

# **Technical Guide to Uttarakhand VAT**



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

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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 Uttarakhand 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 Uttarakhand 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. Shiv Shankar Shaw for thoroughly revising the Guide with updated provisions of Uttarakhand VAT. I am sure that this revised publication would help the members and readers to be well equipped in effectively discharging their duties as Uttarakhand VAT practitioners.

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

**CA. Atul Gupta**

Chairman

Indirect Taxes Committee

Date: 31<sup>st</sup> July, 2015

Place: New Delhi.



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## **Glossary**

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In this Act, unless the context otherwise requires-

1. "**Assessee**" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him.
2. "**Assessing Authority**" means any person appointed by the State Government or the Commissioner to perform all or any of the functions of assessing authority under this Act.
3. "**Assessment Year**" means a period of 12 months ending on March 31.
4. "**Appellate Authority**" means the authority to whom an appeal lies under section 51.
5. "**Appellate Tribunal**" means the Appellate Tribunal constituted under section 54 of this Act.
6. "**Business**" includes:
  - (a) any trade, commerce or manufacture; or
  - (b) any adventure or concern in the nature of trade, commerce or manufacture; or
  - (c) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or
  - (d) 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 or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; or
  - (e) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period); and

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- (f) Any transaction of buying, selling or supplying plant, machinery, raw materials, processing material, packing material, empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern or works contract or lease but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods.
- 7. "**Casual dealer**" means a person who whether as principal, agent or in any other capacity, undertakes occasional transactions involving buying, selling, supplying or distributing goods or conducting any exhibition-cum-sale in the State of Uttarakhand, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, for a period not exceeding 60 days and includes,
  - (a) a transporter or a transporting agent, whether he has fixed place of business in Uttarakhand or not, who, while holding goods in custody for any person before or after their transportation, or while carrying goods in his vehicle, fails to disclose the name and address of the consignor or consignee in Uttarakhand or fails to furnish a copy of invoice, challan, goods receipt (G.R)/ bility or consignment note or document of like nature in respect of such goods, or
  - (b) an owner or lessee or occupier of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy that such goods are for his personal use or consumption, and such transporter, transporting agent or owner or lessee or occupier of a warehouse, shall be deemed to have purchased such goods on his own account.
- 8. "**Capital Goods**" means plant, machinery and equipments (including pollution control equipments, quality control equipments or laboratory equipments) used in the manufacturing or processing of taxable goods excluding Special Category Goods specified in Schedule III of this Act, and also excluding such goods when used in civil structures.

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9. "**Commissioner**" means the Commissioner of Commercial Tax, appointed by the State Government and includes an Additional Commissioner, and a Joint Commissioner of Commercial Tax appointed by the Government.
10. "**Date of commencement**" means the date on which this Act comes into force.
11. "**Dealer**" means any person who, for the purposes of or in connection with or incidental to or in the course of his business, carries on in Uttarakhand the business of buying, selling, supplying or distributing goods with a motive of profit or not directly or indirectly, regularly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration, and includes:
  - (a) a department of the Central Government or any State Government or a local authority by name of any Panchayat, Municipality, Development Authority, Cantonment Board or any autonomous or statutory body;
  - (b) an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State Governments or of a local authority;
  - (c) a commission agent, factor, broker, arhti, del credere agent, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, whether disclosed or not;
  - (d) any person who acts within the State as an agent of a non-resident dealer i.e. as an agent on behalf 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
    - (i) a mercantile agent as defined in the Sale of Goods Act, 1930, or
    - (ii) an agent for handling of goods or documents of title relating to goods, or
    - (iii) an agent for the collection or the payment of the sale price of goods or a guarantor for such collection or such payment.

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- (e) an individual, a firm or a company or other body corporate, club, Hindu undivided family or any other system of joint family, association of persons, trust, and cooperative society or any other society, whether such society is incorporated or unincorporated, and which carries on such business including buying goods for and selling to its members for a price, fee or subscription, whether in the course of business or not;
- (f) a non-resident dealer whether an individual, or a firm or a company or association or other body of persons, whether incorporated or not, the principal office or head quarter whereof is outside the State, whether or not having branch or office in the State, in respect of purchases or sales, supplies or distribution of goods in the State of Uttarakhand directly or through his agent or through such branch or office;
- (g) an auctioneer, who carries on the business of selling or auctioning 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;
- (h) a casual dealer;
- (i) a person who supplies by way of or as a part of any service or any other manner whatsoever, goods, being foods or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash or deferred payment or other valuable consideration;
- (j) any 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;
- (k) a person engaged in the business of transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (l) any 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 works contract;

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- (m) Any person who carries on the business of transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (n) any person engaged in business of delivery of goods on hire purchase or any other system of payment by instalment;
- Provided that a person who sells agricultural or horticultural produce grown by him or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods, be treated as a dealer.
12. "**Declared Goods**" means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-state trade or commerce.
13. "**Document**" means title deeds, writing or inscription and includes electronic data, computer programmes, computer tapes, computer discs computer floppies and the like that furnishes evidence.
14. "**Document of Title**" means, any document which confers a title of goods and includes a bill of lading, dock warrant, goods receipt/ bility, railway receipt, warehouse keeper's certificate, warrant or order for the delivery of goods and any other like document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented.
15. "**Goods**" means every kind or class of movable property (other than newspaper, actionable claims, stocks, shares and securities and postal stationery sold by the Postal Department) and includes-
- (a) livestock, growing crops, grass, trees and things attached to or fastened to anything permanently attached to the earth which under the contract of sale are agreed to be severed;
- (b) all materials, commodities and articles (whether as goods or in some other form) involved in the execution of works contract including those used in the fitting out, improvement or repair of any movable or immovable property, or involved in lease or hire purchase.

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16. "**Government**" means the Government of the State of Uttarakhand.
17. "**Importer**" in relation to any goods means a dealer who brings or receives any goods into the State from any place outside the State and includes a dealer-
  - (i) who makes first sale of any goods brought or received into the State from any place outside the State; or
  - (ii) who receives any goods into the State on behalf of any other persons from any place outside the State; or
  - (iii) on whose behalf any goods are received into the State from any place outside the State by any other person.
18. "**Import**" means bringing or receiving of goods, into the State from outside the State or from outside the country, as a result of purchase or otherwise.
19. "**Input Tax**" in relation to any registered dealer means a tax paid or payable under this Act by the dealer to another registered dealer on the purchase of any taxable goods other than Special Category Goods in the course of business for re-sale or for use in manufacturing or processing of such taxable goods for sale or for use as containers or packing materials for packing of such manufactured goods.
20. "**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 and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by installment.
21. "**Lessee**" means any person to whom the right to use any goods for any purpose is transferred under a lease.
22. "**Lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease.
23. "**Manufacture**" means any activity that brings out a change in an article or results in transformation into a new and different article so understood in commercial parlance, and would include producing, making, mining, collecting, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, but would not include any such process or mode of manufacture as may be prescribed.

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*However, currently the act and/or rules do not prescribe any mode for manufacture.*

24. "**Manufacturer**" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes a dealer who makes purchases from any other dealer not liable to tax on the sales under the Act other than sales exempted under section 4.
25. "**Non-resident Dealer**" means a dealer who carries on business in Uttarakhand, but who has no fixed place of business or residence in Uttarakhand.
26. "**Official Gazette**" means the Gazette of Government of Uttarakhand.
27. "**Officer-In-Charge of a check post or barrier**" means an officer not below the rank of Commercial Tax Officer Grade-I, posted at such check post or barrier.
28. "**Output Tax**" in relation to any registered dealer means the tax charged or chargeable under this Act in respect of any sale or supply of taxable goods made by the dealer in the course of business and includes tax paid by a Commission Agent in respect of sale of taxable goods made on behalf of such dealer.
29. "**Person**" includes:-
  - (a) an individual;
  - (b) a Joint Hindu Family;
  - (c) a company or a corporation or a financial Institution or a bank.
  - (d) a firm;
  - (e) an association of persons or a body of individuals, whether incorporated or not;
  - (f) the Central Government or the Government of Uttarakhand or the Government of any other State or Union Territory in India;
  - (g) a local authority, a club, a society or trust.
30. "**Place of Business**" means any place where a dealer carries on business and includes-
  - (a) any shop, ware-house, godown or other place where a dealer stores his goods;

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- (b) any place where a dealer produces or manufactures goods;
  - (c) any place where a dealer keeps his books of accounts;
  - (d) any place where a dealer executes the works contract or where the right to use goods is exercised;
  - (e) in any case where a dealer carries on business through an agent (by what ever name called), the place of business of such agent;
  - (f) any place where a dealer or a person books or delivers goods and any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting goods.
31. "**Prescribed**" means prescribed under this Act or under the rules made or notifications issued under this Act.
32. "**Purchase**" with all its grammatical variation and cognate expressions shall be construed from the word "Sale".
33. "**Recipient**" means a person receiving goods, as defined for the purpose of this Act.
34. "**Registered Dealer**" means dealer registered under this Act, and includes a dealer who has obtained registration voluntarily.
35. "**Repealed Act**" means the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2005.
36. "**Repealed Ordinance**" means the Uttarakhand Value Added Tax Act, 2005.
37. "**Re- Sale**" means a sale of purchased goods-
  - (a) in the same form in which they were purchased, or
  - (b) without using them in the manufacture of any goods, or
  - (c) without doing anything to them, which amounts to, or results in a manufacture.
38. "**Return**" means any return prescribed and / or required to be furnished under this Act or the rules made there under.
39. "**Reverse Tax**" means that portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any

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purpose other than resale or manufacture of taxable goods or execution of works contract or use as container or packing materials within the State.

40. "**Rules**" means rules made under this Act.
41. "**Sale**" with its grammatical variation and cognate expressions means any transfer of property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration, and includes-
  - (a) a transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration.
  - (b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
  - (c) the delivery of goods on hire purchase or any system of payment by instalments;
  - (d) 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;
  - (e) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
  - (f) any 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 drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration
  - (g) a transfer of property in goods by an auctioneer referred to in clause (g) of sub-section (11) or sale of goods by any dealer in the course of any other activity in the nature of banking or insurance, who in the course of his main activity also sells goods repossessed or reclaimed;

And such delivery, transfer or supply of any goods under clauses(a) to (g) above shall be deemed to be the sale of those goods by the person

making the delivery, transfer or supply, and purchaser of those goods shall be the person to whom such delivery, transfer or supply is made;

Explanation1: A sale or purchase shall not be deemed to have taken place in side the State if the goods are sold-

- (a) in the course of inter-state trade or commerce; or
- (b) outside the State of Uttaranchal otherwise than by way of sale; or
- (c) in the course of import into or export out of the territory of India

Explanation 2: A sale or purchase shall be deemed to have taken place in the State under sub- clause (b) 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 works contract, notwithstanding that the agreement for works contract has been wholly or in part entered into outside the State;

Explanation 3: Notwithstanding anything contained in this Act, two independent sales or purchases shall, for the purpose 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 his purchaser;
- (b) when the goods are transferred from the seller to a buying agent and from the buying agent to principal, and if the agent is found in either of the cases aforesaid-
  - (i) to have sold the goods at one rate and passed on the sales 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 deductions made to him, from the sales or purchases effected by him on behalf of his principal or
  - (iv) to have acted for a fictitious or non-existent principal.

42. "**Sale Invoice**" means a document listing goods sold, with price, quantity, tax charged, and such other particulars as may be prescribed in the Act or the Rules made there under.

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43. "**Sale Price**" means the amount of valuable consideration received or receivable by a dealer for sale of any goods and shall include any sum charged for anything done by the dealer in respect of goods at the time or before the delivery thereof, excise duty, special excise duty or any other duty or tax but shall not include-
- (a) any sum allowed by the seller of goods to the purchaser as cash discount, commission or trade discount according to normal trade practice, at the time of sale of goods;
  - (b) the cost of outward freight or delivery or the cost of installation in cases where such cost is separately charged;
  - (c) the amount of tax under this Act, if separately charged by the dealer.

Explanation: For the purpose of this sub-section "Sale Price" includes

- (a) in relation to the delivery of goods on hire purchase or any other system of payment by installments, the total amount of valuable consideration including deposit or other initial payment in order to complete the purchase or the acquisition of the property in goods. It includes hire charges, interest and other charges incidental to such transaction, but does not include any sum payable as penalty or as compensation or damages for breach of agreement.
- (b) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hire charges received or receivable for such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement.
- (c) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, the valuable consideration paid or payable to a person for the execution of such works contract, less the actual amount representing labour, but does not include any sum payable as a penalty or as compensation or damages for breach of agreement.
- (d) the amount of duties paid or payable under Central Excise Act, 1944, or Customs Act, 1962, or U.P. Excise Act, 1910, as

applicable in Uttaranchal, in respect of such goods at the time of clearance of the goods from bonded warehouse, whether such duties are paid or payable by or on behalf of the seller or by any other person.

- (e) the price of packing material in which goods sold are packed.
44. "**Special Category Goods**" means the goods specified in Schedule III of this Act on which tax is payable at the point of Importer or Manufacturer.
45. "**State**" means the State of Uttarakhand.
46. "**State Government**" means the Government of State of Uttarakhand.
47. "**Tax**" means the tax payable under this Act, and includes the amount as lump sum (composition money) accepted in lieu of actual amount of tax due on the turnover as provided under Section 7 of the Act, amount of reverse input tax credit and the amount of additional tax leviable under section 3(A).
48. "**Tax Period**" means a calendar month, a quarter of a year, or a year, as may be prescribed, or part thereof.
49. "**Taxable Turnover**" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed.
50. "**Transporter**" means any person who, for the purpose of or in connection with or incidental to or in the course of business, transports or causes to transport goods, or holds goods in custody for any person before or after their transportation and includes railway, shipping company, air cargo service or courier service.
51. "**Turnover of Sales**" means the aggregate amount for which goods are sold or supplied or distributed by a dealer, either directly or through another, whether on his own account or on account of others, whether for cash or deferred payment or other valuable consideration;
- Explanation 1: "Turnover of Sales" for the purpose of this Act shall include any sum charged for anything done by the dealer in respect of the goods sold or supplied at the time of or before delivery thereof but shall not include the sale value of agricultural or horticultural produce effected by a person who produces it by agriculture or horticulture from

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land owned or held by him as lessee, usufructuary mortgagee or in any other capacity recognized or permitted by law, but the expression agricultural or horticultural produce shall not include timber or standing trees, manufactured tea or any other produce which is subjected to manufacture or processing after harvest;

Explanation 2: "Turnover of Sales" in relation to

- (a) the transfer of property in goods (whether as goods or in some other form) involved in execution of works contract, means the amount of valuable consideration paid or payable to a person for the execution of such works contract
- (b) the delivery of goods on hire purchase or any system of payment by instalment, means the amount of valuable consideration paid or payable to a person for such delivery; and
- (c) the transfer of the right to use any goods for any purpose (whether or not for a specified period) means the valuable consideration received or receivable for such transfer

Explanation 3: Subject to such conditions and restrictions, if any, in this behalf:

- (a) the amount for which goods are sold shall include the price of the packing material in which they are packed, and any sum charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as tax on sale or purchase of goods, when such cost or amount is separately charged
- (b) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in turnover and
- (c) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sale in respect of such goods shall be included in the turnover of the latter dealer alone.

52. "**Turnover of Purchases**" with its cognate expression means the aggregate of the amounts of purchase price paid or payable by a

dealer in respect of any purchase of goods made by or through him whether for cash or deferred payment, after deducting the amount, if any, refunded to the dealer by the seller in respect of any goods returned to such seller within such period as may be prescribed.

53. "**Vehicle**" means every wheeled conveyance used for carrying goods solely or in addition to passengers and includes a vessel, an auto vehicle, a bicycle, a hand driven or an animal driven cart, an animal carrying load, a rickshaw, or a person carrying goods.
54. "**Value of Goods**" means the value as ascertained from the purchase invoice (s)/ bill(s) and includes insurance charges, excise duties, countervailing duties, sales tax, transport charges, freight charges and all other charges incidental to the transaction of the goods:  
Provided that where the purchase invoice(s)/bill(s) are not produced or when the goods are acquired or obtained otherwise than by way of purchase, the value of goods shall be the value at which the goods of like kind or quality are sold or are capable of being sold in open market.
55. "**Vessel**" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner.
56. "**Works Contract**" include any agreement for carrying out, for cash, deferred payment or other valuable consideration, building, constructing, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.
57. "**Year**" means the financial year beginning from 1<sup>st</sup> April and ending with 31<sup>st</sup> March.
58. "**Year of Commencement**" means the assessment year in which the date of commencement of this Act, falls.
59. "**Web site**" means, world wide web of the department of commercial tax, Uttarakhand with domain "uk.nic.in" and with address <http://comtax.uk.gov.in> or any other website as may be notified by the Commissioner.

# **Chapter 1**

## **Introduction**

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VAT was introduced in India from 1<sup>st</sup> April 2005 as part of Indirect Tax Law. VAT is subject to State Government control, and is levied on sale and purchase of goods within a State. The introduction of State VAT has proved to be an important reform measure at State level. The State VAT has replaced the earlier Sales Tax system of the States. The main motive of VAT has been rationalization of overall tax burden and reduction in general price level by removal of cascading effect of double taxation. Thus, it seeks to help common people, traders, industrialists as well as the Governments. It is an important move towards more equal competition, efficiency and uniformity in the taxation system.

Value Added Tax (VAT) is a multi-point destination based system of taxation, with tax being levied on value addition at each level of transaction in the production/ distribution chain. The term ‘value addition’ implies the increase in value of goods at each stage of production or its transfer. VAT is a tax on final consumption of goods and is ultimately borne by the consumer, hence it is also known as consumption tax.

The main benefits of implementation of VAT are:

- VAT is imposed on the basis of invoice/ bill at each stage, hence tax evasion is reduced; thereby it increases the revenue for Government.
- Set off is available for input tax as well as paid on previous purchases, which removes cascading effect.
- Tax structure is more transparent, simple and easy to understand.
- Promotes competitiveness of exports.

### **Uttarakhand VAT**

VAT in Uttarakhand came into force from 1<sup>st</sup> October 2005. The Uttarakhand Value Added Tax Act, 2005 is the basic legal framework regulating VAT in Uttarakhand. VAT contributes more than ₹ 3600 Crores to the Uttarakhand Government revenue.

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Following implementation of Uttarakhand Value Added Tax Act, 2005, the following Acts have been repealed.

- The Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002
- The Uttaranchal Value Added Tax Act, 2005

### **Role of Chartered Accountants**

The Chartered Accountants are well trained by the Institute of Chartered Accountants of India for ensuring successful implementation and compliance of VAT. They can guide the dealers in proper record keeping, tax planning and compliance procedures. As a tax practitioner a Chartered Accountant can cater to the industry requirement very efficiently. Through negotiations with suppliers, fulfillment of VAT Audit requirement and sorting out its queries, a chartered accountant plays a vital role in helping the dealer conduct the business his ease.

The Chartered Accountants through their attest function also ensure that the dealer pays the taxes to the Government properly, returns are filed on time, and provisions of this Act are properly complied with, thereby helping the Government in controlling tax evasion practices. Thus the Chartered Accountants with their service to the industry also help the Government in revenue growth.

## **Chapter 2**

### **Incidence and Levy of Tax**

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#### **1. Incidence of Tax**

**Section 3(1) to Section 3(4):** Every dealer or person,

- shall be liable to pay tax on every sale made within the State
- if he is registered or liable to be registered under the provisions of this Act, shall be a taxable person and liable to pay tax in the manner provided in the Act.
- shall pay from the date he becomes so liable, a tax for each assessment year on his turnover, to be determined of all sales inside the State, made on or after the date he becomes liable to pay tax
- Where a dealer carries on the business of-
  - (a) sale of any taxable goods in the course of inter-state trade or commerce or
  - (b) sale of any taxable goods in the course of export outside the territory of India, or
  - (c) consigning any taxable goods for delivery at a place outside the State; or
  - (d) sale of any taxable goods purchased or received from outside the State; or
  - (e) purchase of any taxable goods after furnishing any form of declaration or certificate either under Uttarakhand (the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002, or the Central Sales Tax Act,1956, or under this Act, or
  - (f) sales or purchases of taxable goods if such dealer is already registered under the Uttarakhand (the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act,1956 and desires to retain such

registration after the commencement of this Act or applies for grant of registration voluntarily under the provisions of this Act; and

- (i) if such a dealer has been carrying on the business in the immediately preceding assessment year and continues it on the date of commencement of this Act, he shall be liable to pay tax from the date of commencement of this Act; and
- (ii) if such dealer commences business on or after the date of commencement of this Act, he shall be liable to pay tax from the date on which any of the events from (a) to (f) above takes place for the first time in any assessment year;

**Section 3(5):** Any dealer who carries on business of purchases and, or of sales of goods inside the State only and has neither furnished nor received any form of declaration or certificate under this Act or the Uttarakhand (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956 or rules made or notifications issued thereunder in respect of any purchases or sales, and the business continues on the date of commencement of this Act, and

- (a) if such a dealer has been carrying on business for whole or part of the immediately preceding assessment year, and continues it on the date of commencement of this Act and,
  - (i) if the aggregate of his turnover as per the provisions of the Uttarakhand (The Uttar Pradesh Trade Tax Act, 1948), Adaptation and Modification Order, 2002 in the preceding year exceeded the amount specified under sub-section (7) in case of whole year or the proportionate amount in case of part of the year, he shall be liable to pay tax from the date of commencement of this Act; or
  - (ii) if the aggregate of turnover as per the provisions of the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 for the period from the first day of the year of commencement up to the date of commencement of this Act, exceeds the amount specified under

*Incidence and Levy of Tax*

- sub-section (7) proportionately, he shall be liable to pay tax from the date of commencement of this Act; or
- (iii) if such a dealer is not liable to pay tax from the date of commencement, of the Act under (a) (i) and clause (ii) above, he shall be liable to pay tax from the date the aggregate of his turnover for the first time exceeds the taxable quantum in any assessment year; or
- (iv) if such dealer is already registered under the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956 and desires to retain it voluntarily, he shall be liable to pay tax from the date of commencement of this Act;
- (b) if such dealer commences business in the year of commencement on the first day or any other subsequent date, but before the date of commencement of this Act, and
- (i) if the aggregate of his turnover from commencement of business till the date of commencement of this Act exceeds the proportionate amount of taxable quantum, he shall be liable to pay tax from the date of commencement of this Act;
- (ii) if such a dealer is not liable to pay tax from the date of commencement of this Act, under (i) above, he shall be liable to pay tax from the date the aggregate of his turnover for the period starting from the date of commencement of business and ending on the last date of the assessment year, for the first time exceeds the proportionate amount of taxable quantum;
- (c) (i) if such a dealer commences business on or after the date of commencement of this Act either in the year of commencement or in any subsequent assessment year, he shall be liable to pay tax in such first assessment year from the date when the aggregate of his turnover for the period starting from the date of commencement of his business and ending on the last date of that assessment year for the first time exceeds the proportionate amount of taxable quantum; and
- (ii) if such a dealer is not liable to pay tax in the year of commencement of business as per sub-clause (i) above, he

shall be liable to pay tax in the first assessment year in which the aggregate of his turnover exceeds taxable quantum and shall be liable from the date his turnover so exceeds for the first time;

**Section 3(6):** Whereby any order passed under this Act, it is found that any person registered as dealer ought not to have been so registered and the registration certificate is cancelled, 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 was a dealer.

