 1. Composition of Tax liability for Retailers [Section 20(1)]

#### For Retailers

- Composition Scheme

Government is empowered to notify composition scheme for registered retail dealer, whose gross turnover calculated from the commencement of any year first exceeds within such year the taxable quantum but does not exceed such amount as may be specified in the scheme and to permit the dealer to pay tax as per the scheme in lieu of the tax payable by him as per the provisions of the Act. Retail dealer for this purpose mean any dealer who purchases goods inside the State and re-sells the same exclusively within the State to a person, who purchases the goods for his own use and not for resale. [Section 20(1)(a)]

A composition for retail dealers has been notified by the Government under the aforesaid sub-section and as per the scheme notified on 06/06/2014, retail dealers whose annual gross turnover does not exceed ₹ 60 (sixty) lacs are eligible for opting the composition scheme. Rates of Tax under the said composition scheme are as under:-

Dealer's Category	Turnover	Tax
Category-(a)	Gross turnover above ₹ 6 lacs but up to 7 lacs	₹ 4000/- per annum
Category (a)	Gross turnover above ₹ 7 lacs but up to 8 lacs	₹ 5500/- per annum
Category (a)	Gross turnover above ₹ 8 lacs but up to 12 lacs	₹ 6000/- per annum
Category (a)	Gross turnover above ₹ 12 lacs but up to 60 lacs	½ (half) percent of gross Turnover

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Gross turnover includes the aggregate amount of sales of taxable and non-taxable goods.

- Retail Dealers who are not eligible for the composition scheme:-
  - (a) Whose annual gross turnover has crossed the limit of ` 60 lacs.
  - (b) Who is an importer or exporter to and from other States or other countries.
  - (c) Who have stock of taxable goods on which Sales tax has not been paid in the State.
  - (d) Who is manufacturer, works contractor or lessor.
  - (e) Who has claimed stock in hand under section 108 as on 1<sup>st</sup> May, 2005.
- Procedure for Composition scheme for Retail Traders:-
  - (a) The eligible dealer will make an application in Form Annexure-1, within 30 days of becoming liable to pay tax under AVAT Act, 2003.
  - (b) On being satisfied, the prescribed Authority shall grant a certificate in prescribed form and shall intimate the eligible applicant dealer regarding accepted estimated gross turnover (if it is up to ` 12 lacs) and the slab rate at which the dealer is liable to pay tax.
  - (c) A retailer who have been allowed composition scheme for accepted gross turnover up to ` 12 lacs only shall pay the fixed compounded amount of tax for the year within 30 (thirty) days of acceptance by the Prescribed Authority. For any subsequent year, the dealer shall submit annual return of previous year in Format RD-I and pay the compounded amount of tax on the basis of it within 31<sup>st</sup> May of the year.
  - (d) A retail dealer whose option for payment of compounded amount of tax has been accepted by the Prescribed Authority who falls under the afore-mentioned category (a), shall have to pay the fixed compounded amount of tax for the year.
  - (e) A dealer shall pay compounded tax at higher slab rate under the category (a), or migrate to category (b) during the subsequent year if he finds his annual gross turnover to be conforming to such higher slab rate under category (a) or category (b).
  - (f) A retail dealer whose turnover exceeds ₹ 12 lacs shall furnish a tax return in Format RD-I for each quarter within 21 days of the end of the

*Composition Scheme-Payment of Tax in lump sum*

quarter along with the evidence of tax payments and also furnish a consolidated annual return in the same format to the Prescribed Authority by 31st May to which such returns relates.

- (g) Every dealer opting to pay tax by way of composition under this notification shall—
- (i) display his certificate at the prominent location in place of business,
  - (ii) not collect taxes on his sales,
  - (iii) not issue or receive any tax invoice.
- (h) The retail dealer under the aforementioned category (b), whose gross turnover in a year exceeds Rupees 60 (sixty) lakhs, shall continue to pay tax by way of composition during that year and composition of tax in his case shall be effective only from 1st April of the next year.
- (i) The option once exercised shall be final and cannot be revoked by the dealer during the year except for the modification relating to slab.

## **2. Composition of Tax liability for Works Contractors [Section 20(2)]**

- Composition Scheme

Government is empowered to notify composition scheme for registered dealers liable to pay tax on sales effected by way of transfer of property in goods, involved in the execution of a works contract and permit such dealer to pay at his option, in lieu of the amount of tax payable by him under this Act, an amount by way of composition at the rate specified in the said notification but not exceeding five percent of the total contract value of the works contract. [Section 20(2)].

A Composition scheme for works contractor has been notified and has been last amended w.e.f. 01/04/2012 and the eligible works contractor who opts for the composition scheme will pay tax at his option, in lieu of the amount of tax payable by him under the provisions of the Act, by way of composition, an amount at the rate of **5% (five percent)** of the total aggregate value of the works contracts received or receivable by him,

The dealer opting for this scheme shall be eligible to make inter-state purchases on the strength of declarations in Form "C". The dealer shall also be eligible to make use of "Delivery Note" (Form 61) for the purpose of

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importing the consignments for being used in execution of works contract into Assam.

The dealer under this scheme shall file quarterly returns in Form- WC 3 along with the evidences of tax payments within 21 days of the end of the quarter and shall file annual return in the same form within two months of the end of the respective Financial Year.

The dealer shall pay the tax under this scheme for the month within 21 days of the end of the concerned month.

- Conditions and procedure for Composition Scheme:
  - (a) The dealer who elects to compound the tax for any year under this Scheme shall submit an application duly signed by competent person in Form-WC-1 to the Prescribed Authority, within thirty days from the commencement of the Scheme or within thirty days from the date of the commencement of the business of works contract, if he commences such business of works contract after the commencement of the Scheme and also by 30<sup>th</sup> April of every subsequent year. The prescribed authority, on sufficient cause, may condone the delay up to 60 days.
  - (b) The prescribed authority after making necessary enquiry and verification may permit the applicant dealer to pay tax as per composition scheme for the year. Such permission will be granted in form WC-2 within 30 days of the receipt of the application and shall be valid for a particular year.
  - (c) Once the composition certificate is issued, the dealer during the composition period shall not be entitled to opt out of the Scheme for part of the financial year.
  - (d) A dealer who has been awarded more than one contract in the State shall have to opt for making payment of tax by way of composition in respect of all the contracts.
  - (e) The Prescribed Authority may cancel such permission in the following cases:-
    - (i) if the dealer fails to pay tax or file the tax return within the prescribed period;
    - (ii) if it appears to the Prescribed Authority that the dealer has suppressed whole or part of turnover in the return filed by him,

*Composition Scheme-Payment of Tax in lump sum*

or the return filed by the dealer appears to be incomplete or incorrect;

- (iii) if the dealer contravenes any provisions of the Act or the Rules made there under.
- (f) The concerned Prescribed Authority, after conducting such verification, as may be necessary, may permit such dealer to pay in lieu of the amount of tax payable by him during the year, in respect of which such permission is granted, an amount by way of composition as provided in this Scheme.
- (g) The person responsible for deducting TDS under section 47(1) shall be supplied with the copy of the permission under this scheme and accordingly such person shall deduct tax at source @5% from any amount paid to such dealer.
- (h) The dealer opting for composition of tax under this Scheme shall be subject to all other provisions of the Assam Value Added Tax Act, 2003 and rules made there under and the terms and conditions contained in this Scheme.
- (i) Every dealer opting for this composition scheme shall—
  - (i) display his certificate at the prominent location in place of business
  - (ii) pay tax as per the scheme
  - (iii) not issue or receive any tax invoice.
- (j) The dealer shall also keep complete account of, payments receivable by him for the execution of the contract and, the payments actually received by him.

**3. Composition of Tax liability for Real Estate Developers [Section 20(2)]**

- A “composition scheme for Real Estate Developer” has also been notified for registered dealer who transfers property in goods involved in the execution of works contract of construction of flat, dwellings, buildings or premises and in which transfer along with land or interest underlying the land is envisaged and permits such registered dealer to pay at his option, in lieu of the amount of tax payable by him under the provisions of the Act, by way of composition, an amount at the rate of

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1% of the aggregate amount specified in the agreement entered into between the dealer and the purchaser of flats, dwellings, buildings, or premises or value specified for the purpose of stamp duty in respect of the said agreement under the Indian Stamp (Assam Amendment) Act, 2004.

- Conditions and procedure for composition Scheme:
  - (a) The dealer who opts to compound the tax for any year under this Scheme shall submit an application duly signed by competent person in Form-WC-1 within 30 days from the commencement of the Scheme or within 30 days from the date of the commencement of the said business, whichever is later and also by 30<sup>th</sup> April of every subsequent year. The delay up to 60 days may be condoned.
  - (b) The prescribed authority after making necessary enquiry and verification may permit the applicant dealer to pay tax by way of composition as provided in this Scheme. Such permission shall be granted in Annexure-2 within 30 days of the receipt of the application and shall be valid for a particular year.
  - (c) Once the composition certificate is issued, the dealer during the composition period shall not be entitled to opt out of the Scheme for part of the financial year.
  - (d) The Prescribed Authority may cancel such permission in the following cases:-
    - (i) if the dealer fails to pay tax or file the tax return within the prescribed period;
    - (ii) if it appears to the Prescribed Authority that the dealer has suppressed whole or part of turnover in the return filed by him, or, the return filed by the dealer appears to be incomplete or incorrect;
    - (iii) if the dealer contravenes any provisions of the Act or the Rules made there under.
  - (e) The dealer opting for this scheme shall not be entitled to procure goods from outside the State, using the declarations in form 'C' or form 'F' under the CST Act, 1956.
  - (f) The dealer under this scheme shall file quarterly returns in Form-Annexure-3 along with the evidences of tax payments within 21 days

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of the end of the quarter and shall file annual return in the same form within 2 months of the end of the respective Financial Year.

- (g) The dealer shall pay the tax under this scheme for the month within 21 days of the end of the concerned month.
- (h) The dealer opting for composition of tax under this Scheme shall be subject to all other provisions of this Act and rules made there under and the terms and conditions contained in this Scheme.
- (i) Every dealer opting for this composition scheme shall—
  - (i) display his certificate at the prominent location in place of business
  - (ii) pay tax as per the scheme
  - (iii) not issue or receive any tax invoice.
- (j) The dealer shall also keep complete account of, payments receivable by him for the execution of the contract and, the payments actually received by him.

**4. Composition Scheme for ‘Construction Committees’ executing various Schemes under MLA & MP local area development fund [Section 20(2)]**

- A composition scheme has also been notified for Construction Committees executing various Schemes under MLA and MP Local Area Development Fund to pay, in lieu of amount of tax payable by such Committee under the provision of the Act by way of composition of an amount at the rate of 1% of the total aggregate value of such Scheme received or receivable by such Committee.
- The aforesaid scheme is subject to the following two conditions:-
  - (a) The Deputy Commissioner of the District shall deduct tax at the rate of 1% of the total aggregate value of such Scheme at the time of release of such amount and deposit the said amount in the Government treasury.
  - (b) The Deputy Commissioner shall issue a certificate on the amount of deduction of tax made and furnish the same to the Construction Committee.

## **5. Composition of Tax liability for Construction Committees constituted for executing various schemes under various Government Departments [Section 20(2)]**

- A composition scheme has also been notified for Construction Committees constituted for executing schemes under various Government Departments permitting such committee to pay, in lieu of amount of tax payable under the Act by way of composition an amount at the rate of 4% of the aggregate value of works involved in such schemes exceeding rupees four lacs received or receivable by such committee.
- The aforesaid scheme is subject to the following two conditions:-
  - (a) The Department shall deduct tax at the rate of four paise in rupee of the total aggregate value of works involved in such Schemes at the time of release of such amount and deposit the said amount in the Government treasury.
  - (b) The Department shall issue a certificate on the amount of deduction of tax made and furnish the same to the Construction Committee.

## **6. Composition of Tax liability for some other class of dealers [Section 20(3)]**

- Government is empowered to notify composition scheme and permit any class of dealers, to pay in lieu of the tax payable under this Act, for any period, an amount, linked with the production capacity or the extent of business, or calculated at a fixed rate of gross receipts of business or some such other thing, to be determined by the Government by way of composition and may prescribe simplified system of maintenance of accounts and filing of returns which shall remain in force during the period of such composition. [Section 20(3)]
- **Composition scheme for Marble Dealers**

A Composition scheme for Marble Dealers has been notified and has been last amended on 25/06/2013 and the registered Marble dealers have been permitted to pay at their option, composite tax in lieu of the amount of tax payable under the Act.

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(a) Rate of tax:

The dealer under the composition scheme will be liable to pay the following amount of tax on import of Marble in the State-

(a)	Import through six wheeler truck	₹ 45,000/- per truck
(b)	Import through ten wheeler truck	₹ 75,000/- per truck
(c)	Import through trailer truck	₹ 75,000/- per truck
(a)	Import otherwise through above	₹ 2,000/- per tonne

(b) Conditions and procedures:

- (i) The dealer who elects to compound the tax shall submit an application duly signed by competent person in Form-Annexure-1, within 30 days from the commencement of the Scheme or within 30 days from the date of the commencement of the said business, whichever is later and also by 15<sup>th</sup> April of every subsequent year. A delay up to 60 days may be condoned.
- (ii) The prescribed authority, after making necessary enquiry and verification, may permit the applicant dealer to pay tax by way of composition as provided in this Scheme. Such permission, which shall be valid for a particular year will be granted in form Annexure-2 within 30 days of the receipt of the application.
- (iii) Once the composition certificate is issued, the dealer during the composition period shall not be entitled to opt out of the Scheme for a part of the financial year.
- (iv) The dealer opting for composition scheme shall be eligible to make inter-state purchase of goods on the strength of 'C' forms (prescribed under the CST Rules, 1957).
- (v) The dealer shall, before the expiry of the next succeeding month, submit a monthly statement showing truck-wise import of consignments of marble made during the calendar month on the strength of each delivery note with corresponding details of consignor, bill number and date, amount and quantity. Such statement shall be accompanied by a receipt from the designated bank for the full amount of composition amount payable on his taxable import of marble during the month to which the statement relates. For delayed payments, interest will be levied as per provisions of the said Act.

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- (vi) The dealer under this Scheme shall be subject to other provisions of this Act and rules made there under and the terms and conditions contained in this Scheme.
- (vii) Any dispute arising in connection with this scheme would be settled by the Government as per provisions of the Act or the Rules and the order of the Government in this behalf shall be final.

• **Composition scheme for Brick Dealers (Kiln Owners):**

A Composition scheme for Brick Dealers has been notified and has been last amended on 25/06/2013, and Brick Kiln owners have been permitted to pay at their option, the tax as per composition scheme. The scheme will be applicable on all Brick Kiln owners, except those who desire to pay tax as per his books of accounts and had made an application in this regard within 60 days of the date of notification.

(a) Rate of tax for each Kiln:

Sl. No.	Capacity of Kiln	Category	Annual rate of lump sum tax payable on sales
1	25 payas and above	A	₹ 1,00,000/-
2	21 payas to 24 payas	B	₹ 80,000/-
3	Up to 20 payas	C	₹ 60,000/-

The composition amount for each of the subsequent 4 years shall be equivalent to 105% of the composition amount for immediately preceding year. The above rates of lump-sum tax shall be applicable for each kiln and a brick kiln owner having more than one kiln even at the same site shall be liable to pay the lump-sum tax for each kiln.

(b) Conditions and procedures:

- (i) A brick kiln owner means the owner or the person in-charge of a brick kiln which is neither operated mechanically nor has the facility of being so operated. Mechanical operation shall include all processes from preparation of mud for making katcha bricks to baking and removal of baked bricks.
- (ii) Every brick kiln owner shall obtain a Tax Clearance Certificate from the concerned Prescribed Authority before applying for permission from the Secretary, Mahkuma Parisad or any other

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Authority for the purpose of opening or operating every kiln. The concerned Prescribed Authority, on receipt of an application for issue of Tax Clearance Certificate, shall issue such certificate or refuse it with reasons thereof within a period of 30 days from the date of receipt of the application submitted by the brick kiln owner, failing which, the brick kiln owner shall be at liberty to presume that Tax Clearance Certificate has been given.

- (iii) A brick kiln owner liable to pay the lump-sum amount of tax shall, within 20 days of the commencement of every financial year or the date of his liability whichever is later shall inform the appropriate authority about the capacity of his kiln in the following format, failing which his kiln shall be deemed to be of category-A for all purposes.

F O R M A T

I, Shri..... aged ..... years, son of Shri....., resident of village/town.....tehsil..... District..... Proprietor/Partner/Manager/Managing Director/Director of ..... holding General Registration Number in respect of the brick kiln situated at..... District .....do hereby declare that my/our brick kiln falls in the category ..... as specified in rate schedule, as the brick kiln is of the capacity of .....

Signature

- (iv) If the dealer fails to pay the tax payable as per this scheme, a penalty not exceeding one and a half times the amount of tax which he is liable to pay, may be imposed on him. He shall be liable to pay simple interest on late payment at 18% p.a.
- (v) The dealer opting for composition of tax under this Scheme shall be subject to other provisions of this Act and rules made thereunder and the terms and conditions contained in this Scheme.
- (vi) The option once exercised shall be final and cannot be revoked by the dealer.

• **Composition scheme for Dealers of Potato, Onion and Garlic:**

A Composition scheme for registered Dealers dealing in Potato, Onion and

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Garlic has been notified and such dealers have been permitted to pay at their option, composite tax in lieu of the amount of tax payable under the Act.

(a) Rate of tax:

The dealer is liable to pay tax on inter-state purchases of Potato, Onion and Garlic respectively at the rate of ₹ 100/-, ₹ 200/- and ₹ 400/- per tonne.

(b) Conditions and procedure for composition Scheme:

- (i) The dealer who elects to compound the tax for any year under this Scheme shall submit an application duly signed by competent person in Form-Annexure-1 to the Prescribed Authority, within 30 days of the commencement of the Scheme or within 30 days of the date of the commencement of the said business if he commences such business of works contract after the commencement of the Scheme and also by 15<sup>th</sup> April of the every subsequent year. Delay up to 60 days may be condoned.
- (ii) The prescribed authority after making necessary enquiry and verification may permit the applicant dealer to pay tax as per composition scheme for the year. Such permission will be granted in form Annexure-II within 30 days of the receipt of the application and shall be valid for a particular year.
- (iii) Once the composition certificate is issued, the dealer during the composition period shall not be entitled to opt out of the Scheme for a part of the financial year.
- (iv) The dealer shall, before the expiry of the next succeeding month, submit a monthly statement showing truck wise import of consignments of such goods made during a calendar month on the strength of each delivery note with corresponding details of consignor, bill number and date, amount and quantity. Such statement shall be accompanied by a receipt from the designated bank for the full amount of composition amount payable on his taxable import of such goods during the concerned month. For delayed payments, interest will be levied as per provisions of the said Act.
- (v) The dealer under this scheme shall be eligible to make inter-state purchase of goods on the strength of declarations in Form "C" prescribed under the CST Rules, 1957. The dealer shall also

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be eligible to make use of "Delivery Note" (Form 61) for the purpose of importing the consignments of marble into Assam.

(vi) The option once exercised shall be final and cannot be revoked by the dealer.

- **Composition scheme for dealers serving or selling of sweetmeats, snacks, cooked food, milk and non-alcoholic beverages:**

A Composition scheme for registered Dealers for dealers serving or selling of sweetmeats, snacks, cooked food, milk and non-alcoholic beverages, whose gross turnover does not exceed ₹ 10 lacs, has been notified and such dealers have been permitted to pay at their option, composite tax in lieu of the amount of tax payable under the Act.

(a) Rate of tax:

<b>Conditions</b>	<b>Amount of Tax per annum</b>
If the annual gross turnover exceeds rupees 6(six) lakhs, but does not exceed rupees 8(eight) lakhs and employ or engage staff/workmen not exceeding five in number	₹ 15,000/-
If the annual gross turnover exceeds rupees 8(eight) lakhs, but does not exceed rupees 10(ten) lakhs and employ or engage staff/workmen not exceeding seven in number	₹ 22,000/-

(b) Conditions and procedure for composition Scheme:

(i) The eligible dealer who desires to opt for this scheme shall submit an application duly signed by competent person in Form-Annexure-1 to the Prescribed Authority. Any eligible dealer becoming liable to payment of tax after commencement of this notification shall file application within 30(thirty) days of becoming so liable.

(ii) On being satisfied, the Prescribed Authority shall grant certificate of registration in Form-5 of AVAT rules and shall also intimate accepted estimated turnover and the slab rate at which the dealer is liable to pay.

(iii) The option once exercised shall be final and cannot be revoked by the dealer during the year.

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- (iv) Such dealer shall have to deposit the amount of tax within 30 days of aforesaid grant of certificate. For any subsequent year, the dealer shall submit annual return of previous year in Annexure-II and pay the compounded amount of tax on the basis of it by 31st May of the year.
  - (v) The dealer under this scheme shall not be eligible to make inter-state purchase of goods or any other transaction governed by the CST Act, 1956 and shall also not be allowed to use statutory forms like Delivery Note.
  - (vi) In determining the gross turnover, the sales of both taxable and tax free goods made by the dealer shall be taken into account.
  - (vii) Every dealer opting for this composition scheme shall—
    - (a) display his certificate at the prominent location in place of business
    - (b) not collect taxes on sales
    - (c) not issue or receive any tax invoice.
  - (viii) The dealer whose gross turnover in a year exceeds ten lakh rupees shall continue to pay tax by way of composition during that year and composition of tax in his case shall cease to have effect only from 1st April of the next year.
  - (ix) The dealer opting for consumption of tax under this notification shall be subject to all other provisions of the Act and Rules as maybe mutatis mutandis applicable.
- **Composition scheme for Pharmacy/ Chemist Shop was notified on 02/02/2008, but due to change of the schedule of drugs and medicines, the said composition scheme has become redundant.**

# Chapter-6

## Registration Requirements and Procedures

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**A. Registration of a dealer is possible in the following four ways:**  
(Except registration of transporters, which is discussed separately)

**1. Compulsory Registration**

Any dealer, who is not dealing exclusively in tax free goods and who is liable to pay tax as per section 7, shall not carry on the business as a dealer unless he has been registered and possesses a certificate of registration. Every dealer liable to pay tax or registered or required to be registered under CST Act, 1956 shall also require applying for registration under this Act. [Section 21(1)]

**2. Registration by Prescribed Authority**

If the Prescribed Authority is satisfied that any dealer liable to pay tax, has failed to get himself registered, the Prescribed Authority shall, in addition to taking any other action under the provisions of this Act, register him as if an application for registration had been made. [Section 22(1)]

**3. Voluntary Registration**

A dealer who desires to get himself registered voluntarily, notwithstanding that he is not liable to pay tax, may apply in the prescribed manner to the Prescribed Authority for registration under this Act. [Section 23(1)]

**4. Provisional Registration**

Any person, who intends to manufacture any taxable goods but is otherwise not liable for registration, may make an application in the prescribed manner to the Prescribed Authority for provisional registration. A dealer who is liable to be registered under section 21 shall not be eligible for a provisional certificate. [Section 24(1)]

## **B. Application for Registration**

Dealer liable to pay tax shall apply for registration in Form-2 within 30 days from the date on which he is first liable to pay tax as per rule 13(1) for the purpose of section 21(1). Applications under sections 22 and 23 shall also be made in Form-2. The Prescribed Authority shall grant certificate of registration in Form-3. A dealer, who opts for composition scheme under section 20 or casual dealer, shall apply in Form-4 and he shall be granted certificate of registration in Form-5.

