

# West Bengal Value Added Tax Act, 2003



**Directorate of Commercial Taxes, West Bengal**  
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## **West Bengal Act XXXVII of 2003 THE WEST BENGAL VALUE ADDED TAX ACT, 2003**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Kolkata Gazette, Extraordinary*, of the 27th December, 2004.]

*An Act to levy tax on sale of goods in West Bengal on the basis of value added to such goods at each stage of sale of such goods and on purchases of certain goods in West Bengal in specified circumstances and to provide for matters connected therewith or incidental thereto.*

WHEREAS it is expedient to provide for the levy of tax on sale of goods in West Bengal on the basis of value added to such goods at each stage of sale of such goods and on purchases of certain goods in West Bengal in specified circumstances and to provide for matters connected therewith or incidental thereto;

It is hereby enacted in the Fifty-fourth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

### **CHAPTER I Preliminary.**

Short title, extent and commencement.

- 1.** (1) This Act may be called the West Bengal Value Added Tax Act, 2003.  
(2) It extends to the whole of West Bengal.  
(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date or dates as the State Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act.

Definitions.

- 2.** In this Act, unless the context otherwise requires,—
- (1) "Additional Commissioner" means an Additional Commissioner of Sales Tax appointed under sub-section (1) of section 5;
- (2) "Appellate and Revisional Board" means <sup>1</sup>[the West Bengal Sales Tax Appellate and Revisional Board] constituted under section 7;
- (3) "appointed day", in relation to any provision of this Act, means the date on which such provision comes into force;
- (3A) "appropriate Government Treasury" means—
- (a) in the case of a dealer in Kolkata—
- (i) the Kolkata Branch of the Reserve Bank of India for payments under the Act exceeding five hundred rupees, and

- (ii) such head office, main office, branch or branches of any bank in Kolkata as may be authorised in this behalf by the State Government for the purpose of accepting deposits for payments under the Act, and
  - (b) in other cases, the treasury or sub-treasury of the sub-division where the dealer's place of business is situated or, in the event of the dealer having more than one place of business, where the chief branch or head office of the business is situated;
- (4) "Bureau" means the Bureau of Investigation constituted under section 8;
- (5) "Business" includes —
  - (a) any trade, commerce, manufacture, execution of works contract or any adventure or concern in the nature of trade, commerce, manufacture or execution of works contract, whether or not such trade, commerce, manufacture, execution of works contract, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, execution of works contract, adventure or concern; and
  - (b) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, execution of works contract, adventure or concern;
- <sup>2</sup>[(6) "Capital goods" means such goods meant for use in the manufacture or for execution of works contract in West Bengal, and such other goods as are required by a reseller to keep the goods in saleable condition or to effect the sale properly in West Bengal;]
- (7) "casual dealer" means a person, other than a dealer who, whether as principal, agent or in any other capacity, has occasional transaction involving buying, selling, supplying or distributing goods in West Bengal, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, whether he has fixed place of business in West Bengal or not,—
  - (a) a transporter, carrier or transporting agent, as defined in the clause (52) who, while carrying any goods in his goods vehicle as defined in clause (16), fails to disclose the name and address of the consignor or consignee in West Bengal or fails to furnish a copy of the invoice, challan, transport receipt or consignment note or document of light 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 the Commissioner that such goods are for his personal use or consumption,
 and such transporter, carrier or transporting agent, or owner or lessee or occupier of a warehouse, shall be deemed to have purchased such goods on his own account;
- (8) "Commissioner" means the Commissioner of Sales Tax appointed under sub-section (1) of section 3;