**Section 3(7): Taxable quantum for levy of Tax**

(a) No dealer shall, except as otherwise provided under clause (e) of this sub-section, be liable to tax if, during the assessment year, the aggregate of his turnover of sales of all goods, whether such sale is made by the dealer directly or through his branch, depot or agent inside the State, or in the course of inter-state trade or commerce, or in the course of export out of the territory of India or by way of consignment outside the State, is less than the amount mentioned hereinafter-

(i)	in the case of manufacturers or producers of any goods for sale	₹ 5 lacs
(ii)	in case of execution of works contract	₹ 5 lacs
(iii)	in case of transfer of right to use goods	₹ 5 lacs
(iv)	in case of dealers engaged in any other business	₹ 5 lacs

- (b) Nothing in clause (a) shall apply in respect of –
- (i) the sale by a dealer of goods imported by him from outside Uttarakhand, the turnover whereof is liable to tax under this Act.
  - (ii) the sale by a dealer of –
    - goods imported by him from outside Uttarakhand after furnishing to selling dealer a declaration under sub-section (4) of section (8) of the Central Sales Tax Act, 1956

*Incidence and Levy of Tax*

- goods purchased or imported by furnishing any declaration or certificate under any provision of this Act
- goods manufactured by him by using the goods referred to in sub-clause (i) or sub-clause (ii)
- Where tax is payable, and has been so paid, by a commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

**Section 3(8):** Gross Turnover for the purpose of determining the liability to pay tax under the Act –

- except as otherwise expressly provided, the turnover of all sales (whether taxable or not) and as the case may be, the turnover of all purchases on which tax is payable shall be included;
- the turnover shall include all sales and such purchases made by the dealer in his account and also on behalf of principals whether disclosed or not.

**Section 3(9):** Taxable Turnover for the purpose of payment of tax shall be that part of the gross turnover of sales during any period which remains after deducting there from,

- (a) sales of goods declared as exempt from tax in Schedule 1
- (b) sales of goods which are shown to the satisfaction of the assessing authority to have taken place-
  - (i) in the course of inter-state trade or commerce, or
  - (ii) outside the State of Uttarakhand other than by way of sale, or
  - (iii) in the course of export of the goods out of the territory of India

*Explanation:* section 3, section 4 and section 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in sub-clause (i), sub-clause (ii) or sub-clause (iii).

- (c) in case of turnover of sales in relation to works contract certain deductions as referred to in Rule 14 and subject to such conditions and restrictions as may be imposed;

- (d) such other sales and subject to such conditions and restrictions as may be imposed.

## **2. Levy of Additional Tax (Section3A)**

Every dealer liable to pay tax under this Act shall be liable to pay in addition to the tax payable under any other provision of this Act, an additional tax on the taxable turnover of sale or purchase of goods or both, at such rate not exceeding five percent, as may be specified by the State Government by notification in the gazette. Different rates may be specified in respect of different goods or different classes of goods.

### **2.1 Additional tax shall not be levied on sale of,**

- (a) the turnover of sale or purchases or both as the case may be, of goods specified in Schedule-I, II(A), II(C) and III
- (b) turnover of sale or purchases or both as the case may be, of goods declared to be of special importance in the inter-State trade or commerce under Section 14 of the Central Sales Tax Act, 1956
- (c) such sale or purchase, or sale or purchases of such goods by such class of dealer, as may be specified in the notification issued by the State Government

## **3. Purchase Tax (Section 3(10))**

Every dealer who in the course of his business purchases any goods-

- (a) from a registered dealer in the circumstances in which no tax under this Act is payable by that registered dealer on the sale price of such goods; or
- (b) from a person other than a registered dealer and tax on sale of such goods cannot be levied on the seller either in view of any provision of this Act or because the selling dealer though liable to pay tax has not obtained registration,

he shall be liable to pay tax on purchase price of such goods if-

- (i) goods are not sold within the State of Uttarakhand, or in the course of Inter-State trade or commerce or in the course of export out of the territory of India; or

*Incidence and Levy of Tax*

- (ii) goods are consumed or used in the manufacture of goods exempt from tax under this Act; or
- (iii) goods are used or consumed in the manufacture of goods and such manufactured goods are disposed of otherwise than by way of sale in the State of Uttarakhand or in the course of interstate trade or commerce or in the course of export out of the territory of India; or
- (iv) goods are used or consumed otherwise,

and such tax shall be levied at the same rate at which it would have been levied under this Act on the sale of such goods within the State on the date of such purchases.

#### **4. Rate of Tax**

- The tax payable by a dealer under this Act shall be levied on his taxable turnover at such rates but not exceeding-
    - (a) the maximum rate for the time being specified in section 15 of Central Sales Tax Act, 1956 in respect of declared goods, and
    - (b) fifty percent in respect of goods other than the goods referred to in clause (a) above;
- Provided that in case of transfer of the right to use any goods, the rate of tax shall not exceed twenty percent in respect of goods other than the goods referred to in clause (a) above.
- No tax under this Act shall be payable on the sale or purchase of the goods specified in Schedule-I
  - A dealer shall be liable to pay tax on his taxable turnover,
    - (i) At every point of sale at the rate hereafter provided:
      - In respect of goods specified in Schedule II (A) - 1 percent
      - In respect of goods specified in Schedule II (B) - 5 percent
      - In respect of goods specified in Schedule II (C) - at the rates specified therein

- In respect of goods other than those included in any of the Schedules – 13.5 percent
- (ii) At the point of sale by Manufacturer or sale by Importer in respect of Special Category Goods specified in Schedule III - at the rates specified therein.
  - When a dealer transfers his right to use goods, he is required to pay tax @ 5%<sup>1</sup> on the net turnover [Section 4(5)]
  - When a dealer sells goods to another dealer and the Buyer dealer furnishes a certificate that he holds a Recognition Certificate, the selling dealer will pay tax on those goods @ 3%<sup>2</sup>, [Section 4(7)(a)]
  - When a dealer having Recognition Certificate purchases goods after payment of tax at concessional rate or without payment of tax and uses such goods for other than that for which the Recognition Certificate was granted or has otherwise disposed of the said goods, he will be liable to pay penalty. That penalty shall not be less than **one and half times the difference** of amount of tax payable on the sale/purchase of goods and the amount of tax payable as per other provisions of Act, but **not exceeding twice** the amount of such difference. [Section 4(7)(d)]<sup>3</sup>
  - When a dealer having Recognition Certificate purchases goods after payment of tax at concessional rate or without payment of tax and uses it in manufacturing goods or as packing material for manufactured goods and disposed them of otherwise than by way of sale in the state or in the course of inter-state trade or commerce or in the course of export, he will be liable to pay, an amount equal to one and half times of the difference of amount of tax calculated on the sale/purchase value of goods at the general rate of tax and tax at the concessional rate on the sale or purchase such goods. [Section 4(7)(e)]<sup>4</sup>

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<sup>1</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015. Earlier the same rate was 4%.

<sup>2</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015. Earlier the same rate was 2%.

<sup>3</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015.

<sup>4</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015.

**5. Certain classes of person or unit exempt from payment of tax or entitled to refund of the tax paid goods**

- Sale of goods to or by the dealer or persons specified in Schedule IV shall be exempt from whole or any part of tax, as may be specified therein.
- Sale made in the course of export of goods outside the territory of India as specified under sub-section (1) and sub-section (3) of section 5 of the Central Sales Tax Act, 1956 shall be Zero-Rated, which means that there shall be no tax on the sale turnover of such transaction and the exporter shall be entitled to refund of tax paid by him on purchase of goods which are so exported.
- Units established in Special Economic Zones (SEZ), shall be entitled to claim refund of tax paid on purchase from units established in Domestic Tariff Area.
- Any person or a dealer or an international organization listed in Schedule V shall be entitled to refund of tax paid by it on the purchase of taxable goods.

**6. Rate of Tax on Packing Material**

When goods are sold or purchased in containers or packed in any packing material, the rate of tax applicable to such containers or packing material (whether the price of container or packing material is charged separately or not) shall be the same as those applicable to the goods contained or packed and turnover in respect of container and packing material shall be included in the turnover of such goods.

Where the sale of goods contained in container or packed in packing material is exempt from tax, then the sale of such container or packing material shall also be exempted from tax.

**7. Specified Goods on which Tax shall be payable at M.R.P (Section 4(8))**

- (i) Where the State Government is satisfied that it is expedient in public interest so to do, it may, by notification and subject to such conditions and restrictions as may be specified therein, direct any class or category of dealers to pay, on sale of such goods as may be specified in the notification, in lieu of tax payable at the actual sale price, a tax at the rate specified in the respective Schedule on the Maximum Retail Price (M.R.P.)
- (ii) A dealer paying tax at M.R.P. under clause (a) above, shall, in addition to mentioning in the Sale Invoice, the actual sale price, separately indicate in the sale invoice the M.R.P. on which tax has been charged and also print on the top "INVOICE FOR TAX ON M.R.P."
- (iii) Any dealer purchasing goods on which tax has been paid on M.R.P., shall neither be entitled to Input Tax Credit on such purchases nor shall be liable to pay tax of sale on such goods
- (iv) Where the State Government is of the opinion that it is no longer in the public interest to continue any scheme under the above provisions, it may, by notification, at any time withdraw any such scheme, and thereafter the tax shall be payable under the relevant provisions of the Act

**Explanation:** The expression M.R.P.(Maximum Retail Price) means the price printed on label or packet of the goods or the regulated price of the goods, if any.

**8. Levy of tax on certain goods by weight, volume, measurement or unit (Section 4A)**

The State Government may, by notification, fix the amount of tax payable on the sale or purchase of certain goods or a class of goods in respect of a specified area or whole of the State, on the basis of weight, volume, measurement or unit, and subject to such terms and condition as may be notified.

## **Chapter 3**

# **Input Tax Credit**

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Input Tax means a tax paid or payable under this Act by the dealer to another registered dealer on the purchase of any taxable goods in the course of business for re-sale or for use in manufacturing or processing of such taxable goods for sale or for use as containers or packing materials for packing of such manufactured goods.

Input Tax Credit (ITC) shall be allowed only to a registered dealer, and for the purpose of calculating the net tax payable by a registered dealer for any tax period after being registered, an input tax credit as determined under the provisions of this Act shall be allowed to such registered dealer for the tax paid or payable in respect of all taxable sales (other than sale of goods specified in Schedule III)

Further, the amount of input tax credit or refund on any purchase of goods shall not exceed the amount of tax actually paid for the same goods. [Proviso to Section 6(1)]<sup>5</sup>

### **1. Condition for Input Tax Credit (ITC)**

Input Tax Credit to which the registered dealer is entitled shall be the amount of tax paid by the registered dealer to the seller on his turnover of purchases made during the tax period, intended to be used for the purposes of

- (a) sale within the State or
- (b) sale in the course of inter-state trade and commerce or
- (c) sale in the course of export out of the territory of India or
- (d) use as raw material and consumables in manufacturing or processing of goods (other than those specified in Schedule I or Schedule III) and containers or other packing materials used for packing of such manufactured goods, for sale or resale within the State or in the course of inter-state trade or commerce.

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<sup>5</sup> Addition vide Uttarakhand VAT (Amendment) Act, 2015

- (e) use as raw material and consumables in manufacturing or processing of any goods (other than those specified in Schedule III) and containers and other packing materials used for packing of such manufactured goods, for sale in the course of export of goods out of the territory of India.

If purchases are used partly for the purpose specified above, the tax credit shall be allowed proportionate to the extent they are used for the purpose specified above.

## **2. Input Tax Credit on Capital Goods**

ITC on capital goods is available except on the following:

- goods not connected with the business of the dealer, or
- goods purchased from an un-registered dealer, or a dealer whose Certificate of Registration has been cancelled, or
- goods purchased from outside the State, or
- goods purchased or paid for prior to the date of commencement of this Act or the date of registration under this Act, or
- goods used in manufacturing or processing of goods exempt from tax or Special Category Goods specified in schedule III, or providing services or trading activities which are not liable to tax under this Act, or
- goods used for lease under an agreement of transfer of right to use goods (whether for a specified period or not) for any purpose or
- goods used in connection with transfer of property in goods involved in the execution of works contract or
- goods on which tax being payable under this Act or under the Uttarakhand (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 has not been paid on any earlier sale or purchase of such goods or
- goods used in generation of energy/power including captive power or
- goods have been already used, or acquired for use in any other factory or workshop in India or

### *Input Tax Credit*

- goods purchased from a registered dealer who has given option to pay Presumptive Tax at a percentage of turnover of sales or a lump sum amount in lieu of tax on sale and / or purchase of such goods by way of composition scheme or
- No input tax credit shall be allowed on the capital or other expenditure on land, civil structure or construction, and motor car, accessories or spare parts.

### **3. Input Tax Credit on goods other than Capital Goods**

ITC on goods other than capital goods is also available except on the following:

- goods not connected with the business of the dealer, or
- goods purchased from an un-registered dealer or a dealer whose Certificate of Registration has been cancelled, or
- goods purchased from outside the State, or
- goods the sale of which is exempted under this Act or the goods used in manufacture, processing or packing of such goods, or
- goods whether goods as such or constituents of finished or semi finished goods which remain unsold in stock at the time of closure of business due to discontinuance by the dealer or cancellation of his registration, or his being declared non-taxable under the provisions of this Act, or
- goods transferred outside the State, otherwise than by way of sale, or
- goods purchased from a registered dealer who has given an option to pay Presumptive tax at a percentage of turnover of sales
- goods that are stolen or lost or destroyed or disposed of in any manner other than in ordinary course of business or goods distributed by way of free sample or gift, or
- goods leased under an agreement of transfer of right to use any goods (whether for a specified period or not) for any purpose, or
- goods sold by way of transfer of property in goods(whether as goods or in some other form) involved in the execution of works contract or

- goods on which tax being payable under this Act or under the Uttarakhand (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 has not been paid on any earlier sale or purchase of such goods, or
- Special category Goods specified in Schedule-III or the goods except molasses used in manufacture, processing or packing of such goods, or
- goods used in generation of energy/power including captive power.

#### **4. Input Tax Credit on Branch/ Consignment Transfer Transactions**

Input Tax Credit on raw materials used directly in the manufacture of goods which are dispatched outside the state by way of branch or consignment transfer outside the State of Uttarakhand shall be eligible after deduction 3%<sup>6</sup> of tax on taxable turnover of their purchases within the State.

Input tax credit shall not be claimed by a dealer where the Sale Invoice from the registered dealer selling the goods evidencing the input tax paid is-

- not available with the dealer in original or its duplicate copy.
- the assessing authority has reason to believe that the original Sale invoice has not been issued by the selling dealer from whom the goods are purported to have been purchased.

#### **5. Input Tax Credit on sale below purchase price/cost price in case of Manufacture [Section 6(18)]<sup>7</sup>**

Where goods purchased or resold or goods manufactured or processed by using or utilizing such purchased goods are sold at a price which is lower than;

- (i) the purchase price of such goods in case of resale; or

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<sup>6</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015. Earlier the same rate was 2%.

<sup>7</sup> Section 6(18) inserted vide Uttarakhand VAT (Amendment) Act, 2015

### *Input Tax Credit*

- (ii) the cost price in case of manufacture,

the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of such goods or manufactured goods.

### **6. Adjustment of Input Tax Credit exceeding tax liability**

If the input tax credit for a tax period exceeds the tax liability for that period, the excess amount shall be adjusted against the tax liability, if any, under the Central Sales Tax Act, 1956, for the same tax period and the balance shall be credited against any outstanding tax, penalty or interest under this Act or under the Central Sales Tax Act, 1956 and only the remaining amount shall be carried forward by the dealer to succeeding tax periods and the amount shall be deemed to be an input tax credit for that period.

**For Export:** The dealer engaged in export shall be entitled to refund of the tax paid on purchase of goods after the end of every quarter of a year.

### **7. Credit Notes and Debit Notes**

- (i) Where a Sale invoice has been issued and the amount shown as tax charged in the Sale invoice exceeds the tax payable under this Act in respect of that sale, the registered dealer making the sale shall provide the purchaser with a credit note to this effect.
- (ii) Where the Sale invoice has been issued and the tax payable under this Act in respect of the sales exceeds the amount of tax charged in that Sale invoice, the registered dealer making the sale shall provide the purchaser with a debit note to this effect.
- (iii) In case of goods returned or rejected by the purchaser, a credit note to this effect shall be issued by the selling dealer to the purchaser, and a debit note will be issued by the purchaser to the selling dealer.

### **8. Reverse of Input Tax Credit (ITC)**

Input Tax Credit is required to be reversed (fully or partly) when ITC availed are used for non-specified purposes. ITC is also required to be adjusted for Debit Note or Credit Note for any change in consideration if tax is separately shown or for purchase return.

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“Provided that if part of purchased goods is utilized otherwise, the amount of reverse tax credit shall be proportionately calculated”.

### **Illustration**

The net input tax credit to which a registered dealer is entitled shall be determined by the formula:

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

Where,

A = the amount of input tax credit the dealer is entitled to

B = tax credit carried from the preceding tax period

C = reverse tax credit

Illustration: XYZ Ltd is engaged in the business of manufacture and trading in cement. Besides, the manufacturer also stock transfer its manufactured cement to the State of Uttar Pradesh for trading therein. During the F.Y 2013-14, XYZ Ltd. manufactures 2,000 Tons of cement out of which 1,500 Tons of cement has been sold within the state and balance stock transfer to the State of Uttar Pradesh for sale in that State. The manufacturer purchase local raw material worth ₹ 1,00,00,000/- on payment of 13.5% VAT which amounts to ₹ 13,50,000/- and consumables worth ₹ 20,00,000/- from the State of Maharashtra. Further, the manufacturer has brought forward tax credit of ₹ 2,00,000/- from the preceding tax period i.e., F.Y 2012-13.

Determine the Net Input Tax Credit available to the XYZ Ltd.

Solution: The net amount of Input Tax Credit (ITC) available to the dealer is determined as under:

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

A = Amount of Tax Credit entitled to the dealer on local purchase of Raw Materials = ₹ 13,50,000/-

B = Amount of Tax credit carried from the preceding tax period = ₹ 2,00,000/-

C = Reverse Tax Credit

In terms of proviso to Section 6(3) of the Act, where the finished products are dispatched outside the state other than by way of sale, a partial amount of

### *Input Tax Credit*

input tax credit shall be allowed in respect of tax paid in excess of two percent on the raw materials used directly in the manufacture of such finished products.

In the instant case 500 Tons of cement are stock transferred to the State of Uttar Pradesh and hence in terms of proviso to Sec 6(3) of the Act, the dealer is entitle to reverse tax credit to the extent of two percent on the raw material used. The amount of reverse tax credit is determined as follows:

Total Manufacture = 2000 Tons

Stock Transfer = 500 Tons

Proportion of Stock Transfer =  $500/2000 \times 100 = 25\%$

Raw Material Cost = ₹ 1,00,00,000/-

Reverse Tax Credit =  $25\% \times ₹ 1,00,00,000/- \times 2\% = ₹ 50,000/-$

Hence,

Net ITC available to XYZ Ltd. = ₹ 13,50,000 + ₹ 2,00,000 – ₹ 50,000 = ₹ 15,00,000/-.

## **Chapter 4**

# **Registration Procedure**

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Under the Uttarakhand Value Added Tax Act, 2005 registration can be obtained in the following three ways:

- Compulsory Registration
- Deemed Registration
- Voluntary Registration.

However, notwithstanding anything contained in this chapter, the following class of dealers shall be liable for registration, irrespective of their turnover at the commencement of their business in the State-

- every casual dealer
- every dealer registered under the Central Sales Tax Act, 1956, within the State
- every dealer residing outside the State but carrying on business within the State
- every dealer in liquor including beer
- every commission agent, broker, del credere agent, auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling supplying or distributing goods on behalf of his principal.