## **C. Enquiry and satisfaction of Prescribed Authority**

Upon receipt of applications under section 21, 23 or 24, the Prescribed Authority may conduct such inquiry as he deems fit and may call for such evidence and information as he may deem necessary and after the inquiry, if any, and after considering the evidence and information, if any, if he is satisfied that the application for registration made under this section is in order, he shall register issue to him a certificate of registration in the prescribed form (Form No. 3 in case of TIN and Form no. 5 in case of GRN) which shall specify the class or classes of goods dealt in or manufactured by him. The certificate of registration so granted shall not be transferable.

## **D. Registration Number**

For the purpose of identification, unique registration number will be allotted and mentioned in the registration certificates, in case of dealer liable to file application in Form 4, General Registration Number (GRN); in case of dealer liable to file application in Form -2, Taxpayer Identification Number (TIN) will be allotted.

## **E. Multiple Registration Numbers**

Dealer may be allotted TIN for business not under composition scheme as well as separate and distinct GRN for each type of business activity qualifying for separate composition scheme(s) notified under the Act. The dealer shall keep separate sets of accounts in respect of each of such activities and shall submit separate returns, statements or communications to the concerned Prescribed Authority.

Where any dealer sets up any additional new industrial unit(s) of production and intends to avail benefit of tax concession as per scheme announced by the Government, he shall have to file separate application for registration in

Form-2 in each of such cases and shall be allotted separate and distinct Tax Identification Number (TIN). The dealer shall keep separate sets of accounts in respect of each of such units of production and shall submit separate returns, statements or communications.

## **F. Penalty for failure to get registered [Section 26]**

1. If a dealer, fails to apply for registration within stipulated time of 30 days, he shall be liable to pay a penalty which shall be ₹ 100/- for each day of default and such dealer shall, before filing the application for registration, deposit the penalty for the period from the day next to the date of expiry of thirty days to the date immediately preceding the date of application.

2. If it appears to the Prescribed Authority that the date of liability as disclosed in the application form is later than actual date of liability, resulting in short payment of penalty by the dealer, or where the dealer has failed to apply for registration on being asked so to do, or where the dealer has filed the application for registration but has failed to deposit the amount of penalty before filing such application, he, the Prescribed Authority, may, after giving the dealer a reasonable opportunity of being heard, by an order impose by way of penalty a sum not less than one hundred rupees and not exceeding three hundred rupees, for every day of default.

## **G. Filing of Applications**

As discussed above the dealer required to be registered is to file application in Form-2 or Form-4 within the prescribed time of 30 days. In case of late application, a penalty of ₹ 100/- per day for the days of default should also be deposited along with the application.

Where a dealer has more than one place of business within the State, he shall make a single application in respect of all such places specifying therein one of such places as the principal place of business and submit such application to the Prescribed Authority within whose jurisdiction the principal place of business of the dealer is situated.

The Application shall be accompanied with the following documents:-

- (a) Challan of ₹ 100/- for registration fee
- (b) Recent passport size photograph the signatory (2 copies)
- (c) Copy of PAN Card

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- (d) Rent Agreement
- (e) Copy of Deed of Partnership. Articles of Association & Memorandum, as applicable.
- (f) Copy of Municipal Trade License
- (g) Bank Account (Xerox copy of pass book/ cheque book)
- (h) Copy of Current Bank Account (Mandatory in case of section 23)
- (i) Annexure-I , Annexure-II of Form-2
- (j) Identity Proof
- (k) Form-72 (Declaration of manager as per section rule 51, section 91)

## **H. Security to be furnished [Section 25]**

*Security for registration:*

Where it appears to the Prescribed Authority to be necessary to do so for the proper realization of the tax payable under this Act or for the proper custody and use of the forms, he may direct the dealer to deposit the security as a pre-condition for registration. [Section 25(1)]

*Security after registration:*

Where it appears to the Prescribed Authority that granting a certificate of registration is necessary for the proper realization of tax payable under this Act or for the proper custody and use of the forms, he may, at any time while such certificate is in force, require the dealer to furnish such security or additional security within specified time and manner. [Section 25(2)]

*Security from unregistered person:*

The Prescribed Authority may demand from any person other than a registered dealer who imports into the State any consignment of goods, a reasonable security for ensuring that there is no evasion of tax. [Section 25(3)]

*Quantum of Security Deposits:*

The amount of security which a dealer may be required to furnish shall not exceed, the sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for a tax period of the year in which such security or, as the case may be, additional security is required to be furnished. [Section 25(5)]

## *Registration Requirements and Procedures*

### *Form of Security: [Rule 14(1)]*

Security or additional security under section 25 may be furnished by a dealer in any of the following manner, namely:-

- (a) by paying the amount direct into the Designated Bank by means of challans; or
- (b) by furnishing of security or additional security in the form of Government securities; or
- (c) by depositing National Savings Certificates, face value of which is not less than the amount of security or additional security required, duly pledged in favour of such authority; or
- (d) by furnishing guarantee from a bank, approved in this behalf by the concerned Prescribed authority.

### *Forfeiture of Security Deposits:*

The Prescribed Authority, for good and sufficient reasons, may forfeit the whole or any part of the security or additional security, furnished by a dealer, for (a) realizing or recovery of tax or any other sum due; or (b) recovery of any financial loss caused to the Government due to negligence or default in making proper use of statutory forms or in keeping in safe custody, blank or unused statutory forms. [Section 25(7)]

## **I. Effective date of Registration**

In case of applications under sections 21, the registration shall be effective from the date of liability where the application for registration is made within the prescribed time of 30 days. In case of late application or in cases of applications u/s. 23 or 24, the registration shall be granted w.e.f. the date of application. In case of registration under section 22, registration will be effective from the date of issue of Registration certificate. In the case of late application under section 21 or in the case of registration under section 22, the dealer shall remain liable to pay tax as an unregistered dealer for the period from the date of liability to the date preceding the date of effect of registration.

## **J. Period of Registration & Cancellation**

Registration of a dealer on application made u/s. 23 or 24 shall be in force for a period of 3 complete years and shall be deemed to have been cancelled on the expiry of the said 3 years unless the Prescribed Authority on an

application made by the dealer is satisfied that the provisions of section 21 have since become applicable to him.

A dealer registered on application made under section 23 may apply, not less than 6 months prior to the end of a year, for cancellation of such registration to take effect at the end of the current year and unless the dealer is liable to pay tax under this Act, the registration may accordingly be cancelled.

## **K. Certificate of Registration**

When the Prescribed Authority grants a registration to a dealer, it shall issue a certificate of registration, which shall be in Form-3 or Form-5 as, the case may be. The Prescribed Authority shall also issue a certified copy of such certificate in respect of every additional place of business. Such certificate should be held by the dealer subject to the provisions of the Act and these rules and the restrictions and conditions specified in the certificate.

Every registered dealer shall display his certificate of registration at a conspicuous place at the principal place of business mentioned in such certificate, and a certified copy of such certificate shall be displayed at a conspicuous place at every other place of business within the State.

Rupees fifty for duplicate copy the certificate of registration and also for each copy of the certificate for each additional place of business will be payable vide bank challan.

## **L. Liability to obtain registration and to furnish information by transporter (Section 28)**

Every transporter engaged in the business of transporting taxable goods in the State shall submit an application duly filled up and signed by competent person in Form-10 within 30 days of the commencement of business and get himself registered. Certificate of registration will be granted in Form-11.

Where any transporter fails to get himself registered as per provision of clause (a) of sub-section (1), the Prescribed Authority may direct him to pay by way of penalty an amount not exceeding ₹ 5,000/- for the first offence and if the offence is a continuing one with a fine not exceeding ₹ 500/- for every day during which the offence continues.

## Chapter-7

# Amendment, Suspension and Cancellation of Registration Certificate

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### A. Amendment of certificate

Any registered dealer, who,

- (a) sells or otherwise disposes of his business or any part of his business or effects any change in the ownership of his business or comes to know of any such change or discontinues his business or changes his place of business or opens a new place of business; or
- (b) discontinues or changes his warehouse or opens a new warehouse or changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration; or
- (c) being a company, effects any change in the constitution of its board of directors; or
- (d) being a firm, change its constitution without getting dissolved; or
- (e) effects a change in the name of his business; or
- (f) is a trust and there is a change in the trustees thereof; or
- (g) is a HUF and the business of such family is converted into a partnership business with all or any of the co-partners as partners thereof; or
- (h) is a firm or a company or a trust or any other set up and change in the management of such firm, company, trust or other set up takes place; or
- (i) effects any change in the particulars furnished in an application for registration; or
- (j) applies for or has an application made against him for insolvency or liquidation, within 14 days of the occurrence of aforesaid events,

shall submit an application in Form-8 or Form-9 as applicable along with certificate of registration and evidences of changes along with fees of ₹ 50/- by affixing court fee stamps. If any such dealer dies, his legal representative shall, in the like manner, apply for the same.

In case of late application, if the prescribed authority is not satisfied about the reason of delay, he may levy a penalty of a sum of ₹ 100/- per day of default subject to a maximum of ₹ 5000/-.

Irrespective of the date of application, the amendment shall take effect from the date of contingency which necessitates the amendment. However, where in consequence of a change in the ownership of a business, the liability of a dealer to pay tax ceases, the amendment of the certificate of registration shall take effect from the date on which information in respect of such change is furnished.

## **B. Cancellation of registration**

- (1) In a case, where,—
  - (a) any business in respect of which a certificate of registration has been granted to a dealer, has been discontinued; or [Section 27(7)(a)]
  - (b) there is transfer of business by a dealer and the transferee already holds a certificate of registration under this Act; or [Section 27(7)(b)]
  - (c) a dealer has ceased to be liable to pay tax; or [Section 27(7)(c)]
  - (d) an incorporated body is closed down or if it otherwise has ceased to exist; or [Section 27(7)(d)]
  - (e) the owner of an ownership business has died leaving no successor to carry on business; or [Section 27(7)(e)]
  - (f) a firm or association of persons has been dissolved, [Section 27(7)(f)]

the dealer shall apply for cancellation of his registration to the Prescribed Authority, in Form-8 as applicable along with copy of registration certificate within 14 days of such occurrence surrender the certificate of registration along with the application for cancellation.

On receipt of such application or where no such application has been made, after due notice to the dealer and after making such enquiry as he may deem fit, if the Prescribed Authority is satisfied, he may cancel any such certificate of registration.

### *Amendment, Suspension and Cancellation of Registration Certificate*

If a dealer fails without sufficient cause to comply with the aforesaid provisions fails to surrender his certificate of registration, the Prescribed Authority may, by an order in writing, direct that the dealer shall pay, by way of penalty, a sum not exceeding one hundred rupees for every day of default.

(2) The Prescribed Authority may at any time, for reasons to be recorded in writing and after giving the dealer a reasonable opportunity of being heard, cancel his certificate of registration from such date as he may specify, if a dealer-

- (a) has failed to file three consecutive returns under this Act, within the time prescribed; or
- (b) knowingly furnishes incomplete or incorrect particulars in his returns; or
- (c) has failed to pay any tax due from him under the provisions of this Act; or
- (d) having issued tax invoices or retail invoices, has failed to account for the said invoices in his books of account; or
- (e) holds or accepts or furnishes or causes to be furnished a declaration, which he knows, or has reason to believe to be false; or
- (f) who has been required to furnish security under the provisions of section 25, but has failed to furnish such security; or
- (g) contravenes or has contravened any of the provisions of this Act; or
- (h) has been convicted of an offence under this Act; or
- (i) discontinues his business and has failed to furnish information regarding such discontinuation; or
- (j) without entering into a transaction of sale issues to another dealer tax invoice, retail invoice, bill or cash memorandum with the intention of defrauding the Government of its revenue or with the intention that the Government may be defrauded of its revenue.

### **C. Suspension of certificate of registration**

- (a) When any registered dealer has failed to pay any tax, interest, penalty or any other sum payable under this Act or has failed to furnish a return, the certificate of registration of such dealer may be suspended by the Prescribed Authority.

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- (b) Suspension shall be withdrawn and the certificate of registration shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return or returns within 45 days from the date of suspension.
- (c) If the certificate of registration of a dealer is suspended or cancelled or if the suspension is withdrawn, the information may be made public through publication in the Official Gazette and insertion of notice in newspapers.

**D. Certificate of registration, when deemed to be in-operative**

The certificate of registration shall be deemed to be in-operative,—

- (a) in case of clause (a) or clause (b) of sub-section (7) with effect from the date of discontinuance or transfer of the business as the case may be;
- (b) in case of clauses (c), (d), (e) and (f) of sub-section (7) from the date on which the dealer's liability to pay tax has ceased,

notwithstanding the fact that the order of cancellation is passed or that the particulars of the dealer regarding cancellation are published, as required under sub-section (15), in the Official Gazette after the aforesaid date.

# Chapter-8

## Filing of Returns

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### 1. Who is liable to file return

Every registered dealer and every dealer liable to pay tax shall furnish a correct and complete tax return in Form 13 &14 or in forms specified under Industrial or composition schemes, as applicable. [Section 29(1)]

### 2. When are the returns to be filed [Rule 17]

Every registered dealer and every dealer liable to pay tax shall furnish, correct and complete and signed by the competent persons, periodical returns and annual tax returns. [Section 29(1)]

Periodical returns by every registered dealer or dealer liable to pay tax under this Act		Period & Form	Due Date
a)	Whose turnover of taxable goods in any assessment year exceeds ₹ 40 lacs.	Monthly (Form- 13)	By 21 <sup>st</sup> day of the succeeding month.
b)	Whose turnover of taxable goods in any assessment year does not exceed ₹ 40 lacs.	Quarterly (Form-13)	By 21 <sup>st</sup> day of the month following the quarter.
Annual returns by every registered dealer or dealer liable to pay tax under this Act		Form	Due Date
a)	If the dealer is liable for Audit under section 62.	Annual (Form- 14)	Within seven months after the close of the year to which the return relates.
b)	If the dealer is not liable for Audit under section 62.	Annual (Form- 14)	Within two months after the close of the year to which the return relates.

Notwithstanding anything contained above.

- (a) Eligible industrial units under Industrial Schemes of Assam shall file their returns in the manner and in form specified in the scheme.

- (b) Notwithstanding anything contained above, every registered dealer who is permitted to avail any scheme of composition of any tax liability shall furnish returns and/or statement of the quantity of goods imported in the manner laid down in such scheme.

### **3. How to file the returns [Rule 17B]**

- A. Every dealer who has been selected by the Commissioner under Rule 17B(1) or who opts for filing return electronically shall file his returns electronically.
- B. Due dates of filing of electronic returns are the same as for filing of paper returns.
- C. Dealers who have filed electronic returns shall also furnish the returns in prescribed form in the paper form (it is generated when someone files his return electronically) within 30 days of the date of filing return electronically for a particular period/year.
- D. As per the Circular dated 9<sup>th</sup> June, 2014, the following registered dealers have been selected for filing the returns electronically:-
- (a) Dealers registered under CST Act, 1956.
  - (b) Dealers registered as “Company” under the Companies Act, 1956.
  - (c) Dealers, who are not covered by the aforesaid two categories and whose annual gross turnover exceeds ₹ 10 lacs in any of the last 3 financial years.
- E. Dealers other than the dealers covered by the aforesaid circular and other than the dealers who have opted for filing the returns electronically shall file returns in paper form.

### **4. Revised Returns [Section 29(4), Rule 17(8)]**

- If any dealer having furnished a tax return or an annual return under this section, discovers any omission or any other error in the return so filed, he may without prejudice to the charge of any interest, furnish revised tax return or revised annual return, as the case may.
- Revised Monthly/ Quarterly returns may be filed at any time before expiration of time limit for filing annual return.
- Revised Annual Return may be filed within a period of six months from the due date of submission of annual return.

- No revised tax return or revised annual return shall be entertained if the case has been taken up for audit assessment and notice to that effect has already been served on the dealer.

## **5. Payment of Tax [Section 27(5) and Rule 26]**

Every dealer shall pay the full amount of tax, interest and any other sum payable by him according to his return or the differential tax payable according to the revised return furnished, if any, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount into the Government account. For the dealers other than the dealers under composition scheme(s), due date of deposit of tax will be the due date of filing of the return, i.e. within next 21 days of the succeeding month/quarter.

The dues shall be paid into a Designated Bank by Challan in Form-24 or by way of a crossed cheque or a crossed demand draft in favour of the Prescribed Authority. In case of cheque or bank draft, it must be drawn on a local branch of the Bank. Challans shall be filled in quadruplicate. Two copies of the challan i.e. original and the duplicate copies duly signed as proof of payment shall be returned to the dealer or the tenderer and the other two copies i.e., the triplicate and the quadruplicate copies shall be retained by the Bank. The amount of tax, interest or penalty or any other sum except when the same is payable by court fees stamps, shall be deposited in the Government Account under the Head of Account "0040-Sales Tax".

### **E-Payment of dues**

Any dealer liable to pay tax may make e-payment of dues under the Act. However, the following classes of dealers are liable to make e-payment of dues:

- (a) Those who are registered under CST Act, 1956.
- (b) Other dealers, whose tax payable for any tax period is not less than ₹ 1000/-.

Six Banks *viz.* (1) State bank of India, (2) IDBI, (3) Union Bank of India, (4) United Bank of India, (5) ICICI Bank, (6) HDFC Bank have been allowed to provide e-payment facility.

## **6. Submission of returns in cases of branches [Rule 17(A)]**

- (1) In case of a dealer having more than one place of business in the

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State all returns and annual returns prescribed by the rules shall be submitted by the head office in the State and shall include the total turnover of all the branches of the business.

- (2) Each branch shall also-
  - (a) submit to the Prescribed Authority of the area in which it is situated, tax return(s) and annual return pertaining to transactions made at such branch,
  - (b) Furnish a declaration to such Authority to the effect that the turnover derived at the branch is included in tax return(s) and the annual return submitted by its head office and specifying the name and address of such head office:

Provided that such dealer shall also submit along with the returns and annual return of the head office, the copies of the returns and annual return, as the case may be, submitted by each branch to the Prescribed Authority of the respective area.

## **7. Signatories of Returns [Section 29(6) & 30(6)]**

1. 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 authorized 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 or authorized signatory thereof;
  - (d) in the case of a firm, by any partner thereof not being a minor or by a manager;
  - (e) in the case of any other association, by the person competent to act on behalf of the association.

*Explanation.* For this purpose of clause (c), the expression “principal officer” shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961 (Central Act 43 of 1961).

2. Any return signed by a person not authorized as above shall be treated as if no return has been filed.

## **8. Late submission of Returns (Penalty) [Section 30(4)]**

If any dealer fails to furnish the required tax return or annual return or revised returns by the prescribed date or fails to furnish proof of payment of tax along with the return, the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.

## **9. Submission of returns by Transporters [Section 28]**

Every Transporter, in respect of taxable goods cleared, forwarded, transported or shipped by him, shall submit monthly statement of goods transported into Assam in Form-53 and monthly statement of goods transported outside Assam in Form -54 within 21 days of the following month.

Where any transporter fails to comply with the above provision, the Prescribed Authority may, direct him to pay by way of penalty an amount not exceeding ₹ 1000/- for the first offence and if the offence is a continuing one with a fine not exceeding ₹ 100/- for every day during which the offence continues.

The Prescribed Authority shall have the power to call for and examine the books of account or other documents in the possession of such transporter or his agent with a view to verifying the correctness of the statements or returns submitted.

## **10. Interest & penalty for late payment of Tax [Section 30]**

1. On failure to pay the tax due within the prescribed time, the dealer shall be liable to pay simple interest, at the rate of 1.5% per month on the amount of tax not so paid or short- paid, for the period commencing on the day following the date of expiry of the due date to the date of payment or the date of assessment, whichever is earlier. If any dealer fails to pay interest along with return or revised return in accordance with the provisions of this sub-section, such interest shall be levied by the Prescribed Authority.

For the purpose of calculating interest;

'month' shall mean thirty days;

where the period of default is in respect of a period of less than one month, the interest shall be computed proportionately.

2. If any dealer, without sufficient cause, fails to pay the amount of tax due and interest calculated as above along with return or revised return, the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, by way of penalty a sum not exceeding two percent per month of the tax so payable from the first day of the month following the month in which it had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

### **11. Rounding off of the amount of tax, interest or penalty [Section 32]**

1. For the purpose of calculation of tax, the taxable turnover of each rate of tax shall be rounded off to the nearest multiple of ten rupees, and for this purpose, where such amount contains a part of ten rupees, then, if such part is five rupees or more, it shall be increased to ten rupees, and if such part is less than five rupees, it shall be ignored.

2. The amount of tax, interest, penalty or any other sum payable by a dealer under the provisions of this Act or any sum refundable to any dealer shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, then, if such part is fifty paise or more, it shall be increased to one rupee and, if such part is less than fifty paise, it shall be ignored.

### **12. Collection of Tax only by Registered Dealers [Section 31]**

As per section 30, no person other than a registered dealer or a person required to deduct any amount by way of tax shall collect any amount by way of tax under this Act. No collection of tax shall be made except in accordance with the provisions of this Act and the rules made thereunder and beyond the rate specified. Excess or unauthorized collection of tax shall be liable to forfeiture by the Government.

On willful contravention of the provision, the person may be penalized by an amount not less than the amount of tax so collected and not exceeding twice the amount of tax so collected by him in contravention.

## Chapter-9

# Scrutiny of Returns and Assessments

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### A. Scrutiny of returns [Section 33]

1. Every return furnished by a registered dealer or a dealer to whom notice has been issued for filing of returns shall be subject to scrutiny by the Prescribed 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.

2. If any mistake is detected as a result of such scrutiny, the Prescribed Authority shall serve a notice in form-19 on the dealer to cure the defects and to make payment of the extra amount of tax along with the interest, if it is so payable. The dealer shall correct the defects and submit a new correct and complete return within the period specified in the notice with the evidence of payment of the extra amount of tax and interest. The dealer shall be deemed to have submitted a correct and complete return by the date prescribed only if he furnishes the duly corrected return within the period specified in the notice with the evidence of such payment of tax and interest.