- (9) "company" means a company as defined in section 3 of the Companies Act, 1956, and includes a body corporate or corporation within the meaning of clause (7) of section 2, or a foreign company referred to in section 591, of that Act;
- (10) "contractual transfer price" in relation to any period, means the aggregate of the amount received or receivable by a dealer in respect of transfer of property in goods (whether as goods or in some other form) in execution of any works contract, as defined in the clause (57), whether executed fully or partly during such period;  
<sup>4</sup>[ \*\*\* ]
- (11) "dealer" means any person who carries on the business of selling or purchasing goods in West Bengal or any person making sales under section 14, and includes—
- (a) an occupier of a jute-mill or shipper of jute,
  - (b) Government, a local authority, a statutory body, a trust or other body corporate which, or a liquidator or receiver appointed by a court in respect of a person, being a dealer as defined in this clause, who, whether or not in the course of business, sells, supplies or distributes directly or otherwise goods for cash or for deferred payment or for commission, remuneration or other valuable consideration,
  - <sup>5</sup>[(ba) a person who has set up an establishment with an intention of selling or purchasing goods in West Bengal,]
  - (c) a society including a co-operative society, club or any association which sells goods to its members or others for cash, or for deferred payment, or for commission, or for remuneration, or for other valuable consideration,
  - (d) a factor, a broker, a commission agent, a *del credere* agent, an auctioneer, an agent for handling or transporting of goods or handing of document of title to goods, 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 selling goods and who has, in the customary course of business, authority to sell goods belonging to principals;
- (12) "digital signature" means authentication of any electronic record by a person by means of an electronic method or procedure in accordance with the provisions of section 3 of the Information Technology Act, 2000; 21 of 2000
- (13) "director", in relation to a company, includes any person occupying the position of director, by whatever name called;
- (14) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000, and includes micro film or computer generated micro film;
- (15) "goods" includes all kinds of movable property other than—
- (a) <sup>3</sup>[ ] actionable claims, stocks, shares or securities,

- (b) country liquor,
  - (c) foreign liquor, whether made in India or not, including *brandy, whisky, vodka, gin, rum, liqueur, cordials, bitters* and *wines* or a mixture thereof *beer, ale, porter, cider, perry*, and other similar potable fermented liquors,
  - (d) lottery tickets, and
  - (e) motor spirit of any kind;
- (16) "goods vehicle" means any motor vehicle as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988, constructed or adapted for use for transportation of goods or any motor vehicle not so constructed or adapted when used for the transportation of goods, and includes a trailer attached to such vehicle and any means of transportation including an animal to carry goods from one point to another point;
- (17) "Government" means the Central Government, the Government of any State or the Government of any Union Territory;
- (17A) "import" means bringing goods in West Bengal from any place outside West Bengal or from any other country;
- (18) "input tax", in relation to a tax period on or after coming into force of this Act, means the amount of tax,—
- (a) paid or payable under the Act, other than under section 11, by a registered dealer, <sup>6</sup>[other than those enjoying composition under sub-section (3), sub-section (3A), or sub-section (3B), of section 16 or sub-section (4) of section 18] to a registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, at the time of purchasing taxable goods, other than such taxable goods as may be prescribed, during that period,
  - (b) <sup>7</sup>[ \*\*\*\* ]
  - (c) <sup>7</sup>[ \*\*\*\* ];
- (19) "input tax credit" or "input tax rebate", in relation to any period, means the setting off of the amount of input tax, or part thereof, by a registered dealer against the amount of his output tax;
- (20) "interest due" means the amount of interest which remains unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder;
- (20A) "interest payable" means the amount of interest payable under section 33 or section 34 or section 34A;
- (20B) "jute" means the plant known botanically as belonging to the *genus chorchorous*, and includes all the species of that *genus*, whether known commonly as *pat, kosta, nalia*, or by any other name, and also means the plant known botanically as *hibiscus cannabinus* or commonly known as *mesta*;
- (21) "jute-mill" means a factory as defined in, or declared to be a factory under, the Factories Act, 1948, which is engaged wholly or in part in the manufacture of jute products;
- (22) "manufacture", with all its grammatical variations and cognate