### **1. Compulsory Registration (Section 15)**

Under the Uttarakhand Value Added Tax Act, 2005, every dealer shall be liable for compulsory registration,

- (i) who sells any goods imported by him from outside the State of Uttarakhand or
- (ii) who sells goods manufactured by him by using goods imported from outside the State, or
- (iii) who is liable to pay tax under any other provision of this Act, or

### *Registration Procedure*

- (iv) who is subjected to tax deduction at source, or
- (v) who would be liable to pay tax (had the exemption not been granted under this Act), provided his actual or estimated turnover for the assessment year is not less than the taxable quantum as per Section 3(7), or
- (vi) who commences business during the course of an assessment year and whose average monthly estimated turnover for the remainder of such year, or whose actual turnover in any month during the aforesaid period, is not less than one-twelfth of the amount specified in Section 3(7).

## **2. Deemed Registration**

Certain dealers, even though not liable to pay tax, shall also get registration under this Act from the date on which a dealer for the first time-

- (i) receives any taxable goods from outside the State, or
- (ii) imports goods inside or export goods outside the territory of India, or
- (iii) consigns any taxable goods outside the State except by reason of a sale.

## **3. Voluntary Registration (Section 16)**

Any dealer who

- (i) intends to manufacture any taxable goods for sale, or
- (ii) intends to carry on business of sale or purchase of taxable goods, or
- (iii) is carrying on business of sale or purchase of goods but otherwise is not liable to obtain registration if he so desires, may present an application for grant of voluntary registration under this Act, and such registration certificate if granted, shall be valid with effect from the date on which the application is presented.

A dealer who has been granted voluntary registration under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act.

## **4. Procedure for Registration (Section 17)**

- The dealer required to be registered shall submit an application for registration in Form I electronically, accompanied with fee of Rupees

One Hundred only, within such time fixed by the assessing authority or any other officer authorized by the Commissioner.

- The assessing authority may, after such enquiry as it considers necessary and subject to the provisions of section 20 in this behalf, allow the application and cause the dealer to be registered, and issue a certificate of registration in the Form II.

Provided that where any security for grant of registration has been demanded from the dealer, registration shall be granted after the dealer has furnished such security to the satisfaction of the assessing authority.

- Registration made thereunder shall take effect from the date on which the dealer becomes liable to registration in case he applies for registration within the period of 30 days, and, in any other case, from the date on which he applies for registration.
- Registration certificate granted to a dealer shall remain in force till the date of discontinuance of business, unless the registration certificate is cancelled by the assessing authority.
- If application for registration is incorrect or incomplete or is not in order or the fee or penalty has not been paid or the security demanded has not been furnished or for any other sufficient reasons to be recorded in writing by the assessing authority, it may, after giving a reasonable opportunity of being heard to the applicant, reject the application by an order in writing.
- If a dealer to whom a certificate of registration has been granted –
  - has failed to file the returns under this Act within the time; or
  - knowingly furnishes incomplete or incorrect particulars in return ; or
  - has failed to pay any tax including penalty or interest, and late fee, if any, due from him under the provisions of this Act within the time, the certificate of registration of such dealer may be suspended by the assessing authority after giving such dealer an opportunity of being heard.

Provided that the certificate of registration of a dealer shall not be suspended if he has furnished return or returns and deposited the

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amount of tax due, interest and late fee, if any, payable within the time specified in the notice.

Where any proceedings for cancellation of registration under section 18 are pending for disposal before the assessing authority, the certificate of registration of such dealer may be suspended for the period the proceedings of cancellation are pending, after giving such dealer an opportunity of being heard.

- Suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes including penalty, interest or late fee, if any, and on furnishing of overdue return or returns within 45 days from the date of suspension.
- Section 17(11) If any dealer-
  - transfers his business or any part thereof by sale, lease, leave, license, hire or in any other manner whatsoever, or otherwise disposes off his business or any part thereof, or
  - acquires any business, whether by purchase or otherwise, or
  - effects or comes to know of any other change in the ownership or constitution of his business, or
  - discontinues his business or changes his place of business or ware house or opens a new place of business or ware house, or
  - changes the name, style or nature of his business, or effects any change in the class or description of goods in which he carries on his business, as specified in his certificate of registration, or
  - enters into partnership or other association in regard to his business, or
  - starts a new business or joins another business either singly or jointly with other person, or
  - in case a company incorporated under a statute or a company or a private company registered under the Companies Act effects any change in the constitution of Board of Directors, or

- effects any change in particulars furnished in application for grant of registration certificate,
- shall, within thirty days of the occurring of any of the events aforesaid, inform the assessing authority.

## **5. Security in the Interest of Revenue (Section 20)**

1. The assessing authority may, where it appears necessary to him so to do-
  - (a) for the proper realization of any tax, penalty or other sums due or payable under this Act, or
  - (b) for the proper custody or use of forms under this Act or the rules framed there under, or
  - (c) as a condition for the grant or as the case may be, the continuance in effect of registration certificate

by an order in writing and for reasons to be recorded therein, direct, before the grant of, or, as the case may be, at any time while the certificate of registration is in force, that the dealer or the person concerned shall furnish, within the specified time, such security or if the dealer or the person concerned has already furnished such security, such additional security of any nature, as may be specified for all, or any of the aforesaid purposes.
2. The assessing authority may, by order in writing and for sufficient reasons to be recorded therein, demand from any person (other than a registered dealer) who imports into the State of Uttarakhand any consignment of goods, reasonable security for ensuring that there is no evasion of tax
3. No dealer or the person concerned shall be required to furnish any security or additional security under this section to the assessing authority unless he has been given an opportunity of being heard
4. The amount of such security or additional security that may be required to be furnished by any dealer or any person concerned, shall-
  - (a) in the case of dealer liable to pay tax under the provisions of section 3 who has applied for the grant of certificate of registration under section 15 or section 16, be such amount as

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the assessing authority may, having regard to the nature and size of the business of such dealer, determine for the payment of the tax for which the dealer may be or become liable under this Act.

- (b) in any other case not to exceed the tax payable in accordance with the estimate of the assessing authority on the turnover of the dealer or the person concerned for the assessment year in which such security is required to be furnished.
- 5. Notwithstanding anything contained in this section, the Commissioner may, in respect of goods notified by the Government in this behalf, by a general order in writing, direct that the cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or a person requiring any of the forms under this Act.
- 6. Where the surety bond has been executed by a registered dealer and the said registered dealer's certificate of registration is either cancelled or he has closed down his business the dealer shall furnish a fresh surety bond as may be directed or in the manner as stated in below in point no (7).
- 7. Where the security furnished by a dealer or a person concerned under this section is in the form of a surety bond, and the surety dies or becomes insolvent, the dealer or the person concerned shall, within 30 days of the occurrence of any of the aforesaid events, inform the assessing authority, and shall within 60 days of such occurrence furnish a fresh surety bond or furnish other security of the amount of the bond, to the satisfaction of the assessing authority.
- 8. The assessing authority may, by order in writing and for sufficient reasons to be recorded therein, forfeit the whole or any part of the security which includes the additional security furnished by a dealer or a person concerned, for-
  - (a) recovery of tax or any other sum due or
  - (b) recovery of any financial loss caused to the State Government due to negligence or default in not making proper use of or not keeping in safe custody the blank or unused forms
  - (c) recovery of loss of revenue caused by issuing of false invoices.

9. The assessing authority may-
  - (a) refuse to grant registration certificate or
  - (b) suspend any such certificate already issued or
  - (c) refuse to issue any of the forms to any dealer or person concerned, until the dealer or the person concerned has complied with the order regarding furnishing of the security or the additional security, as the case may be.
10. Where the security furnished by any dealer or person concerned is forfeited in whole or in part or is rendered insufficient he shall furnish a fresh or further security of the requisite amount or, as the case may be, shall make up the deficiency in such manner and within such period as may be specified in the order.
11. The assessing authority may, on application by a dealer who has furnished security as required, refund any amount of security or part thereof if such security is not required for the purpose for which it was furnished.
12. No security under this section shall be required to be furnished by a dealer exclusively dealing in goods exempted from tax under section 4 and not making use of any of the forms under this Act or under the Central Sales Tax Act, 1956.
13. An appeal under section 51 may within sixty days from the date of the service of the copy of the order be filed against any order passed under this section.
14. Any dealer or person concerned aggrieved by an order of appellate authority, may file an appeal under section 53 to the Appellate Tribunal within ninety days from the date of service of the copy of such order.

The provisions of this section shall mutatis mutandis, apply in relation to security required to be furnished under the order of any authority under this Act or the Court.

## **6. Application for Registration Certificate (Rule 7)**

1. Every dealer who is required to be registered under section 15 of section 16 of the Act shall submit an application for registration under sub-section (2) of Section 17 of the act to the assessing authority or

### *Registration Procedure*

any other officer authorized by the Commissioner in Form I. The application for registration shall be submitted electronically on department website. The dealer submitting the application for registration shall be duly introduced by an existing registered dealer of three years standing, an Advocate or by a Chartered Accountant or Cost Accountant. The application shall be accompanied by copies of passport size photographs of the proprietor, or each adult partner of the firm or of each audit co-parcener of the Hindu Undivided Family, as the case may be duly attested by an Advocate or a Gazetted officer along with PAN of business issued by the Income Tax Department, and shall be under the signature of-

- (a) Proprietor or any person authorized to act on his behalf in case of proprietorship business.
  - (b) A partner duly authorized by all other partners in case of partnership firm.
  - (c) Karta in case of Hindu Undivided Family
  - (d) Managing Director or Director or a person authorized by the Board of Directors in case of a limited company.
  - (e) President or Secretary in the case of Society, Club or Association of persons.
  - (f) Head of the office or any other person authorized by him in case of a department of a State Government or the Central Government of a Corporation or a local body.
  - (g) Trustee in case of a trust.
  - (h) Receiver or guardian of a minor or an incapacitated person where business in the name of the minor incapacitated person.
  - (i) In any other case, person duly authorized by the dealer or any other person authorized by a competent authority.
2. For obtaining registration, certified copies of the following document shall be produced before the assessing authority or any other officer authorized by the Commissioner. The originals shall be produced at the time of verification of such documents.
- (a) For Proof of deposit of Registration Fee-Challan or e-challan

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- (b) For proof of identity of the individuals any one of the following
  - Passport of the individual
  - Voter ID Card of the individual
  - PAN Card of the individual
  - Driving License of the individual and passport size photograph of the individual attested by an Advocate or a Gazette officer
- (c) For proof of residential address of the individuals any one of the following containing the name and residential address of the individual-
  - Passport of the individual
  - Voter ID Card of the individual
  - Driving License of the individual
  - Bank account statement/Pass Book of the individual along with a leaf of cancelled cheque of such account.
  - Registered sale deed or lease deed of the house, as the case may be
  - Latest receipt of property tax of municipal corporation, council Gram Panchayat, as the case may be, or property tax assessment order
  - Latest paid telephone bill
  - Latest paid electricity bill of UPCL
  - Certificate issued by an officer of revenue department, not below the rank of Tehsildar.
- (d) For proof of the address of all the business premises of the dealer (other than Department Corporation/ Company/Institution of Central/ State Govt. Or Local Bodies)- any one of the following containing name of the business and the address of the premises-

*Registration Procedure*

- Registered sale deed or ownership deed of the business premises or agreement with the builder in the case of owner.
  - Property Tax assessment order
  - Proof of tenancy/Sub tenancy like tenancy agreement of rent receipt or lease of license of consent letter etc supported by documents showing ownership of license holder or person giving consent in case of tenant/sub tenant
  - Meter sealing certificate issued by UPCL of the premises.
  - Certificates issued by an officer of revenue department, not below the rank of Tehsildar
  - Certificate issued by SIDCUL or DIC or
  - Development authority
  - Bank account statement/Pass book of the business along with a leaf of cancelled cheque of such account.
- (e) For proof of, constitution of the dealer (other than proprietor)-
- Registered partnership deed in case of the partnership firm
  - Document by which HUF was created in case of HUF.
  - Memorandum of association and article of association and Bank a/c statement of the business in case of a company.
  - By- laws of Society, Club or Association in case of society, club or association.
  - Certificate issued by the Head of the department or office in case of Govt. Department or corporation.
  - Trust deed in case of a trust.
- (f) For Proof of authority in the name of the applicant (other than proprietor)
- Authority letter given by all other partners of a partnership firm to such partner who is signing the registration application.

- Document (containing the name of Karta) by which HUF was created in case of HUF.
  - Authority letter given by the board of directors to such director or manager/employee of a company who is signing the registration application.
  - Resolution of appointment of the person as President or Secretary in case of a society, club or association.
  - Authority letter given by Head of Office of a department of state Govt. or Central Govt. or Corporation or Local Body to such officer or employee who is signing the registration application.
  - Resolution passed by all the trustees in the name of a trustee to authorize him to sign the registration application.
  - Authority letter given by the incapacitated proprietor of the business to the person who is authorized to sign the registration application.
  - Copy of deed or relevant document in case of receiver or guardian of a minor or an incapacitated person.
- (g) For Proof of registration under other Acts (if such registration is applicable)
- Registration Certificate under the Shop or Commercial Establishment Act.
  - Registration Certificate under the Mandi Act
  - Registration Certificate issued by the Registrar under the Firms and Society Act
  - Registration Certificate under the Service Tax Act
  - Registration Certificate under the Industries Act
  - Registration Certificate under the Central Excise Act
  - Registration Certificate under the Drugs and Cosmetics Act

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- Registration Certificate issued Registrar under the Companies Act
- Registration Certificate issued by KVIC or KVIB
- Registration Certificate under the Trade Marks Act, 1999
- Registration Certificate under Any other Act of a State or the Central Govt.

## **7. Fees for Registration**

- (i) The dealer or person who is required to obtain registration shall furnish along with the Application for Registration satisfactory proof of deposit of a fee of rupees 1000.

Provided that in case of the dealer who is already registered, his registration shall remain in force without his depositing any additional registration fees, till he continues to be liable to registration under the Act.

- (ii) The registration granted to a dealer shall remain in force so long as the dealer continues to be liable to registration under the Act.

## **8. Grant of Registration Certificate**

- If the Assessing Authority or any other officer authorized by the Commissioner is satisfied that the application for registration is in order, the information furnished is correct and complete and the fee and the penalty, where payable, under section 17 has been deposited, he may, unless he considers it necessary to demand security under section 20, register the dealer and grant him the Registration Certificate in Form II (Amended)
- If the Assessing Authority or any other officer authorized by the Commissioner has demanded security under section 20, the dealer shall be registered and granted a Registration Certificate only if the security, so demanded, has been furnished to the satisfaction of such officer
- If the application is incorrect, incomplete, is not in order or the fee or penalty has not been paid or the security has not been furnished, the Assessing Authority or any other officer authorized by the

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Commissioner may, after serving on the dealer a notice to show cause, reject the application

- Every Registration Certificate in Form II (Amended) shall bear Taxpayer's Identification Number (TIN) and it shall be entered in the Register of Registered Dealers. TIN will comprise of three components—
  - State Code in 2 characters as 05
  - 7digital serial number - with first 2 digits as an index mark that may be assigned to that Sector by the Commissioner, and 5 digits shall indicate the serial number which shall be consecutive for all dealers in a Sector according to the entry in the Register of Registered Dealers
  - Check digits in 2 characters as may be worked out by the Commissioner
- The Assessing Authority or any other officer authorized by the Commissioner shall furnish to the dealer, free of cost, an attested copy of the registration certificate for every additional place of business specified therein.
- A Registration certificate granted under these rules shall not be transferable. Where a registered dealer is succeeded in the business by another dealer by transfer, reconstitution, or otherwise, the dealer so succeeded shall obtain a fresh Registration Certificate in accordance with these rules.
- If a Registration Certificate is lost, destroyed or defaced, the Assessing Authority or any other officer authorized by the Commissioner shall, on being satisfied that the certificate has so been lost, destroyed or defaced, issue a duplicate copy thereof on presentation of an application by the dealer which shall be accompanied by satisfactory proof of deposit of a fee of ₹ 50/-.
- The TIN in case of a casual dealer shall be as per sub-rule (4) but the number shall be suffixed by (T) and its entry shall be made in the Register of Registered Dealers in red ink.

## **Chapter 5**

# **Amendment and Cancellation of Registration Certificate**

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### **1. Amendment of certificate of registration (Section 19)**

- (a) The assessing authority after considering any information furnished under this Act or otherwise received and after making such inquiry as he may deem fit, amend from time to time any certificate of registration, and such amendment of the certificate of registration shall take effect,
- (i) in case of change in the name, ownership or place of business or opening of a new place of business, from the date of the event necessitating the amendment whether or not information in that behalf is furnished under sub-section (11) of section 17
  - (ii) in case of any addition or modification in the description of any goods in the certificate of registration, from the date of the event necessitating the amendment if information on that behalf is furnished under sub-section (11) of section 17 and in any other case, from the date of receipt of request for such addition or modification by the assessing authority;
  - (iii) in case of deletion of any goods or class of goods from the date of order of deletion

Provided that where in consequence of a change in the ownership of a business, the liability of a dealer to pay tax ceases, the amendment of certificate of registration shall take effect from the date on which information in respect of such change is furnished under sub-section (11) of section 17.

- (b) Where a registered dealer-
- (i) effects a change in the name of his business or
  - (ii) is a firm and there is change in the constitution of the firm without dissolution thereof or

- (iii) is a trust and there is a change in the trustees thereof or
- (iv) is a guardian of a ward and there is a change in the guardianship or
- (v) is a "Joint Hindu family" and the business of such family is converted into a partnership business with all or any of the coparceners as partners thereof

then merely by reason of any of the circumstances aforesaid, it shall not be necessary for such dealer or such firm to apply for a fresh certificate of registration and on information being furnished in the manner required under this section, the certificate of registration shall be amended.

## **2. Cancellation of registration (Section 18)**

- (i) A certificate of registration granted under section 15 or under section 16 to a dealer, may be cancelled by the assessing authority, either on the application of the dealer or on its own motion, where the assessing authority is satisfied that-
  - (a) any business in respect of which a certificate of registration has been granted to a dealer under this Act has been discontinued, or
  - (b) in the case of transfer of business by a dealer where the transferee already holds a certificate of registration under this Act, or
  - (c) an incorporated body is closed down or if it otherwise ceases to exist, or
  - (d) the owner of a proprietorship business dies leaving no successor to carry on business, or
  - (e) in case of a firm or association of persons if it is dissolved, or
  - (f) a dealer has ceased to be liable to pay tax under this Act or has ceased to be subject to registration, or
  - (g) a dealer has failed to pay any tax (including any penalty or interest) due from him under the provisions of this Act within three months of the due date, or

*Amendment and Cancellation of Registration Certificate*

- (h) a dealer having issued any Sale invoice to any person regarding sales of goods, has deliberately failed to account for the said invoice in his books of account, or
  - (i) a dealer holds or accepts or furnishes or causes to be furnished a declaration form, which he knows or has reason to believe to be false, or
  - (j) a dealer who has been required to furnish security under the provisions of section 20 but has failed to furnish such security, or
  - (k) a dealer to whom registration certificate was granted has misused it, or
  - (l) a dealer to whom registration was granted has permitted some other person to carry on business in the name of the dealer, or
  - (m) a dealer has transferred any form of declaration or a certificate under this Act obtained by him, to any other person or a dealer except for lawful purposes, or
  - (n) a dealer has been registered by mistake or
  - (o) there is any other reason which in the opinion of the assessing authority warrants such action, the assessing authority may at any time, for reasons to be recorded in writing, and after giving the dealer an opportunity of being heard, cancel the certificate of registration held by any dealer from such date as the assessing authority may specify in this behalf.
- (ii) The registration certificate shall not be cancelled on its own motion, and the dealer's application for cancellation of registration certificate shall not be rejected by the assessing authority without the dealer being given a reasonable opportunity of being heard.
  - (iii) The cancellation of registration will take effect from the date of order of cancellation by the assessing authority unless it is to take effect from a different date ordered by the assessing authority.
  - (iv) Every person whose registration is cancelled under this section shall pay in respect of every taxable goods held as stock or as capital goods on the date of cancellation an amount equal to-

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- the tax that would be payable in respect of those goods if the goods were sold at fair market price on that date, or
  - the total tax credit previously claimed in respect of those goods, whichever is higher.
- (v) If an order of cancellation passed under this section is set aside as a result of an appeal or other proceedings under this Act, the certificate of registration of the dealer shall, subject to the provisions of section 15 and section 16, be restored and he shall be liable to pay tax in the same manner as if his certificate of registration had never been cancelled.
- (vi) Provided that if the dealer, pending disposal of his appeal or such other proceedings, has realized tax from purchasers, he shall be liable to deposit the realized tax in the Government treasury as per the provisions of this Act.
- (vii) Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him, and every dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within 15 days of date of communication to him of the order of cancellation  
Provided that such dealer shall furnish the details of all forms of declaration and certificates under this Act or the Central Sales Tax Act, 1956 obtained and used by him if not already filed, and shall also surrender the remaining unused forms of declaration and certificates with his application for cancellation of Registration Certificate or, as the case may be, within fifteen days of the date of communication to him of the order of cancellation.
- (viii) The obligations and liabilities under this Act (including the filing of returns and payment of tax of any person in respect of anything done or omitted to be done by that person while the person is a registered person are not affected by the cancellation of the registration certificate.  
Provided that the cancellation of registration on an application of the dealer or otherwise shall not affect the liability of a dealer to pay the tax (including any penalty and interest) due for any period irrespective

*Amendment and Cancellation of Registration Certificate*

of such cancellation whether such tax (including any penalty and interest) is assessed before the date of cancellation but remains unpaid or is assessed thereafter.