### B. Provisional assessment [Section 34, Rule 20]

1. Where a dealer fails to furnish a tax return before the due date or if the tax return furnished by him appears to be incorrect and incomplete or if the dealer fails to furnish a correct and complete return with evidence of payment of tax and interest, if any, in response to the notice issued under section 33, the Prescribed Authority shall, after providing opportunity of being heard, proceed to assess the dealer provisionally for the period of default to the best of his judgment recording the reason for such assessment and proceed to demand and collect the tax and interest accordingly.

2. The provisional assessment shall be made on the basis of past returns or past records and where no such returns or records are available, on the basis of information received or collected by the Prescribed Authority. The Prescribed Authority shall issue a demand notice and direct the dealer to pay the sum specified in the demand notice within 21 days from the date of the service of such notice.

3. If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified under foresaid demand notice, the 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.

4. Nothing contained in this section shall prevent the Prescribed Authority from making an audit assessment under section 36 or best judgment assessment under section 37 and any tax, interest or penalty paid against provisional assessment shall be adjusted against, tax, interest and penalty payable on such assessment under those sections.

### **C. Self-assessment [Section 35, Rule 21]**

1. The amount of tax due from a dealer liable to pay tax may be assessed separately for each year during which he is so liable. However, the Commissioner may, subject to such conditions, if any, as may be prescribed, assess the tax due from any dealer during a part of a year and the other provisions of this section shall be construed accordingly. [Section 35(1)]

2. If a dealer has filed all the tax returns and the annual return and audit report in applicable case or revised returns in the prescribed manner and within the prescribed time and has paid the tax payable according to such returns or revised returns and also interest payable if any, the returns or revised returns so filed shall be accepted and his assessment shall be deemed to have been made for the purpose of sub-section (1) subject to adjustment of any arithmetical error apparent on the face of the said return. [Section 35(2)]

3. Except for the cases selected for audit assessment under rule 22, all other cases shall be deemed to have been assessed to tax under sub-section (1) of section 35.(Rule 21)

### **D. Audit assessment [Section 36, Rule 22]**

1. Where,—

- (a) a registered dealer is selected for audit assessment on the basis of any criteria or on random basis; or
- (b) the Prescribed Authority is not satisfied with the correctness of any return filed under section 29; or bona fides of any claim of exemption,

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deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or

- (c) the Prescribed Authority has reasons to believe that detailed scrutiny of the case is necessary; or
- (d) a provisional assessment under section 34 has been made,

the Prescribed Authority may, notwithstanding the fact that the dealer may already have been assessed under section 34 or section 35, serve on such dealer a notice in Form-20 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. For this purpose, the Prescribed Authority may also undertake tax audit of stock-in-trade of the dealer. [Section 36(1)]

If the proceedings under this section 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 is not functioning from such premises, the Prescribed Authority shall assess to the best of his judgment the amount of tax due from him. [Section 36(3)]

2. If the Prescribed Authority is prevented by the dealer from conducting the proceedings under this section, the Prescribed Authority may demand a sum not exceeding the amount of tax so assessed, by way of penalty.

3. The Prescribed Authority shall, after considering all the evidence produced in course of the proceedings or collected by him either—

- (a) confirm the self-assessment under section 35; or
- (b) set aside the self-assessment and assess the amount of tax due from the dealer; or
- (c) assess the amount of tax due from the dealer, if no assessment has been made under section 35:

Provided that if the Prescribed Authority proposes to rely on any evidence collected by him, the dealer shall be afforded a reasonable opportunity of being heard before any adverse inference is drawn.

4. As per rule-22(1), the following categories of cases may be taken up for audit assessment under section 36:-

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- (i) gross turnover exceeding five crores rupees in a year;
- (ii) claim of input tax exceeding ten lakh rupees in a year;
- (iii) claim of refund exceeding one lakh rupees in a year;
- (iv) claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India exceeding twenty five lakh rupees in a year;
- (v) fall in gross turnover or payment of tax compared to last year;
- (vi) claim of sale, purchase or consignment of goods not matching with the other party to the transaction;
- (vii) exceptional cases in which ratio between purchases and sales or between input tax and output tax or between stocks and sales is way out of the general trend in the trade or industry;
- (viii) cases based on definite intelligence about evasion of tax;
- (ix) cases selected at random;
- (x) cases of any particular trade or trades which the Commissioner may select; and
- (xi) cases in which the dealer fails to complete the return(s) in material particulars after being given an opportunity for the same.

**E. Best judgment assessment [Section 37, Rule 23]**

1. If any dealer,—
  - (a) has not furnished annual return in respect of any period by the prescribed date; or
  - (b) has knowingly furnished incomplete or incorrect annual return or statement for any period; or
  - (c) has failed to comply with the terms of any notice under sub-section (1) or sub-section (3) of section 36; or
  - (d) has not maintained any accounts or has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting or the method employed is such that in the opinion of the Prescribed Authority assessment cannot properly be made on the basis thereof,

the Prescribed Authority shall, after issue of a notice to the dealer in Form-21, so as to give him a reasonable opportunity of being heard, assess him to the best of his judgment.

2. If the Prescribed Authority 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 by the prescribed date; or
- (b) has furnished incomplete and incorrect returns for any period; or
- (c) has availed himself of tax credit to which he is not entitled; or
- (d) has failed to keep up-to-date account; or
- (e) has issued false or incorrect tax invoice,

he may, after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum not exceeding twice the amount of,-

- (i) tax assessed in a case falling under clause (a); or
- (ii) additional tax assessed on account of the cases falling under clause (b), clause (c), clause (d) and clause (e).

#### **F. Assessment of dealer who fails to get himself registered [Section 38, Rule 24]**

1. If the Prescribed Authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, he shall proceed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods after serving a notice in Form-22 and in making such assessment shall give the dealer a reasonable opportunity of being heard.

2. The Prescribed Authority may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding the amount of tax assessed or a sum of ₹ 10,000/-, whichever is more.

### **G. No assessment after five years [Section 39]**

No assessment under the foregoing provisions of this Act shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in case of offence under this Act for which proceedings for prosecution has been initiated, the limitation as specified in this sub-section shall not apply.

### **H. Turnover escaping assessment [Section 40]**

1. Where, after a dealer is assessed under section 34, 35, 36 or 37 of this Act for any year or part thereof, the Prescribed Authority 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; or
- (d) been wrongly allowed any deduction there from; or
- (e) been wrongly allowed any credit therein,

the Prescribed Authority may, after serving a notice in form 23 and giving the dealer a reasonable opportunity of being heard and after making such enquiries as he considers necessary, proceed to assess to the best of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly.

2. No order of assessment and reassessment shall be made under section 40 after the expiry of eight years from the end of the year in respect of which or part of which the tax is assessable.

### **I. Exclusion of time period for assessment [Section 41]**

In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceedings remained stayed under the order of a competent Court shall be excluded.

**J. Exclusion of time period for assessment  
[Section 42]**

Where any Court or the Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the CST 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-10

# Payment and Recovery of Taxes

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### **A. Payment and recovery of tax, penalty and interest [Section 43]**

1. Tax shall be paid in the manner hereinafter provided and at such intervals as may be prescribed.

2. A dealer furnishing returns or revised return(s) under section 29 shall pay into Government account, the amount of tax due from him for the period covered under the return along with the amount of interest, penalty or any other sum payable by him and shall furnish a receipt (challan in form 24) showing the payment of such amount into the Government account. (Refer, Rule 26, Form 24)

3.(a) The amount of tax,—

- (i) due where returns have been filed without full payment of tax due; or
- (ii) assessed under this Act less the sum already paid in respect of such period together with interest, if any; or

(b) the amount of penalty imposed under any provision of this Act; or

(c) any other dues under this Act,

shall be paid by the person or dealer or the person liable therefore into the Government account within 30 days from the date of service of the notice issued by the Prescribed Authority in respect thereof. However the Prescribed Authority may allow him to pay the tax, penalty, interest or the sum forfeited, by instalments but grant of instalments to pay tax shall be without prejudice to the other provisions of this Act including levy of penalty and interest. [Section 43(4)]

4. Where a dealer fails to make demanded sum or any other amount due from him under this Act within 30 days of the date of service of the notice of demand, the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall, in addition to the

### *Payment and Recovery of Taxes*

amount due pay, by way of penalty, a sum not exceeding 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 date on which such amount was due to be paid. [Section 43(5)]

The amount that remains unpaid after the due date of payment in pursuance of the notice issued u/s. 43(4) & 43(5) shall be recoverable as arrears of land revenue. [Section 43(6)]

5. Where in pursuance of section 43(6), any proceedings for the recovery as arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, has been commenced and the amount of tax, penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal revision or rectification under this Act, the Prescribed Authority may inform the dealer and the authority by whom or under whose order the recovery is to be made and thereupon such proceedings 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 covered under sub-section (6).

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

### **B. Special mode of recovery (Section 44)**

Notwithstanding anything contained in any law or contract to the contrary, the Prescribed Authority may, at any time or from time to time, by notice in form-28, a copy of which shall be forwarded to the dealer at his last known address, require—

- (a) any person from whom any amount of money is due, or may become due, to a dealer or person liable on whom notice has been served under sub-section (3) of section 29; or
- (b) any person who holds or may subsequently hold money for or on account of such dealer or person liable,

to pay to the Prescribed Authority, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due from the dealer or person

liable in respect of the arrears of tax, interest, penalty or any other sum due under this Act, or the whole of the money when it is equal to or less than that amount.

The Prescribed Authority may apply to the Court in whose custody there is money belonging to the dealer or person liable for payment to him of the entire amount of such money or if it is more than the tax, interest, penalty or any other sum, if any, due, an amount sufficient to discharge such tax, interest, penalty or any other sum due.

### **C. Application of the provisions of other Acts for recovery of demands [Section 45]**

For the purposes of recovery of any amount recoverable as an arrear of land revenue under this Act, the provisions of the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886), the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913) as to recovery of arrears of land revenue shall notwithstanding anything contained in those Acts or in any other enactment, be deemed to be in force throughout the State and the provisions of the Revenue Recovery Act, 1890 (Central Act 1 of 1890) shall have effect accordingly.

### **D. Special power of tax authorities for recovery of tax as arrears of land revenue [Section 46]**

(1) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913) the taxing authority appointed by the Government under sub-section (2) of section 3 of this Act for the purpose of recovery of tax, interest, penalty or any other sum due shall be deemed to be a Certificate-officer appointed under clause (3) of section 3 of the said Act and shall have the same powers as are vested in the Certificate-officer under that Act.

(2) Any proceeding under sub-section (1) shall be deemed to be a proceeding for recovery of the public demand under the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913) and all provisions of the said Act for recovery, attachment, sale and arrest shall mutatis mutandis apply.

(3) The taxing authority appointed by the Government for the purpose of recovery of any amount of tax, interest, penalty or any other sum, shall also be deemed to be a Revenue Officer under the Deputy Commissioner of the district under the Assam Land and Revenue Regulation, 1886 (Regulation 1

of 1886) and shall have the same powers as are vested in the Revenue Officer under section 69 of the said Regulation for the purpose of attachment and sale of movable property of the defaulting dealer or the person liable.

(4) Any proceeding under sub-section (3) shall be deemed to be a proceeding for recovery of arrears of land revenue under the Assam Land and Revenue Regulation, 1886 (Regulation 1 of 1886) and all provisions of the said Regulation for recovery, attachment and sale of movable property of the defaulting dealer or the person liable shall mutatis mutandis apply.

(5) The Government may, by notification in the Official Gazette, also empower the Commissioner or any person appointed to assist the Commissioner under sub-section (2) of section 3, not below the rank of Superintendent of Taxes, to exercise the power under the said Acts for the purpose of recovering such amount.

#### **E. Interest on failure to pay the Assessed due tax**

(1) When a dealer is in default or is deemed to be in default in making the payment in pursuance of any assessment under this Act, he shall be liable to pay simple interest on such amount at the rate of 1.5% per month from the date of such default for so long as he continues to make default in the payment of the said tax. [Section 52(4)]

(2) Where, as a result of any final order the amount of tax (including any penalty) due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly and any excess amount of interest paid shall be refunded. [Section 52(5)]

(3) Where any amount of tax payable is enhanced by any such order, interest shall be payable on the amount by which the tax is enhanced. [Section 52(6)]

(4) Where the realization of any amount remains stayed by the order of any Court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation. [Section 52(7)]

(5) The interest payable under this Act shall be deemed to be tax due under this Act. [Section 52(8)]

## **F. Tax to be first charged on property [Section 48]**

Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount payable by a dealer under this Act on account of tax, penalty or interest or any other sum which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.

## **G. Period of limitation for recovery of tax [Section 49]**

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

# Chapter-11

## Tax Deducted at Source

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### **A. Special provisions relating to deduction of tax at source in certain cases [Section 47 & Rule 28]**

- (1) Who is liable to deduct TDS under this Act:
  - (a) Every person other than an individual, a Hindu Undivided Family, a firm or a company not under the control of the Government, responsible for making any payment or discharging any liability on account of specified transactions.
  - (b) Every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or corporation, board, authority, undertaking or any other body by whatever name called, owned, financed or controlled wholly or substantially by the Government
  - (c) The Commissioner may, with the prior approval of the State Government, direct any other person or other class of persons to deduct tax at source.

- (2) Information to be provided by the aforesaid persons:

Any person, who is responsible for deduction of taxes, and who enters into any contract with any contractor for transfer of property in goods involved in the execution of works contract, shall submit within 15 days from the date of signing of the contract information in form-32. Failure to do so shall entail a penalty not exceeding ₹ 500/- per day of default after affording such person a reasonable opportunity of being heard.

- (3) Registration of supplier, contractor or lessor:

Any person who is responsible for deduction of tax at source, shall not enter into such transaction unless the contractor, lessor or seller or supplier, as the case may be, produces an authenticated copy of the certificate of registration under this Act or furnishes an undertaking for getting himself registered and any such contractor, lessor or seller or supplier who is not so registered under this Act shall not be paid by the said responsible person any amount in

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respect of the sale or supply, before he gets himself registered under this Act and submits an authenticated copy of the certificate of registration.

(4) Payments or discharges of liabilities against which tax is to be deducted:

- (a) any amount purporting to be the full or part payment of sale price or consideration for the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (b) any amount purporting to be the full or part payment of sale price or consideration for the transfer of the right to use any goods for any purpose
- (c) any payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or corporation, board, authority, undertaking or any other body by whatever name called, owned, financed or controlled wholly or substantially by the Government

(5) When the Tax is liable to be deducted:

At the time of credit to the account of or payment to the dealer of such amount in cash, by cheque, by adjustment or in any other manner. No tax under Section 47 shall be deducted when the amount paid to any dealer in respect of sales or deemed sales transaction (works contract, lease or supply) does not exceed ₹ 5000/- in a financial year.

Amount on which tax is liable to be deducted:

- (a) In case of works contract- On the amount calculated on the taxable turnover of such works contract at the rate as specified in the Fifth Schedule.
- (b) In case of lease transaction- On the amount of total sale price for the transfer of the right to use goods.
- (c) In case of Supply of goods- On the amount calculated at the rate as may be specified in the Schedule from such sum towards full satisfaction of the tax payable under this Act on account of total sale price of such sale or supply.

(6) Rate at which tax is liable to be deducted:

- (a) In case of works contract- At the rate as specified in the Fifth Schedule in case where WC-2 has not been provided to the deductor, in other case at the rate as specified in the WC-2. In case, the contractor

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produces a Certificate in form-31, tax will be deducted or not deducted as specified under the said certificate.

- (b) In case of Lease transaction-At the rate specified in Fifth Schedule.
  - (c) In case of supply of goods- At the rate as may be specified in the Schedule to which the goods belong.
- (7) Lower deduction or no deduction Certificate:

A works contract may apply before the Prescribed Authority in Form-30 for allowing nil deduction or deduction at lower rate. The prescribed Authority may grant him a certificate in Form-30 certifying nil deduction or deduction at lower rate. However, the said certificate will not affect the tax liability of the Contractor.

- (8) Sales tax deduction Number:

Every person liable to deduct tax at source u/s. 47 shall apply to the Prescribed Authority for allotment of Sales Tax Deduction Account Number in Form-33 within 15 days from the date of entering into any contract relating to supply of goods or execution of works contract or for transfer of right to use any goods. A Tax Deduction Account Number shall be issued in Form-34. The number shall be quoted in such documents, statements and returns as may be prescribed.

- (9) Deposit of deducted tax:

Any tax deducted under this section shall be paid into the Government account within ten days from the expiry of the month, deposit into a Designated Bank by Challan (Form No. 24).

Where the amount has not been deposited after deduction, such amount and any other sum which may be payable under section 47 shall be a charge upon all the assets of the person concerned who made the deduction or who is liable to pay any other amount and shall be recoverable from him, with prior approval of the Commissioner, as arrears of land revenue.

The defaulter in depositing the deducted tax shall be liable to pay simple interest at the rate of 1.5% per month on the amount not so deposited, from the date on which such amount was deductible to the date on which such amount is actually deposited into the Government account.

- (10) If someone fails to deduct the tax at source:

If any person responsible for deduction of tax fails to make the deduction, he shall be liable to pay simple interest at the rate of 1.5% per month on the

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amount deductible under this section from the date on which such amount was deductible to the date on which such amount is actually deposited into the Government account.

(11) Issue of TDS Certificate & deposit thereof:

The person making any deduction of tax under section 47 and paying it into the Government account shall, within 7 days from the date of deposit of the amount deducted, issue to the dealer concerned, a certificate of tax deducted in Form-29 in duplicate in respect of such deduction and deposit, together with attested photocopy of the challan. The dealer shall furnish one copy of the certificate and the challan copy for adjustment of such deposit against his dues to the Prescribed Authority.

(12) Tax deducted is equivalent to payment of tax by deductee:

Any deduction made in accordance with the provisions of this section and credited into the Government account, shall be treated as payment of tax on behalf of the person from whose bills and invoices, the deduction has been made and credit shall be given to him for the amount so deducted on the production of the certificate prescribed in this regard, towards the amount of tax finally assessed or determined as being payable by the concerned person in the assessment for the relevant assessment year and any amount deducted in excess of the tax so assessed or determined shall be refundable in accordance with the provisions of this Act.

No interest or penalty shall be imposed or no recovery proceedings against the dealer or payee shall be initiated in respect of deduction of tax under this section.

(13) Annual returns by tax Deductor:

The person responsible for deduction of tax shall within two months from the end of each year, file a return in Form-35 to the Prescribed Authority.

(14) Maintenance of records:

Every person responsible for issuing certificate in Form-29 shall maintain for each year separate account in Form-36 showing the amount of tax deducted, certificate of tax deduction issued, and the particulars of remittances made to the Government Account.

(15) As per Notification no.FTX.55/05/Pt-II/55 dated 08/02/2007, TDS shall not be deductible in the following cases;

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<b>Sl. No.</b>	<b>Categories of dealer</b>	<b>Conditions and restrictions</b>
1.	Retail outlets of Oil Companies selling diesel, petrol and other motor spirits.	Tax shall not be deducted subject to the condition that the concerned retail outlet has obtained the supplies locally from any oil companies.
2.	Dealers holding a certificate of entitlement for the purpose of tax remission/ tax exemption under the Act.	Tax shall not be deducted subject to the condition that the dealer submits a tax clearance certificate, as prescribed under the provision of the principal Act, from the concerned Prescribed Authority.

# Chapter-12

## Refund

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### **A. Refund [Section 50, Rule 29]**

1. Refund application by a dealer, who has paid tax, interest or penalty in excess of what is due from him shall be made within 180 days from the date of assessment or reassessment, as the case may be in Form-37. However, the application filed after the stipulated period may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the stipulated period. [Rule 29(1)(a)]
2. The refund application shall be signed and verified as in the case of application for registration in case of a registered dealer. [Rule 29(1)(b)]
3. Subject to other provisions of this Act and the rules made there under, if it is found on the assessment or reassessment, as the case may be, that a dealer has paid tax, interest or penalty in excess of what is due from him, the Prescribed Authority shall, on the claim being made by the dealer in Form-37 and within the prescribed time of 180 days, and being satisfied that the refund claimed is due, refund to such dealer the amount of tax, penalty and interest paid in excess by him. However, such refund shall be made after adjusting 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 passing of order for such refund.[Section 50(1), Rule 29(1)(d)]
4. Where any excess tax credit for any tax period is carried over for adjustment against the tax due in subsequent tax periods and such credit or part thereof remains unadjusted even after a period of 24 months from the date of filing the return showing excess input tax credit, the dealer may exercise option for further carry forward of the credit till final adjustment or may claim refund of the amount of such excess credit remaining unadjusted. [Section 50(2), Rule 29(2)(a)]
5. A registered dealer making sale of goods in the course of inter-state trade or commerce falling under Section 3 of the CST Act, 1956 shall adjust any excess credit available under the Act against any tax payable under the CST Act, 1956 and thereafter, be eligible to claim a refund of excess credit, only after 24 continuous credit returns have been filed. [Section 50(2), Rule 29(2)(b)]

*Refund*

6. Refund application by a dealer, who opts to claim refund of excess Input Tax Credit as discussed in above two paragraphs shall be made in Form-41 within one month from the date of expiry of the period of 24 months. However, the application filed after the said period may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period. [Rule 29(2)(c)]
7. 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 50(2)]
8. The Prescribed Authority may reject any claim for refund if the claim filed appears to involve any mistake apparent on the record or appears to be incorrect or incomplete, based on any information available on the record, after giving the dealer the opportunity to show cause in writing against such rejection. [Rule 29(1)(c)]
9. When the Prescribed Authority is satisfied that the refund claimed is due, he shall record an order sanctioning the refund. [Rule 29(1)(d)]
10. When the amount to be refunded is more than Rupees 3 lacs the Prescribed Authority shall take prior approval of Deputy Commissioner before sanctioning such refund. The Deputy Commissioner shall not approve the refund if the amount to be refunded exceeds Rupees 10 lacs but forward such cases to the Commissioner for approval. Where the amount to be refunded is more than Rupees 50 lacs, the Commissioner shall take prior approval of the Government before sanctioning such refund. [Rule 29(1)(e)]
11. When an order for refund is passed, refund voucher in Form-38 shall be issued in favour of claimant if he desires payment in cash and advice in Form-39, shall at the same time be forwarded to the Treasury Officer concerned. [Rule 29(1)(f)]
12. Where any amount refundable under this sub-rule is not refunded to the dealer within the period of 90 days of claim of refund made in accordance with the provisions of clause (a) of rule 29(1), the refund voucher shall include the interest specified under section 52 covering the period following the end of the said period to the day of refund. The authority issuing such order shall simultaneously record an order sanctioning the interest payable, if any, on such refund, specifying therein, the amount of refund, the payment of which was delayed, the period of delay for which such interest is payable and the amount of interest payable by the State Government and shall

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communicate the same to the Commissioner stating briefly the reasons for the delay in allowing the refund:

Provided that in computing the period of 90 days, the following periods shall be excluded:-

- (i) any delay attributable to the conduct of the person to whom the refund is payable; and
- (ii) the time during which any reasonable inquiry relating to the return or claim was initiated and completed and the time taken for adjustment by the refunding authority of any tax, interest and other amount due. [Rule 29(g)]

13. After the refund is sanctioned, if the claimant desires to adjust the amount of refund due to him, the Prescribed Authority shall set off the amount to be refunded or any part thereof against the tax, if any, remaining payable by the claimant or against the future dues. [Rule 29(1)(h)]

14. The Prescribed Authority shall enter in a register in Form-40 particulars of all the refunds allowed in pursuance of assessment orders, all applications for refunds and of the order passed thereon. [Rule 29(1)(i)]

## **B. Refund of ITC in case of zero rated sales [Section 51]**

Unlike in the case of inter-state or intra-state sales, Input tax credit of a registered dealer against goods sold in case of export, or sold to a unit located at SEZ or to an export oriented unit, can be claimed without waiting for 24 months as prescribed u/s. 15(2).