- expressions, means producing, making, extracting or processing any goods and includes <sup>8</sup>[rearing ] of seedlings or plants, and raising of man-made forest or other natural resources like minerals, coal etc. for sale;
- (22A) "maximum retail price", in respect of goods taxable under the Act, means maximum price printed on the package of any goods at which such goods may be sold to the ultimate consumer, whether such price is inclusive of tax or not;
- (22B) "motor spirit" means any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.
- Explanation.*— For the purpose of this clause, the expression "motor vehicle" shall include any means of carriage, confidence or transport by land, air or water;
- (23) "net tax", in relation to any period, means—
- (a) in case of a registered dealer, other than those referred to in sub-clause (c) and sub-clause (d), the amount of output tax in excess of the net tax credit, as referred to in sub-section (17) of section 22, claimed by such a registered dealer in accordance with the provisions of this Act and the rules made thereunder,
  - (b) in case of any dealer other than a registered dealer, the amount of output tax,
  - (c) <sup>9</sup>[in case of a registered dealer paying tax at a compound rate under sub-section (3), sub-section (3A), or sub-section (3B), of section 16 or sub-section (4) of section 18, the amount of output tax,]
  - (d) in case of a registered dealer, other than those referred to in sub-clause (a) and sub-clause (c), enjoying deferment of payment of tax, or tax holiday, or remission of tax under clause (a), clause (b), or clause (c) <sup>10</sup>[respectively of sub-section (1) of section 118], the amount of output tax;
- (24) "notification" means a notification published in the *Official Gazette*;
- (25) "occupier of a jute-mill" means the person who has ultimate control over the affairs of the jute-mill;
- (26) "output tax", in relation to any period, means the aggregate amount of tax payable by a dealer liable to pay tax under section 10, section 11, section 12, section 14, sub-section (3) of section 24, and section 27C, and includes tax payable at the compounded rate under sub-section (3) of section 16 or <sup>11</sup>[sub-section (3A), or sub-section (3B), of section 16 or sub-section (4) of section 18], in respect of any sale, or purchase, of goods, or execution of works contractor, made by him West Bengal;
- (27) "partnership", "partner" and "firm" shall have the meanings respectively assigned to them in the Indian Partnership Act, 1932;
- (28) "penalty due" means the penalty found to be unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or rules made thereunder;
- (29) "place of business" means any place where a dealer has set up the

business of selling or purchasing goods or a place from where a dealer sells any goods or where he keeps accounts, registers or documents, including those in the form of electronic records relating to sales of purchases of goods or execution of works contract and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business, and includes any place where the dealer processes, produces or manufactures goods or executes works contract and any warehouse of such dealer;

- (30) "prescribed" means prescribed by rules made under this Act;
- (31) "principal officer", in relation to a company, means the director or managing director of such company, or the secretary authorised to act as principal officer by the Board of Directors of such company;
- (31A) "principal place of business" means any place of business where a dealer keeps all accounts, registers, documents, including those in the form of electronic records, and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business and, includes the chief branch or head office within West Bengal;
- (32) \* \* \* \* \*
- (33) \* \* \* \* \*
- (34) "purchase" means any transfer of property in goods to the person making the purchase for cash or deferred payment or other valuable consideration, but does not include a transfer by way of mortgage, hypothecation, charge or pledge;
- (35) "purchase price" means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed as cash discount, commission or commercial rebates granted at the time of delivery, or before delivery, of such goods but including cost of freight or delivery or distribution or installation or insurance, or any sum charged for anything done by the seller in respect of the goods at the time of delivery of such goods or before delivery thereof, other than interest if separately charged;
- (36) "raw jute" means the fibre of jute which has not been subjected to any process of spinning or weaving, and includes jute cuttings, whether loose or packed in drums or bales;
- (37) "rules" means the rules made under this Act;
- (38) "registered" means registered under section 24;
- (39) "sale" means any transfer of property in goods for cash, deferred payment or other valuable consideration, and includes —
- (a) any transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration,
  - (b) any delivery of goods on hire-purchase or any system of payment by instalments,

- (c) any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,
- (d) 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 any drinks (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,
- (e) any supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration,

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

*Explanation I.*— A sale shall be deemed to take place in West Bengal if the goods are within West Bengal —

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

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

*Explanation II.* — The transfer of property involved in the supply or distribution of goods by a society (including a Co-operative Society), club, firm or any association to its members for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purpose of this Act;

- (40) "sale in West Bengal", when used with respect to a sale made by a dealer, includes <sup>12</sup>[a sale deemed to have taken place in West Bengal in the course of inter-State trade of commerce or in the course of export out of the territory of India];
- (41) "sale price" means the amount payable to a dealer or casual dealer as valuable consideration for the sale, other than the sale referred to in section 14, of any goods and includes —
  - (a) any sum charged for anything done by the dealer or casual dealer in respect of such goods at the time of delivery, or before delivery, of such goods,
  - (b) any sum charged for freight, delivery, distribution, installation or insurance, by such dealer at the time of delivery, or before delivery, of such goods,

(c) any tax, duty or charges levied or leviable (other than the tax charged separately under this Act, subject to the provision as mentioned in the *Explanation* and cess levied under the West Bengal Transport Infrastructure Development Fund Act, 2002), in respect of such goods,

but does not include any sum allowed as cash discount, commission or other commercial rebate on the value of such goods at the time of delivery, or before delivery of such goods and interest if separately charged.