### **3. Realization of tax by dealer (Section 22)**

1. Where any tax on sale of goods is payable on any turnover by a dealer (including a commission agent) registered under this Act, such a dealer may recover an amount, equivalent to the amount of tax on sale of goods payable, from the person to whom the goods are sold by him, whether on his own behalf or on behalf of his principal.

Provided that no dealer shall realize from any person whom the goods are sold, any amount by way of tax or any amount in lieu of the tax by giving it a different name or colour, which is not payable by him or is in excess of the amount payable by him under the provisions of this Act.

Provided further that no dealer who agrees to pay a Presumptive Tax or from whom the Assessing Authority agrees to accept a composition money in lieu of the amount of the tax payable by him, shall realize from any person any amount by way of tax on sale of goods or an amount in lieu thereof by giving it a different name or colour.

2. No person who is not a dealer registered under this Act shall in respect of any sale and purchase of goods made by or through him realize from any person any amount by way of tax on sale or purchase of goods under this Act or any amount in lieu of the tax on sale or purchase of goods by giving it a different name or colour
3. No dealer registered under this Act, shall, in respect of any sale or purchase of goods made by or through him realize from any person to whom goods are sold, any amount by way of tax on such sale or any amount in lieu of tax by giving it a different name or colour, which is not payable by him or which is in excess of the amount payable by him under the provisions of the Act.
4. Where a registered dealer realizes tax on sale of goods from the purchaser, the Sale Invoice shall separately show the price of the goods sold and the amount realized as tax.
5. If a dealer who is liable to pay tax on sale of any goods does not charge amount of tax separately from the purchaser of such goods or

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after charging the amount of tax, does not show such amount separately on Sale invoice, the selling dealer shall be liable to pay tax on total price of goods.

6. A person may refuse to pay any amount in the name of tax on any purchase of goods if the seller of such goods does not comply as referred to in point (4) above.
7. If any dealer purchases any goods from a registered dealer who does not comply as referred to in point (4) above, such dealer shall not be entitled to the input tax credit in respect of such purchase.
8. Where any amount in excess of the amount of tax due under this Act, has been wrongly realized by a dealer, who is required to file return under section 23 of this Act, he shall deposit in the excess amount along with the return relating to his turnover for the respective period, together with the relevant details.
9. Where any amount in excess of the amount of tax due under this Act, has been wrongly realized by a person who is not a dealer registered under this Act, he shall deposit the excess amount before the expiry of the next succeeding month, along with the relevant details.

## Chapter 6

### Returns and Tax Payment

**Rule 11 :** Every dealer, liable to tax shall submit periodical returns of his turnover to the assessing authority in the manner specified in the table below accompanied by supporting documents including-

- Proof of payment of amount of tax or interest, if any.
- Proof of payment of late fees along with satisfactory reasons for the delay, in case such return is not filed within the time.
- List of Tax charged by the registered selling dealers on the turnover of State Purchases of non capital VAT goods in respect which ITC is claimed.
- List of Tax charged by the registered selling dealers on the turnover of State purchases of capital VAT goods in respect which ITC is claimed.
- List of Tax Charged on the turnover of State Sales of Vat Goods (including capital goods) from the registered purchasing dealers.
- Such other annexure documents and statements as may be specified by the assessing officer.

Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
1	Dealers having GTO of more than 50 lakh in the preceding year.	Quarterly, for quarter ending June 30, September 30, December 31 and March 31 up to the last date of the succeeding month. Return shall be filed	Monthly by e-payment up to 20th of the succeeding month: Provided that in case the	Form -III (amended)

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Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		<p>in one of the following ways:-</p> <p>(1) Online on the website of the Department with digital signature of the dealer or the person authorized to sign the return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of the department without digital signature a duly signed electronically generated hard copy of the return and the "acknowledgement" with the proof of payment on e-payment of tax or any other dues.</p>	<p>tax due for a month is Nil the dealer shall submit such information in Form VI (A) up to 20th of the succeeding month.</p>	
2	Dealers having GTO up to 50 lakhs in the	Quarterly, for quarter ending June 30, September 30,	Quarterly by e-payment or otherwise up	Form- III (amended)

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Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
	preceding year.	<p>December 31, and March 31, up to 25th of the succeeding month.</p> <p>Return shall be filed in one of the following three ways:-</p> <p>(1) Online on the website of the department with digital signature of the dealer or the person authorized to sign the return, issued by the certifying authority in accordance with the provisions of section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of department without digital Signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of</p>	<p>to 20th of the succeeding month.</p>	

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Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		<p>payment or e-payment of tax or any other dues</p> <p>(3) If filed otherwise, duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
3	Dealers who are in first year of their business	<p>Quarterly, for quarter ending June 30, September 30, December 31 and March 31, up to 25th of the succeeding month.</p> <p>Return shall be filed in one of the following ways:-</p> <p>(1) Online on the website of the Department with digital signature, of the dealer or the person authorized to sign the return issued by the certifying authority in</p>	<p>Monthly by e-payment or otherwise up to 20th of the succeeding month.</p> <p>Provided that in case the tax due for a month is NIL the dealer shall submit such information in Form-VI (A) up to 25th of the succeeding month.</p>	Form-III (amended)

*Returns and Tax Payment*

Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		<p>accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
4	Dealers who have opted for Composition scheme under	Quarterly, for quarter ending June 30, September 30, December 31 and	Quarterly, by e-payment or otherwise up to 20th of the	Form-III(C) (amended)

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Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
	sub-section (1) of section 7 of the Act.	<p>March 31 up to 25th of the Succeeding month.</p> <p>Return shall be filed in one of the following three ways:-</p> <p>(1) Online on the website of the Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-</p>	succeeding month	

*Returns and Tax Payment*

Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		payment of tax or any other dues. (3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.		
5	Dealers/Persons carrying business transfer Property goods involved in the execution of works contract.	Quarterly for quarter ending June 30, September 30, December 31 and March 31 up to 25th of the Succeeding month.  Return shall be filed in one of the following ways:- (1) Online on the website of the Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the	Quarterly, by e-payment or otherwise up to 20th of the succeeding month	Form-III(B) (amended)

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Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		<p>provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
6	Persons responsible for making deduction of tax at source under	Quarterly for quarter ending June 30, September 30, December 31 and March 31 up to 25th	Monthly, by e-payment or otherwise up to 20th of the succeeding	Form-III(A) (amended)

*Returns and Tax Payment*

Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
	<p>the provisions of Section 35 of the Act.</p> <p>Explanation- If such person is a registered dealer he, in addition to the return for him in clause (1), (2), (3), (4), or clause (5), as the case may be shall filed return in Form-III-A (amended)</p>	<p>of the Succeeding month.</p> <p>Return shall be filed in one of the following ways:-</p> <p>(1) Online on the website of the Department with digital signature, of the dealer or the person authorized to sign the return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p>	month	

Sr. No	Class of Dealers or person	Submission of periodical returns	Payment of tax-composition money, late fee, interest or TDS	Prescribed form for the periodical returns
		(3) If filed otherwise-Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.		

If periodical return is not filed within the time prescribed above, the dealer or person, shall pay late fee by computing in the following manner-

1(a) For dealers or persons, other than those classified at Sr. No. 1, of the table - ₹ 100 for delay of a week or part thereof, till the date of actual submission of such periodical return or till the date of actual submission of annual return for the relating assessment year or till the date of assessment for the relating assessment year, whichever is earlier.

1(b) For dealers or persons classified at Sl. No. 1, of the table –

₹ 200 for delay of a week or part thereof, till the date of actual submission of such periodical return or till the date of actual submission of annual return for the relating assessment year or till the date of assessment for the relating assessment year, whichever is earlier.

## **1. Submission of Annual Returns**

Every dealer liable to tax shall, in addition to the periodical returns, submit an annual return of his turnover and every person responsible for making deduction under the provisions of section 35 of the Act shall submit an annual return of payment made and TDS in the manner specified in the table below-

*Returns and Tax Payment*

<b>Sr. No.</b>	<b>Class of Dealers or person</b>	<b>Submission of annual return</b>	<b>Payment of differential amount of tax interest, composition money, late fee or TDS if any</b>	<b>Prescribed Form for the Annual Return</b>
1	Dealers having GTO of more than 50 lakhs.	<p>Return shall be filed on or before December 31<sup>st</sup> in the succeeding assessment year in one of the following ways:-</p> <p>(1) Online on the official website of the Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the official website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment"</p>	E-payment or otherwise before submission of the annual return	Form-IV (amended)

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		<p>with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise-Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
2	Dealers having GTO upto 50 lakhs	<p>Return shall be filed on or before December 31st in the succeeding assessment year in one of the following ways:-</p> <p>(1) Online on the official website of the Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the official website of the department without digital signature, a duly</p>	E-payment or otherwise before submission of the annual return	Form-IV (amended)

*Returns and Tax Payment*

		<p>signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
3	Dealers who have opted for composition scheme under sub-section (1) of section 7 of the Act	<p>Return shall be filed on or before December 31st in the succeeding assessment year in one of the following ways:-</p> <p>(1) Online on the official website of Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p>	E-payment or otherwise before submission of the annual return	Form-IV (c) (amended)

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		<p>(2) Online on the official website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
4	Dealers/persons carrying on business of transfer of property in goods involved in the execution of works contract	<p>Return shall be filed on or before December 31st in the succeeding assessment year in one of the following ways:-</p> <p>(1) Online on the official website of the Department with digital signature, of the dealer or the person authorized to sign return, issued by the certifying authority in</p>	E-payment or otherwise before submission of the annual return	Form-IV (B) (amended)

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		<p>accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the official website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
5	<p>Persons responsible for making deduction under the provisions of section 35 of the Act.</p> <p>Explanation- if such person is a registered dealer he in addition in</p>	<p>Return shall be filed on or before December 31st in the succeeding assessment year in one of the following ways:-</p> <p>(1) Online on the official website of the Department with digital signature, of</p>	<p>E-payment or otherwise before submission of the annual return</p>	Form-IV (A) (amended)

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	<p>the return for him in clause 1,2,3,4 or 5 as the case may be, shall file return in Form - IV(A) (amended)</p>	<p>the dealer or the person authorized to sign return, issued by the certifying authority in accordance with the provisions of Section 35 of the Information Technology Act, 2000.</p> <p>(2) Online on the official website of the department without digital signature, a duly signed electronically generated hard copy of the return and the "acknowledgment" with the proof of payment or e-payment of tax or any other dues.</p> <p>(3) If filed otherwise- Duly signed copy of the return and two copies of the "acknowledgment" along with proof of payment or e-payment of tax or any other dues.</p>		
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If annual return is not filed within the time prescribed above, the dealer or person, shall pay a late fee of ₹ 200 for delay of a week or part thereof till the date of actual submission of such annual return, or till the date of assessment for the relating assessment year whichever is earlier.

## **2. Filing of returns electronically**

1. The Commissioner may, by a general order, make it mandatory for a class of dealers or persons or for all dealers file periodical returns online and to pay due tax, composition money, fee, TDS, interest of any other amount electronically and may also, from time to time, issue necessary instructions regarding filing of returns.
2. A dealer or a person is required to submit periodical return online on the website of the department without digital signature. However, the commissioner, if satisfied, may waive, for all dealers or persons or for a class of dealers or persons which he deems fit, the requirement of submission of electronically generated and signed hard copy of such return with the conditions
  - that a duly signed electronically generated hard copy of the "acknowledgement" related to such return is submitted along with hard copy of the proof of payment or e-payment of tax or any other dues and
  - that the hard copy of such electronically generated return is protected for the period as is provided to preserve the "accounts" under sub-section (1) of section 61 and
  - that such protected hard copy is produced whenever so required by the assessing authority

## **3. Revised Returns**

- (i) If any dealer discovers any omission or other error in any return submitted by him, he may, at any time before the time for submitting the next return, submit a revised return. If the revised return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable and if the revised return shows lesser amount of tax to be due than was shown in the original return the dealer may adjust the excess amount toward the tax due for the subsequent periods.
- (ii) If goods sold or purchased by a dealer are returned within six months of the date of sale or purchase, and assessment for the year to which such sale or purchases relates is as yet to be made, he may within 30 days of the expiry of the month in which such goods are returned,

submit for that purpose only a revised return for the period during which such sale or purchase was made.

#### **4. Payment and Recovery of Tax (Section 34)**

1. Amount of tax admittedly payable shall be deposited along with the return of the respective tax period. Amount assessed as tax shall be deposited within 60 days of the service of order of assessment and notice of demand. Amount imposed by way of penalty shall be deposited within 60 days of service of the order imposing such amount by way of penalty. Any other amount including late fee, if any, except the amount of tax admittedly payable or assessed and penalty imposed, that may be determined as payable under any provisions of this Act, shall be paid in time.

Provided that where no such time has been specified, the period to deposit the due amount shall be deemed to be within 60 days of the service of the order by which such amount has been determined.

2. A registered dealer furnishing return shall pay into the Government treasury, in such manner and at such interval as may be specified, the amount of tax due from him for the period covered under the return along with the amount of penalty or interest or late fee, if any, or all the three payable by him or late fee, if any, payable by him and shall furnish a receipt from the Treasury or proof of e-payment showing the payment of such amount.
3. A registered dealer furnishing a revised return which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return, a receipt showing the payment of the differential amount.
4. The tax admittedly payable shall be deposited within the time failing which simple interest at the rate of fifteen percent per annum shall become due and be payable on the unpaid amount with effect from the date immediately following the last date till the date of payment of such amount.

**Explanation:** (1) For the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales, or as the case may be, the turnover of purchases or of both, as disclosed in the accounts maintained by the

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dealer or admitted by him in any return or proceeding under this Act, whichever is greater.

(2) "Month" shall mean thirty days and the interest payable in respect of period of less than one month shall be computed proportionately.

5. The amount of tax assessed under this Act in excess of amount of tax already deposited along with the interest payable according to the provisions of this Act shall be deposited in the manner specified in and within 30 days of service of order of assessment and notice of demand.
6. If the tax (other than the tax admittedly payable to which sub-section (2) applies) assessed, reassessed or enhanced by any authority or Court remains unpaid for three months after expiration of the period specified in the order of assessment and demand notice, a simple interest at the rate of nine percent per annum on unpaid amount calculated from the date of such expiration shall become due and be payable  
Provided that the amount of interest under this sub-section shall be recalculated if the amount of tax is varied on appeal or revision or by any order of a competent Court.
7. The amount of interest payable shall, without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, be added to the amount of the tax and shall also be deemed for all purposes to be part of the tax.
8. Where an order of assessment or reassessment has been made and tax payable is enhanced, the dealer shall be liable to pay interest on such enhanced tax as if it was enhanced in the order of assessment made for the first time and for this purpose the date of service of the order of assessment and demand notice shall be deemed to be amended accordingly.
9. Where realization of any tax remained stayed by order of any Court or authority and such order of stay is subsequently vacated, the interest shall be payable also for any period during which such order remained in operation.
10. Any tax or other dues including late fee, if any, payable to the State Government under this Act, any amount of money which a person is

required to pay to the assessing authority for which he is personally liable to the assessing authority shall, notwithstanding anything contained in any other law for the time being in force and subject to any special or general order of the State Government, be recoverable as arrears of Land Revenue by the assessing authority or any other officer authorized by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery-

- (a) have all the powers which a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree.
  - (b) have the power to require the assessing authority or such authorized officer having jurisdiction in any other area to make such recovery if the defaulter is or has property within the area of such other assessing authority or officer and thereupon such other assessing authority or officer shall proceed to make recovery.
11. Notwithstanding anything contained in point (4) and (5) above, and notwithstanding any judgment, decree or order of any Court, Tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act, is served upon the dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues, –
- (a) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice in respect of the amount by which such tax or other dues are enhanced, and any proceeding in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal.
  - (b) where, as a result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced
    - (i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realized.
    - (ii) if any recovery proceedings are pending before any officer or authority other than the assessing authority, the

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- assessing authority shall intimate such reduction to such officer or authority.
- (iii) any proceeding initiated on the basis of notice or notices served upon the dealer before the disposal of such appeal.
- revision or other proceeding, including any recovery proceeding may be continued in relation to amount so reduced from the stage at which it stood immediately before such disposal.
- (c) no fresh notice shall be necessary in any case where amount of the tax or other dues is not enhanced (with reference to the amount assessed by the assessing authority) as a result of such appeal, revision or other proceedings.
12. In respect of any sum recoverable under this Act as arrears of Land Revenue, the assessing authority may, after 90 days of the service of the order of assessment and notice of demand, forward to the Collector a certificate for recovery under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability of this amount on the person who is liable and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue.
- Provided that no such certificate for recovery shall be issued before giving a notice to the person/dealer to this effect.
- Provided further that without prejudice to the powers conferred by this section the Collector shall, for the purpose of recovering the amount specified in the certificate shall have also all the powers which-
- (a) a Collector has under the Revenue Recovery Act, 1890
- (b) a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree.
- Explanation: The expression Collector includes an Additional Collector or any other officer authorized to exercise the powers of Collector under the law relating to land revenue for the time being in force in the State.*
13. Where any amount of tax or penalty is recoverable under this Act from the owner of a vehicle and recovery certificate has been issued, the officer competent to execute the recovery certificate may take the

assistance of police and other officer or officials of the State Government in locating such vehicle or other vehicles of the same owner. If so required by the recovery officer, such other officer or officials shall be empowered to detain such vehicle. Whenever any such vehicle is detained by any officer or official, he shall give the cause of detention in writing to the person in charge of the vehicle at the time of detention and shall immediately inform the officer executing the recovery certificate. Officer executing the recovery certificate shall proceed, according to law to realize arrears against such owner of vehicle.

Provided that if amount recoverable is paid after detention of vehicle, the vehicle shall be released.

Provided further that if at the time of detention some goods are loaded on it and owner of such goods is a person other than the owner of the vehicle, the owner or the person in charge of the goods shall be allowed to remove such goods from such vehicle if he so desires.

14. Notwithstanding anything contained in any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice, in writing the copy of which shall be forwarded to the dealer at his last address known to the assessing authority, require-
  - (a) any person from whom any amount is due or may become due to the dealer, or
  - (b) any person who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing authority-
    - (i) forthwith upon the money becoming due or being held, or
    - (ii) at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from the dealer in respect of arrears of tax or other dues under this Act, or the whole of the money when it is equal to or less than that amount

Explanation: For the purpose of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claim, if any, as may have fallen due for payment by such dealer to such person, and as may be legally subsisting.

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15. The assessing authority may at any time or from time to time amend or revoke such notice.
16. Any person making any payment in compliance with notice shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing officer shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount referred to in the receipt.
17. Any person discharging any liability to the dealer after the receipt of notice shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the amount mentioned in such notice, whichever is less.
18. Where a person, to whom a notice is sent, proves to the satisfaction of the assessing authority that the sum demanded or any part of thereof is not due from him to the dealer, or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, as the case may be, to the assessing authority.
19. Notwithstanding anything to the contrary contained in any law for the time being in force, any tax payable under the provisions of this Act together with interest or penalty, shall be due for payment immediately when it becomes payable or assessed in the manner provided in this Act or the rules made thereunder and any such amount payable by a dealer on account of tax, penalty or interest or any amount which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.
20. Notwithstanding anything contained in this Act, no tax, fee, interest or penalty under this Act shall be recovered and no refund shall be allowed if the amount involved for any assessment year is less than 10 rupees.
21. The Assessing Authority shall have the powers to-
  - (a) withhold issuing of any Form or Certificate under the Act to a person, or a dealer or a casual dealer.
  - (b) order seizure of goods being transported by a person, or a dealer or a casual dealer from whom any tax, penalty, interest or any other amount under the provision of the Act is due.

# **Chapter 7**

## **Assessment**

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### **1. Provisional Assessment (Section 24)**

The assessing authority may scrutinize any return or returns in relation to any tax period furnished by any dealer to verify the correctness of calculation, application of correct rate of tax and interest, and input tax credit claimed therein and full payment of tax and interest payable by the dealer during such period.

- If any mistake is detected as a result of such scrutiny, the assessing authority shall, without prejudice to anything contained in section 58, serve a notice on the dealer to make payment of the extra amount of tax, if any, along with the interest as per the provisions of this Act.
- In case of a registered dealer or any dealer liable to pay tax or a dealer to whom notice has been issued by the assessing authority, and in respect of any tax period during an assessment year-
  - (i) the return is not submitted within the time specified in Rule 11 or extended by the assessing authority, or
  - (ii) the return is submitted but not in the manner specified in Section 23 read with Rule 11, or
  - (iii) the return submitted is, in the opinion of the assessing authority, incorrect or incomplete or contains wrong particulars, or
  - (iv) the return is submitted without payment of tax in the manner specified in Section 34, or
  - (v) the return required is not filed within the time specified in Rule 11.

The assessing authority shall after making such inquiries as it considers necessary, determine the turnover of sales or of purchases or both, as the case may be, provisionally and assess the tax payable thereon.

- If in respect of any one or more tax period, as the case may be-
  - (i) the tax payable as shown in the return appears to the assessing authority to be incorrect, or

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- (ii) the tax paid along with the return is less than the amount due under this Act or shown payable in the return, or
- (iii) the input tax credit claimed in the return is not supported by the required information.

The assessing authority shall provisionally assess the tax payable on the turnover of sales or purchases or both as the case may be, shown in the return at the rates specified under the Act.