### **1. Provisional refund in case of export**

If any amount is refundable as per return on account of sales in course of export to other countries, the dealer may apply to the Prescribed Authority for grant of provisional refund pending audit and investigation to establish the correctness of the claim and consequent assessment, if any in Form 42 within 30 days of the filing of such return. The belated application may also be admitted by the Prescribed Authority if he is satisfied that the dealer had sufficient cause for delay. [Section 51(1) Rule 30(1)(a)]

The Prescribed Authority may direct the assessment 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 51(3)]

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Subject to the above provisions of section 51(3), the Prescribed Authority may require the dealer to furnish a Bank Guarantee or other security for an amount equal to the amount of refund and on receipt of such guarantee or security, he shall grant the dealer a provisional refund that may be determined as refundable. [Section 51(2)]

The Prescribed Authority shall ordinarily, within 30 days (excluding the days of delay attributable to the dealer) of the receipt of the application, grant refund provisionally, if such dealer furnishes a bank guarantee or other security duly pledged in favour of the Prescribed Authority. [Rule 30(1)(a)]

The Prescribed Authority may pass an order of final refund where provisional refund has been granted after audit and assessment as a result of such audit, if any, is completed and the excess refund allowed, if any, may be recovered as if it is a tax payable under this Act and release the Bank guarantee furnished by the dealer at the time of grant of provisional refund in the manner prescribed. [Rule 30(1)(b)]

If, on assessment, the provisional refund granted under sub-section (2) is found to be in excess, then the excess shall be recovered as if it were a tax due from the dealer under this Act. Interest shall be charged on such excess amount at the rate of one and a half percent per month from the date of grant of provisional refund till the date of recovery of the amount. [Section 51(4), 51(5)]

## **2. Refund in case of export**

Where any dealer claims refund in the return furnished for a tax period on account of sales made in the course of export out of the territory of India, he shall make an application in Form-43 to the jurisdictional Prescribed Authority, within 30 days from the date of furnishing such return. The belated application may be admitted by the Prescribed Authority if he is satisfied that the dealer had sufficient cause for not making the application within the stipulated time. [Rule 30(2)(a)]

The application filed under this sub-rule shall be accompanied by tax invoices, copies of the purchase order placed by the foreign buyer with the dealer, the agreement with the foreign buyer, the invoice issued to the foreign purchaser, transport documentation i.e. Bill of Lading, Airway Bill, or a similar document, letter of credit, evidence of payment made by the foreign buyer, the customs clearance certificate, Form 'H' and such other evidences as may be required to establish the claim of refund. [Rule 30(2)(b)]

The Prescribed Authority, on receipt of the application for refund along with the required documents, shall refer the case for tax audit to determine the admissibility or otherwise of the claim of refund. The tax audit shall be completed within one month, as far as practically possible. [Rule 30(2)(c)].

If, on assessment as a result of audit, the claim of refund is found to be correct and is supported by the required evidences, and after receipt of report of such findings, the concerned Prescribed Authority shall sanction the refund claimed within 90 days. However, if delay in completing the audit is attributable to the dealer, the period, shall be excluded while computing the period of the aforesaid limitation. [Rule 30(2)(d)]

### **3. Refund in case of sales to a unit located in a Special Economic Zone (SEZ) or to an Export Oriented Unit**

Where any dealer claims refund in the return furnished for a tax period on account of sales made to a unit located in a Special Economic Zone (SEZ) or to an Export Oriented Unit (EOU), he shall make an application in Form-43 to the jurisdictional Prescribed Authority, within 30 days from the date of furnishing such return. The belated application may also be admitted by the Prescribed Authority if he is satisfied that the dealer had sufficient cause for the delay. [Rule 30(3)(a)]

The excess input tax credit in any tax period, for which refund is claimed under this sub-rule, shall be carried over to six consecutive tax periods, following that tax period, for adjustment against output tax and the amount found refundable at the end of such tax periods, shall be refunded in accordance with the provisions of Rule 30(2)(c) and Rule 30(2)(d). [Rule 30(3)(b)]

The application for refund furnished under clause (a) of this sub-rule shall be accompanied by the copy of the tax invoice, certificate of the competent authority showing the name and address of the dealer and the SEZ, under which it is established and the entitlement of the dealer to purchase goods free of tax covered under such tax invoice and such other evidence, as may be required to establish the claim of refund. [Rule 30(3)(c)]

### **C. Refund for organization under Eighth Schedule [Section 54(2)]**

Section 54(2) says that the sale of goods to any person or international organizations as specified in the Eighth Schedule appended to this Act shall be zero-rated. The persons or International Organizations listed in the said

Schedule may apply in Form-37A along with copies of retail invoices within 180 days from the date of purchase for refund of VAT paid for goods purchased in the State subject to conditions as may be prescribed. Procedure for refund is prescribed in Rule 29A.

#### **D. Interest on Refund [Section 52]**

1. A registered dealer entitled to refund in pursuance of any order under this Act including assessment or in pursuance of any order by any Court, shall be entitled to receive, in addition to the refund, simple interest at the rate of 9% per annum for the period commencing after 90 days of the application claiming refund in pursuance to such order till the date on which the refund is granted.[Section 52(1)]
2. The interest shall be calculated on the amount of refund due after deducting there from any tax, interest, penalty or any other dues under this Act. [Section 52(2)]
3. If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced such interest shall be enhanced or reduced accordingly. [Section 52(3)]

#### **E. Power to withhold refund [Section 53]**

Where an order giving rise to refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending, and the Prescribed Authority 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 Prescribed Authority may withhold the refund till such time as he may determine. However, if refund is so withheld under sub-section (1) the dealer shall be entitled to interest as provided under sub-section (1) of section 52, if as a result of the appeal or further proceedings or any other proceedings, he becomes entitled to the refund. However, the dealer shall be entitled to interest on refund so withheld, if as a result of the appeal or further proceedings or any other proceedings he becomes entitled to the refund.

# Chapter-13

## Accounts & Records

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### **A. Maintenance of accounts and records etc. [Section 55, Rule 31]**

1. Every registered dealer or every dealer liable to pay tax under this Act shall keep a true and up-to-date accounts of:

- (a) Total Sale and purchase transactions made in the state and made in course of inter-state trade or commerce or made in course of import in to India or export out of India separately for exempted goods and for different rates of tax.

Such purchase book or account shall record the date, invoice number, name of supplier, Taxpayer Identification Number (TIN) of domestic supplier, value of purchases and tax credit. The sales book shall have the provision for recording of sales to registered and unregistered (final consumers) persons, separately, date and number of sales invoice and if the buyer is a registered taxpayer, his name, Taxpayer Identification Number (TIN) and sale value and tax charged.

A dealer may maintain account books as per his requirement and nature of business but these shall contain the information as specified in Form-44 (Sales Book) and in Form -45 (Purchase Book);

- (b) Input tax relating to his purchases and of output tax relating to his sales against tax invoices in such a manner that the totaling made at the end of each tax period reflects the purchases and sales made under each tax rate and tax paid on such purchases and charged on such sales;
- (c) Input tax relating to his purchases and of output tax relating to his sales against tax invoices in such a manner that the totaling made at the end of each tax period reflects the purchases and sales made under each tax rate and tax paid on such purchases and charged on such sales;
- (d) Every dealer liable to pay tax under the Act, shall maintain, a Value Added Tax (VAT) account showing month wise details of total output tax, total input tax, total purchase tax, Central Sales Tax, reverse tax,

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net tax payable, tax paid and the input tax credit due for refund or carry forward to the subsequent return period, if any.

- (e) A registered dealer engaged in the manufacturing or processing of goods shall maintain true and up to date accounts of –
  - (i) capital goods purchased;
  - (ii) inputs purchased;
  - (iii) inputs used in manufacturing and processing of exempted goods for sale;
  - (iv) inputs used in manufacturing and processing of taxable goods for sale;
  - (v) goods manufactured including manufacturing account;
  - (vi) goods sold;
  - (vii) stock account of inputs, consumables, packing materials, fuel, and finished products and by-products, if any.
- (f) The following records shall be maintained by a dealer having exercised the option to pay tax under section 20:
  - (a) Details of the goods purchased and sold by him; and
  - (b) Cash book, daybook, ledger, invoice/bill books and purchase vouchers;

2. All Such accounts, registers and documents maintained in the course of business shall be kept at the place of the business of the dealer and shall not be removed elsewhere, except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner.

3. Where a dealer has established branch offices of the business in the State at places other than the principal place of business, the relevant accounts, registers and documents in respect of each such branch shall be kept by him at the respective branch office.

4. If the Commissioner is of the opinion that the accounts kept and maintained by any dealer or class of dealers are not sufficiently intelligible and clear to enable him to verify the returns or to make any assessment under this Act, he may by an order, require such dealer or class of dealers, to keep such accounts, in such form and in such manner as he may, subject to rules made under this Act, direct.

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5. Every registered dealer or every dealer liable to pay tax under this Act maintain and retain the following documents:-

- (a) Original tax invoices or other invoices for purchases made shall be retained in date order.
- (b) Copies of tax invoices related to taxable sales and invoices related to exempt sales shall all be retained in date and numerical order.
- (c) Credit and debit notes issued and received shall all be retained in date and numerical order.
- (d) Bank records, including statements, cheque book counter foils and pay-in-slips.

**B. Period of retention of accounts [Section 59]**

- (a) Every dealer shall preserve books of accounts including tax invoices and retail invoices until the expiry of eight years after the end of the year to which they relate or for such other period as may be prescribed or until the assessment reaches its finality, whichever is later.
- (b) Where such a dealer is a party to any appeal or revision under this Act he shall retain, until the appeal or revision is finally disposed of, every record and accounts that pertain to the subject matter of the appeal or revision.

**C. Electronic Records [Section 60]**

Every dealer who maintains the records in a computer or any other electronic device shall also maintain day to day print out of all such records and shall retain them for the period specified in section 59.

**D. Tax Invoice [Section 56, Rule 32]**

1. Tax Invoice can be issued by a registered dealer, other than the person who has opted for composition scheme, who make intra-state sales of taxable goods (other than the goods of fourth schedule) to registered dealers.

2. A Tax invoice shall contain the followings:-

- (a) the word 'Tax Invoice' printed in bold letter at the top or at any prominent place;

- (b) the name, address and Taxpayer Identification Number (TIN) of the selling registered dealer and Purchasing dealers;
- (c) an individual serialized number either printed or put by a numbering machine, and the date on which the tax invoice is issued;
- (d) description, quantity, volume and value of goods sold, and amount of tax charged thereon indicated separately;
- (e) signature of the selling dealer or his manager or agent, duly authorized by him;
- (f) A certificate/ declaration, namely:-

"I/We hereby certify that my/our registration certificate under the Assam Value Added Tax Act, 2003 is in force on the date on which the sale of the goods specified in this tax invoice is made by me/us and that the transaction of sale covered by this tax invoice has been effected by me/us".

3. Tax invoice shall be in triplicate. The original and the duplicate copy shall be issued to the purchaser or the person taking delivery of the goods, as the case may be, and the triplicate copy shall be retained by the selling dealer. The copies shall be pre-printed like "ORIGINAL - BUYER'S COPY", "DUPLICATE - TRANSPORTER'S COPY" and "TRIPLICATE - SELLER'S COPY". The original copy of the Tax Invoice shall bear the words "VALID FOR INPUT TAX" and the original copy shall only be valid to set up a claim of input tax credit. The duplicate and triplicate copy of a Tax Invoice shall bear the words, "THIS COPY DOES NOT ENTITLE THE HOLDER A TAX CREDIT".

4. A Tax Invoice shall contain value of goods with break-up according to rate of tax applicable. A specimen of tax invoice is available in Form-46, which a dealer at his convenience, may use for this purpose.

5. The different copies of a Tax Invoice must be in different colours for easy identification of the original copy. The Government may, by notification, give directions as to the colour in which the original copy of the tax invoice has to be printed.

6. Every purchasing dealer registered under the Act, shall inform his registration number to the selling dealer.

7. Where a dealer registered under this Act is also registered under the Central Excise Act, 1944 (Act No. 1 of 1944) and issues an invoice for removal of goods containing the particulars as specified in section 56 and as prescribed in these rules, it shall be treated as tax invoice.

8. The dealer who purchases goods specified in the Second, Third and Fifth Schedule appended to the Act within the State of Assam and manufactured by an industrial unit eligible for tax remission under Industrial schemes and all subsequent sellers who sell such goods to other registered dealers shall give a declaration in the tax invoice to the effect that the goods so sold or transferred by him under the invoices are purchased from an eligible industrial unit.

### **E. Loss of Tax Invoice [Rule 32(8)]**

1. Where the original tax invoice, issued by the registered selling dealer, is lost or destroyed, the selling dealer may, on an undertaking given by the purchasing dealer, provide a copy clearly marked as a 'duplicate' and shall furnish a copy of such undertaking along with his return for the tax period in which such 'duplicate' tax invoice has been issued. Such duplicate invoice shall bear the following declaration recorded in red ink and signed by the selling dealer or his declared manager, as the case may be:-

"I, hereby declare that this is the duplicate tax invoice of tax invoice No. .... issued on dated..... and issued to M/s ..... having registration No. ....

Signature

Status ....."

2. The purchasing dealer shall apply to the Prescribed Authority for allowing his claim if input tax credit in respect of such invoice and shall attach along with such an application, a duplicate copy of the tax invoice issued by the selling dealer and the copy of indemnity bond for the amount equal to the amount of input tax claimed under such invoice.

3. On receipt of such application, the Prescribed Authority shall cross-check the transaction and after satisfying about the genuineness of the transaction shall allow the claim by an order passed in this regard.

4. The purchasing dealer shall avail the input tax credit only after receipt of the order from the Prescribed Authority.

### **F. Retail Invoice [Section 56, Rule 33]**

1. Except when a tax invoice is issued under sub-section (1), if a registered dealer sells any goods exceeding such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a retail invoice and retain a copy thereof.

2. The retail invoice shall contain the following particulars on the original as well as copies thereof,—

- (a) the words 'Retail Invoice' or 'Cash Memorandum' or 'Bill' printed in bold letters at the top or at a prominent place;
- (b) the name, address and Taxpayer Identification Number (TIN) or General Registration Number (GRN) of the selling registered dealer;
- (c) in case the sale is in course of export out of the territory of India, the name, address and the registration number, if any, of the purchasing dealer or the foreign buyer, and the type of statutory form, if any, against which the sale has been made;
- (d) an individual serialized number, either printed or put by a numbering machine, 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 manager or agent, duly authorized by him.
- (g) 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.

### **G. Penalty for contravention of Section 56 [Section 56A]**

If a registered dealer or any other dealer contravenes the provision of section 56 relating to Tax Invoice or Retail Invoice, the Prescribed Authority may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, direct that he shall pay by way of penalty a sum equal to double the amount of tax or ₹ 2,000/-, whichever is higher.

### **H. Credit and Debit Notes [Section 57]**

1. In the following circumstances, a dealer is liable to issue debit note/ credit note:

- (a) Where the amount shown as tax charged in the tax invoice exceeds the actual tax charged in respect of the sale concerned, the seller shall provide the purchaser with a credit note within six months of the sales

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of goods involved in the transaction, containing such particulars as may be prescribed.

- (b) Where actual tax charged in respect the tax invoice on the sale concerned exceeds the tax shown in the tax invoice as charged, the seller shall provide the purchaser with a debit note within six months of the sale, containing such particulars as may be prescribed.
- (c) 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 shall be issued by the purchaser to the selling dealer containing the particulars as may be prescribed. Credit and debit notes in respect of sales or purchase return shall be issued only when the goods have been returned within a period of six months from the date of original sale.
- (d) Any registered dealer who receives or issues credit notes or debit notes shall modify his return for the period in which the credit note or debit note is issued and pay any tax due on such return.

2. Credit and Debit notes specified in Section 57 shall contain the following particulars:

- (a) The words "credit note" or "debit note" in a prominent place, as the case may be;
- (b) A consecutive serial number;
- (c) The date of the issue of the document;
- (d) The name, address and registration number of the selling dealer;
- (e) The name and address of the buyer, together with buyer's registration number, if registered;
- (f) Description, quantity and value of the goods (excluding tax) returned;
- (g) The amount of the tax credited or debited;
- (h) Date(s) and number(s) of relevant tax invoice(s) issued by the seller in respect of the sale of goods;
- (i) A brief explanation of the circumstances giving rise to the issuing of the debit note or credit note; and
- (j) Signature of the issuing dealer.

3. A registered dealer shall not give more than one credit note or debit note in respect of the same adjustment, and may provide a duplicate, where

the original of the debit note or the credit note is lost or destroyed, with the declaration that it is a duplicate of such credit or debit note.

### **I. Quoting of registration number [Section 58]**

1. Every registered dealer shall quote the allotted registration number (TIN or GRN) on all correspondences made, or statements and returns submitted, or information furnished and on tax invoices or documents issued by him. He shall also mention invariably his registration number on each copy of challan while depositing amount of tax, or fee or other dues under this Act.
2. The selling dealer, if required by the purchaser of such goods, shall show him the certificate of registration granted to him under the provisions of this Act.
3. While making purchases of any goods every purchasing dealer who is a registered dealer under this Act shall give his TIN or GRN as the case may be to the dealer selling such goods and the dealer selling the goods shall mention the TIN or GRN of the purchasing dealer on sale invoice or bill or cash memo or transfer memo or challan or transfer invoice as the case may be, to be issued to the purchasing dealer or the recipient of goods.

### **J. Audit of accounts [Section 62]**

1. Where in any particular year, the gross turnover of a dealer exceeds one Crore rupees, then such dealer shall get his accounts, in respect of that year audited by an accountant within seven months from the end of that year and obtain a report of such audit in the Forms 47 and 48 duly signed and verified by such accountant. The dealer shall submit a copy of the said audit report to the Prescribed Authority along with the annual return within seven months from the end of the year to which the return relates.

However, in a case where such dealer is required under any other law to get his accounts audited, it shall be deemed to be sufficient compliance if he gets his accounts audited under such law and furnishes an audit report as required under such law and a further report in the form prescribed under this section within the time specified above.

2. If any dealer fails to get his accounts audited and fails to furnish a true copy of the audit report within seven months from the end of the relevant year, the Prescribed Authority may, after giving the dealer a reasonable

opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to half percent of the gross turnover or a sum of ₹ 1,00,000/-, whichever is less.

3. The following persons have been declared as “Accountant” for the purpose of audit under this section:

- (a) a Chartered Accountant within the meaning of the Chartered Accountant Act, 1949 (Central Act 38 of 1948),
- (b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959),
- (c) a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (Central Act 1 of 1956).

## **K. Audit of accounts in certain circumstances [Section 62A]**

1. If, at any stage of the proceedings before him, the Prescribed Authority, having regard to the nature and complexity of the accounts of the dealer and the interest of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Commissioner, direct the dealer, irrespective of the fact that the accounts of the dealer have been audited under any other law, to get the accounts audited by an accountant, who is eligible for audit under section 62 and nominated by the Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Prescribed Authority may require.

2. Every such audit report shall be furnished by the dealer to the Prescribed Authority within such period as may be specified by the Prescribed Authority. However, the Prescribed Authority may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed 180 days from the date on which the direction under sub-section (1) is received by the dealer.

3. The expenses of, and incidental to, any audit under this section including the remuneration of the accountant shall be determined by the Commissioner and paid by the dealer and in default of such payment shall be

recoverable from the assessee in the manner provided in section 43 of this Act for recovery of arrears of tax.

**L. Maintenance of the register of Certificate of Export [Rule 37]**

Every exporter who purchases goods for export out of the territory of India from a registered dealer free of tax shall maintain due account of every certificate of Export received by him from the Prescribed Authority in a register in Form-57 and if any such certificate is lost or destroyed or stolen he shall report the same to the Prescribed Authority immediately and shall make appropriate entry in the remark column of the register in Form-57 and take such other steps to issue public notice of the loss, destruction or theft as the Commissioner may direct.

**M. Records to be maintained by transporter [Section 28(3) Rule 36]**

1. Every transporter shall in respect of taxable goods, maintain true record of such goods transported, delivered, or received for transport. The Consignment Note and Forwarding Note of the transporter shall contain all the particulars as contained in Form-49 and Form-50 respectively and the transporter at his convenience may use such forms. The Dispatch Register and Delivery Register shall invariably be maintained in Form-51 and Form-52 respectively. Such record shall be preserved by him for a period of five years.

2. Consignment Notes shall be serially numbered in consecutive order. The last serial number shall go up to 1,00,000 where after a fresh series of Consignment Note shall start, intimation regarding it shall be given by the transporter to the Prescribed Authority before bringing the fresh series in use.

3. The Dispatch Register and Delivery Register before use shall be got authenticated from the Prescribed Authority in whose jurisdiction the place of business of the transporter is situated.

4. No transporter shall transport, accept for booking or release any consignment of taxable goods, unless- (a) the consignment is covered by a copy of invoice or sale bill; (b) the particulars regarding consignment intended to be booked are furnished in the forwarding notes by the consignor; (c) the person taking delivery of goods or delivering the goods for booking furnishes a letter of authority from the consignee or consignor

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containing his specimen signatures duly attested; and (e) the consignment note or the forwarding note in respect of consignment of goods brought from a place outside the State or intended to be booked for a place outside the State by a dealer not registered under the Act is countersigned by the Prescribed Authority or any other officer authorized by him.