*Explanation.*— For the purpose of this clause, the expression "sale price" of a dealer, enjoying payment of tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, or selling to any person other than a dealer of goods upon which maximum retail price as the referred to in clause (22 A) is applicable and where such maximum retail price is inclusive of sales tax, shall include any tax payable under this Act, including the tax referred to in section 10, or section 12;

- (42) "shipper of jute" means any person who purchases raw jute and supplies it himself or by an agent to any person including himself outside West Bengal;
- (43) "Special Commissioner" means a Special Commissioner appointed under sub-section (1) of section 4;
- (44) "State Government" means the Government of West Bengal;
- (45) "tax" means the tax due as defined in clause (46) or tax payable as defined in clause (49) under this Act;
- (46) "tax due" means the amount of tax which remains unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder;
- (47) "taxable goods" means goods other than those specified in Schedule A;
- (48) "tax invoice" means an invoice containing such particulars as may be prescribed;
- (49) "tax payable" means the tax payable under this Act on sales or purchases effected or for execution of works contract by a dealer or casual dealer but does not include tax due as defined in clause (46);
- (50) "tax period" means such period, as may be prescribed, for which tax is payable under the Act;
- (51) "Tax Recovery Officer" means a Tax Recovery Officer appointed by the State Government under sub-section (4) of section 55;
- (52) "transporter, carrier or transporting agent" means a person who carries on the business of transporting goods on account of any other person into, or outside, or within, West Bengal;
- (53) "Tribunal" means the West Bengal Taxation Tribunal established under the section 3 of the West Bengal Taxation Tribunal Act, 1987;
- (54) "turnover of purchases", in relation to any period, means,—
- (a) <sup>13</sup>[ \*\*\* ],
- (b) in case of a shipper of jute liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable



by such shipper of jute in respect of the quantities of raw jute purchased by him in West Bengal and despatched by him during such period to any place outside West Bengal by any means of transit,

(c) in case of any dealer liable to pay tax under section 12, the aggregate of the purchase prices or parts of purchase prices payable by such dealer in respect of the goods purchased by him during such period for use of such goods in West Bengal, after deducting the amounts, if any, refunded to the seller during such period in respect of any such goods purchased but returned to the seller within six months of such purchase;

(55) "turnover of sales", in relation to any period, means the aggregate of the sale-prices or parts of sale-prices received or receivable by the dealer in respect of sales as defined in clause (39) of the Act and in clause (g) of section 2 of the Central Sales Tax Act, 1956, of goods made during such period after deducting therefrom

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(a) the sale-prices or the parts of sale-prices, if any, in respect of goods during such period, which are shown to the satisfaction of the Commissioner to have been purchased by the dealer in West Bengal, upon payment of tax on the maximum retail price of such goods or, where tax on maximum retail price of such goods were paid in West Bengal in an earlier occasion, and

(b) the amounts, if any, refunded by the dealer in respect of any such goods returned or rejected by the purchaser within six months from the date of such sales;

(56) "warehouse" means any enclosure, building or place where a dealer, casual dealer or any other person keeps stocks of goods, and includes a vessel, vehicle or godown;

(57) "works contract" means any agreement for carrying out for cash, deferred payment or other valuable consideration —

(a) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property,

(b) the installation or repair of any machinery affixed to a building or other immovable property,

(c) the overhaul or repair of —

(i) any motor vehicle,

(ii) any sea-going vessel, river craft or steamer,

(iii) any other vessel propelled by internal combustion engine or by any other mechanical means,

(iv) railway engine,

(v) any aircraft, or

(vi) any component or accessory part of any of the goods mentioned in items (i) to (iv), or

(d) the fitting of, assembling, altering, ornamenting, finishing, furnishing, improving, processing, treating, adapting or printing on any goods;

- (58) "year" means the year commencing on the first day of April and ending on the last day of March;
- (59) "zero-rated sale" means a sale of any goods on which no tax is chargeable but credit for the input tax related to that sale is admissible.