- The provisional assessment under this section shall be made on the basis of past returns, or past records or on the basis of information received by the assessing authority, and the assessing authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be specified under Section 34 of the Act.
- Nothing contained in this section shall prevent the assessing authority from making final assessment for the whole year under section 25 or section 26 and any tax paid against the provisional assessment shall be adjusted against tax, interest and penalty payable on final assessment under sections referred to above.
- No provisional assessment against a dealer shall be made without giving the dealer a reasonable opportunity of being heard.

## **2. Assessment of Registered Dealer for the Assessment Year (Section 25)**

1. There shall be an assessment of taxable turnover, amount of tax payable on such turnover, and amount of input tax credit admissible to a dealer for each assessment year or where the dealer has carried on his business for a part of an assessment year, for such part of assessment year during which the dealer has carried on business.
2. Every dealer shall, for the assessment year, submit to the assessing authority in addition to periodical returns, an annual return of his turnover and the amount of tax due from him, complete in all material particulars, in the Form IV on or before December 31st in the succeeding assessment year by electronic methods, accompanied by supporting documents, including.
  - (a) Particulars of turnover of purchase, sale and other transactions and value of opening and closing stocks;

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- (b) Computation of his own final assessment of amount of tax due from him on the basis of such return including claim for input tax credit;
  - (c) Such declarations, certificates, and such other evidences on which the dealer relies in support of his claim of exemption, concession or rebate of tax declared in "the computation of his own final assessment of amount of tax due from him;
  - (d) Proof of payment of the additional tax, interest, composition, money or fee due as per computation of his own assessment;
  - (e) Proof of tax or part thereof, if any, claimed to have been deducted at source (TDS).
  - (f) Proof of payment of late fee in case such return is not filed within the time;
  - (g) a true copy of the audit report as required under Section 62 of the Act and
  - (h) Such other particulars, information, documents and statements as may be specified by the assessing officer.
3. Deemed Assessment: Every dealer excluding works contractors who have not opted for composition shall be deemed to have been assessed to tax based on annual return filled by him as provided in Section 25, provided that it is filed within the time or if filed late, but not beyond 30th June of the succeeding assessment year, along with the proof of the payment of late fee, if any.
4. Notwithstanding anything contained in this section, from among the dealers who are deemed to have been assessed under the deemed assessment, a dealer or dealers may be selected for assessment under point (6) and (7) below. Selection of such dealer/s shall be made after scrutiny. Selection of dealer/s for scrutiny and thereafter selection for assessment, for an assessment year, shall be made in the manner specified by the Commissioner.
5. For the purposes of this Act and the rules made there under-
- (a) The annual return, referred to in Section 25, filed by the dealer, shall be deemed to be the assessment order and the facts disclosed and the figures mentioned in such return shall be deemed to be part of such assessment order; and

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- (b) The last date for submission of annual return or the actual date, on which such return is filed along with the late fee of ₹ 200 per week or part thereof till the date of actual submission of such annual return or till the date of assessment for the relating assessment year, if any, whichever is later, shall be deemed to be the date of such assessment order.
6. Notwithstanding anything contained in this section, to assess a dealer who has not been deemed assessed or who has been selected for assessment under, the assessing authority shall serve on such dealer, a notice requiring him to appear on a date and at a place specified therein, to attend and submit periodical returns and annual return of his turnover, if not filed earlier, along with the proof of payment of late fee, if any, and to produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns including sale and purchase invoices, or to produce such evidence as may be specified in the notice.

*Explanation: Opportunity given under this Sub-section for submission of periodical returns and annual return shall not prevent the Assessing Authority from imposing penalties, interest or late fee, if any, under any other provisions of the Act, for not filing such returns within the time limit.*

7. If the dealer complies with the notice issued and the assessing authority after examining periodical returns, the annual return, books of accounts and documents and after considering all the evidences produced in the course of proceedings or the evidences collected or received by the assessing authority and after making such enquiry, as he may deem fit.
- (a) is satisfied that turnover of Sales and purchases disclosed and amount of tax shown as payable by the dealer in the annual return is correct, he may assess the dealer to tax in accordance with the provisions of the Act, by an order in writing.
- (b) if the assessing authority is of the opinion that the turnover or the liability of the tax disclosed by the dealer and the amount of tax paid by the dealer does not appear to be correct, he shall give him reasonable opportunity of being heard by giving him a show cause notice stating the reason, for non acceptance of the turnover of sales or purchase or liability of tax as disclosed by

the dealer, and after considering the reply submitted by the dealer;

- (i) if he is satisfied that the turnover disclosed by the dealer in the annual return is correct, shall assess the dealer to tax by an order in writing according to the provisions of the Act.
- (ii) if he is not satisfied with the reply submitted by the dealer, shall determine the turnover to the best of his judgment and the tax payable thereon according to the provisions of the Act, by an order in writing.

Provided that where the opportunity for submission of periodical returns and annual return along with the proof of deposit of late fee and production of books, accounts and documents and evidences on which the dealer relies in support of his returns including sale invoices, or for production of such evidences as may be specified in the notice has been afforded to the dealer but for any reason he has not availed such opportunity and thereby the assessing authority could not examine the correctness and propriety of particulars shown in such returns, it shall not be necessary to issue show cause notice to such dealer before making an assessment order to the best of his judgment;

Provided further that, no assessment order year shall be made after expiration of 3 years from the end of such assessment year.

8. Any provisional assessment order in respect of any tax period under Section 24 shall not prevent the assessing authority to make final assessment and the provisional assessment order shall be merged in the final assessment order passed under this Section.
9. In case of the following dealers or class of dealers in respect of different transactions more than one assessment may be made for the same assessment year and will be treated as part of one assessment year-
  - (a) dealer who has obtained more than one authorized for transit of goods through the State; in respect of each authorization for transit of goods to the State;
  - (b) casual dealer who has no fixed place of business, by different assessing authorities in whose jurisdiction he has carried on business;

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- (c) unregistered dealer who imports taxable goods on each occasion, he imports the goods;
- (d) unregistered dealer who either executes works contracts or effects transfer of right to use any goods, for any purpose in jurisdiction of more than one assessing authorities and has no fixed place of business, by each assessing authority in respect of business carried out in his jurisdiction;

Provided that, more than one assessment shall not be made in respect of the same turnover of sales or the same turnover of purchase.

10. Where during the course of an assessment year the rate of tax on the turnover of any goods or class of goods is varied or an exemption in respect thereof is granted or cancelled the assessment, so far as it relates to the portion of such turnover for the period after the date of variation, exemption or cancellation shall be made on the basis of the rate so varied or the exemption so granted or cancelled
11. Any assessment made under this section shall be without prejudice to any penalty imposed under the Act.

**3. Deemed Assessment in Certain Cases (Section 25A)  
Notification no. -103/XXXVI(3)/2014/21(1)/2014 Dt.  
04.03.2014 w.e.f. 04.03.2014).**

1. With the objective to dispose of a large number of pending annual assessments in which relatively smaller amount of turnover or tax is involved, notwithstanding anything contained in this Act, it is hereby provided that Commissioner may, by notification declare that the registered dealers, as listed in such notification, are deemed to have been self assessed, under The Uttarakhand VAT Act, 2005 or under sub-section (2) of section 9 of The Central Sales Tax Act, 1956 read with The Uttarakhand VAT Act for the assessment year as mentioned in such notification, on the basis of;
  - (a) the tax liability admitted in all the periodical returns, in the cases where all the periodical returns are filed but annual return is not filed till the date of commencement of the provisions of this section; and
  - (b) the tax admitted in the annual return, in the case where any or all of the periodical returns are not filed but annual return is

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filed till the date of commencement of the provisions of this section; and

- (c) the tax admitted in the annual return, in the case where all of the periodical returns and annual return are filed till the date of commencement of the provisions of this section.

Provided that-

- (i) assessment of such dealer is pending and is not related to the assessment years other than 2011-12 or 2012-13; and
- (ii) the "Annual Gross Turnover" of such dealer in the related assessment year is not more than ₹ 1 crore. However there shall be no such limit for the dealer who has exclusively dealt in the Special Category Goods as specified in schedule III at serial no. 2, 3 or 8, and sold it after purchase from registered dealers within the State; and
- (iii) where any exemption, concession or rebate of tax under the provisions of the Central Sales Tax Act, 1956 or Uttarakhand VAT Act, 2005 is claimed, the annual return and the required declarations, certificate or other evidence in support of such claim are submitted as per provision of the related Act and Rules made there under; and
- (iv) any appeal under Section 51 or Section 53 or any writ against any order or notice of the assessing officer under any section of the Act, related to such assessment year is not filed.

Provided further that-

- (i) such dealer has not made any transaction of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and
- (ii) such dealer has not made any transaction of sale of "iron and steel" or "edible oil" to a registered dealer within the state or outside the state; and
- (iii) such dealer has not made any sale, after purchase, of bricks or any kind of minor minerals;
- (iv) such dealer has not sold any Timber product, the rate of tax on which is either zero or less than the general rate of VAT on Timber and which is made of such timber which is imported

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from outside the State or purchased from within the State on a concessional VAT rate; and

- (v) such dealer has not claimed a Refund of more than ₹ 5000.
2. Deemed assessment as referred to in point (1) above cannot be made a ground for any legal dispute, in any other assessment of the same dealer or in any assessment of any other dealer, regarding the rate of tax on a particular commodity, certain transaction being a transaction of sale of goods or service, certain transaction being an inter-state sale or intra-state sale or certain transaction being interstate sale, consignment/ stock transfer etc.
  3. No proceedings for imposing or realising penalty or late fees for not filling or late filing of return or not depositing the admitted tax within time shall be initiated in the cases referred to in point (1) above and if already initiated shall be dropped. However, the tax admitted or interest due, if not deposited shall be realized as per provisions of the Act.
  4. If, on the basis of scrutiny or any information received, the assessing officer is satisfied that the tax liability in any case related to any assessment year exceeds the admitted tax liability by ₹ 5000 or more, the case for such an assessment year may be opened, with the permission of the Commissioner or the officer not below the rank of Joint Commissioner authorised for this purpose by the Commissioner, for reassessment after examining the books of accounts and the related documents, and notwithstanding anything contained in this Act, the limit for opening such case for reassessment shall not be more than 5 years after the close of such assessment year, and the limit for finalizing such reassessment shall not be more than one year from the date on which the case is opened.

No appeal under the Act shall lie against any decision above for opening any case for reassessment.

5. "Annual gross turnover", for the purpose of this section, shall be the sum of:

The State Transactions as under:

- (a) taxable sales of goods within the State;
- (b) taxable purchase under sub-section (10) of section 3 of the Act;

- (c) non taxable sales of goods listed in Schedule.-I
- (d) non taxable sales of goods (as per other provisions of the Act); and

The Inter-state Transactions as under:

- (a) taxable inter-state sale of goods;
- (b) non taxable inter-state sale of goods listed in Schedule-I
- (c) non taxable inter-state sale (as per other provisions of the Central Sales Tax Act, 1956);
- (d) turnover of export out of the Country;
- (e) Value of goods stock transferred/ consigned to outside the State.

6. To carry out the objective and purpose of this section, the Commissioner may, if required, issue necessary instructions or clarifications so that, due to minor omissions or errors on the part of any dealer, the benefit of the provisions of this section could not be denied.

#### **4. Assessment of unregistered person liable to tax (Section 26)**

The Assessing Authority, upon information which has come to his possession, is satisfied that any person who is liable to pay tax under this Act in respect of any period has failed to get himself registered, he shall, before expiry of three years following the end of the relevant financial year, proceed to assess the person to the best of his judgment as to the amount of tax due from such person in respect of such period and all subsequent periods and shall direct him further to pay, by way of penalty, a sum equal to the amount of tax found due as a result of such assessment :

Provided that no such assessment shall be made without giving the dealer a reasonable opportunity of being heard.

Explanation:- For the purposes of this section, a dealer shall be deemed to have failed to apply for registration, if he makes an incomplete application for registration or having made an application for registration, fails to comply with any direction given to him by the assessing authority within the time specified by it.

## **5. Special Provisions relating to Casual Dealer (Section 27)**

A casual dealer shall, at least seven days before commencing business in the State, submit to the Assessing Authority an application for registration and such particulars of his business in Form 1 along with an application fee of Rupees one thousand.

Such casual dealer shall deposit within seven days but before commencement of business, the Assessing Authority, which shall not exceed the estimated liability to pay tax for one month or such lesser period for which the casual dealer is conducting business, may fix security in cash as.

The Assessing Authority shall, after such enquiry as he considers necessary and after the dealer has furnished the demanded security, allow the application and cause the dealer to be registered and issue a Certificate of Registration in the Form II.

The Assessing Authority shall, after the dealer is registered, issue him forms as he may deem fit, for bringing goods for sale in the State. The dealer shall render complete account of forms received and used and surrender the unused forms.

Such casual dealer shall submit returns of his turnover at such intervals, within such period and in such form and manner as may be specified by the Commissioner.

Such casual dealer when he ceases to carrying on business, shall file a final tax return within seven days of the conclusion of his business.

The Assessing Authority shall, after examining the returns, books, accounts and after such enquiries as he considers necessary, assess him to tax as soon as possible after the receipt of final tax return from the casual dealer;

Provided that where the period of business of such casual dealer spreads over more than one financial year, the assessment order shall be made separately for the periods falling in separate financial years.

The Assessing Authority after adjusting any tax due from such casual dealer, refund the balance amount of security to him.

Such casual dealer shall be liable to tax if his turnover for this period exceeds the proportionate amount of taxable quantum as per Section 3(7).

Where the period of business of such casual dealer during a financial year exceeds 60 days and he ceases to be a casual dealer, he shall apply for registration as a regular dealer under section 15 and shall be assessed to tax as a regular dealer for the whole year as per the provisions of section 25 or section 26;

## **6. Assessment in case of special circumstances (Section 28)**

1. Assessment in case of Price Variation-Where a dealer receives in any year any amount due to price variation which would have been in his turnover for any previous tax period if it had been received by him during that period, it shall be deemed to be turnover during the tax period in which such amount was received and he shall, during the tax period in which such amount was received, include such amount in the return separately for the tax period, to the assessing authority and the assessing authority shall assess the tax payable on such amount as his turnover for the tax period in which such amount is received.

Provided that the tax shall be charged at the rate at which it would have been charged had such turnover been assessed for the assessment year to which such turnover belongs.

2. Protective Assessment-Where the assessing authority has reason to believe that any person, with a view to evading the payment of tax or in order to claim any input tax credit which he otherwise is not eligible for, or was carrying on business in the name of, or in association with any other person either directly or indirectly, whether as an agent, employee, manager, partner or power of attorney holder, guarantor, relative or sister concern or in any other capacity, such person and the person in whose name the registration certificate, if any, is taken , shall jointly and severally be liable for payment of the tax , interest or penalty or other amount due under this Act which shall be assessed, levied and recovered from all or any such person as if such person or persons are dealer under the Act. However before taking action under this section the person concerned shall be given a reasonable opportunity of being heard.

## **7. Assessment of Escaped Turnover (Section 29)**

1. Where after a dealer is assessed under section 25 or section 26 for

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any year or part thereof, the assessing authority has reason to believe that the whole or any part of turnover of the dealer in respect of any tax 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 exemption or deduction there from; or
- (e) been wrongly allowed any tax credit therein

the assessing authority shall, after recording the reasons in writing, serve a notice on the dealer, and after giving the dealer a reasonable opportunity of being heard and making such enquiries as he considers necessary, he shall assess or reassess the turnover of the dealer and tax according to law and the provisions of this Act shall as far as may be, apply accordingly.

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.

**Explanation:**

- (a) Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.
  - (b) For the purposes of this section, "Assessing Authority" means the officer who passed the earlier assessment order, if any, and includes the officer having jurisdiction for the time being to assess the dealer.
  - (c) Notwithstanding the issuance of notice under this sub-section, where an order of assessment or reassessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of assessment or reassessment made under this section in pursuance of such notice.
2. Except as provided in Section 28, no order of assessment or reassessment shall be made after the expiry of three years from the

- end of the year in respect of which or part of which the tax is assessable.
3. Assessment or reassessment in respect of turnover escaped from assessment may be passed at any time within three years and nine months ending on 31st December after the expiry of assessment year for which assessment is to be made, provided that notice under this section has been served within a period of three years and six months ending on 30th September after the expiry of the assessment year for which assessment is to be made.
  4. If the commissioner on his own or on the basis of reasons recorded by the assessing authority is satisfied that it is just and expedient so to do, he may authorize the assessing authority in that behalf, and then such assessment or reassessment may be made after the expiration of the period aforesaid but not after the expiration of six years from the end of such assessment year, notwithstanding that such assessment or reassessment may involve a change of opinion.

## **8. Rectification of Mistakes (Section 30)**

1. Any officer or authority, or the Tribunal or the High Court may, on its own motion or on the application of the dealer or any other interested person, rectify any mistake in any order passed by him or it under this Act apparent on the face of the record, within three years from the date of the order sought to be rectified.

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period.

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fee or other dues shall be made unless a reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

2. Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance.

**9. Power to set aside an Order of Assessment (Section 31)**

1. In any case in which an order of assessment or reassessment or order of penalty is passed ex-parte, the dealer may apply to the assessing Authority within thirty days of the service of the order to set aside such order and reopen the case; and if such officer is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, he may set aside the order and reopen the case for hearing.

Provided that no such application for setting aside such ex-parte order shall be entertained unless the dealer has submitted all periodical returns and Annual Return completely and correctly and it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.

2. Where an assessment order under section 24 is passed ex-parte, the dealer may apply to the assessing authority within 30 days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the return and deposited the tax due according to the return within 30 days from the last day of filing such return, it may modify or set aside such order and also the demand notice, if any, issued there under.

3. If a dealer is granted an eligibility certificate under section 4A of the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 for the period for which an order of assessment or reassessment or an order in appeal has been passed prior to the grant of eligibility certificate, such order may be set aside either on its own or on the application of the dealer, by assessing or appellate authority having jurisdiction within one year of receipt by him of the copy of the order granting such eligibility certificate and a fresh order may be passed according to law.

Provided that where the application under this section has been made by the dealer within the period aforesaid, it may be disposed of even beyond such period.

**10. Period of Limitation for making Assessment or Reassessment (Section 32)**

1. No order of assessment under section 24 for any tax period of an

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assessment year shall be made after the dealer has submitted annual return for such assessment year and where annual return has not been submitted by the dealer, assessment shall not be made after the expiry of the time allowed, if extended, for submission of annual return for such period.

2. Except as otherwise provided in section 28 no order of assessment or reassessment under any provisions of this Act for any assessment year shall be made after expiration of 3 years from the end of such assessment year.
3. Assessment or reassessment order under the provisions of section 29 may be made within the time limit of three years from the end of the year in respect of which or part of which the tax is assessable therein.
4. If an order of assessment is set aside and the case is remanded for reassessment by any authority under the provisions of this Act or by a competent Court, the order of reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case.
5. If an order of assessment is quashed on the ground of want of jurisdiction of the assessing authority, or due to improper service of any notice, or due to service of improper notice, or any other like ground, by any competent authority or Court, fresh order of assessment may be made by the assessing authority having jurisdiction within one year from the date of receipt by the assessing authority whose order is so quashed, of the copy of the order of such authority or Court.

Provided that where any assessment or reassessment order made earlier has been quashed for want of proper service of notice, or for want of jurisdiction, or for want of service of proper notice, fresh order of assessment or reassessment may be made by the assessing authority after serving notice properly and after affording reasonable opportunity of being heard to dealer.

6. If an order of assessment or reassessment for any assessment year is set aside under section 31, a fresh order of assessment or reassessment for that year may be made within one year from the date on which such earlier order was set aside.
7. Where the proceedings for assessment or reassessment for any assessment year remain stayed under the orders of any Court or

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authority, the period commencing from the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section.

Provided that if in so computing, the period of limitation comes to less than one year, such assessment or reassessment may be made within one year from the date of receipt by the assessing authority of the order vacating the stay.

8. The period during which any appeal or other proceedings in respect of any other assessment or reassessment or any other matter of assessee remain pending before the High Court or the Supreme Court, involving a question of law having direct bearing on the assessment or reassessment in question, shall be excluded in computing the period of limitation provided in this section.
9. Where in the assessment or reassessment of a dealer for any assessment year, any assessing authority-
  - (a) has included any turnover and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment –
    - (i) of such dealer for any other assessment year, or
    - (ii) of such dealer under the Central Sale Tax Act, 1956, or
    - (iii) of any other dealer, whether under this Act, or under the Central Sales Tax Act, 1956.
  - (b) has not included any turnover on the ground that it relates to assessment under the Central Sales Tax Act, 1956, and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of the dealer under this Act, whether for such assessment year, or any other assessment year then nothing contained in this section limiting the time shall apply to assessment or reassessment whether under this Act or under the Central Sales Tax Act, 1956, of such dealer or such other dealer relating to such assessment year or such other assessment year, as the case may be.

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10. Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of any judgment or order of any Court or Tribunal which has become final, then notwithstanding anything contained in this Act, the assessing authority may, with the permission of the Commissioner or any officer authorized by him for this purpose, proceed to reassess the tax payable by the dealer in accordance with the judgment or order, at any time within a period of three years from the date of the judgment or order.
11. Notwithstanding anything contained in this section, where the State Government is of the opinion that due to any extra-ordinary circumstances prevalent at the time in the State or any part of it, it will be difficult to complete assessment or reassessment in any case or class of cases within time, it may, by notification in the Gazette extend the time limit for making assessment or reassessment in such a case or class of cases.
12. Where any dealer claims refund of any amount deposited by him as tax or any amount recovered from him as tax or any amount deducted from him as tax under provisions of sub-section (1) of section 35 and where no assessment has been made within time, notwithstanding anything contained in this section, the Assessing Authority may, with the prior permission of the Commissioner in writing, make an assessment of the turnover and tax even beyond the time limit of three years under this section for such assessment year towards tax liability in respect of the turnover against which such amount has been deposited or deducted or recovered.