5. All accounts, records, registers and documents relating to the above transactions shall at all reasonable times be open to inspection by an officer any officer appointed to assist the Commissioner. The Prescribed Authority shall have the power to call for and examine the books of accounts, other documents and records in possession of a transporter for the purpose of verifying the correctness of the statements, submitted under this rule or for any other purpose and the transporter shall be bound to furnish the books of accounts or other documents when so called for.

6. Where the goods have been dispatched by a consigning dealer "to self", the transporter shall ascertain and keep record of the full name and address of the person taking delivery of the goods, the name of the dealer with his registration certificate number under the Act, if any, and if the person taking delivery is not a dealer but taking delivery for and on behalf of a dealer, the name and address of such dealer and his registration certificate number under the said Act.

7. The driver or the person in charge of the goods vehicle shall always carry with him a copy of the Consignment Note in respect of each consignment of goods being carried. In case the goods vehicle is carrying more than five consignments in respect of different dealers, the driver or person in charge of such vehicle shall also carry a Manifesto, which shall contain all the particulars of specimen Form-55.

8. When the transporter does anything directly or indirectly, which results in evasion of tax or would have resulted in evasion of tax if such evasion was not detected and prevented in time, the Prescribed Authority may, direct him to pay by way of penalty an amount equal to three times the tax so evaded or so sought to be evaded. In such a case, the transporter shall be deemed to be a dealer and he shall also be liable to pay the tax so evaded or so sought to be evaded. The penalty and tax so imposed shall be without prejudice to his liability for prosecution under this Act or any other law for the time being in force.

## Chapter-14

# Liability in Special Cases

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### **A. Liability in case of transfer of business [Section 63, Rule 38]**

1. Where the business of a dealer liable to pay tax under this Act is transferred in whole or in part, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax (including any penalty) due from the dealer under this Act or under the earlier law, up to the time of such transfer, whether such tax (including any penalty) has been assessed before such transfer, but has remained unpaid or is assessed thereafter.

2. Where the transferee or the lessee of a business carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing dealer, apply within 14 days for amendment of his certificate of registration.

### **B. Liability to pay tax in case of death [Section 64]**

Where a dealer, liable to pay tax under this Act, dies then,—

- (a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay tax including any penalty, sum forfeited and interest due from such dealer under this Act or under earlier law, in the like manner and to the same extent as the deceased dealer; and
- (b) if the business carried on by the dealer is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the extent the estate is capable of meeting the charge as the deceased dealer would have been liable to pay if he had not died, the tax including any penalty, sum forfeited and interest due from such dealer under this Act, or under earlier law; whether such tax including any penalty, sum forfeited and interest has been assessed before his death but has remained unpaid, or is assessed after his death.

For the purposes, of this section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

### **C. Liability of guardians, trustees and Court of Wards etc. [Section 65]**

1. Where the business in respect of which tax is payable under this Act is carried on by, or is in the charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax (including any penalty) shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

2. Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a Court, the tax (including any penalty) shall be levied upon and be recoverable from such Court of Wards, Administrator- General, Official Trustee, receiver or manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

### **D. Liability of partners of firm to pay tax [Section 66]**

1. Notwithstanding anything contained in the Indian Partnership Act, 1932 (or in any contract to the contrary, where any firm is liable to pay any tax (including any penalty) under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment and accordingly any notice or order under this Act may be served on any person who was a partner during the relevant time whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly.

Where any such partner retires from the firm, he shall intimate the date of his retirement to the Prescribed Authority by a notice in that behalf in writing and he shall be liable to pay tax (including any penalty) remaining unpaid at the

time of his retirement and any tax (including any penalty) due up to the date of his retirement though un-assessed on that date. If no such intimation is given within fifteen days from the date of retirement, the liability of the partner under the first proviso shall continue until the date on which such intimation is received by the Prescribed Authority.

2. Where a change has occurred in the constitution of a firm or an association of persons, the partners or members of the firm or association as it existed before and as it exists after its reconstitution, shall, jointly and severally be liable to pay tax (including any penalty) due from such firm or association for any period before its re-constitution.

### **E. Liability to tax of dissolved firm [Section 67(2)]**

Where a dealer liable to pay tax under this Act, is a firm, and the firm is dissolved, every person who was a partner shall be jointly and severally liable to pay, the tax including any penalty, sum forfeited and interest due from the firm under this Act or under the earlier law, up to the time of dissolution, whether such tax including any penalty, sum forfeited and interest has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

### **F. Liability to tax of a partitioned Hindu Undivided Family [Section 67 (2)]**

Where a dealer, liable to pay tax under this Act, is a Hindu Undivided Family and the joint family property is partitioned amongst the various members or group of members, each member or group of members shall be jointly and severally liable to pay the tax including any penalty, sum forfeited and interest due from the dealer under this Act or under the earlier law, up to the time of the partition, whether such tax including any penalty, sum forfeited and interest has been assessed before partition but has remained unpaid, or is assessed after partition.

### **G. Liability in case of company in liquidation [Section 70]**

1. Every person,—
  - (a) who is a liquidator of any company which is being wound up whether under the orders of a Court or otherwise; or

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- (b) who has been appointed the receiver of any assets of a company (hereinafter referred to as the "liquidator"), shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Prescribed Authority.

2. The Prescribed Authority shall, after making such inquiries or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he received notice of the appointment of the liquidator, the amount which in the opinion of the Prescribed Authority would be sufficient to provide for any tax (including any penalty) which is then, or is likely thereafter to become, payable by the company. [Section 70(2)]

3. The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Prescribed Authority under sub-section (2) and on being so notified, the liquidator shall set aside an amount equal to the amount notified and, until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand.

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of the tax, interest, penalty and any other sum, if any, payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payments over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Prescribed Authority reasonable. [Section 70(3)]

4. If the liquidator fails to give notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of that sub-section, he shall be personally liable for the payment of tax, interest, penalty and any other sum, if any, which the company would be liable to pay under this Act.

Provided that if the amount of tax, interest, penalty and any other sum, if any, payable by the company is notified under sub-section (2) the personal liability of the liquidator under this sub-section shall be to the extent of such amount. [Section 70(4)]

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

6. When any private company is wound up and any tax, interest, penalty and any other sum, assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax and penalty, if any, unless he proves to the satisfaction of the Prescribed Authority that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

7. The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

## **H. Amalgamation of Companies [Section 71]**

1. When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase shall be included in the turnover of the sales or of purchases of the respective companies and shall be assessed to tax accordingly.

2. Notwithstanding anything contained in the said order, for all of the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall be treated as such for all periods up to the date of the said order and the certificates of registration of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

3. Words and expressions used in this section, but not defined, shall have the meanings respectively assigned to them in the Companies Act, 1956 (Central Act 1 of 1956).

## **I. Certain agents liable to tax for sales on behalf of principal [Section 68]**

1. Where any person 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 tax on the turnover of such sales or purchases.

2. If the principal, on whose behalf a commission agent has sold or purchased any goods, shows to the satisfaction of the Prescribed Authority that tax has been paid by the commission agent on such goods under sub-section (1), the principal shall not be liable to pay tax again in respect of the same transaction.

3. Where a manager or an agent of a non-resident dealer sells or purchases any goods on behalf of the 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. However, if the non-resident dealer shows to the satisfaction of the Prescribed Authority that the tax payable in respect of any sale or purchase has been paid by the manager or agent residing in the State, then the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

#### **J. Liability of contractor and sub-contractor to tax [Section 69, Rule 39]**

1. Where a dealer carries on the business of transfer of property in goods involved in the execution of a works contract (hereinafter referred to as a contractor) through another such dealer (hereinafter referred to as a sub-contractor) directly or otherwise, and the sub-contractor executes such works contract and each or either of them is liable to pay tax under this Act, then notwithstanding anything contained in this Act, the contractor and the sub-contractor shall be jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in the execution of such works contract. [Section 69(1)]

2. If the contractor proves in the prescribed manner that the tax has been paid by the sub-contractor on the taxable turnover of the goods involved in the execution of the works contract, executed by such sub-contractor, the contractor shall not be liable to pay tax again on the taxable turnover of such goods. [Section 69(2)]

A contractor shall not be liable to pay tax under sub-section (2) of section 69, if he produces documentary evidence as to the payment of tax on the taxable turnover of the goods involved in execution of works contract, by the sub-contractor along with a declaration from such sub-contractor to this effect. [Rule 39(1)]

3. If the sub-contractor proves in the prescribed manner that the tax has been paid by the contractor on the taxable turnover of goods involved in the execution of the works contract, executed by such contractor, the sub-contractor shall not be liable to pay tax again on the taxable turnover of such goods. [Section 69(3)]

A sub-contractor shall not be liable to pay tax under sub-section (3) of section 69, if he produces documentary evidence as to the payment of tax on the taxable turnover of the goods involved in execution of works contract, by the contractor along with a declaration from such main contractor to this effect. [Rule 39(2)]

### **K. Liability of the owner of the place or premises in certain cases [Section 71A]**

1. Any dealer conducting exhibitions, exchange melas or any prize schemes for sales promotion or any caterer supplying food and services shall obtain a written permission from the Commissioner. The Commissioner may issue such permission subject to such conditions as may be specified in such permission. The dealer to whom the permission is issued shall exhibit the same at a conspicuous place where the exhibition or exchange mela or prize scheme is conducted. The owner of the premises where the exhibition, exchange mela or any prize scheme for sales promotion are conducted shall obtain a copy of the permission issued by the Commissioner and intimate the Commissioner concerned the particulars regarding the period during which the mela is conducted, the dealer conducting the mela and the conditions subject to which the premises are leased out for the conduct of such exhibition, exchange mela or prize schemes and any other relevant information. Where the owner of the premises fails to do so, he shall be jointly and severally liable for any tax that may become due on the sales of goods made in such exhibition, exchange mela or any prize schemes.

2. A caterer supplying food and services in a place which is not his regular place of business shall obtain a written permission from the Commissioner. The Commissioner may issue such permission subject to such conditions as may be specified in such permission. The owner of the premises where such supply is made by the caterer shall obtain a copy of the permission issued by the Commissioner and intimate the Prescribed Authority concerned the particulars regarding the period during which the supply is so made. Where the owner of the premises fails to do so, he shall be jointly and severally liable for any tax that may become due on the sales of goods made in such catering.

## Chapter-15

# Survey, Inspection of Accounts, Documents, Search of Premises and Establishment of Check-posts

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### A. Survey [Section 72]

1. The Commissioner shall from time to time cause a survey of unregistered dealers to be undertaken with a view to identifying dealers, who are liable to pay tax under this Act, but have remained unregistered and for the said purpose, he may by notice require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.
2. For the purpose of survey, the Commissioner may call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies which, he is of the opinion, shall be relevant and useful for the purposes of the survey.
3. He may from, time to time, cause the results of the survey to be published in any manner that he thinks fit so as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.
4. The Commissioner may, for the purpose of survey, enter any place where a person is engaged in business, whether such place be the principal place of business or not of such person and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in the business,—
  - (i) to provide him with the necessary facility to;
    - (a) inspect such books of accounts or other documents as he may require and which may be available at such place;
    - (b) check or verify the cash, stock or other valuable articles or things which may be found therein; and

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- (ii) to furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Act.

For the purposes of this section, a place of business includes a place where a person is engaged in business through an agent by whatever name called or otherwise, the place of business of such agent, a warehouse, godown or other place where the dealer or the agent stores his goods, or any place where the dealer or the agent keeps the books of accounts.

5. The Commissioner shall enter the place where the person is carrying on business only during the hours at which such place is open for business and in case of the said or any other place only after sunrise and before sunset.

6. The Commissioner may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash, stock or things checked or verified by him, and record the statement of any person which may be useful for, or relevant to, any proceedings under this Act.

7. The Commissioner, in exercise of the powers under this section, shall on no account, 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.

## **B. Cross-checking of transactions [Section 73]**

1. The Commissioner may from time to time collect information regarding sales and purchases effected by any class of dealers and cause any of such transactions of sale and purchase to be cross-checked.

2. He may from time to time by notification in the Official Gazette require any class of dealers to furnish such information, details and particulars as may be specified therein regarding the transactions of sales and purchases effected by them during the period mentioned in the said notification in such form to such authority and by such date as may be specified. He may cause such transactions to be cross-checked with the help of the automated data processing system to the extent possible.

3. He may cause any of such transactions to be cross-checked by reference to the books of accounts of the purchasing and selling dealers.

4. He may, as far as possible, arrange that for any given dealer, not more than two dates are fixed during any year for cross-checking the transactions with reference to the books of accounts and other evidence by calling the

dealer and two dates for visiting the said place of business of the dealer if the dealer has failed to attend in response to the intimation. He may communicate such dates to the dealer.

### **C. Production and inspection of accounts and documents and search of premises [Section 74, Rule 40]**

1. The Commissioner or any authority appointed under sub-section (1) of section 3 to assist him may, subject to such conditions as may be prescribed, require any dealer or any other person to produce before him any accounts, registers or documents, or to furnish any information, relating to stocks of goods, or to sale, purchase and delivery of goods or to payments made or received by the dealer, or any other information relating to his business, as may be necessary for the purpose of this Act. [Section 74(1)]

In requiring the production by any dealer of his accounts and documents, strict regard shall be had to the necessity of not disturbing the accounting procedure of the dealer or the work of his staff any more than is absolutely necessary for the purpose of applying adequate check or ascertaining the required information as the case may be. [Rule 49(1)]

2. All accounts, registers and documents including electronic records relating to stocks of goods, or to purchase, sale and delivery of goods, or to payments made or received by any dealer, and all goods and cash kept in any place of business of any dealer, shall at all reasonable time be open to inspection by any authority referred to in sub-section (1), and the dealer shall render all possible assistance to such authority in carrying out the inspection. Such authority 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 74(2)]

3. Unless the authority acting under sub-section (2) of section 74 in his discretion deems it necessary to make a surprise visit, he shall give reasonable notice in writing to the dealer of his intention to inspect and in fixing the date, time and place for the purpose of as far as possible, be paid to the convenience of the dealer. [Rule 49(2)]

4. Seizure of Books of account and documents [Section 74(3)]

(a) If the authority has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him and is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under this Act, such authority may, for

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reasons to be recorded in writing, seize such accounts, registers, documents including electronic records or computer of the dealer, as may be necessary, and he shall grant a receipt for the same and obtain acknowledgement of the receipt so given to him. However, if the dealer or person from whose custody the seizure is made, refuses to give an acknowledgement, such authority may leave the receipt at the premises and record this fact.

- (b) The authority, shall keep in his custody the books of accounts, registers, documents including electronic records or the computer seized and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or for the prosecution of the dealer, under any law and shall thereafter be returned to the dealer or any other person from whose custody they were seized, in the prescribed manner.

The seizing authority (if other than Commissioner of Taxes) may, for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such books of accounts, registers, documents including electronic records or the computer for a period exceeding 120 days.

On application of the dealer, the Commissioner shall on payment of fees of ₹ 2/- per page of the seized documents (by way of court fee stamp as per rule 61(1)(j)), provide him with true copies of the said books of accounts, registers or documents including electronic records.

- (c) The authority referred to in sub-section (1) may, before returning such books of accounts, registers or other documents as aforesaid, place or cause to be placed such marks of identification thereon as appear to him to be necessary.

The authority may, before returning the books of accounts, registers and other documents, require that the dealer or the person, as the case may be, shall give a written undertaking that the books of accounts, registers and other documents shall be presented whenever required by any competent authority for any proceedings under this Act.

The seized books of accounts, registers and other documents shall not be released before expiry of 90 days calculated from the date of

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issuance of Demand Notice. However, such seized items may be released earlier with prior approval from the Government if the amount involved in the Notice of Demand issued against such seizure by such authority does not exceed Rupees five lakhs and with prior approval from the Government if the amount involved exceeds Rupees five lakhs.

- (d) When any seized accounts, registers or documents have to be returned to the dealer, such return may be made after taking such extracts therefrom, as may be necessary. The authority making the return shall affix its signature or official seal or both on such accounts, registers or documents and the dealer shall give a receipt in acknowledgement, which shall mention the numbers and particulars of the places where the accounts, registers or documents returned to him. [Rule 40(4)]
5. Enter into premises and search: [Section 74(4), Rule 40(3)]
- (a) For the purposes of section 74(1) and 74(2), the Commissioner or any authority appointed under sub-section (1) of section 3 to assist him may, enter and search any place of business of any dealer or any other place where such authority has reason to believe that the dealer keeps or is for the time being keeping any account, registers or documents of his business or stocks of goods relating to his business. [Section 74(4)]
  - (b) The power conferred by section 74(4) shall include the power,—
    - (i) to search any person who leaves or is about to enter such place of business, residence or any other place or the dealer or his agent and employees present, and if such person is a woman, the search shall be made by another woman, with strict regard to decency;
    - (ii) to make a note or inventory of anything including goods found as a result of such search;
    - (iii) to record the statement of a dealer or any person connected with his business, and such statement may, after giving the affected person a reasonable opportunity of being heard, be used for the purpose of determining his liability to tax.
  - (c) No authority below the rank of the Commissioner shall enter and search any residential accommodation (not being a place of business

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cum residence) unless such authority is specifically authorized in writing by the Commissioner in this regard in Form- 59 on an application by such authority in Form -58. [Section 74(4), Rule 40(3)(ii)]

- (d) Where any authority conducts a search under sub-section (4) of section 74, he shall, as far as may be possible follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974). [Rule 40(3)(i)]

6. Seizure of goods: [Section 74(5)]

- (a) The authority referred to in sub-section (1), shall have the powers to seize any goods,—
- (i) which are found in a dealer's place of business or vehicle; or
  - (ii) which, such authority has reason to believe belong to the dealer and which are found in any place of business or vehicle or any other building or place;

but are not accounted for by the dealer in his accounts or registers or other documents maintained in the ordinary course of his business.

A list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two witnesses.

- (b) The authority referred to in section 74(1) at the earliest possible, after seizure of the goods, serve upon the dealer, a notice to show cause within a period of 15 days of service of such notice as to why a penalty equal to three times the amount of tax as may be calculated on the price which such goods would have fetched on their assumed sale in the State, on the date of seizure, be not imposed on him for his default in not making entries in respect of such goods in his books of accounts or registers or other documents, as the case may be, maintained by him in the course of his business.
- (c) The seizing authority shall record the statement, if any, given by the owner of the goods or his representative. If the authority referred to in section 74(1), after taking into consideration the explanation of the dealer and after giving him a reasonable opportunity of being heard, is satisfied that the entries relating to the said goods were not made in the books of accounts, registers or other documents of the dealer without any proper justification, such authority shall pass an order

imposing penalty equal to three times of the amount of tax on deemed sales value and direct him to deposit, in addition to the penalty, advance tax calculated on the deemed sale value of the goods at applicable rate of tax equal to three times the amount of tax which shall be adjustable with the liability to tax incurred on the purchase or the sale of such goods or the sale of goods manufactured therefrom and in case he finds otherwise, he shall order release of the goods.

- (d) The authority referred to in Section 74(1) may, at any time after the service of the post seizure notice and before passing an order imposing penalty and for payment of advance tax, release the goods seized if the dealer or the person from whom the goods were seized furnishes security equivalent to penalty and advance tax in the form of call deposit receipt drawn on a Scheduled Bank or a Bank guarantee from such a Bank to the satisfaction of such authority. Such security shall be released on payment by the dealer of the penalty imposed and advance tax demanded.
- (e) Where no security is furnished under clause (d), the dealer shall pay the amount of penalty and advance tax, within ten days of the service of the order imposing penalty and for payment of advance tax on him, and on payment of such amount the goods seized shall be released forthwith.
- (f) If the dealer fails to pay within the period specified in clause (e) the penalty and advance tax, the authority referred to in clause (a) shall, subject to other provisions of this section, dispose of the goods by way of sale in open auction in the manner prescribed in rule (5).
- (g) If the goods, in respect of which seizure is made, are of a perishable nature or subject to speedy and natural decay or when the expenses of keeping them in custody are likely to exceed their value, the same may be ordered to be auctioned as soon as it is practicable soon after an order of seizure of such goods is made.
- (h) The proceeds of sale of the goods referred to in clause (f) shall be applied in the prescribed manner for payment in the following order of priority,—
  - first, for incidental charges, if any, relating to auction sale of such goods;
  - secondly, for expenses, if any, for storage of such goods;

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thirdly, for advance tax and penalty imposed under clause (b) and clause (c); and

the balance of the proceeds of sale, if any, shall be remitted to a Government account and shall be paid to the owner of the goods or, if his particulars are not available, to the persons from whom such goods were seized, upon application within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to his satisfaction.

Any amount of advance tax directed to be paid and penalty imposed under clause (c), which remains unpaid or which cannot be recovered in accordance with the provisions of this sub-section, shall be recoverable as an arrear of land revenue.

- (i) Any authority referred to in section 74(1), seizing the goods shall take all the measures necessary for their safe custody. Where it is not feasible for such authority, to take possession of such seized goods, the said authority may, in writing, give custody of such seized goods to such person from whom the seizure of goods has been made on the express condition that he shall keep such seized goods,—
  - (i) where the custody is given to the person from whom the goods are seized, in the warehouse or any other place where the seizure has been made or in any other place as may be indicated by such authority in the zimmanama; or
  - (ii) where the custody is given to any other person, in the warehouse or place as may be indicated by such authority in the zimmanama

and such zimmadar shall not dispose of such goods in any manner and that he shall remain personally liable to return the goods to the authority on demand in the condition in which the goods were at the time of giving zimma.

The authority may take physical possession of such seized goods from the custody of such person even before the conclusion of the proceedings where such person communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody, or such authority finds it expedient to take custody of the goods or to transfer the custody from that person to some other person, for any reason.

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7. 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.
8. Power to seal the place etc.: [Section 74(7)]
- (a) The authority referred to in section 74(1), shall have the power to seal the place of business, goods vehicle or any box, locker, safe, almirah, or other receptacle found in such place of business or goods vehicle in which he has reason to believe that any books of accounts, registers or other documents or goods are kept or contained, if the owner or other person in occupation or in-charge of such office, shop, godown, vessel, goods vehicle or box, locker, safe, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so. However, the power to seal shall be exercised in presence of two witnesses.
- (b) Where any place of business, godown, warehouse, goods vehicle or any box, locker, safe, almirah or other receptacle has been sealed, the authority referred to in sub-section (1), on an application made by the owner or the person in occupation or in-charge of such place of business, godown, warehouse, goods vehicle or any box, locker, safe, almirah or other receptacle, may order de-sealing thereof on such terms and conditions as may be directed.
9. The authority referred to in section 74(1), shall also have the power to break open the lock of any door, box, locker, safe, almirah or other receptacle where the owner or other person in occupation or in-charge of the office, shop, godown, vessel or goods vehicle or the box, locker, safe, almirah or other receptacle found in the place of business or vehicle, is present but leaves the place or after a reasonable opportunity having been given to him to do so, fails to open such office, shop, godown, vessel or goods vehicle or the box, locker, safe, almirah or other receptacle as the case may be. Such authority shall prepare a list of the goods and documents found therein which shall be signed by such authority and not less than two witnesses.
10. The Commissioner or any authority appointed to assist him may requisition the services of any police officer or any public servant, or of both in making search and seizure or for safe custody of goods seized under this Act and such public servant or police officer shall render necessary assistance to him.