## Chapter 8

# Tax Deduction at Source

For the purpose of this chapter, unless the context otherwise requires:

**"Works Contract"** includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, building, constructing, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property

**"Assessing authority"** means the officer having jurisdiction over the place where the place of business or residence of the person is located

**Section 35(1):-** Every person responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract, not being a building contract of such class or value as may be notified by the State Government in public interest in this behalf, shall, at the time of making such payment to the contractor, either in cash or in any other manner, deduct an amount equal to six percent of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract.

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section

**Section 35(2):-** Where under an agreement of transfer of right to use any goods for any purpose (whether or not for a specified period) the lessee to whom the right to use any goods is transferred is-

- (a) a registered dealer, or

- (b) the Central Government or any State Government, or
- (c) any local authority, any corporation or undertaking constituted by or under a Central Act or a State Act, or
- (d) any Co-operative society or any other society, club, firm or other association of persons or a company, whether incorporated or not,

the person responsible for making such payment to the lessor (who is transferring the right to use any goods) for discharge of liabilities under such agreement, shall at the time of making such payment to the lessor, either in cash or by credit or any other manner, deduct an amount at the rate of 5%<sup>8</sup> of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such transfer of right to use any goods.

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate.

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section.

**Section 35(3):-** Any contractor responsible for making any payment for discharge of any liability to any sub-contractor in pursuance of a contract with the sub-contractor for the transfer of property in goods (whether as goods or in any other form) involved in the execution of a works contract or for transfer of right to use any goods for any purpose, whether wholly or in part, of the work undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or by any other mode, deduct an amount equal to four percent of such payment or discharge, purporting to be a part of full amount of tax payable under this Act on such transfer from the bills or invoices raised by the sub-contractor as payable by the contractor

Provided that no deduction under this sub-section shall be made on the amount on which deduction has already been made under sub-section (1) or sub-section (2)

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<sup>8</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015. Earlier the rate was 4%.

### *Tax Deduction at Source*

Deposit of Tax deduction: The amount deducted under sub-section (1) or sub-section (2) or sub-section (3) of Section 35 shall be deposited into the Government Treasury by the person making such deduction before the expiry of the month following that in which deduction is made

The person making such deductions under sub-section(1) or sub-section(2) or sub-section(3) shall, at the time of payment or discharge furnish to the person from whose bills or invoices such deduction is made, a certificate Form VIII.

Submission of return for tax deducted at source: As per Section 35(6), the person responsible for making the payment to the contractor or sub-contractor shall submit quarterly returns within 25<sup>th</sup> of the succeeding quarter and an annual return 31st in the succeeding assessment year. The assessing authority may, in its discretion, for reasons to be recorded extend the date for the submission of the return by such person

**Section 35(7):-** Any deduction made in accordance with the provisions of this section and credited in the Government Treasury, shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and credit shall be given to him for the amount so deducted on the production of the certificate referred to in sub-section (5), in the assessment made for the relevant assessment year.

**Section 35(8)<sup>9</sup>:**- If any person as referred to in sub-section (1) or in sub-sections (2) or in sub-section (3)

- a) fails to make the deduction of the amount deductible under this section the Assessing Authority may, after giving such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum which shall not be less than one hundred fifteen percent and not more than one hundred twenty five percent of such amount deductible under this section; or
- b) after deduction fails to deposit the amount so deducted in to the Govt. Treasury as required in sub-section (4), the Assessing Authority may, after giving such person an opportunity of being heard, by order in writing, direct that such person shall
  - (i) pay, by way of penalty, a sum equal to two percent of such amount, if the delay in depositing such amount is not more than a month; and

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<sup>9</sup> Section 35(8) is substituted vide Uttarakhand VAT (Amendment) Act, 2015.

(ii) pay, by way of penalty, a sum which shall not be less than fifteen percent and not more than twenty five percent of such amount, if the delay in depositing such amount is more than a month.

**Section 35(9):-** Without prejudice to the provisions of sub-section (8), if any such person fails to make the deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of fifteen percent per annum on the amount deductible under this section but not so deducted and, if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited

**Section 35(10)<sup>10</sup>:**- Without prejudice to the provisions of sub-section (8), where the amount has not been deposited after deduction, the Assessing Authority, after giving an opportunity of being heard, may pass an order directing such person to deposit such amount together with the interest referred to in sub-section (9) and such amount together with such interest shall be charged upon all the assets of the person concerned.

- **Registration for deduction of tax at source**

- (i) Every person responsible for making tax deduction at source in accordance with the provisions of this Section, if he is not registered dealer, shall submit an application within 30 days from the date from which such person is first liable to make such deduction in Form 1B to the Assessing Authority for allotment of Tax Deduction Account Number.
- (ii) If the application is in order and particular given therein are correct, the Assessing Authority shall allot him a Tax Deduction Account Number
- (iii) Tax Deduction Account Number shall be mentioned in all the documents pertaining to deposit of tax and in all correspondence and returns filed. No person other than a registered dealer can make tax deduction at source unless he has applied for a Tax Deduction Account Number
- (iv) If any person referred to in clause (i) above fails to apply for Tax Deduction Account Number, he shall be liable for penalty as per the provisions of this Act

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<sup>10</sup> Substituted vide Uttarakhand VAT (Amendment) Act, 2015.

*Tax Deduction at Source*

• **Tax Deducted at Source and Allotment of Tax Deduction Account Number (TDAN) (Rule21)**

1. Every person or dealer other than a registered dealer, responsible for making tax deduction at source in accordance with the provisions of section 35, shall apply online or otherwise in Form 1(B) (amended) to the assessing authority or any other officer authorized by the Commissioner, For allotment of Tax Deduction Account Number (TDAN).

Provided that a person, other than a registered dealer responsible for making deduction at source as per the provisions of Section-35 shall be allowed 30 days time from the date from which such person is first liable to make such deduction to obtain a TDAN.

Provided further that the person other than a registered dealer, who is responsible for making tax deduction at source as per the provisions of Section 35 and is already deducting the tax at source shall apply for TDAN within a period of 30 days from the commencement of the above provisions.

2. In case of a department of a State Government or the Central Government or a Corporation or a Local Body such application shall be made and signed by the person described in Rule 7 and accompanied by an authority letter given by the head of the office in the name of the applicant if the application is signed by a person other than the head of the office.
3. If the assessing authority or any other officer authorized by the Commissioner, after examining the application and making such enquiry as he may deem fit, is satisfied that the particulars furnished are correct and complete, he shall allot a Tax Deduction Account Number and issue a Certificate to this effect to such person.

Every TDAN certificate, granted shall comprise of such number of numeric or alpha-numeric digits as may be determined by the Commissioner.

4. Every dealer or person liable to tax or liable to deduct tax at source under the provisions of section 35 of the Act, shall submit to the assessing authority quarterly returns and annual return in the manner specified in Rule 11.

Provided that a dealer or a person who ceases to carry on business during the course of a financial year, shall file the final return in Form IV(A) (amended) for the period of his business during the relevant year within 60 days from the date of cessation of business.

5. Such dealer or person shall issue to the dealer or person from whom tax has been deducted, a certificate in Form VIII (amended) regarding the amount of tax deducted. The TDAN of the person liable to deduct tax at source and the TIN of the dealer from who deduction has been made shall be mentioned on such TDS certificate.

This Form, in duplicate, shall be issued by the assessing authority to the dealer/person who is liable to deduct tax at source. Such dealer/person shall issue the Original copy to the dealer/person from whom tax has been deducted.

The assessing authority on receipt of the Original copy of such certificate, shall treat the amount to have been deposited by the dealer/person in whose favour the certificate has been issued provided the certificate is complete and the Tax Deduction Account Number (TDAN) of the dealer/person and the Tax payer Identification Number (TIN) of the dealer/ person from whom deductions have been made are clearly mentioned in such TDS certificate.

# **Chapter 9**

## **Refund**

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### **1. Refund of Excess Payment (Section 36)**

1. The assessing authority shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

Provided that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956, or the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and only the balance, if any, shall be refunded.

2. If any amount is found to be refundable, the refund shall be made through a refund voucher after adjustment towards any amount outstanding against the dealer for the same or any other assessment year including electronic methods within one month from the date of order of refund or the date of receipt, of the order of refund by the assessing authority, if such order is passed by any other competent authority or Court. If the refund is not made within sixty days of the date of such order or as the case may be, the date of receipt of such order of refund, by the assessing authority, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum from the date of expiry of such period to the date of refund.

Provided that if any amount is found to be refundable in the cases deemed to have been self assessed in accordance Section 25, the refund shall be made within one month of the expiry of one year from the last date specified for filling the annual return under Rule 11 relating to the particular assessment year or the actual date, when the annual return is filed, whichever is later.

3. Notwithstanding any judgment, decree or order of any Court or authority no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act.

4. Notwithstanding anything contained contrary in this section any dealer to whom refund of any amount is allowed, may, before the date such refund is made, apply to the assessing authority for withholding the amount of refund for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956. If the dealer has presented his application for withholding amount of refund, the assessing authority shall withhold amount of refund. In such a case the dealer shall not be entitled for interest.

**Explanation:**

1. The expression "Refund" includes any adjustment as given in para 1 above.
2. If the refund is made electronically the date of refund shall be deemed to be the date on which the refund is made, otherwise the date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer.

**2. Provisional Refund in case of Exporters (Section 37)**

1. If a registered dealer has filed returns as required by or under this Act, and the returns show any amount to be refundable to the dealer on account of sale in the course of export, then the dealer may after the end of every quarter to the assessing authority for grant of provisional refund, if any, pending assessment.
2. The said dealer shall furnish a Bank Guarantee or other security or documentary evidence of export of goods to the satisfaction of the assessing authority for an amount equal to the amount of the provisional refund. On receipt of such guarantee or, other security or documentary evidence of export the assessing authority shall, subject to the provisions of this section and the rules, grant the dealer within thirty days a provisional refund that may be found as refundable. The dealer shall keep the bank guarantee or security furnished by him valid upto the date of recovery of excess amount, if any, after final assessment.

Provided that if the amount found refundable is not refunded to the dealer within the period of sixty days from the date of the order, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum.

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3. The assessment under this Act of such dealer in respect of the year containing the period covered by the said return will be taken up as early as practicable and the provisional refund against tax due, if any, as a result of the assessment shall be adjusted.
4. If, on assessment, the provisional refund granted is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest as if it were tax admittedly due from the dealer under this Act.
5. Interest will be charged at the rate of fifteen percent per annum from the date of grant of provisional refund, till the date of payment of such amount.

**3. Refund of Tax in case of sales to Embassies, International Organizations or to units established in Special Economic Zone (Section 38)**

1. Any person or a dealer or embassies, international organizations listed in Schedule V of this Act, shall be entitled to claim refund of tax paid by him on the purchase of goods and notwithstanding anything contained in section 36, the amount due for refund shall be refunded within 45 days of the presentation of the claim for refund.
2. Any unit established in Special Economic Zone shall be entitled to claim refund of tax paid by it on the purchases from any unit established in Domestic Tariff Area and such dealer shall be eligible for refund of such amount as in case of exporters and the provisions of section 37 shall mutatis mutandis apply in such case.

**4. Power to Withhold Refund in certain cases (Section 39)**

1. Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the assessing authority is of the opinion that grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the assessing authority may, with the permission of the Commissioner or any officer authorized by him, withhold the refund till such time as he may determine.

2. Where a refund is withheld and as a result of the appeal or further proceeding or any other proceeding, dealer becomes entitled to any refund, the dealer shall be entitled to interest as provided under Section 41 on the refundable amount.
3. Provided that if any refund has been withheld under this section, and if any amount out of the refundable amount is adjusted towards any tax liability of the dealer, the dealer shall not be entitled for any amount of interest for the relevant period on the amount so adjusted.

## **5. Disbursement of Amount Wrongly Realized by Dealer as Tax (Section 40)**

1. Where any amount is realized from any person by any dealer, purporting to do so by way of realization of tax on the sale or purchase of any goods, in contravention of the provisions of section 22, such dealer shall deposit the entire amount so realized within 30 days of the expiry of the relevant quarter.
2. Any amount deposited by any dealer under sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person from whom it was realized by the dealer, or for his legal representatives, and the deposit shall discharge such dealer of the liability in respect thereof to the extent of the deposit.
3. Where any amount is deposited by any dealer under sub-section (1) such amount or any part thereof shall, on a claim being made in that behalf be refunded to the person from whom such dealer had actually realized such amount or part thereof, or to his legal representative and to no other person.

Provided that no such claim shall be entertained after the expiry of three years from the date of order of assessment or one year from the date of the final order in appeal or revision, if any in respect thereof, whichever is later.

4. Where any amount has been deposited by any dealer in accordance with the discussion at point 1 above, the dealer shall not be entitled to allow refund of such amount to the purchaser of goods.

Explanation: The expression "final order on appeal or revision" includes an order passed by the Supreme Court under Article 32, Article 132, Article 133,

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Article 136 or Article 137 or by the High Court under Article 226 or Article 227 of the Constitution.

**6. Interest on Refund (Section 41)**

1. Any dealer or a person entitled to refund in pursuance of any order under this Act (including assessment under Section 24, Section 25, or Section 26) or in pursuance of any order by any court, shall subject to rules, be entitled to receive, in additional to the refund, a simple interest at the rate of nine percent per annum if the refund voucher/electronic intimation of refund is not sent to him as per the provisions of section 36.
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 or under the Central Sales Tax Act, 1956.
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.
4. Where as a result of any final order the amount of tax (including any penalty) due 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 and refunded accordingly.

# **Chapter 10**

## **Accounts and Records**

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### **1. Maintenance of Accounts (Section 59)**

1. Every dealer or a person registered or liable to be registered under this Act, or liable to pay tax under this Act, including a dealer paying tax under the composition scheme, shall keep and maintain a true and correct account showing the value of goods purchased, manufactured or sold or supplied by him under this Act.

Provided that this sub-section shall not apply to such dealers as are not liable to taxation under this Act.
2. A manufacturer liable to pay tax under this Act shall in addition to the accounts referred to above, maintain stock books in respect of raw materials as well as products obtained.
3. The Commissioner may, subject to such conditions or restrictions direct any dealer or any class of dealers generally to keep such accounts and records, including records of purchases, sales or delivery of goods in such form and in such manner as may be specified.
4. Every registered dealer or a dealer shall keep at his place of business all accounts, registers and documents maintained in the course of business.
5. Where a dealer has established branch offices of his business in the State 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 such branch.
6. A dealer who maintains or keeps books or accounts in a computer shall prepare floppies of such books or accounts or documents and shall maintain them as part of accounts. He shall also maintain day-to-day print out of all such books, accounts and documents.
7. Any dealer who claims input tax credit shall maintain a register in respect of computation of input tax credit tax period wise.

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8. Where a dealer purchases or receives or disposes of manufactured goods in more than one of the following ways:
  - (a) makes sale of taxable goods inside the State or
  - (b) dispatches taxable goods to other dealers for sale inside the State or
  - (c) makes sale of taxable goods in the course of inter-state trade or commerce or
  - (d) makes sale of goods in the course of export outside the territory of India or
  - (e) dispatches taxable goods out side the State otherwise than by way of saleshall keep separate account of sales or dispatches and also purchases and receipts of goods for such purposes separately as far as possible.
9. Every dealer liable to pay tax shall prepare an inventory of goods purchased from inside the State or imported from outside the State along with their purchase value as given below:
  - (a) goods held in the opening stock on the date on which the dealer becomes liable to pay tax
  - (b) goods held in the closing stock on the last date of each financial year
  - (c) goods held in opening stock on the first date of the assessment year in which the dealer applies for cancellation of registration
  - (d) goods held in stock at the time of discontinuance of businessProvided that if the dealer manufactures any goods and holds any manufactured or semi-manufactured goods in stock, he shall also prepare inventory of goods and record estimated purchase value of goods used in manufactured or semi-manufactured goods as constituent and estimated purchase value of goods used in the manufacture of such goods as fuel or consumable stores or lubricants or packing material.
10. Where a registered dealer or a dealer liable to pay tax, consigns any taxable goods whether as a result of sale or otherwise:

- (a) such dealer shall issue a sale invoice or a challan containing an individual serialized number and date of issue in case of consignment of goods otherwise than way of sale which shall contain the name, address and registration certificate no. (which effective date) of the consignor and consignee and the description, quantity, volume of goods and amount of tax charged in case of sale and also estimated value of goods in case of consignment and value of goods in case of sale.
  - (b) such dealer shall issue a sale invoice or as the case may be the challan in original to the purchaser or the consignee person and the first copy of the invoice in case of sale and the original copy of the challan in case of consignment shall accompany the goods during the journey of goods and the second copy of the invoice in case of sale and the duplicate of the challan in case of consignment shall be preserved by the dealer as part of his accounts.
  - (c) Person transporting the goods for delivery to consignment shall record the registration number of the vehicles on the sale invoice or the challan and shall deliver such document to the consignee along with the goods.
  - (d) The consignee dealer of goods shall not transfer any such document to any other person and preserve the same for a period of six years after the close of the assessment year to which they relate or till the assessment or reassessment or any other proceedings under the Act for such assessment year is completed, whichever is later.
11. Where a dealer receives any certificate or any form of declaration under this Act or Rules made or notifications issued there under
- (a) he shall use them for the purpose for which it has been issued and keep an account of such used or unused certificates or forms of declarations
  - (b) he shall not transfer to any person and no person shall receive from any person any certificate or any form of declaration except for lawful purposes
  - (c) any dealer who receives any form under the Act including duplicate copy thereof and other connected documents, shall

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preserve them for a period of six years after the close of the assessment year to which they relate or till the assessment or reassessment or any other proceedings under the Act for such assessment year is completed, whichever is later.

**2. Sale Invoice (Section 60)**

1. Every registered dealer making a sale to any person or a dealer, whether registered or not, shall provide that purchaser for every sale with a Sale Invoice containing such particulars as specified below, and retain a copy thereof. The amount of tax charged on sales of goods shall be shown separately.

Provided that if an invoice has been issued under the provisions of Central Excise Tariff Act, 1985, it shall be deemed to be a Sale invoice if it contains the particulars specified below.

2. The Sale Invoice issued above shall contain the following particulars on the original as well as copies thereof:
  - (a) the name, address and registration certificate number i.e. Taxpayer's Identification Number (TIN) of the selling registered dealer and the date from which the registration is effective
  - (b) the name, address and registration certificate number i.e. Taxpayer's Identification Number (TIN) with effective date, of the purchasing dealer
  - (c) an individual serialized number and the date on which the Sale 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, agent or employee duly authorized by him.

3. Every registered dealer shall, in respect of every sale of goods on which tax is charged, issue to the purchaser a Sale Invoice and in case of sale of goods exempt from tax, in respect of every sale exceeding Rupees Fifty in any one transaction to any person, he shall issue to the purchaser a Sale invoice.

Provided that in a case in which a purchaser demands a sale invoice in respect of such sale, the dealer shall issue to the purchaser a sale invoice, irrespective of the amount of sale.

4. Every Sale Invoice shall, before being issued, be authenticated by the dealer or his authorized signatory.
5. The Sale Invoice shall be issued in triplicate. The original shall be issued to the purchaser and the first copy shall be issued to the dealer or any other person, as the case may be, taking delivery of the goods and the second copy shall be retained by the selling dealer.
6. Not more than one Sale Invoice shall be issued for each sale.
7. An original Sale Invoice shall not be provided to a person in any circumstances other than those specified in this section, but a copy marked as Duplicate may be provided, if the person receiving the original invoice so requests for the reason that the original has been lost.
8. The particulars of Sales shall be in Form XXVIII, separately for–
  - (i) sale of goods in the course of inter-state trade and commerce;
  - (ii) sale of goods in the course of export outside the territory of India;
  - (iii) transfer of goods outside the state other than by way of sale;
  - (iv) sale within the State of the Special Category Goods specified in Schedule III of the Act, on which tax is charged;
  - (v) sale within the State of the goods other than Special Category Goods specified in Schedule III of the Act on which tax is charged;
  - (vi) sale within the State of other goods.

### **3. Period for which Accounts to be retained (Section 61)**

1. Every dealer shall preserve all accounts required to be maintained by him in the course of his business, including Sale invoices, debit credit memos and vouchers relating to productions, stocks, purchases, deliveries and sales, for a period of six years after the close of the assessment year to which they relate or till the assessment or reassessment or any other proceedings under the Act for such assessment year is completed, whichever is later.
2. Every dealer who maintains the records electronically shall retain them in electronically readable format for the period specified in above.

# **Chapter 11**

## **Audit Report**

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### **1. Section 62**

- Where in any particular year gross turnover of a dealer exceeds One crore rupees or such other amount as the State Government may, by notification in the Official Gazette, specify, then such dealer shall get his accounts, in respect of that year, audited by an accountant and obtain a report of such audit duly signed and verified by such accountant in Form XXXII.
- A true copy of such report shall be furnished by such dealers to the assessing authority along with the annual return.
- Where in any particular year gross turnover of a dealer exceeds forty lakh rupees but does not exceed one crore rupees then such dealer shall furnish a true copy of the audit report of his accounts duly signed and verified by a chartered accountant, or a Cost Accountant or an Auditor. This report shall be submitted to the assessing authority along with the annual return.