11. The Commissioner or any authority appointed to assist him while making entry, search and seizure under this section shall, as far as may be, follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

#### **D. Obtaining Delivery Note [Rule 41(11)]**

1. A registered dealer who intends to bring or import any taxable goods from outside the State for sale, shall apply to the appropriate Prescribed Authority for issue of Delivery Note (Form-61). The dealer shall also furnish a utilization statement of Delivery Notes previously issued. If the Prescribed Authority is satisfied that the application of the dealer is genuine and reasonable, he may issue him such number of forms as he may deem proper.

2. Such Delivery Note in Form-61 shall be got printed by the Government in triplicate, that is the counter foil, the original foil and the duplicate foil and shall be issued to the applicant dealer by the appropriate Prescribed Authority against payment of ₹ 2/- per leaf.

3. The Dealer shall retain the counterfoil of the Delivery Note and he shall send in advance the portions marked as 'Original' and 'Duplicate' of such Delivery Note to the consignor. Such Delivery Note, in duplicate, filled in by the consignor shall accompany the goods and shall be tendered by the person-in-charge of the goods vehicle to the officer-in-charge of the check post through which the goods vehicle first enters into the State.

#### **E. Obtaining Road Permit [Rule 41(12)]**

1. Where any person intends to bring, import or otherwise receive into the State from any place outside the State, any taxable goods, in excess of the quantity or measure as specified in rule 42, for his own use and not for resale or for transfer of any other manner and the consignment of such goods is transported into the State by road, railways, air or waterways, such person shall make an application for Road Permit (Form- 62) to the Prescribed Authority in whose jurisdiction the applicant carries on business or, if he does not carry on any business, within whose jurisdiction the applicant resides.

2. Where any person, having a manufacturing or industrial unit or intending to set up such a unit, intends to bring, import or otherwise receive into the State from any place outside the State, any taxable goods, in excess of the quantity or measure as provided in rule 42 for use in setting up of the

industrial unit or for use as raw materials in manufacture of goods in the industrial unit and not for resale or for transfer in any other manner and the consignment of such goods is transported into the State by road, railways, air or waterways, such person shall make an application for Road Permit to the Prescribed Authority in whose jurisdiction the industrial unit or its office is located.

3. The person transporting the goods shall produce the "Original" and the "Duplicate" foils of the Road Permit (Form-62) before the Officer-in-charge of the check post and the said officer shall after proper verification, allow the movement of the goods conforming to the description and quantity mentioned in the Road Permit. The Officer-in-charge shall sign and seal both the foils of the Road Permit as a mark of having verified the particulars furnished therein, retain the "Original" foil and return the "Duplicate" foil to the person producing it. He shall send the "Original" foil retained by him to the Prescribed Authority who had issued the Road Permit;

4. If the Prescribed Authority is of the opinion that the consignment of goods mentioned in the application referred to in sub-clause (iii), involves any tax liability under any provisions of the Act and considers it necessary to obtain security for safeguarding the payment of tax on such transaction, he shall, before issuing the Road Permit, direct the applicant to make payment of an amount equivalent to the amount of tax that may become payable on such transactions;

5. Where the Prescribed Authority is of the opinion that a person, who has applied for Road Permit should furnish security with a view to ensure that there is no mis utilization of the Road Permit, direct the applicant to furnish security in the Form of a call deposit or bank guarantee for an amount not exceeding the amount of tax under the Act calculated on the value of the goods;

#### **F. Other provisions relating to Delivery Notes & Road permits [Rule 41(11), 41(12)]**

1. The said forms shall not be transferred under any circumstances;

2. The officer-in-charge of the check post shall retain the original portion of the declaration form and return the duplicate portion after signature and marking seal in token of having verified it, to the person producing it and such officer shall send the retained original portion of the declaration form to the appropriate Prescribed Authority.

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3. The obtaining dealer shall keep such forms in safe custody and maintain true and correct account of such forms in a register and where any such form is lost, will inform the Police and the jurisdictional Prescribed Authority immediately. The dealer shall also take steps to issue public notice of the loss, destruction or theft, as the Prescribed may direct.
4. Any of such statutory form, in respect of which a report of loss or damage has been received by the jurisdictional Prescribed Authority, shall stand invalid.
5. On receipt of report of the loss, theft or damage, the jurisdictional Prescribed Authority shall call upon the dealer to furnish a reasonable security by way of an indemnity bond in respect of each lost form separately or in respect of each lost form separately or in respect of all the lost forms collectively to safeguard against their misuse.
6. The Prescribed Authority shall inform the details of such Forms to the Commissioner and to the Officer in charge of the Check posts.
7. The Commissioner shall from time to time publish in the Official Gazette, the particulars of the Road Permit in respect of which a report has been received about loss, theft or damage.
8. Any unused form remaining in stock with a dealer shall be surrendered to the jurisdictional Prescribed Authority within 30 days of the discontinuance of the business by the dealer or cancellation of his certificate of registration.
9. To ensure smooth passage of vehicles carrying goods meant for E1 transactions at the check gate, it was clarified by the Commissioner that a check gate authority shall not detain such vehicles and levy tax, penalty on technical grounds that the Statutory Forms were not issued by the first buyer in Assam but by the subsequent buyer.

**G. Withholding of issuance of Road permit and Delivery Note [Rule 41(12A)]**

The Prescribed authority may, after affording the applicant an opportunity of being heard and for reasons to be recorded in writing, withhold issue of any declaration form or issue such forms in such numbers and subject to such conditions and restrictions as he may consider necessary, if a registered dealer, at the time of making an application for declaration forms, namely:- Delivery Note in Form -61 or Road Permit in Form- 62 under the Act has,-

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- (i) defaulted in furnishing any return or returns in accordance with the provisions of law or in payment of tax due according to such return; or
- (ii) defaulted in making the payment of the amount of tax assessed, re-assessed or the penalty imposed under the Act and in respect of which no orders for stay have been obtained from the competent authority under the provision of law; or
- (iii) not filed proper utilization account of any declaration form issued to him earlier; or
- (iv) some adverse material has been found by the Prescribed Authority suggesting any concealment of sale or purchase or furnishing inaccurate particulars in the returns.

## **H. Obtaining Tax Clearance Certificate [Rule 44]**

1. Where a dealer or person requires a clearance certificate, such dealer shall, make an application in Form-63 in duplicate containing therein a declaration regarding position of submission of returns, payment of due taxes, payment demanded taxes, interest and penalty under the Act, position of any litigation cases lying before the Appellate Authority, Appellate Tribunal as the case may be and having the same duly verified and signed to the Prescribed Authority, with a prayer to issue a clearance certificate to him for the purpose (s).
2. If the Prescribed Authority is satisfied that the application is in order and the declaration made by a dealer or person in his application is correct, such authority shall, within 7 days from the date of receipt of such application, issue to the applicant a clearance certificate in Form-63.
3. A clearance certificate issued under sub-rule (2) shall be valid for the period specified in such clearance certificate over the signature and seal of the Prescribed Authority.
4. A copy of the clearance certificates so issued shall be retained by the Prescribed Authority for his record.
5. Where the Prescribed Authority does not issue a clearance certificate to a dealer or person under sub-rule (2), such authority shall, after giving the dealer an opportunity of being heard, reject his application within 7 days from the date of receipt of such application for reasons recorded therein and intimate him in writing accordingly.

## **I. Establishment of check-posts [Section 75]**

1. If the Government, considers it necessary that, with a view to preventing or checking evasion of tax under this Act in any place or places in the State, it is necessary so to do, it may, by notification in the Official Gazette, direct the establishment of a check-post or the erection of a barrier, or both, at such place or places as may be notified. [Section 75(1)]

When a check post is set-up on thoroughfare of road, barriers may be erected across the thorough fare of road in the form of contrivance to enable traffic being intercepted, detained and searched. [Rule 41(1)]

Any officer appointed under the provisions of the Act and for time being on duty at the check post shall be deemed to be the Officer-in-charge of such check post and all the provisions of the Act and rules shall apply accordingly. The following officers shall be deemed to be on duty at a check post for the purpose of this rule:

- (i) The Commissioner;
- (ii) Any other Officer appointed to assist the Commissioner and exercising jurisdiction over the area where the check post is located;
- (iii) Any officer appointed in any capacity to assist the Commissioner and posted in such capacity to 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 the Officer-in-Charge of the check post.

Where at any time more than one officer is present, the senior most among them shall be deemed to be the Officer-in-Charge of the check post. [Rule 41(2)]

The Commissioner may, by general or specific order in writing not inconsistent with the provisions of the Act and rules, direct the Officer-in-charge of the Check Post, subject to such conditions as may deem fit to impose, to do or refrain from doing something which the latter has the authority to do whereupon such Officer-in-charge shall carry out the order. [Rule 41(3)]

As per circulars issued by the Commissioner of Taxes, Assam, the transporters or dealers have been directed to declare online the details of vehicle/consignment in advance before a goods carrying vehicle reaches the Check gate physically.

**Section 75(3A):** The owner of any goods or transporter of such goods or the person in-charge of the goods vehicle carrying goods shall also furnish relevant information in the electronic format online as may be prescribed.<sup>7</sup>

Though after the date of notification nothing has been specifically provided, however in pursuance to the circulars issued earlier by the Commissioner of taxes, the web-site provides the system for submitting online information.

2. At every check-post or barrier, or at any other place when so required by any officer empowered by the Commissioner in this behalf, the driver or any other person-in-charge of a goods vehicle shall stop the vehicle, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle, by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge, who shall, if so required, give his name and address and, the name and address of the owner of the goods vehicle as well as those of the consignor and consignee of the goods and also furnish such other information, as may be required by the aforesaid officer, who may also search the goods vehicle or part thereof and the driver or the person-in-charge of the goods vehicle or the goods, if he considers it necessary. The officer-in-charge of the check post shall be an officer appointed to assist the Commissioner and posted to the check-post, but not below the rank of the Superintendent of Taxes. [Section 75(2)]

3. The owner or the person in charge of a goods vehicle shall carry with him the following documents:

- (i) Invoice
- (i) Consignment Note
- (i) Manifesto of the Transporter
- (i) Registration Certificate of the Vehicle
- (i) Weighment Slip of the goods carried by the vehicle
- (i) Trip Sheet or log book (Form-65)

In addition to the above, the following documents are also required to be carried:

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<sup>7</sup> Sub Section 3A to Section 75 inserted vide Assam VAT (Amendment) Act 2014 w.e.f. 06/02/2015

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While bringing goods into state of Assam from other State:	
Bill of sale (Form -60)	In case of import of Tax free goods
Delivery Note (Form-61)	In case of import of Taxable goods for re-sale
Road Permit (Form-62)	In case of import of Taxable goods for use in the setting up of industrial unit or for use as raw material in the manufacture of goods or for personal use or consumption
While carrying taxable goods from Assam to other state(s):	
Form-63	Tax Clearance Certificate (Rule 41(9)(iii))
Dispatch Note (Form-XI)	Dispatch Note as per rule 4A of CST (Assam) Rules, 1957. The rule further says that Tax Clearance Certificate may also be used instead of Dispatch note.
While carrying taxable goods in case of movement through Assam from any place outside the state to any other place outside the state(s):	
Statutory document(s) of importing State	If the goods are taxable in the importing state
Transit Pass of other relevant States	
An application for Transit Pass	(to be submitted at entry point check gate in the State)
Transit Pass (Form 64)	(To be obtained from entry point check gate)
In case of intra-state movement of taxable goods	
Form-63	Tax Clearance Certificate (Rule 41(9)(iii))

The Commissioner has clarified that in case of movement of taxable goods to any other State through the State of Assam, the statutory documents of the importing State shall be mandatorily required to be carried by the Goods Carrier to avoid fraudulent delivery and subsequent sale of such goods into the State of Assam, resulting in evasion of taxes. The check post authorities are directed not to issue any transit pass unless the consignments are supported by the Statutory Forms of the Consignee States. Following are the

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details of such statutory forms of the North Eastern States as mentioned by the Commissioner:

<b>State</b>	<b>Type of Form/Permit</b>	<b>Remarks</b>
Arunachal Pradesh	No Statutory Form	Copy of Registration Certificate of the Importing Dealer shall have to be produced. DG Form issued earlier has been discontinued.
Manipur	VAT Form 27 (Inward) VAT Form 28 (Outward)	Generated Online. In case of Private Consumption, a special permit is issued by the Taxing Authority.
Meghalaya	Form 40	Generated Online
Mizoram	Form 33	Generated Online
Nagaland	Form 23	Generated Online
Tripura	Form XXV	Generated Online

4. The owner or the person in charge of a goods vehicle shall produce the prescribed documents before any officer officer-in-charge of a check-post or barrier or any other officer as may be empowered by the Commissioner in this behalf. [Section 75(3)]

5. No person shall transport goods across or beyond a check post or barrier except after filing before the officer-in-charge of the check post, the documents referred to in sub-section (3) of section 75. [Rule 41(4)]

6. The check post authority shall enter the relevant information in the computer and generate serially numbered computerized printout of gate pass and other documents, as the case may be.

The Commissioner may direct that the relevant information be furnished in the electronic format and in such cases it shall be incumbent upon the person carrying the goods or person in-charge of the goods vehicle to furnish such information in the electronic format.[Rule 41(5)]

7. The owner of any goods or the transporter of such goods or the person in-charge of the goods vehicle carrying such goods shall also furnish relevant information in the electronic format online as may be prescribed. (Section 75(3A)].

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8. In case, where computer counter is not functional, for one reason or another, and in case when there is extraordinary rush of work at the computer counter of the check post, the relevant information or particulars shall be filled in manually. [Rule 41(7)].
9. Detention of vehicles: [Section 75(4)]
- (a) If it appears to the officer-in-charge of a check-post or barrier or any officer empowered by the Commissioner in this behalf that the driver or the person-in-charge of the goods vehicle is not giving the correct name and address of the owner of the goods vehicle or of the consignor or consignee of the goods, and if the said authority after making such enquiry as he deems fit, finds that in order to prevent any evasion of tax payable under this Act and to ascertain the correct name and address of the owner of the goods vehicle or of the consignor or the consignee of the goods it is necessary to detain the goods, he shall detain the goods either in the check-post or elsewhere as long as may be necessary. However, no such goods shall be detained by the said authority for more than forty eight hours except with the permission of the next higher authority.
- (b) When any goods are detained as above, the authority detaining the goods shall issue to the owner of the goods, or, if the owner of the goods is not present, to his representative or the driver or other person-in-charge of the goods vehicle a receipt specifying the description and quantity of the goods so detained and obtain an acknowledgement, from such person or if such person refuses to give an acknowledgement, record the fact of refusal in the presence of two witnesses.
10. If on an examination of the contents in the goods vehicle or the inspection of records relating to the goods carried, the aforesaid authority has reason to believe that the owner or the person-in-charge of such goods vehicle is not carrying the documents as required by section 75(3) or is not carrying proper and genuine documents or is attempting to evade payment of the tax due under this Act, or that the sale or purchase of the goods for the purpose of payment of tax under this Act has not been properly accounted for, he may, for reasons to be recorded in writing seize the goods and documents relating to the goods and the documents of the vehicle. A list of all the goods and the documents seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two witnesses. [Section 75(5)]

11. The officer detaining or seizing the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person-in-charge of the vehicle. If, after the inquiry including an inquiry into the nature of the transaction which occasioned the movement of goods, such officer finds that there has been an attempt to evade the tax under this Act, he shall, by an order, impose on the owner of the goods and in case the owner is not forthcoming or his identity is not disclosed by the person-in-charge of the goods or the driver or person-in-charge of the vehicle, in which the goods are being carried, on the person-in-charge of the goods or the goods vehicle or the driver, deeming such person to be the owner of the goods, a penalty calculated on the value of the goods at three times the rate of tax applicable on sale or purchase of such goods, and direct him to deposit, in addition to the penalty, advance tax calculated on the deemed sale value of the goods at applicable rate of tax on sales of such goods which shall be adjustable with the liability to tax incurred on the purchase or the sale of such goods or the sale of goods manufactured therefrom, and in case he finds otherwise, he shall order the release of the goods. [Section 75(6)]

12. The officer in charge of the check-post or the officer empowered by the Commissioner under sub section (2) may release the goods to the owner of the goods or to any person duly authorized by such owner on payment of the penalty and the advance tax under sub section (6). [Section 75(7)]

13. The goods detained or the goods and documents so seized may be released by the officer detaining or seizing the goods, if the owner or his agent or the person-in-charge of the goods vehicle requests for time to adduce further evidence in respect of goods ordered to be detained under clause (a) of sub-section (4) or seized under sub-section (5) subject to furnishing of security to the satisfaction of such officer in the form of a bank draft or a call deposit or a guarantee from a Scheduled Bank, equivalent to penalty and advance tax calculated in the manner laid down in sub-section (6).

Provided that where the owner or his agent or the person-in-charge of the goods vehicle exercises the option of paying tax and penalty as per provision of sub-section (6), the officer-in-charge of the check-post or the officer empowered in this behalf instead of detaining or seizing the goods or the documents relating to the goods shall release the same. [Section 75(8)]

14. If the tax and penalty imposed under sub-section (6) is not paid or the security as provided in sub-section (8) is not furnished forthwith or the goods

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are not claimed by any person, the officer-in-charge of the check-post or any officer empowered by the Commissioner shall arrange for safe custody and sale of the goods by public auction and for this purpose the provisions contained in clause (f), clause (g) and clause (h) of sub-section (5) of section 74, in so far as may be applicable, shall apply. [Section 75(9)]

15. Where any goods are in movement within the territory of the State, an officer empowered by the Commissioner in this behalf may stop the goods vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and provisions of section 75 in respect of detention, seizure or disposal of such goods shall *mutatis mutandis*, apply. [Section 75(10)]

16. Where a transporter, while transporting goods, is found to be in collusion with any dealer to avoid or evade tax, the officer-in-charge of the check-post or the officer empowered by the Commissioner, shall detain the goods vehicle or the carrier of such transporter, and after affording him a reasonable opportunity of being heard and with prior approval in writing of the Commissioner, may confiscate such goods vehicle or carrier. [Section 75(11)]

17. Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where before delivery is taken from him, a carrier or bailee to whom goods are delivered for transmission, keeps the said goods in any office, shop, godown, vessel, receptacle, goods vehicle or any other place of business or any building or place, any officer appointed to assist the Commissioner under sub-section (1) of section 3 shall have power to enter and search such office, shop, godown, vessel, receptacle, goods vehicle or other place of business or building or place, and to examine the goods and inspect all documents relating to such goods. The carrier or bailee or the person-in-charge of the goods and records shall give all facilities for such examination or inspection and shall, if so required, produce the documents referred to in sub-section (3) and give a declaration containing such particulars as may be prescribed regarding the goods and give his name and address and the name and address of the carrier or the bailee and the consignee.

The power conferred above shall also include,—

- (i) power to seize any books of accounts;

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- (ii) power to seize any goods;
- (iii) power to break open the lock of any door, box, locker, safe, almirah or other receptacle in the office, shop, godown, vessel, vehicle, place of business, building or place where goods are kept by a transporter or bailee;
- (iv) power to seal the place of business, goods vehicle or any box, locker, safe, almirah or other receptacle found in such place of business;
- (v) power to levy tax and penalty;
- (vi) power to auction goods; and

for this purpose, all the provisions of section 74 and of this section in this regard shall, mutatis mutandis, apply. [Section 75(12)]

18. In case of carrying taxable goods in case of movement through Assam from any place outside the state to any other place outside the state(s), if such goods are required to be unloaded temporarily at any place within the State for the purpose of transshipment or for any other purpose, the driver or the person-in-charge of the goods vehicle shall-

- (a) give a declaration to this effect before the officer-in-charge of the entry check-post or barrier or the officer of the concerned office empowered by the Commissioner in this regard, mentioning the exact place of such temporary unloading while applying for the transit pass;
- (b) before unloading even temporarily, any goods for which transit pass has been issued, at any place within the State, the driver or the person-in-charge of the vehicle, or the transporter of the goods shall inform the officer empowered by the Commissioner in this regard, under whose jurisdiction the place of such unloading falls, of such unloading and subsequent loading of the same goods in the same goods vehicle or in a different goods vehicle;
- (c) the loading and un-loading shall be done in the presence of such officer;
- (d) on being satisfied, the officer shall make endorsement in the transit pass with his seal and signature and issue a lieu transit pass stating therein the goods vehicle number etc.

## **J. Transit of goods by road through the State and issue of transit pass [Section 76]**

1. The driver or the person-in-charge of a goods vehicle carrying taxable goods, from any place outside the State or Country and bound for any place

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outside the State shall obtain a transit pass (Form 64) from the officer-in-charge of the first check-post or barrier on entry into the State or where there is no check-post from such officer as empowered by the Commissioner in this regard, after entry of the goods vehicle into the State.

2. Where any goods brought into the State at any place by railway or by air or by post or by steamer or boat for transport outside the State by road, the driver or person in-charge of the goods vehicle or the transporter carrying goods from railway station or airport or post office, or steamer or boat station, as the case may be, to the place outside the State shall obtain transit pass, from such jurisdictional officer as empowered by the Commissioner.

3. The driver or the person-in-charge of the goods vehicle shall produce the goods and transit pass before the officer-in-charge of the check-post or barrier or such officer empowered by the Commissioner and get the said transit passes endorsed by such officer before his exit from the State, in proof of exit of such goods from the State.

4. Where any goods are brought from a place outside the State by road and after entry of such goods into the State the same are to be transported to a place outside the State either by railway or by air or by post or by river, the driver or the person-in-charge of the vehicle, or the transporter while obtaining transit pass from the entry check-post shall state the fact to this effect in the application for obtaining transit pass. The driver or the person-in-charge of such vehicle, or the transporter shall also mention the authority before whom, the transit pass along with copy of goods receipt is to be produced for endorsement. For the purpose of this sub-section, the office of the officer as empowered by the Commissioner in this regard and having jurisdiction over the area in which such railway station or airport or post office, or steamer or boat station is situated shall be deemed to be the exit check-post. The officer in-charge of the entry check-post after making such enquiries as he deems fit shall issue transit pass. The driver or the person-in-charge of the vehicle, after handing over goods to railway or airway or post office or steamer or boat, as the case may be, produce copies of the transit pass along with goods receipt note issued by railway or airport authority or post-office or steamer owner before such officer empowered by the Commissioner to be deemed officer-in-charge of the exit check-post mentioned in the transit pass for endorsement on them.

5. Where it appears to the authority at the entry check-post or barrier or to the officer empowered by the Commissioner in this regard that the driver or the person-in-charge of the vehicle, or the transporter is not giving correct

and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case where the transporter of the goods has no permanent address within the State, the officer-in-charge of the entry check-post or the officer empowered by the Commissioner shall, before issuing the transit pass, require the driver or the person-in-charge of the vehicle, or the transporter to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit or guarantee from a Scheduled Bank.

The security so furnished shall be released to the person who furnished the security on submission of the transit pass as per provision of sub-section (6). If, however, the transit pass is not submitted in time as provided in the said sub-section or is submitted without due endorsement(s) as provided in the same sub-section, the amount of such security shall be adjusted against the amount of tax that may be assessed under sub-section (6) and shall be deposited into the Government account.

6. Where goods carried by a goods vehicle coming from any place outside the State are required to be unloaded temporarily at any place within the State for the purpose of transshipment or for any other purpose, the driver or the person-in-charge of the goods vehicle shall give a declaration to this effect before the officer-in-charge of the entry check-post or barrier or the officer empowered by the Commissioner in this regard, mentioning the exact place of such temporary unloading while applying for the transit pass. Before unloading, even temporarily, any goods for which transit pass has been issued, at any place within the State, the driver or the person-in-charge of the vehicle, or the transporter of the goods shall inform the officer empowered by the Commissioner in this regard, under whose jurisdiction the place of such unloading falls and such unloading and subsequent loading in the same goods vehicle or in a different goods vehicle shall be done in presence of the such officer and an endorsement of such officer to this effect with his seal and signature shall be obtained on the transit pass:

Provided that where any transshipment of goods is made by the driver or the person in-charge of the vehicle, or the transporter under any compelling circumstances and if the fact of such transshipment was not declared by him at the entry check-post or before the officer empowered by the Commissioner in this behalf, he shall adduce reasons for doing so before such officer along with supporting evidence wherever necessary, and if such officer is satisfied with the reasons adduced or evidence produced by the driver or the person-in-charge of the vehicle, or the transporter, he shall make an endorsement on

the document containing the declaration as required and return the same to the driver or the person-in-charge of the goods vehicle or the transporter and allow the movement of the vehicle, carrying such goods outside the State:

Provided further that the Commissioner may, for the purpose of this sub-section, constitute a separate group of officers for any place in the State, who shall supervise such unloading and re-loading at that place and shall put the endorsement on the transit pass accordingly.

7. The driver or the person in-charge of the goods vehicle or the transporter of the goods shall submit the transit pass with the endorsement of the authority, to the officer-in-charge of the concerned entry check-post within 30 days from the date of its issue, failing which it shall be presumed that the goods carried by the goods vehicle have been sold within the State and all provisions of this Act shall, so far as may be applicable, be applicable as if such driver or the person-in-charge of the vehicle, or transporter were a dealer within the meaning of clause (15) of section 2 and the officer-in-charge of the entry check-post or barrier, or the officer empowered by the Commissioner in this behalf were the Prescribed Authority with power of assessment having jurisdiction in respect of this dealer to assess his liability to tax and to impose interest or penalty.

8. If the officer-in-charge of the entry check-post or any other officer from whom transit pass was obtained is satisfied that the owner, driver or person-in-charge of the vehicle, or the transporter has failed to submit the transit pass with endorsements within 30 days of its issuance without any reasonable cause, such officer may, after giving the person concerned a reasonable opportunity of being heard, impose upon him, in addition to tax, a penalty equal to three times such tax.

9. If the owner, driver or the person-in-charge of the vehicle, or the transporter fails to obtain a transit pass in applicable case without any reasonable cause, the officer-in-charge of the entry check-post or deemed entry check-post or any officer empowered by the Commissioner in this behalf shall after giving the person concerned a reasonable opportunity of being heard, impose upon him a penalty equal to three times the tax calculated on the goods carried by the goods vehicle at the rate of tax prevailing in the State and shall also realize security equivalent to the amount of tax so calculated. If the person concerned fails to pay the penalty and the security, the goods shall be seized under the provision of sub-section (5) and shall be disposed of as per provision of sub-section (9) of section 75.

10. If, at the exit check post or deemed exit check post or at any point of movement of the goods carried by the vehicle, within the State or at the place of transshipment of the goods, the goods are not found in accordance with the transit pass, it shall be presumed that the goods carried by such goods vehicle have been sold within the State and in such case the officer-in-charge of the exit check-post or any other officer as may be empowered, may, after giving the driver or the person-in-charge of the vehicle, or the transporter a reasonable opportunity of being heard, impose upon him in addition to tax, a penalty equal to three times such tax on the portion of the goods not found in accordance with the transit pass and also on any unaccounted for goods carried by the goods vehicle without obtaining transit pass.

For the purpose of this sub-section, the driver or the person-in-charge of the vehicle, or the transporter shall be deemed to be a dealer within the meaning of clause (15) of section 2 and the officer-in-charge of the exit check-post or deemed exit check-post or the officer empowered by the Commissioner in this behalf shall be deemed to be the Prescribed Authority with power of assessment having jurisdiction in respect of this dealer to assess his liability to tax and to imposed interest or penalty.

### **K. Import of goods into state by Road, Rail, River, Air or Post [Section 77]**

1. No person 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 Assam any consignment of taxable goods dispatched from outside Assam:

Provided that this restriction shall not apply to any consignment which does not exceed the following quantities subject to the condition that value of such quantities does not exceed ₹ 20,000/- –

- |       |                                                   |                        |
|-------|---------------------------------------------------|------------------------|
| (i)   | in the case of goods sold by quintal and kilogram | 5 kilograms in weight. |
| (ii)  | in the case of goods sold by liters               | 5 litres in weight.    |
| (iii) | in the case goods sold by metre                   | 5 metres in length.    |
| (iv)  | in the case of goods sold by pieces               | 1 in number            |
| (v)   | in the case of goods sold by gross                | 1 gross in number      |

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- (vi) in the case of goods sold by dozen 1 dozen in number
- (vii) in the case of goods sold by pair 1 pair
- (viii) in the case of precious stones, namely; diamonds, emeralds, rubies, real pearls, and sapphires, synthetic or artificial precious stones, pearls artificial or cultured [Rule 42, Section 77(1)] 1 gram in weight

2. Where any taxable goods are consigned by road, rail, river, air or post from a place outside the State for delivery to a dealer inside the State, the importer shall not,—

- (a) obtain delivery thereof unless he furnishes to the prescribed officer or any such officer empowered by the Government in this behalf, a declaration in form-61 or form 62 as applicable along with relevant consignment note, railway receipt, bill of lading or air note as the case may be, and the invoice or bill or such other document prescribed in Rule 41 as applicable *mutatis mutandis* in the case for endorsement by such officer; and

(aa) obtain or cause to be obtained delivery thereof unless he files details of vehicle consignment and statutory form online in advance before the goods carrying vehicle reaches delivery point.<sup>8</sup>

- (b) after taking delivery, carry such goods away or cause the goods to be carried away from the railway station, steamer or boat station or airport or post office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with the goods.

3. Such transporter shall not deliver the consignment of such goods taxable under the Act, unless the relevant consignment note, railway receipt, air note or bill of lading bears an endorsement from the concerned Prescribed Authority as mentioned above to the effect that the delivery of the goods has been allowed. [Rule 43(3)]

4. The provisions of rule 41 shall also be applicable *mutatis mutandis* for importing goods through Rail, River, Air or post under Section 77(2). [Rule 43(4)]

5. In case dispatch of any taxable goods to a person outside the State by any mode other than through road transport such as through Rail, Air, Sea,

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<sup>8</sup> Sub Clause 'aa' to Section 77(2) inserted vide Assam VAT (Amendment) Act 2014 w.e.f. 06/02/2015

Post or Courier, the dealer shall obtain a valid tax clearance certificate and furnish the details according to invoice/delivery challan, railway receipt, bill of lading or any document of this nature to the appropriate prescribed Authority that the goods have been dispatched for a destination outside the State other than by Road. The Prescribed Authority shall keep such details in the assessment file of the dealer. [Rule 43(5)]

## **L. Power to purchase goods in case of under-valuation [Section 78, Rule 45]**

1. Where in respect of any taxable goods, carried in a goods vehicle or held in stock by any dealer or on his behalf by any other person, or held in the custody of any transporter, the Prescribed Authority or any authority to assist the Commissioner under sub-section (2) of section 3, has reason to believe that the value disclosed in invoice, challan, stock transfer memo or any other related document is lower than the prevailing market price or Maximum Retail Price in case of packaged goods by a difference of 30% or more of the prevailing market price or Maximum Retail Price, as the case may be, such authority, for reasons to be recorded in writing, may purchase such goods. No such order for purchase shall be passed unless the person or dealer being dispossessed of such goods, is afforded a reasonable opportunity of being heard.

*Explanation.*— “Prevailing market price” shall mean the wholesale price at which the goods are generally bought and sold in the nearest wholesale market of the State by the dealers in such goods during the time when proceedings are taken to purchase such goods.

“Maximum Retail Price” (or 'MRP') shall mean the price marked on the package in which the goods are contained. [Section 78(1)]

2. The aforesaid Authority shall ascertain whether there is understatement of value of goods. For this purpose, he shall first find out 35% of the prevailing market price or MRP, as the case may be, and deduct the amount so arrived at from the prevailing market price or MRP. If the residual amount so arrived at is more than the total or aggregate of the purchase price as per invoice and the transportation charge, then it shall be a case of undervaluation of goods. [Rule 45 (1)]

3. The aforesaid Authority shall serve a notice in Form-67 on the person concerned giving him an opportunity of showing cause against his intention of purchasing the goods. After hearing the person concerned and after examining the written submission, if any, made by him, if the aforesaid

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Authority is satisfied that there has been an undervaluation of the goods, he shall pass a speaking order for purchasing the goods. [Rule 45(2)]

4. The price payable for purchase of such goods shall be the total price as mentioned in the invoice, challan, delivery note, or any other related document, plus the cost of transportation of the goods incurred up to the time of purchase, if any. [Section 78(2)]

5. The person in possession of such goods, shall be bound to sell the goods to such authority and if he refuses, fails or does not deliver the goods, he shall be liable to a penalty which shall be double the amount of differences between the prevailing market price or Maximum Retail Price in the opinion of such authority and the price offered to such person for purchase of such goods. [Section 78(3)]

6. The aforesaid Authority shall take the goods in his possession and arrange for their proper storage. He shall also arrange for payment of the purchase price to the person being dispossessed of such goods. The payment shall be made by way of Bank Draft drawn in favour of the consignee in case of goods imported into the State and in favour of the consignor in case of goods exported outside the State. [Rule 45(3)]

7. The authority purchasing the goods, shall dispose of such goods in public auction as per procedure prescribed in Rule 40(5) immediately after such purchase and the sale proceeds so realized shall forthwith be paid into the Government account. [Section 78(4), Rule 45(4)]

8. In case the highest bid in the public auction is less than the price at which the goods were purchased, the goods shall be put to auction again following the same procedure. If in the second auction also the highest bid, falls short of the purchase price, the Prescribed Authority or the officer in-charge of the check post shall refer the matter to the Commissioner with full particulars of both the auctions and also of the goods. [Rule 45(5)]

9. In case the goods are subject to speedy and natural decay, the Prescribed Authority or the officer in-charge of the check post shall sell such goods in public auction without delay. [Rule 45(6)]

# Chapter-16

## Appeal and Revision

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### **A. Appeals to the Appellate Authority [Section 79]**

1. "Appellate Authority" means a person not below the rank of the Deputy Commissioner of Taxes authorized as such by the State Government under sub-section (4) of section 3 to hear and decide appeals under section 79. [Section 2(3)]
2. The Government may authorize an officer not below the rank of the Deputy Commissioner of Taxes to exercise the power and perform the functions of the Appellate Authority under section 79 of this Act. [Section 3(4)]
3. Any person aggrieved by an order passed under this Act by a taxing authority lower in rank than a Deputy Commissioner of Taxes, may file a memorandum of appeal to the Appellate Authority, in Form 68 (in duplicate), within 60 days from the date of receipt of such order. The said appeal will be accompanied with a challan of 5% of the disputed amount subject to a minimum of ₹200/- and maximum of ₹ 500/-. [Section 79(1), Rule 46(2)]
4. The memorandum of appeal shall be verified and signed by the appellant or his agent, authorized in his behalf to the effect that the facts set-out in the memorandum are true to the best of his knowledge and belief and shall be accompanied by a certified copy of the order appealed against and the fee, as required. The appeal shall specify in detail the grounds upon which it is made. [Section 79(3), Rule 46(3), 46(4)]
5. The Memorandum of Appeal may be sent by Registered post or by hand on which the Appellate Authority shall grant a receipt. [Rule 46(5)]
6. The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed. [Section 79(9)]
7. Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, it may admit an appeal after the expiry of the said period, provided it is presented within a further period of 180 days. [Section 79(2)]
8. No appeal shall be entertained by the Appellate Authority unless it is satisfied that such amount of the tax, penalty or interest, as the case may be,

*Appeal and Revision*

as the appellant may admit to be due from him, has been paid. [Section 79(4)]

9. No appeal by a person shall be entertained by an Appellate Authority unless such appeal is accompanied by satisfactory proof of payment of minimum 25% of the disputed tax, penalty, if any, imposed and the interest accrued thereon, if any:

Provided that such authority may stay the recovery of the full or part of the balance amount of tax, interest and penalty, till disposal of the appeal. [Section 79(5)]

10. Where an order staying proceedings of recovery of any tax or other amount is made in any proceedings relating to an appeal, the Appellate Authority shall dispose of the appeal within a period of 120 days from the date of such order. If such appeal is not so disposed of within the aforesaid period specified in sub-section (6) for the reasons attributable to the appellant, the order of stay shall stand vacated after the expiry of the said period. [Section 79(6), 79(7)]

11. The Appellate Authority may, at the hearing of an appeal, after giving the authority which passed the order under appeal a reasonable opportunity of being heard, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, or to produce any evidence whether oral or documentary, not produced at any earlier stage of the proceedings in so far as such ground or evidence does not relate to any matter or facts relating to any claim not made before the lower authority, if the Appellate Authority is satisfied that the omission of that ground from the grounds of appeal or the failure to produce the evidence at the earlier state was not willful or unreasonable. [Section 79(8)]

12. The Appellate Authority shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the tax authority against whose order the appeal is preferred by Registered post. [Section 79(10), Rule 46(7)]

13. The Appellate Authority, after calling for and examining the relevant records and making such further inquiry as may be necessary, may—

- (a) confirm, reduce, enhance, or annul the decision or order appealed against; or
- (b) consider and decide any matter arising out of the proceedings in which the order appealed against was passed, irrespective of the fact that such matter has not been raised before it by the appellant or that no

order has been made in the said proceedings regarding such matter for any reason whatsoever.

In disposing of an appeal, the Appellate Authority may summarily reject the appeal if the requirements of this section and the rules framed thereunder are not complied with. [Section 79(11)]

14. The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On the disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, the tax authority whose order was appealed against and the Commissioner. [Section 79(12)]

15. All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together. [Section 79(13)]

16. An order passed under this section shall, subject to the other provisions of this Act, be final. [Section 79(14)]

17. In every appeal, the Appellate Authority, where it is possible, hear and decide such appeals within a period of one year from the end of the financial year in which such appeal is filed before it. [Section 79(16)]

18. No appeal shall lie against,—

- (a) an order withholding a refund; or
- (b) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act; or
- (c) an order pertaining to the seizure or retention of books of accounts, registers and other documents; or
- (d) an order sanctioning prosecution under the provisions of this Act; or
- (e) an order refusing to compound any offence; or
- (f) an interim order passed in the course of any proceedings under this Act; or
- (g) such other order as may be prescribed. [Section 79 (17)]

## **B. Appeals to the Appellate Tribunal/ Assam Board of Revenue [Section 80]**

1. "Appellate Tribunal" means the Appellate Tribunal constituted under section 4 of this Act. [Section 2(4)]

### *Appeal and Revision*

2. The Government shall, by notification with effect from a date specified therein, constitute an Appellate Tribunal to exercise the powers and perform the functions conferred on the Tribunal by or under this Act. [Section 4(1)]
3. Pending constitution of the Tribunal and till the date specified in the notification under sub-section (1), the Assam Board of Revenue shall act as Tribunal for the purpose of this Act and on the date aforementioned all proceedings pending before the Assam Board of Revenue, acting as Tribunal shall stand transferred to the Tribunal constituted under sub-section (1). [Section 4(2)]
4. Pending constitution of the Tribunal, an appeal to the Assam Board of Revenue shall be presented in the manner as laid down in the Assam Board of Revenue Regulation, 1863. (Rule 48)

### **C. Revision to High Court [Section 81]**

1. Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within 60 days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court; and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.
2. A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law that shall be raised in the revision.
3. The Commissioner shall also be made a party to the proceedings before the High Court where revision is filed by the dealer or other person.
4. The High Court may on application either by the petitioner or by any of the respondents review any order passed by it provided such application is made within one year from the date of receipt of the judgment.
5. A revision or review application presented before the High Court under this section shall be heard by the bench consisting of not less than two judges.

### **D. Revision by the Commissioner [Section 82]**

1. The Commissioner on his own motion may examine the records for any proceedings and if he considers that any order passed by any subordinate authority, is erroneous in so far as it is prejudicial to the interest of revenue, may, after providing opportunity of being heard to the concerned

dealer, pass the order as he deems fit within 8 years from the end of the year in which the order sought to be revised was made. [Section 82(1)].

2. In the case of any order passed by a person appointed to assist the Commissioner under sub-section (1) of section 3, not being an order to which sub-section (1) applies, and not being an order against which an appeal under section 79 has been filed or an order in respect of which the time allowed for appeal under section 79 has not expired, the Commissioner may, either of his own motion or on an application made in the prescribed manner by the dealer or person affected by such order, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, pass such orders thereon, not being an order prejudicial to the dealer or person to whom the order relates as he thinks fit. [Section 82(2)]

3. The said appeal will be accompanied with a challan of 5% of the disputed amount subject to a minimum of ₹ 200/- and maximum of ₹ 500/-.

4. An application by a dealer or person shall not be entertained by the Commissioner unless such application is accompanied by satisfactory proof of payment of minimum 25% of the disputed tax, penalty, if any, imposed and the interest accrued thereon, if any:

Provided that the Commissioner may, if he thinks fit, subject to furnishing of such security as he may deem fit, admit an application with part payment or without any payment of the disputed amount of tax including penalty, if any, required under this sub-section with a view to mitigate undue hardship which is likely to be caused to the dealer or person if the payment of such disputed amount is insisted on:

Provided further that the Commissioner may stay the recovery of the full or part of the balance amount of tax, interest and penalty, till disposal of the application. [Section 82(2A)]

5. Every application for revision under sub-section (2) shall be filed in triplicate in form-78 within 90 days of the date on which the order is sought to be revised against is communicated to the dealer or the person. Belated application may be admitted if the Commissioner is satisfied that applicant has sufficient reasons for not filing the appeal within the prescribed time, if it is within a further period of 180 days. [Section 82(3), Rule 47A(1)]

6. Any Prescribed Authority, being aggrieved by any order passed by the Appellate Authority, may file a revision petition within 90 days from the date of receipt of such order. [Section 82(4)(a)]

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7. When a revision petition is filed by a Prescribed Authority, the Commissioner may, after examination of the order of the Appellate Authority and the records of any proceeding under the Act to which the order of the Appellate Authority relates and after making an enquiry or causing an enquiry to be made, as he may deem necessary, pass any order reversing, modifying or upholding the order of the Appellate Authority:

8. Provided that the Commissioner shall not pass any order prejudicial to the dealer or the person to whom the order relates without giving him a reasonable opportunity of being heard.[Section 82(4)(b)]

**E. Power to rectify error apparent from the record  
[Section 83]**

1. Any authority including the Appellate Authority, Revisional Authority and Appellate Tribunal 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:

Provided no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

2. Where such rectification has the effect of enhancing the tax liability or penalty or both, the Prescribed Authority shall give the dealer or other person a notice of enhanced tax or penalty and the dealer or other person shall pay the enhanced tax or penalty or both in the manner prescribed and when such rectification has the effect of reducing the tax liability or penalty or both the Prescribed Authority shall issue a refund order of the excess tax or penalty or both paid, if any.

**F. Application of section 4 and 12 of Limitation Act, 1963 [Section 84]**

In computing the period of limitation under this chapter, the provisions of section 4 and 12 of the Limitations Act, 1963 (Central Act 36 of 1963) shall, so far as may be, apply.