**Explanation-** For the purpose of this Section, "Accountant" means a Chartered Accountant as defined in the Chartered Accountant Act, 1949, a Cost Accountant as defined in the Cost and Works Accounts Act, 1959, and includes a person who by virtue of the provisions of sub-section (2) of Section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of Companies registered under the said Act.

### **2. Audit by VAT Department**

**Section 25(9)(b),** tax audit may be conducted by an officer posted in the tax audit wing or by any other officer authorized for this purpose by the Commissioner. No dealer may be selected for tax audit for an assessment year after the expiration of five years from the end of such assessment year.

The present amendment made by the State Government by Notification No. 331 dated 6<sup>th</sup> October 2010 has restricted the audit after the expiration of 5

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years. The officer of this wing shall conduct audit of the assessee business of any year and the audit report will be sent to the Assessing Authority. The Assessing Authority will re-open the case on receiving the audit report from the Audit Wing. The Act is silent on the issue as to whether the notice will be issued under Section 29 or whether the Assessing Officer will re-open the case after taking the permission of Commissioner under Section 52.

# **Chapter 12**

## **Inspection of Accounts, Search and Seizure and Establishment of Check Post**

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### **1. Power to order Production of Accounts and Power of Entry and Inspection (Section 42)**

1. Any officer empowered by the State Government in this behalf may, for the purposes of this Act, require any dealer or any other person who carries on business of buying, selling or supplying goods for self or on behalf of other dealer, to produce before him any book, document or account relating to his business or relating to the business of other dealers, and may inspect, examine and copy the same and make such enquiries from the dealer or such person, relating to his business or business of other dealers, as he considers necessary.

Provided that books, documents and accounts of a period more than five years prior to the assessment year shall not be so required, unless in any special case for reasons to be recorded that such officer considers necessary.

2. All books, documents and accounts maintained by any dealer or a person in the ordinary course of business, the goods in his possession, and his place of business or vehicle shall be open to search and inspection at all reasonable time by such officers, as may be authorized by the State Government in this behalf. For the purpose of this section, the officer authorized thereunder may enter and search any place of business or vehicle or any other building or place where he has reason to believe that the dealer keeps or is for the time being, keeping any books, registers, documents, accounts or goods relating to his business, and the officer may 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-

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- (a) to afford him the necessary facility to inspect such books of accounts and other documents as he may require, and which may be available at such place,
  - (b) to afford the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein, and
  - (c) 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.
3. Notwithstanding anything contained in this section, no business premises or residential accommodation shall be entered into, inspected or searched by such officer unless specially authorized by the Commissioner or such other officer not below the rank of a Joint Commissioner, as may be authorized in this behalf by the Commissioner
- Explanation: For the purpose of this sub-section, a place where the person is engaged in business will also include any other place in which the person engaged in business or the said employee or other person attending or helping in business states that any of the books of accounts or other documents or any part of the cash, stock or other valuable article or things relating to the business are or is kept.*
4. The officer authorized above 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 other valuable article or thing checked or verified by him, and record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.
  5. If any officer authorized above has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document he may seize such account, register or document as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be

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considered necessary, provided the dealer or the aforesaid person authenticates such copies and extracts, and gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or document.

*Explanation: In calculating the period specified in this sub-section the period during which proceeding under this Act remain stayed under the order of any Court or authority shall be excluded.*

Notwithstanding anything contained above the officer seizing any account, register or other document under that sub-section may for the reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register, or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the assessment years for which they are relevant as he deems necessary.

6. An officer authorized to act above

- (a) shall have the power to seal the place of the business, vehicle or any box, almirah or receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or the person in occupation or incharge of such office, shop, godown, vehicle or box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon do so;
- (b) where the owner or other person in occupation or incharge of the office, shop, godown, or vehicle or of the box, almirah or other receptacle found in the office, shop, godown, vessel or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such office, shop, godown, vehicle or box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.

- No person shall tamper with the above seal.
7. Any officer empowered may require any person,
    - (a) who transports or holds in custody, for delivery to or on behalf of any dealer, any goods, to give any information likely to be in his possession in respect of such goods or to permit inspection thereof;
    - (b) who maintains or has in his possession any account, book or document relating to the business of a dealer, to produce such account, book, or document for inspection.
  8. Where in the course of any search at the business place of a dealer any book of accounts, other documents, money or goods are found on the possession or control of any person, it shall be presumed, unless the contrary is proved, that such books of account, other documents, money or goods belong to such dealer.
  9. The officer who has made inspection or search or seizure of any books, accounts or documents or investigation or an officer who has made investigations under this section, on the basis of fact found, shall prepare a report in respect of such inspection or search or seizure or investigation and where the officer preparing the report is an officer different from the assessing authority, such officer shall forward a copy of such report to the assessing authority of the dealer.
  10. The assessing authority may require any dealer or a 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.
  11. The assessing authority may call for details and particulars from State or Central Government departments and financial institutions including banking companies, which, he is of the opinion, will be relevant and useful for the purposes of this Act
  12. Notwithstanding the powers of the assessing authority to inspect books of account and enter and search any place of business of any dealer (both registered or unregistered) under this section, the Commissioner, with a view to identify dealers who are liable to pay tax under this Act, may from time to time cause a survey of unregistered dealers to be taken.

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13. The provisions of section 100 and section 165 of the Code of Criminal Procedure, 1973 shall, as far as may be, apply in relation to any entry, search or inspection under this section as they apply in relation to any inspection or search under the said Code.

## **2. Power to seize goods**

1. An officer authorized under Section 42 shall have the power to seize any goods-
  - (a) which are found in the dealer's place of business or vehicle or any other building or place: or
  - (b) which, such officer has reason to believe to belong to the dealer and which are found in any place of business or vehicle or building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in the course of his business

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by him, and a copy thereof shall be given to the dealer.

2. Where any officer empowered by the State Government in this behalf has reason to believe that the goods found in any vehicle, building or place are not traced to any bona fide dealer or it is doubtful if such goods are properly accounted for by any dealer in his accounts , register or other documents, maintained in the course of his business, he shall have power to seize such goods and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure
3. An officer seizing the goods above shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso above, along with other documents relating to the seizure to the assessing officer concerned.
4. The said assessing authority shall serve on dealer or, as the case may be, the person in charge of goods at the time of seizure (hereinafter in this section referred to as the person in charge) a notice in writing requiring him to show cause, why a penalty should not be imposed.
5. If such officer, after taking into consideration the explanation, if any, of the dealer, or as the case may be, the person in-charge and giving him

an opportunity of being heard, is satisfied that the said goods were willfully omitted from being shown in the accounts, registers and other documents, it shall pass an order imposing a penalty not exceeding forty percent of the value of such goods as he deems fit.

A copy of the order imposing penalty above shall be served on the dealer or, as the case may be, the person in-charge.

6. The officer seizing the goods shall serve on the dealer or, as the case may be, the person in-charge an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on the deposit whereof in cash, the goods so seized shall be released in favour of the dealer or, as the case may be, the person in-charge.

Notwithstanding anything contained herein, the Commissioner or such officer, not below the rank of Deputy Commissioner, as may be authorized in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that goods be released without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash, as he may deem fit.

7. The penalty or such part thereof as remains after adjustment of any amount deposited shall be deposited within thirty days of the date of service of the copy of the order imposing the penalty. In default, the assessing authority shall cause the goods to be sold and apply sale proceeds thereof toward the penalty and, subject to the provisions of section 36, refund the balance, if any, to the dealer or, as the case may be, to the person -in-charge.
8. Where the officer seizing the goods, before forwarding the list and other documents or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction. The sale proceeds of such goods shall be adjusted towards the expenses and tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person in-charge.

**3. Power to Acquire Goods in case of Under Valuation  
(Section 44)**

1. Where the assessing authority or an officer empowered under section 42, is satisfied that any dealer bringing, importing or otherwise receiving into the State from any place outside the State any goods has, with a view to evade payment of tax, shown the estimated sale value of such goods in the declaration form for import accompanying such goods less than fair price of such goods, or has not shown the estimated sale value in such form and the presumed sale value of such goods is less than the fair price of such goods, such officer may acquire such goods on payment of 110 percent of such estimated sale value or presumed sale value, as the case may be, to the dealer.
2. The above mentioned power shall not be exercised unless the dealer is afforded an opportunity of being heard.
3. The goods acquired above shall be disposed of in such manner as may be specified by the Commissioner.

**Explanation: For the purpose of this section-**

- (a) "fair price" shall mean the value determined in such manner as may be specified by the Commissioner
- (b) "presumed sale value" shall be equal to 110 percent of the purchase price shown in the declaration form.

**4. Power to seek Information, to summon Witness etc.  
(Section 45)**

- Any officer under this Act, not being an officer below the rank of an officer appointed and posted by the Commissioner, may for any purpose related to the administration or enforcement of the provisions of this Act by notice, require any dealer or other person to furnish any information or any document including electronic records which may be in his knowledge or possession. Whenever so required, the dealer or such person shall furnish correct, complete and true information.
- All such officers under this Act shall have the same power as are vested in a Court under the Civil Procedure Code 1908, when trying a suit in respect of following matters, namely-

- (a) Enforcing the attendance of any person and examining him on oath or affirmation,
- (b) Compelling the production of documents, and
- (c) Issuing commission for examination of witness

and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Code of Criminal Procedure and for the purpose of section 196 of the Indian Penal Code.

- Summons for the production of documents or the attendance of any person shall be issued in the Form XXX.

## **5. Power to Seek assistance from Police (Section 46)**

An officer exercising power under section 42, section 43 or section 48 may take the assistance of police or other officer or officers of the State.

# **Chapter 13**

## **Appeals and Revision**

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### **1. Appeal (Section 51)**

- Any dealer or other person aggrieved by an order made by the Assessing authority or by an officer in charge of tax audit or any order passed other than,
  - (a) an order mentioned in section 56 or
  - (b) an order passed under sub-section (8) of section 43 or
  - (c) an order passed under sub-section (7) of section 43(A) or
  - (d) an order passed under or sub-section (10) of Section 48 or
  - (e) an order of seizure passed under subsection (5) of section 48(A) or
  - (f) an order passed under sub-section (6) or sub-section (7) of section 48(A)

may, within sixty days from the date of the service of the copy of the order, appeal to the Appellate Authority specified under section 53, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.

Notwithstanding anything contained above, where the disputed amount of tax, fee or penalty in an appeal does not exceed one thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the Appellate Authority may decide the appeal accordingly.

No appeal or revision shall lie against an order passed in appeal which has been disposed of summarily.

- Where an appeal under this section has been filed by any dealer or any person against an order referred above and where due to filing of such appeal the Commissioner cannot revise such order passed by the assessing authority on the point of legality or propriety of such order under section 52, the Commissioner may move an application to the appellate authority to examine the legality and propriety of such

order on such point or points as may be mentioned in the application. A copy of such application shall be served on the dealer or such other person, as the case may be

Provided that-

- (a) No application under this sub-section shall be entertained after the expiration of four years from the date of the order in question
- (b) No application for examination of legality and propriety under this sub-section shall be entertained after the disposal of appeal filed by the dealer or other person, as the case may be
- (c) Where the Commissioner has filed an application under this section and the dealer or other person withdraws the appeal filed by him or any other application for disposal of appeal summarily, it shall be deemed for the purpose of section 52, as if no appeal has been filed, and in such a case the period commencing from the date of filing application by the Commissioner and the date of the appellate authority's order on the application of the dealer, shall be excluded in computing the period of limitation provided in section 52, and
- (d) If after computing, the period of limitation comes to less than six months, the revision under section 52 may be made within six months from the date of receipt by the Commissioner of the relevant order of the appellate authority

Explanation: For the purpose of this sub-section, the Commissioner shall include an officer authorized to file an appeal on behalf of the Commissioner before the Tribunal under section 53 of this Act.

- No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be admitted by the appellant in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater
- The appellate authority on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard stay the realization of the amount of the tax, fee or penalty payable by the appellant till the disposal of the appeal

### *Appeals and Revision*

- No application shall be entertained unless it is filed along with the memorandum of appeal and no stay order shall remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of receipt of stay order or the time allowed in the order of the assessing authority under appeal whichever is later and before the expiry of the said period, furnished security to the satisfaction of the assessing authority for payment of the amount, the realization whereof has been stayed

Provided that where the amount stayed is less than rupees twenty five thousand, the dealer shall not be required to furnish the security in respect of such amount

Provided further that where an order under appeal does not involve any dispute about tax, fee or penalty, the appellate authority may stay the operation of such order till the disposal of appeal subject to such conditions as he may deem fit

Explanation: Rejection of similar application for stay by any authority for want of jurisdiction shall not by itself preclude the Appellate Authority from entertaining such application.

- The appellate authority may, after calling for and examining the relevant records and after giving the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, -
  - (a) confirm or annul such order or
  - (b) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise or
  - (c) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified or
  - (d) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the Appellate Authority may, whether the report has been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clauses

Provided that nothing in this sub-section shall preclude the Appellate Authority from dismissing the appeal at any stage with such

observation as it deems fit where the appellant applies for withdrawal of the same and no request for enhancement of the assessment or penalty has been made by the Commissioner

Provided further that before making an enhancement the appellant shall be given an opportunity of being heard on the proposal of enhancement

- An order passed under this section shall, subject to the provisions of this Act, be final
- If the amount of the tax assessed, fee levied or penalty imposed is reduced by the appellate authority he shall order the excess amount of tax, fee or penalty, if realized, to be refunded
- The appellate authority shall be under the superintendence and control of the Commissioner

Provided that in the exercise of such superintendence and control of the Commissioner, no order, instructions and directions shall be given by the Commissioner so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions

- Appeal filed by the dealer and the application filed by the Commissioner arising out of the same cause of action in respect of an assessment year shall be heard and decided together

Provided that where any one of such appeal or application has been heard and decided earlier, and if the Appellate Authority hearing the remaining appeal or application considers that such decision may be legal impediment in giving relief in such remaining appeal and application, he may recall such earlier decision and proceed to decide the appeal and the application together, after giving a fresh hearing

## **2. Revision by Commissioner (Section 52)**

- The Commissioner or such other officer not below the rank of Joint Commissioner as may be authorized in this behalf by the State Government by notification may call for and examine the record relating to any order, (other than an order mentioned in section 56) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect there to as he thinks fit
- No order under above affecting the interest of a party adversely shall

### *Appeals and Revision*

be passed unless he has been given a reasonable opportunity of being heard

- No order shall, subject to the provisions of Section 51, be passed-
  - (a) to revise an order, which is or has been the subject matter of an appeal under section 51, or an order passed by the Appellate Authority under that section
  - (b) before the expiration of sixty days from the date of the order in question
  - (c) after the expiration of four years from the date of the order in question

*Explanation:* Where the appeal against any order is withdrawn or is dismissed for non-payment of fee, or for non compliance of Section 51, the order shall not be deemed to have been a subject matter of an appeal under section 51

- No dealer or any other person shall be entitled to file an application under this section

### **3. Appeal to the Appellate Tribunal (Section 53)**

- Any person aggrieved by an order passed under section 51, under section 52, or under section 76, or a decision under section 57; or a direction under Section 43; or an order passed under Section 43(A); or an order passed under Section 48; or an order passed under Section 48(A) may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal

*Explanation:* For the purpose of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government

- Notwithstanding anything contained above, where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request to the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly
- The manner and procedure of summary disposal of appeal shall be as per the procedure specified in Rule 37.

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- No revision shall lie against an order passed in appeal which has been disposed of summarily
- The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal
- The Tribunal may, if it has not already dismissed the appeal, after calling for and examining the relevant records and after giving the party a reasonable opportunity of being heard or, as the case may be:
  - a) confirm, cancel or vary such order or
  - b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified
- If any amount of tax, fee or penalty is reduced by the Tribunal, he shall order that any money as may have been realized in excess of the due amount, be refunded according to the provisions of this Act
- Explanation: The power to vary an order includes the power to vary the order by reducing or enhancing the amount of assessment or penalty. However before increasing the tax or other amount the dealer shall be given an opportunity of being heard on the proposal of increasing the liability
- Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceedings for reassessment under the order appealed against till the disposal of the appeal
- No application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in addition to the amount required to be deposited under Section 51

Provided that where the amount in dispute in appeal is less than rupees twenty five thousand the dealer shall not be required to deposit the one third of such disputed amount

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Provided further that the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirements of this sub-section regarding payment of the one third of such disputed amount

- Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of the receipt of the stay order and has furnished security to the satisfaction of the assessing authority concerned for the payment of the amount, the realization whereof has been stayed  
Provided that where the amount stayed is less than rupees twenty five thousand, the dealer shall not be required to furnish the security in respect of such amount
- An appeal against an order of the Appellate Authority under section 51 shall be heard and disposed of
  - (i) by a bench of two members, when such order is passed by an Additional Commissioner (Appeals), or the amount of tax, fee or penalty in dispute exceeds two lakh rupees
  - (ii) by a single member bench, in other case
- **Section 53(10)(b)<sup>11</sup>:-** An appeal against an order or direction passed under the following provisions of the Act, shall be heard and disposed of by a bench of two members;
  - (a) an order passed under section 52;
  - (b) a direction given under sub-section (8) of section 43;
  - (c) a direction given under sub-section (7) of section 43-A;
  - (d) a direction given under sub-section (10) of section 48;
  - (e) a direction given under sub-section (7) of section 48-A

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<sup>11</sup> Substituted vide Uttarakhand VAT (Amendment) Act 2015. Earlier only section 52 and 43 were covered.

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- An appeal against a decision given under section 57 shall be filed before the President and shall be heard and disposed of by a bench of three members
- The President may, if he so thinks fit-
  - (a) direct an appeal to be heard and decided by a larger bench
  - (b) transfer an appeal from one member to another member
- In a case before a bench consisting of two or more members, any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench
- Any member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case
- All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together  
Provided that where any one or more of such appeals have been heard and decided earlier, and if the bench hearing the remaining appeals considers that such decision may be legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-
  - (a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;
  - (b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.
- The decision of a case heard by a bench shall be in accordance with the opinion of the majority. Where the members are equally divided the President of the Tribunal may-
  - (a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinion or
  - (b) form a larger bench
- Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other

### *Appeals and Revision*

member or the members of the Tribunal are disqualified to hear the case or there are for the time being only two members including the President, the Government may appoint a person qualified to be appointed as a member of Tribunal, as an additional member to the Tribunal and the point shall be decided in accordance with the opinion of majority of the members of the Tribunal who have heard the case (including those who first heard it)

- The Tribunal shall serve the appellant with notice, in writing, of the appeal decision setting forth the reasons for the decision

#### **4. Constitution of Appellate Tribunal (Section 54)**

1. The Government shall appoint a Tribunal consisting of a President and such members as it think fit to perform the functions assigned to the Tribunal by or under this Act
2. The President and the members shall be appointed from amongst-
  - (a) the persons belonging to Uttarakhand Higher Judicial service who hold or have held a post not below the rank of Additional District judge and
  - (b) the persons belonging to the Uttarakhand Trade Tax Service who hold or have held a post not below the rank of Additional Commissioner
3. The State Government may prescribe such other qualifications or conditions for the appointment of the President and other members of the Tribunal as it may deem fit
4. The appointments to the Tribunal shall be made by the State Government-
  - (a) in case of persons who have been or are members of the Uttarakhand Higher Judicial Service in consultation with the High Court; and
  - (b) in case of persons belonging to the Uttarakhand Trade Tax Service, by selection on the principle of merit from amongst persons who hold or have held the post not below the rank of Additional Commissioner of Trade Tax.
5. The head quarter of the President of the Tribunal shall be at Dehradun, and he shall exercise the concurrent jurisdiction over all the Benches in Uttarakhand

6. The head quarters and jurisdiction of other single member benches shall be such as the Government may, from time to time, in consultation with the President of the Tribunal, notify
7. The President may, from time to time, constitute benches of two or more members, and specify the jurisdiction and place of sitting of such benches as he may consider necessary
8. The members of the Tribunal shall be under the administrative control and supervision of the President
9. The Tribunal shall, with the previous sanction of the Government make regulations consistent with the provisions of this Act and the rules made thereunder for regulating its procedure and the disposal of its business
10. The regulations shall be published in the official Gazette

## **5. Revision by High Court (Section 55)**

1. Any person aggrieved by an order of Section 53 summarily disposing of the appeal or by an order passed under section 30, by the Tribunal may, within ninety days from the date of service of such order, apply to the High Court for revision of such order except in special circumstances referred to in Section 53
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 by the Tribunal
3. The application for revision shall precisely state the question of law involved in the case and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised
4. The Commissioner shall also be made a party to the proceedings before the High Court where appeal is filed by the dealer or other person
5. Where an application under this section is pending, the High Court may, on an application in this behalf stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised
6. Provided that no order for stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant

### *Appeals and Revision*

furnishes adequate security to the satisfaction of the assessing authority concerned

7. The High Court shall after hearing the parties to revision decide the question of law involved therein, and where as a result of such decision the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision
8. All applications for revision of orders passed under section 53 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together

9. The provisions of section 5 of the Limitation Act,1963, shall mutatis mutandis apply to every application, for revision under this section

Explanation: For the purpose of this section, the expression "any person" includes the Commissioner and the State Government

## **6. Orders against which No Appeal or Revision shall lie (Section 56)**

No appeal and no application for revision shall lie against-

- (a) an order or notice under section 24, section 25, section 26 and section 29 initiating an enquiry for assessment or reassessment
- (b) an order or action under section 42 or subsection (1), sub-section (2), sub-section (4), subsection (7) of Section 43
- (c) an order or direction passed under sub-section 2(a) or sub-section (4) of Section 43-A or
- (d) an order of seizure passed or a notice for penalty issued under sub-section (5) of Section 43-A or
- (e) an order passed under sub-section (6) of Section 43A

- (f) an order under sub-section (4) of Section 25 or clause (c) of sub-section (9) of Section 25
- (g) an order or direction passed under sub-section (5), sub-section (6) and sub-section (9) of section 48 or
- (h) an order or direction passed under sub-section 2(a) or sub-section (4) of Section 48-A or
- (i) a notice for penalty under sub-section (5) of section 48A or
- (j) an order of seizure of vehicle passed under subsection (6) of section 48A

## **7. Determination of Disputed Questions (Section 57)**

- 1. If any question arises, otherwise than in a proceeding pending before a court or before an assessing authority under section 25, section 26 or section 29, whether, for the purpose of this Act-
  - (a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer or
  - (b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term or
  - (c) any transaction is a sale or purchase and, if so, the sale or, as the case may be, the purchase price therefore or
  - (d) any particular dealer is required to obtain registration or
  - (e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof

the person or the dealer concerned may, after depositing the fee specified in section 74 submit an application to the Commissioner along with the relevant documents
- 2. The Commissioner shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising  
Provided that before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such enquiries as he considers necessary for the decision of the question
- 3. No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing officer, appellate authority, revising authority or the Tribunal

### *Appeals and Revision*

4. No question which arises from an order already passed, in the case of applicant, by any authority under this Act or the Tribunal, shall be entertained to be determined under this section.
5. Except as provided in point (3), a decision given by the Commissioner under this section shall, subject to the provisions of section 53 and section 55 be final and binding on the applicant, the assessing authority and the Appellate authority
6. A copy of the decision given under this section shall be sent to the applicant and the assessing authority concerned

### **8. Objection to Jurisdiction (Section 64)**

1. No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal unless such objection was taken up before the assessing authority at the earliest possible opportunity and unless, in the opinion of the appellate or revising authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby
2. Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the assessing authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him, shall not be refundable to him, in consequence of the assessment being so set aside or quashed

### **9. Additional Evidence in Appeal (Section 67)**

The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the appellate authority or the Tribunal except where the evidence sought to be adduced in evidence, which the assessing authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the assessing authority.

## Chapter 14

### Offences and Penalties

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#### **1. Offences by a Dealer or other Person (Section 58)**

If the assessing authority is satisfied that any dealer or other person has committed the offence mentioned in any clause of column (1) of the following chart it may, after such enquiry as deemed necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him the amount mentioned in the related column (2), namely-

<b>Column – 1</b>	<b>Column – 2</b>
<b>Offences</b>	<b>Penalties</b>
(i) being liable for registration under this Act carries on or continues to carry on business as a dealer beyond thirty days from the date on which he becomes liable to obtain registration, without obtaining registration under and in accordance with the provisions of section 15 or section 16 or without furnishing the security demanded under section 20;	(i) a sum of rupees two hundred for each month or part thereof for the default during the first three months and rupees five hundred for every month or part thereof after the first three months during which the default continues;
(ii) not being a registered dealer falsely represents that he is or was a registered dealer at the time when he sells or buys goods;	(ii) a sum not exceeding five thousand rupees;
(iii) knowingly uses a false registration number including the registration number of another person, with a view to evade or avoid or shift the liability to pay the tax;	(iii) a sum not exceeding ten thousand rupees;
(iv) has, without reasonable cause failed to furnish the return of his	(iv) a sum not less than ten percent, but not exceeding twenty

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turnover or to furnish it within the time allowed;	five percent of the tax due if the tax due is up to ten thousand rupees and fifty percent if the tax due is above ten thousand rupees; Provided where the time for extension has been obtained and late fee deposited the said penalty shall not be imposed; Provided further in cases where the tax liability is nil and the extension of time with late fee has not been obtained, a sum not exceeding rupees two thousand for each month or part thereof shall be imposed as penalty.
(v) has submitted a false return of his turnover under this Act;	(v) a sum not exceeding ten thousand rupees, or the amount of tax involved, whichever is higher;
(vi) has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover;	(vi) a sum not less than fifty percent but not exceeding two hundred present of the amount of tax which would thereby have been avoided,
(vii) has, without any reasonable cause failed- (a) to deposit the tax due under the Act, before furnishing the return or along with the return;	<sup>12</sup> (vii)(a)(i) a sum equal to five percent of such tax if the delay in depositing such tax is not more than a month; and (ii) a sum which shall not be less than ten percent and not more than twenty percent of such tax if the delay in depositing such tax is more than a month and the amount of such tax is up to twenty thousand; and (iii) a sum which shall not be less

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<sup>12</sup> Substituted vide Uttarakhand VAT (Amendment) Act 2015

<ul style="list-style-type: none"> <li>(b) to pay within the time allowed the tax due under the provisions of the Act;</li>   <li>(c) to deposit with the return, the amount realized as tax in excess of the amount due under the Act or any amount in lieu of such tax by giving it any name or color;</li> </ul>	<p>than twenty percent and not more than thirty percent of such tax if the delay in depositing such tax is more than a month and the amount of such tax is more than twenty thousand,</p> <p>(b) (i) a sum equal to five percent of such tax if the delay in depositing such tax is not more than a month; and</p> <p>(ii) a sum which shall not be less than ten percent and not more than twenty percent of such tax if the delay in depositing such tax is more than a month and the amount of such tax is up to twenty thousand; and</p> <p>(iii) a sum which shall not be less than twenty percent and not more than thirty percent of such tax if the delay in depositing such tax is more than a month and the amount of such tax is more than twenty thousand.</p> <p>(c) a sum not less than the amount of tax realized or realized in excess but not more than twice the said amount.</p>
<ul style="list-style-type: none"> <li>(viii) fails to pay the amount in respect to which moratorium has been granted under the provisions of section 76, within the time specified therein;</li> </ul>	<p>(viii) a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is up to ten thousand rupees and fifty percent if the amount due is above ten thousand rupees.</p>
<ul style="list-style-type: none"> <li>(ix) demands or charges on the sale or purchase of any goods tax</li> </ul>	<p>(ix) a sum not exceeding ten</p>

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not due under the provisions of this Act;	thousand rupees,
(x) realizes any amount as tax on sale or purchase of goods or any amount in lieu of such tax by giving it a different name or color in contravention of the provisions of sub-section (1) or sub-section (2) of section 22;	(x) a sum not less than the amount of tax realized or realized in excess but not exceeding three times of the said amount,
(xi) wrongly claims an amount as input tax credit or claims an input tax credit on the basis of false Sale Invoice;	(xi) a sum of rupees five thousand or three times of the amount claimed whichever is higher
(xii) produces a false proof of deposit of any amount of tax or fee or penalty or any sum due under this Act;	(xii) a sum of rupees five thousand or three times of the amount claimed whichever is higher.
(xiii) does not maintain books, accounts, documents in the manner specified in Section 59; or	(xiii) a sum not exceeding five thousand rupees,
(xiv) has maintained or produced false accounts, registers or documents;	(xiv) a sum not less than fifty percent but not exceeding two hundred percent of the amount of tax which would thereby have been avoided;
(xv) 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 any material particulars;	(xv) a sum not exceeding rupees two thousand for each default;
(xvi) fails to furnish the audit report in contravention of the provisions of section 62;	(xvi) a sum not exceeding five thousand rupees;
(xvii) refuses to permit or refuses	(xvii) a sum not exceeding ten

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or neglects to produce for inspection or examination any book, document or account or display materials in a computer or in a computer floppy or refuses to allow copies or printout to be taken in accordance with the provisions of section 42;	thousand rupees;
(xviii) closes or leaves the place of his business with a view to prevent inspection under this Act or the rules made thereunder;	(xviii) a sum not exceeding five thousand rupees;
(xix) Omitted w.e.f. 01-03-2013	
(xx) Fails or refuses to stop or keep stationary his vehicle for checking at a check post or barrier u/s 50-A or at any other place when so required to do so by an officer empowered u/s 42, 43, 43-A, 48 or 48-A;	(xx) a sum not exceeding ten thousand rupees.
(xxi) Fails to prepare, submit or carry the "Transit Pass" as per provision of section-50 or to deliver the same as provided in section 50A;	(xxi) A sum not exceeding forty percent of the value of goods involved or three times of the tax livable on such goods under any of the provisions of this Act, whichever is higher.
(xxii) the owner or a person duly authorized by such owner or the driver or person-in-charge of a vehicle or of goods in movement , as the case may be, after preparing or submitting "Transit Pass" for transit of goods through the State, fails to produce copies of the "Transit Pass" along with goods before the officer in-charge of the	(xxiii) A sum not exceeding forty percent of the value of goods involved or three times of the tax livable on such goods under any of the provisions of this Act, whichever is higher.

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check-post setup u/s 50-A or before the officer empowered u/s 42 or 43 or fails to prove that the goods have been carried outside the State as per provisions of Section 50;	
(xxiii) being a transporter or hirer or driver or person in charge of a vehicle has prepared documents showing the destination of goods to a place outside the State, fails to produce copies of authorization for transit of goods along with goods before the officer-in-charge of the exit checkpost and/or fails to prove that after obtaining authorization for transit from officer-in-charge of the entry checkpost, goods have been carried outside the State;	(xxiii) a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher.
(xxiv) tampers with any seal put under sub-section (7) of section 42;	(xxiv) a sum not exceeding twenty five thousand rupees;
(xxv) fails to issue a Sale Invoice in accordance with the provisions of section 60, or has issued a Sale Invoice with incomplete or incorrect particulars or having issued such invoice he has failed to account for it correctly in his books of accounts;	(xxv) a sum of rupees one hundred or double the amount of tax involved, whichever is higher for the first default or two hundred rupees or four times of the tax involved whichever is higher for the second and each subsequent default,
(xxvi) issues a false Sale Invoice, voucher or other documents which he knows or has reasons to believe, to be false;	(xxvi) a sum not exceeding ten thousand rupees;
(xxvii) fails to issue a challan or transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the	(xxvii) a sum of rupees one hundred or double the amount of tax involved, whichever is higher for the first default or two hundred rupees

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provisions of this Act;	or four times of the tax involved whichever is higher, for the second and each subsequent default.
(xxviii) issues or receives a false Sale Invoice without sale or purchase of goods shown in such false Sale Invoice;	(xxviii) a sum not exceeding five thousand rupees.
(xxix) issues or furnishes a false or a wrong form of declaration or certificate by reason of which a tax on sale or purchase ceases to be leviable under this Act or the rules made thereunder;	(xxix) a sum of exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher.
(xxx) makes use of or furnishes form of declaration or certificate which has not been obtained by him or his principal or agent in accordance with the provisions of this Act or the rules made thereunder;	(xxx) a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher.
(xxxi) transfers a form of declaration or certificate to any other person except for lawful purposes under the provisions of this Act or the rules made thereunder ;	(xxxi) a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of goods mentioned on it whichever is higher and if the form of declaration or certificate is blank, a sum not exceeding ten thousand rupees.
(xxxii) receives or possesses or uses or furnishes with an intention to cause loss to the revenue, any form of declaration or certificate which has not been obtained by him or his principal or agent in accordance with the provisions of this Act or the rules made thereunder;	(xxxii) a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of the goods mentioned on it whichever is higher, and if the form of declaration or certificate is blank, a sum not exceeding ten thousand rupees,

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(xxxiii) obstructs or prevents any officer from performing any of his functions or discharging his duties under this Act or abuses or threatens any officer;	(xxxiii) a sum not exceeding ten thousand rupees,
(xxxiv) provokes or invites other person or persons with a view to prevent any officer from performing his functions or discharging his duties under the Act or participates in an unlawful assembly with a view to prevent an officer from performing his functions or discharging his duties under this Act, or abuses or threatens any officer;	(xxxiv) a sum not exceeding ten thousand rupees,
(xxxv) makes false verifications or declaration on an application for registration or in connection with any other proceeding under this Act;	(xxxv) a sum not exceeding ten thousand rupees,
(xxxvi) otherwise acts in contravention of the provisions of this Act or the rules made thereunder,	(xxxvi) a sum not exceeding five thousand rupees.
(xxxvii) being liable for obtaining Tax Deduction Account Number under sub-section (13) of Section 35, fails to apply for Tax Deduction Account Number.	(xxxvii) a sum of rupees five hundred for each month or part thereof for the default during the first three months and rupees one thousands for every month or part thereof after the first three months during which the default continues.

Explanation - For the purpose of this section, the Assessing Authority includes an officer not below the rank of Commercial Tax Officer Grade I, posted at the check-post or also an officer authorized to exercise powers under section 42 or section 43 or both, as the case may be.

A copy of the order passed above shall be served on a dealer or the person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person within thirty days of such service failing which it may be recovered as if it were an arrear of land revenue

No order shall be made above, unless the dealer or the other person concerned has been heard or has been given a reasonable opportunity of being heard

The provisions of this section shall mutatis mutandis be applicable to the executer, administrator and the legal representative of the deceased person

## **2. Liability on issuing false certificate etc**

- Notwithstanding anything to the contrary contained elsewhere in this Act, and without prejudice to section 58 a person who issues a false or wrong certificate or declaration under any provision of this Act or the Rules framed thereunder, to another person by reason of which a tax leviable under this Act on the transaction of purchase or sale made to or by such other person ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued
- Provided that before taking any action under this section, the person concerned shall be given an opportunity of being heard
- Explanation: where a person issuing a certificate or declaration discloses therein his intention to use goods purchased by him for such purpose as will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong

## **3 Certain Presumptions in Affixing Tax Liability (Section 65)**

1. Where any goods relating to business are-
  - (a) traced to a dealer and are found in a building or place but the dealer has not accounted for such goods in his books of account or
  - (b) traced to a dealer and are found in a vehicle, whether belonging to the dealer or not, such goods are not accompanied with the documents under any provision of this Act or

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- (c) found in the custody of any person who claims to carry on any profession other than business but fails to prove that such goods belong to some other person or dealer  
it shall be presumed that such goods have been imported or purchased within the State by such dealer or person with a view to evade payment of tax on sale of such goods or if the goods found are for use in manufacture, the tax on the sale of goods to be manufactured by using such goods
2. Where at a check post or any other place inside the State it is found that any taxable goods for the purpose of business, are being imported without a form of declaration, unless otherwise proved after furnishing proper and sufficient evidence, it shall be presumed that-
- (a) such goods are being imported with a view to evade payment of tax under this Act; and
  - (b) such goods are being imported with a view to evade payment of tax on sales of such goods under this Act
- Provided that if goods are meant for use in manufacture of any goods, it shall be presumed that goods are being imported with a view to evade payment of tax on sale of goods to be manufactured by using such goods
3. Where any books or accounts or documents are found in any place or building or vehicle, unless the person in charge of such place or building or vehicle, after furnishing proper and sufficient evidence, proves that the same belong to some other person or dealer, such books, accounts or documents shall be deemed to belong to such person, and such person shall be deemed to be a dealer in respect of such transactions relating to business of purchase and sale of goods, as may be found in such books, accounts or documents
4. Where any transactions of sale and/ or purchase of any goods relating to a dealer are found recorded in any books or accounts or documents of any other dealer and if such transactions are not found recorded in the books or accounts or documents maintained by the former dealer in the ordinary course of business, it shall be presumed that the transaction related to such former dealer and that such goods have been imported or purchased within the State with a view to evade payment of tax on sale of such goods or if the goods recorded in such books, accounts or documents are for use in manufacture, the tax on sale of goods to be manufactured by using such goods

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5. Where in respect of purchase or sale of any goods within the State, the challan or transport invoice is required to be issued or obtained or to accompany the goods during transit and if such provisions have not been complied with or the goods in whole or part are not covered by such documents, it shall be presumed that such goods have been sold, or as the case may be, purchased with a view to evade payment of tax on purchase or sale of such goods or, if the goods are for use in the manufacture, the tax on the sale of goods to be manufactured by using such goods
6. Where a dealer obtains any Sale invoice from a registered dealer without making purchase of goods shown in such Sale invoice, it shall be presumed that the dealer obtaining such documents has purchased goods shown in such document from other person with a view to evade payment of tax on purchase of such goods in the circumstances in which tax cannot be levied on the person selling such goods and tax shall be payable under the provisions of this Act on such purchases by the dealer purchasing the goods
7. Where the Assessing Authority is satisfied that a "scheme" has been entered into or carried out such that a person, in connection with the scheme, has obtained the tax benefit resulting in:
  - (a) a reduction in the liability of any person to pay tax or
  - (b) an increase in the entitlement of a person to an input tax credit or refund or
  - (c) any other avoidance or postponement of liability for the payment of tax

it shall be presumed that such person or persons who carried out or entered into the scheme did so for the sole and dominant purpose to enable such person to obtain the tax benefit, and the assessing authority may determine the liability of such person who has obtained the benefit as if the scheme had not been entered into or carried out. Explanation: The "scheme" includes any agreement, arrangement, promise, or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings, and any plan, proposal, course of action, or course of conduct

## **Appendix 1**

### **Uttarakhand VAT Forms List**

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<b>Form No.</b>	<b>Particulars</b>
Form I	Application for Registration/ Voluntary Registration under Section 15 or Section 16 of The Uttarakhand Value Added Tax Act, 2005
Form I (A)	Application for Issue of Voluntary Registration under Sub-Section (7) of Section 15 of The Uttarakhand Value Added Tax Act, 2005 To A Dealer Registered under Uttarakhand (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002
Form I (B)	An Application Form For Allotment Of TDAN (Tax Deduction A/C Number u/s (35)
Form I (C)	Application for Registration of a Casual Dealer under The Uttarakhand Value Added Tax Act, 2005
Form I - (D)	Information regarding change of business
Form II	Certificate of Registration
Form III	Periodical Return of Turnover of Sales and Purchases
Form III (A)	Periodical Return of Tax Deduction at Source under Section 35 of The Uttarakhand Value Added Tax Act, 2005
Form III-(B)	Periodical Return of Turnover For Works Contractor U/s. 7(2) of the Uttarakhand Value Added Tax Act, 2005
Form III-(C)	Periodical Return of Turnover of Sales & Composition Money U/s. 7(1) of the Uttarakhand Value Added Tax Act, 2005
Form IV	Annual Return of Turnover of Sales and Purchases
Form IV (A)	Annual Return of Tax Deducted at Source under Section 35 of The Uttarakhand Value Added Tax Act, 2005
Form IV-(B)	Annual Return Of Turnover For Works Contractor U/S 7(2) Of Uttarakhand Value Added Tax Act, 2005
Form IV (C)	Annual Return Of Turnover Of Sales And Composition Money U/S 7 (1) of Uttarakhand Value Added Tax Act, 2005
Form V	Notice of Assessment, and Demand for Payment of Tax

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Form V (A)	Notice of Demand for Payment of Penalty
Form VI	Challan for payment of Value Added Tax /Trade Tax/ Central Sales Tax into Treasury/ Sub -Treasury/ R.B. I./ S.B.I./Authorized Bank
Form VII	Verification of Collections and Refunds
Form VIII	Certificate of Tax Deducted under Section 35 of Uttarakhand Value Added Tax Act, 2005
Form IX	Application for Recognition Certificate under Sub-Section (7) of Section 4 of The Uttarakhand Value Added Tax Act, 2005
Form X	Government of Uttarakhand Department of Commercial Tax Recognition Certificate
Form XI	Form of Declaration by a dealer holding a Recognition Certificate
Form XII	Register to be maintained by registered dealers who obtain forms from the Commercial Tax Department
Form XIII	Register of receipt and issue of Forms to be maintained by Assistant Commissioner
Form XIV	Ledger to be maintained by the Assistant Commissioner in respect of dealers to whom Forms are issued by him
Form XV	Register to be maintained in respect of Forms surrendered by Registered dealers and so cancelled by the Assistant Commissioner
Form XVI	Form of Certificate of Import
Form XVII	Form of Certificate of Import
Form XVIII	Trip sheet
Form XIX	Application for Form of Certificate for Import
Form XX	Register of issue of Certificates for Import to be maintained by Assistant Commissioner
Form XXI	Register of unused Certificates for Import surrendered by unregistered dealers or persons to be maintained by Assistant Commissioner
Form XXII	Application for Composition of Tax under sub-section (1) of section 7 of the Uttarakhand Value Added Tax Act, 2005
Form XXIII	Tax Refund Order

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Form XXIV	Tax Adjustment Voucher
Form XXV	Advice of Refund of Tax
Form XXVI	Application for issue of Duplicate Refund Voucher
Form XXVII	Form of Indemnity Bond
Form XXVIII	Register of Sales
Form XXIX	Register of Purchases
Form XXX	Form of Summons under the Uttarakhand Value Added Tax Rules, 2005
Form XXXI	Notice for Audit of Business Affairs
Form XXXII	Audit Report
Form XXXIII	Acknowledgement

## **Appendix 2**

### **VAT Schedule**

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**SCHEDULE I-** List of goods on which no tax shall be payable under this Act.

**SCHEDULE II (A):** List of goods taxable at every point of sale at the rate of one percent.

**SCHEDULE II (B):** List of goods taxable at every point of sale at the rate of five percent.

**SCHEDULE II (C):** List of goods taxable at every point of sale at the rate of 32.5% and 20%.

**SCHEDULE III:** List of Special Category Goods taxable at the point of sale at the rate specified therein.

**SCHEDULE IV:** List of goods exempt from whole or any part of the tax as specified in the Schedule, subject to the conditions therein.

**SCHEDULE V:** List of specified person or International Organizations entitled to refund of tax paid by it on the purchase of taxable goods, subject to the conditions.