## Chapter-17

# Offence and Penalties

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### **A. Offences and prosecution [Section 85]**

1. Whoever,—
  - (a) being liable to pay tax under this Act, carries on business as a dealer without getting himself registered under section 21; or
  - (b) not being a registered dealer, falsely represents, while making any sale or purchase of goods, that he is a registered dealer under this Act; or
  - (c) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
  - (d) carries on or continues to carry on business as a dealer without furnishing the security demanded under section 25 of this Act; or
  - (e) fails to deposit the tax due before furnishing the return in accordance with the provisions of this Act; or
  - (f) fails to pay without reasonable cause the amount of any demand under the provisions of this Act; or
  - (g) fails to submit, without reasonable cause, return of his turnover under the provisions of this Act; or
  - (h) submits a false return of turnover under this Act or furnishes a false statement; or
  - (i) fails or neglects to issue sale invoice or bill or cash memo; or
  - (j) issues a false sale invoice or bill or cash memo without sale of goods shown in such sale invoice or bill or cash memo or issues a false transport memo or challan or transfer invoice without dispatch or delivery of goods shown in such transport memo or challan or transfer invoice; or
  - (k) receives a false purchase invoice or bill or cash memo from a dealer without purchase of goods shown in such purchase invoice or bill or cash memo or receives a transport memo or challan or transfer invoice

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without receipt of goods shown in such transport memo or challan or transfer invoice; or

- (l) is found to have availed wrong credit of input tax in a fraudulent manner; or
- (m) fails to keep true and proper accounts or records of sales or purchases or to produce such accounts before the taxing authority or to preserve such accounts or records in accordance with provisions of this Act; or
- (n) knowingly prepares or produces incorrect accounts, registers or documents or knowingly furnishes incorrect information; or
- (o) refuses to permit or prevents or obstructs, in any manner, any competent authority under this Act, to enter, survey, inspect and search the business place or any other place where any goods or accounts, registers or other documents are believed to have been kept or refuses to display material in a computer or in a computer floppy or refuses to allow copies or printout of the material in a computer or its floppy to be taken in accordance with the provisions of this Act; or
- (p) prevents or obstructs, in any manner, any officer to seize the goods or the accounts, registers or other documents; or
- (q) prevents or obstructs an officer empowered under this Act from performing any of the functions under this Act or the rules made thereunder; or
- (r) makes a false verification or declaration on an application for registration or in connection with any other proceedings under this Act; or
- (s) willfully evades or attempts to evade tax leviable under this Act or willfully attempts, in any manner whatsoever, to evade payment of any tax, penalty or interest or all of them under this Act; or
- (t) tampers with any seal put under sub-section (7) of Section 74; or
- (u) produces a false proof of deposit of any amount of tax or fee, or penalty or any other sum due under this Act; or
- (v) demands or charges on the sale or purchase of any goods any amount of tax in contravention of provisions of this Act; or
- (w) refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnishes information which is false in

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any materials particular or refuses or fails to comply with any requirement made of him under the provisions of this Act; or

- (x) uses or furnishes a prescribed form of declaration or certificate which has not been obtained by him or his authorized agent from the Prescribed Authority in the prescribed manner, or is found to have in his possession any statutory form which has not been obtained in accordance with the provisions of this Act or which has not been furnished to him under the provision of this Act or the rules thereunder by any other dealer; or after obtaining the statutory form from the Prescribed Authority uses it in a manner not authorized by this Act or the rules thereunder; or
- (y) fails to stop the goods vehicle or carrier transporting the goods of which he is the driver or otherwise in charge, for being inspected in accordance with the provisions of this Act, or prevents or obstructs the inspection of the goods or the goods vehicle or the carrier transporting the goods, by the officer in-charge of a check-post or any other officer empowered in this behalf by the Commissioner; or
- (z) imports into or exports from the State, any goods showing incorrect or fictitious names or addresses of consignors or consignees or incorrect details about the goods or incorrect particulars in vouchers, way bills or goods receipts or documents accompanying the goods, while such goods are in transit; or
- (aa) closes or leaves the place of business or being a driver or person-in-charge of a goods vehicle carrying goods leaves the goods vehicle with a view to preventing inspection under this Act or the rules made thereunder; or
- (bb) fails to obtain authorization for transit of goods through the State as provided under section 76 and also fails to prove that the goods are meant for delivery outside the State; or
- (cc) having obtained authorization for transit of goods through the State and having taken responsibility to carry goods outside the State, fails to prove that the same has been carried outside the State; or
- (dd) imports or transports or abets import or transport of any taxable goods by road but fails to disclose the particulars of such goods as provided under section 75 of this Act before the officer-in-charge of a check-post or before an officer empowered by the Commissioner; or

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- (ee) being a transporter fails to get himself registered under section 28, or fails to maintain the records or submit the statements or returns as required under the provisions of this Act; or
- (ff) fails to deduct tax at source as required under section 47; or
- (gg) willfully acts in contravention of any provisions of this Act or the rules made thereunder, for the contravention of which no express provision for punishment is made by this Act,

shall, without prejudice to his liability under any other law for the time being in force and in addition to recovery of tax or any other dues payable by him under this Act, on conviction be punishable with simple imprisonment for a period which shall not be less than 6 months but which may extend to 3 years and shall also be liable to pay a fine of an amount not less than the tax or other amount due and not exceeding ₹ 50,000/-.

2. Whoever aids or abets or induces any person in commission of any act specified in sub-sections (1) shall, on conviction, be punished with simple imprisonment which shall not be less than three months but which may extend to three years with fine not exceeding fifty thousand rupees.

3. Whoever commits any of the acts specified in sub-sections (1) and sub-section (2) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

4. Notwithstanding anything contained in sub-sections (1) and sub-section (2), no person shall be proceeded against under these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year.

5. Where a dealer is accused of an offence specified in sub-sections (1) or sub-section (2), the person deemed to be the manager of the business of such dealer 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 of the offence.

6. In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a Defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.— Culpable mental state includes intention, motive or knowledge of fact or belief in, or reason to believe a fact and a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

## **B. Offences by companies and Hindu Undivided Family [Section 86]**

1. Where an offence under this Act or the rules made thereunder has been committed by a company, every person who at the time when the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this 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.

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.

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 all 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.

### **C. Cognizance of offences [Section 87]**

1. No Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.
2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or the rules made thereunder shall be cognizable and bail able.

### **D. Investigation of offences [Section 88]**

1. Subject to conditions, if any, as may be prescribed, the Commissioner may authorize either generally or in respect of a particular case or class of cases any officer subordinate to him to investigate all or any of the offences punishable under this Act. [Section 88(1)]
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. [Section 88(2)]
3. The following shall be the conditions in causing an investigation by any officer subordinate to the Commissioner into all or any offence punishable under the Act:-
  - (i) the officer entrusted with the work of investigation will confine himself to the extent and the nature of evasion of tax under the Act;
  - (ii) the investigation may be conducted outside the State if the circumstances so warrant;
  - (iii) the officer making the investigation will report to the Commissioner about progress of investigation from time to time till the investigation is completed;
  - (iv) in case, the officer conducting investigation is transferred or retired before completion of investigation, he shall handover the case with the

up-to-date findings of the investigation to the Commissioner, who will entrust other officer to complete the investigation. (Rule 49)

### **E. Compounding of offence [Section 89, Rule 50]**

The Commissioner may, either before or after the institution of proceedings of prosecution for any offence punishable under section 85 or under any rules made under this Act, accept from any person charged with such offence, by way of composition,—

- (a) where the offence consists of the failure to pay or the evasion of, any tax recoverable under the provisions of this Act, in addition to the tax so recoverable, a sum of money not exceeding double the amount of tax recoverable:

Provided that the Commissioner shall not accept any sum by way of composition which is less than 100% of the amount of tax recoverable;

- (b) in any other case, a sum of money not exceeding ₹ 50,000/- subject to a minimum of ₹ 2,000/-, in addition to the tax recoverable.

The Commissioner shall not compound an offence under this section and pass an order for payment of the composition money unless the person concerned admits in writing that he has committed the offence.

Where the Commissioner compounds an offence under this section, the order,—

- (a) shall be in Form-71 and specify the offence committed, the sum of money to be paid, the due date for the payment, the authority before whom and date by which the proof of such payment is to be produced, and the date on or before which the person shall report the fact to the commissioner; and
- (b) shall be served on the person who committed the offence; and
- (c) shall be final and not subject to any appeal.

On payment of the full composition money, no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall not be further proceeded with.

### **F. Penalties [Section 90]**

Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given

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under this Act or the rules thereunder, the Commissioner shall, if no other penalty is provided under this Act for such contravention or failure, impose on him a penalty of an amount not exceeding twice the amount of tax involved or tax evaded or sought to be evaded where it is practicable to quantify such amount or an amount not exceeding ₹ 50,000/- in any other case, subject to a minimum of ₹ 2000/- and where such contravention or failure is a continuing one, a further penalty of one hundred rupees for every day during the period of continuance of the contravention or failure.

Provided that no penalty under this section shall be imposed unless the person concerned is given a reasonable opportunity of being heard.

## Chapter-18

### Miscellaneous

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#### **A. Dealer to declare the name of his business manager [Section 91, Rule 51]**

1. Every dealer, who is liable to pay tax, and who is a Hindu Undivided Family or an association of persons, club or society, firm or company, or who is engaged in business as the guardian or trustee or otherwise on behalf of another person shall furnish a declaration in Form-72 stating the name of the person(s) who shall be deemed to be manager(s) of such dealer's business for the purposes of this Act and who shall act as the manager of business and is or are authorized to sign returns under the Act on their behalf, or to make statements in any enquiry under the Act, and all returns signed and statements so made by such person or persons shall be binding on such dealer.

2. Such declaration shall be furnished at the time of registration, wherever applicable and whenever there is a change of such manager or managers, a fresh declaration shall be furnished within 30 days from the date of such change, stating the name or names of the new manager or managers, within the period prescribed in sub-section (1) of such change.

#### **B. Service of notice [Rule 60]**

1. Any notice which is issued under the provisions of the Act or the rules made there-under may be served on a dealer or person by any of the following methods:-

- (a) personally upon the addressee, if present,
- (b) by messenger, including a courier
- (c) by registered post or under the certificate of posting :

However, if the authority issuing the notice is satisfied that an attempt has been made to serve a notice by any of the above mentioned methods and the dealer is avoiding service or that for any other reason the notice cannot be served upon him by any of the above mentioned methods, the said authority may, after recording his reasons for so doing, cause such notice to be served by affixing a copy thereof in some conspicuous place in his office

and also upon some conspicuous part of the last notified place of business of the dealer, and a notice so served shall be deemed to have been duly served.

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

**C. Service of notice when family is disrupted or firm is dissolved or business is discontinued [Section 94]**

1. In case of a partitioned HUF, notices under this Act shall be served on the last manager of the said HUF and in case he cannot be found, then on all adults who were members of the said HUF.

2. In case of dissolution of a firm or AOP, notices under this Act may be served on any person who was a partner (not being a minor) of the firm, or a member of the association, as the case may be, immediately before its dissolution.

3. Where an assessment is to be made in respect of discontinued business of a Company, a notice under this Act shall be served on the principal officer thereof.

**D. Power to call for information or statement from bank, post office, railway, etc. [Section 95, Rule 52]**

Subject to the provisions of any law for the time being in force, the Commissioner, may require, by notice, any bank, post office, railway, transporter, carrier, shipper, owner or lessee of a warehouse, or clearing, forwarding or transporting agent to furnish to him any information or statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts registers, documents or other records in the possession of such recipient of notice for examination for the purposes of this Act.

**E. Power to take evidence on oath [Section 97, Rule 53]**

1. A taxing authority or an Appellate Authority shall for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation; by issuing summon in Form-73;
- (b) compelling the production of documents and impounding or detaining them by issuing the aforesaid summon;
- (c) issuing commissions for the examination of witnesses;
- (d) requiring or accepting proof of facts by affidavits;
- (e) any other matter as may be prescribed.

2. Every proceedings under this Act before a taxing authority or an Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and the said authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

#### **F. Transfer to defraud revenue void [Section 98]**

Where any person during the pendency of any proceedings or where any person is liable to pay tax creates a charge on or parts with possession by any mode of transfer including sale, mortgage, gift or exchange, of any of his assets in favour of any other person with the intention of defrauding the State of any tax or such other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings.

#### **G. Bar to certain proceedings [Section 99]**

No assessment or other order passed under this Act shall be called in question in any Court, and, save as is provided in this Act, no appeal shall lie against any such assessment or order. No injunction shall be granted by any Court other than the High Court of the State or the Supreme Court of India in respect of any assessment made or any proceedings initiated, or in respect of any action taken, or to be taken, in pursuance of any provisions of this Act.

#### **H. Indemnity [Section 100]**

No suit, prosecution or other legal proceedings shall lie against any officer of Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

**I. Appearance before any authority in proceedings  
[Section 103, Rule 55]**

1. Following persons are entitled to appear on behalf of any person by filing a declaration an authority letter in Form-75 before any authority:

- (a) Relative or a person regularly employed by the person; or
- (b) a legal practitioner, Chartered Accountant or Cost Accountant or Company Secretary.
- (c) a sales tax practitioner who possesses minimum of the following qualifications and is included in the list maintained by the Commissioner in that behalf:
  - (i) a degree in Commerce or business management from a recognized University;
  - (ii) a degree in law from a recognized University;
  - (iii) a retired member of the Assam Taxation Service not below the rank of the Superintendent of Taxes.

2. The Commissioner may disqualify any of the above persons for such period as is stated in the order from appearing before any such authority, who has been removed or dismissed from Government service, or who 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.

3. Any person who has been disqualified under the above provision may, within one month of the date of communication of such order, appeal to the Appellate Tribunal to have the order cancelled or modified. The order of the Commissioner shall not take effect, until one month of the making thereof or, when an appeal is preferred, until the appeal is decided.

4. The Commissioner may, at any time, *suo-motu* or on an application made to him in this behalf, revoke or modify any order of disqualifying made against a person and thereupon such person shall cease to be disqualified subject to such conditions or restrictions as may be contained in such order.

## **J. Determination of disputed questions [Section 105, Rule 57]**

1. If any question, relating to any of the categories specified under the section, arises, otherwise than in a proceedings pending before an Appellate Authority or an Appellate Tribunal or a Court the Commissioner shall, after providing reasonable opportunity of being heard to the applicant, make an order determining the question.
2. Any registered dealer or any association of trade, commerce, and industry may submit an application in quadruplicate in form-76. Separate applications will be submitted for each question to the Commissioner along with challan of ₹ 100/- towards fees for each application.
3. No question which arises from an order already passed, in the case of an applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.
4. Subject to other provisions of this Act, a decision given by the Commissioner under this section shall be final and binding on the applicant, and the Prescribed Authority and any order under this section shall not affect the validity or operation of any order passed earlier by any Prescribed Authority, Appellate Authority, Appellate Tribunal or any Court.
5. The Commissioner, for reasons to be recorded in writing may, on his own motion review an order passed by him under this section and pass such order thereon as he thinks just and proper. The Commissioner may direct that the order of review shall not affect the liability of the person in whose case the review is made in respect of any sale or purchase effected prior to the review and may likewise, if the circumstances so warrant, direct accordingly in respect of any other person similarly situated.

## **K. Putting up of sign board [Rule 33A]**

A registered dealer shall put up a sign board of size not less than 12 inches x 24 inches at a conspicuous place near the cash counter displaying the following:-

Dear Customer,

Issue of cash memo for every sale above rupees one hundred is compulsory under the Assam Value Added Tax Act, 2003. Please insist on cash memo for every purchase above rupees one hundred.

## **L. Display of sign board [Rule 59]**

1. Every dealer registered under this Act shall display a signboard at a conspicuous place at his place of business showing his trade name, address of place of business including premises number, floor, room no, etc., if any and the VAT registration number. If a dealer uses more than one trade name, all such names should be displayed on the sign-board.
2. Any breach of the provision shall be punishable with a penalty not exceeding one hundred rupees for each day of default.

## **M. Activities which are not to be treated as manufacture [Rule 57A]**

The following activities shall not be treated as manufacture for the purpose of the Act retrospectively with effect from 1<sup>st</sup> October, 2008, namely:-

- (a) Saw Mill,
- (b) Tea Industry,
- (c) Galvanization, corrugation of sheet or both,
- (d) Marble and decorative stone cutting from slabs/sheets and polishing unit,
- (e) Paper cutting from Roll Paper,
- (f) Coal to washed coal, sized coal,
- (g) Conversion of plain rod to tor rod,
- (h) Refining and packaging of mustard oil,
- (i) Refining of engine oil,
- (j) Purification and/or packaging of drinking water,
- (k) Production of cooked food, sweet meats and namkins, if the investment in plants and machinery in a unit is less than rupees five crores,
- (l) Conversion of coal to coke

*Explanation:* Some of the activities mentioned in the list above are not manufacture as per the definition of manufacture under the Act. Such activities are also mentioned above in order to remove any scope for mis-interpretation.

## N. Fees [Rule 61]

1. The amount of fee as indicated in column (3) of the Table below against memorandum of appeal, application for revision, review or any other application or petition as described in column (2) of such Table shall be payable when such memorandum is presented or such application or petition is filed.

TABLE

Sl. No.	Description of memorandum, application or petition.	Amount of fee
(a)	Upon an application for registration by a dealer.	Rupees one hundred
(b)	Upon an application for issue of duplicate copy of a certificate of registration.	Rupees fifty for duplicate copy the certificate of registration and also for each copy of the certificate for each additional place of business
(c)	Upon an application for amendment of certificate of registration	Rupees fifty
(d)	Upon a memorandum of appeal to the Appellate Authority or upon a petition for revision	Five per centum of the amount of tax, penalty or interest in dispute subject to a minimum of Rupees two hundred and maximum of Rupees five hundred
(e)	Upon a memorandum of appeal to the Appellate Tribunal	Five per centum of the amount of tax, penalty or interest in dispute subject to a minimum of Rupees two hundred and maximum of Rupees five hundred
(f)	Upon an application for clearance certificate	Nil
(g)	Fees for certified copies- (i) An application fee (ii) Authentication fee for every 360 words of part thereof	Rupees five Rupees five

*Miscellaneous*

	(iii) Urgent fee (iv) Searching fee (v) Where the applicant wants the certified copy to be send (by ordinary post) (vi) One impressed folio for every 360 words	Rupees five Rupee five Rupees ten Rupees ten
(h)	Miscellaneous applications or petitions, other than those referred to hereinabove in this Table.	Five rupees for each application or petition
(i)	(i) Bill of Sale (Form-60) (ii) Delivery Note (Form-61) (iii) Road Permit (Form-62) (iv) Transit Pass (Form-64) (v) Certificate of export (Form-56)	Rupees two per leaf
(j)	True copies of seized documents	Rupees two for each page

2. The first copy of order of assessment, the appellate order, the revisional order or the order of the Appellate Tribunal, when applied for, shall be granted free of charge.

3. No fee shall be payable for filing any objection, written or verbal, made in reply to any notice served under the provisions of the Act or the rules made thereunder or for filing any application requiring information from any person appointed under the Act.

4. All taxes, amount of penalty and fees specified in (a), (b), (d) and (e) of the table in sub-rule (1) shall paid by bank challan under the Head of Account "0040-Sales Tax". The fees specified in (i) of the table shall be deposited by bank challan under Head of Account "0070-other Administrative Services". All other fees mentioned in (c), (f), (g), (h) and (j) of the table shall be paid by way of affixing court fees stamp.

5. Notwithstanding anything contained in the above sub-rules, no fee shall be payable when memorandum is presented or application for revision or review is made by the Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and Superintendent to the Appellate Tribunal under the provisions of the Act or the rules made there-under.

# Appendix 1

## VAT Forms

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### List of Forms

SL. NO.	FORMS	RULE
1	Certificate to be Furnished by the Purchasing Oil Company	8(2)
1A	Certificate to be Furnished by the Licensee of the Bonded Warehouse	8A(1)
2	Application for Registration	13(1)
3	Certificate of Registration	13(8)
4	Application for General Registration Number (GRN)	13(13)
5	Certificate of Registration	13(13)
6	Register of Certificate of Registration	13(16)
7	Application for Refund of Security	14(2)
8	Application for Amendment/Cancellation of Registration Certificate	15(1)
9	Information to be furnished by the Transferee	15(3)
10	Application for Registration of Transporter	16(2)
11	Certificate of Registration for Transporter	16(5)
12	Register of Certificate Issued to Transporters	16(8)
13	Tax Return	17(1)/17(2)
14	Annual Return of Turnover	17(5)
15	Notice to furnish Return	17(7)
16	Notice for forfeiture and Imposition of Penalty	18(1)
17	Notice	18(3)

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18	Application for Refund of the forfeited Amount	18(4)
19	Notice for curing of Defect (s) in Return	19
20	Notice under Section 36	22(4)
21	Notice under Section 37 Tax Act, 2003	23
22	Notice under Section 38	24
23	Notice under Section 40	25
24	Challan	26(1)
25	Notice of demand for Tax/Interest/ Penalty	26(6)
26	Register of daily collection	26(7)
27	Register of Demand, Assessment and Collection	26(8)
28	Notice for Special mode of Recovery	27
29	Certificate of Deduction of Tax at Source	28(1)
30	Application for no Deduction of Tax or Deduction of Tax on a Lower amount.	28(2)(a)
31	Certificate relating to Lower Deduction of Tax at Source/ No Deduction	28(2)(c)
32	Form of Particulars to be Submitted by the Contractee	28(3)
33	Form of application for allotment of tax Deduction Account Number	28(5)
34	Tax Deduction Account Number (TAN) Certificate	28(5)
35	Form of Return to be furnished by a Person Responsible for Deduction of Tax at Source	28(5)(b)
36	Register to be maintained by the Person responsible for Deduction of Tax at Source.	28(5)(c)
37	Application for Refund	29
37A	Application for Refund (Section 54)	29A
38	Refund Voucher	29(1)(f)
38A	Refund Voucher (Section 54)	29A

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39	Refund Advice	29(1)(f)
39A	Refund Advice (Section 54)	29A
40	Refund Register	29(1)(i)
40A	Refund Register (Section 54)	29A
41	Application for Refund of Input Tax Credit	29(2)(c)
42	Application for Refund	30(1)(a)
43	Application for Refund by Exporters	30(2)
44	Sale Book	31(4)
45	Purchase Book	31(4)
46	Tax Invoice	32(5)
47	Certificate of Audit of Accounts	35
48	Statement of Particulars	35
49	Consignment Note	36(1)
50	Forwarding Note	36(1)
51	Dispatch Register to be maintained by Transporter	36(1)
52	Delivery Register to be maintained by Transporter	36(1)
53	Statement of Goods Transported Into Assam	36(4)
54	Statement of Goods Transported Outside Assam	36(4)
55	Manifesto	36(7)
56	Certificate of Export	37(1)
57	Register of Certificate of Export	37(2)
58	Application for Authorization	40(3)
59	Authorization to Search	40(3)
60	Bill of Sale	41(9)(i)
61	Delivery Note	41(9)(ii)
62	Road Permit	41(12)

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63	Tax Clearance Certificate	41(9)
64	Transit Pass	41(9)
65	Trip Sheet To Be Submitted In Triplicate	41(9)
67	Notice For Showing Cause Against Purchase Of Goods	45(2)
68	Memorandum of Appeal	46
69	Memorandum of Appeal filed before the Appellate Tribunal	47(1)
70	Memorandum of Cross objection before the Appellate Tribunal	47(6)
71	Intimation Regarding the Acceptance of Composition Money	50
72	Particulars of the Manager/Authorized Person	51
73	Summon under Section 97	53
74	Application for furnishing of Certain Information	54
75	Authority Under Section 103 Of The Assam Value Added Tax Act, 2003	55
76	Application Form For Determination Of Disputed Question Under Section 105	57
77	Statement Of Tax Paid Stock In Hand	58
78	Revision Petition Filed Under Section 82	47A

## Appendix-2

# Schedules

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**FIRST SCHEDULE-** List of exempted goods.

**SECOND SCHEDULE-** List of goods taxable at 4% (up to 30/10/2009) & 5% (from 31/10/2009 and onwards).

**PART-A** : General

**PART-B** : Items Under Category of it Products.

**PART-C** : Industrial inputs & packing materials

**THIRD SCHEDULE-** List of goods taxable at the Rate of 1%.

**FOURTH SCHEDULE** -List of goods taxable at the point of first sale in the State.

**FIFTH SCHEDULE** -All other goods not covered by First, Second, Third and Fourth Schedule, Works contract, Lease transactions.