- [ 1. Substituted w.e.f. 1.4.2005 by S. 6(1)(a) of WB Act XIII of 2005 for "the West Bengal Commercial Taxes Appellate and Revisional Board".
2. Substituted w.e.f. 1.4.2005 by S. 6(1)(b) of WB Act XIII of 2005 for '(6) "Capital goods" means such goods meant for use in the manufacture or for execution of works contract in West Bengal, and such other goods as are required by a reseller to keep the goods in saleable condition or to effect the sale properly in West Bengal;'.
3. Omitted the word "newspaper" w.e.f. 1.4.2005 by S. 6(1)(c) of WB Act XIII of 2005.
4. Omitted w.e.f. 01.08.2006 by S. 12(1)(a) of WB Act XVIII of 2006 — "*Explanation.*— For the purpose of this clause, the expression "partly during such period" means the year or part of the year for which assessment is made whether or not any tax invoice, invoice or been has been raised in respect of such contract."
5. Substituted w.e.f. 01.08.2006 by S. 12(1)(b) of WB Act XVIII of 2006 for "(ba) a person who has set up a business of selling or purchasing goods in West Bengal;".
6. Substituted w.e.f. 01.08.2006 by S. 12(1)(c)(i) of WB Act XVIII of 2006 for " other than those enjoying composition under sub-section (3) of section 16 or sub-section (4) of section 18".
7. Omitted w.e.f. 01.08.2006 by S. 12(1)(c)(ii) & (iii) of WB Act XVIII of 2006 the following —  
 "(b) payable under section 11 by a registered dealer on his turnover of purchases, referred to in sub-clause (a) of clause (54) of section 2, of raw jute during that period, and"  
 "(c) payable under section 12 by a registered dealer, other than those enjoying composition under sub-section (3) of section 16 or sub-section (4) of section 18, on his turnover of purchases referred to in sub-clause (c) of clause (54) of section 2, where such purchases made during that period, other than purchases of such taxable goods as may be prescribed".
8. Substituted w.e.f. 01.08.2006 by S. 12(1)(d) of WB Act XVIII of 2006 for "printing, rearing".
9. Substituted w.e.f. 01.08.2006 by S. 12(1)(e)(i) of WB Act XVIII of 2006 for "(c) in case of a registered dealer who has been allowed to pay tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, the amount of output tax;".
10. Substituted w.e.f. 01.04.2005 by S. 12(1)(e)(ii) of WB Act XVIII of 2006 for "respectively of section 118".
11. Substituted w.e.f. 01.08.2006 by S. 12(1)(f) of WB Act XVIII of 2006 for "sub-section (4) of section 18".
12. Substituted w.e.f. 01.08.2006 by S. 12(1)(g) of WB Act XVIII of 2006 for "a sale in the course of inter-State trade or commerce".
13. Omitted w.e.f. 01.08.2006 by S. 12(1)(h) of WB Act XVIII of 2006 "(a) in case of an occupier of a jute-mill liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable by such occupier for the quantities of raw jute purchased by him during such period after deducting the amounts, if any, refunded to him by the seller during such period in respect of any quantity of raw jute returned to the seller within ninety days from the date of its purchase and such other amounts as may be prescribed".]

## CHAPTER II

### **Taxing Authorities, Appellate and Revisional Board and Bureau.**

Commissioner.

**3.** (1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Sales Tax.

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

(3) The Commissioner may —

(a) withdraw to himself from a Special Commissioner, or an Additional Commissioner, or any person appointed under section 6 any case or matter which the Special Commissioner or the Additional Commissioner or such person is competent to deal with in exercise or performance of the powers or duties specified under sub-section (2) of section 4 or sub-section (2) of section 5 or sub-section (2) of section 6 respectively;

(b) transfer any case or matter from a Special Commissioner competent to deal with the same to another Special Commissioner so competent;

(c) transfer any case or matter from an Additional Commissioner competent to deal with the same to another Additional Commissioner so competent; or

(d) transfer any case or matter from any person appointed under section 6 competent to deal with the same to another person appointed under that section so competent.

(4) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by an order in writing, delegate any of his powers under this Act except those under sub-section (13) of section 93.

(5) Any person appointed as the Commissioner under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Commissioner.

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Special  
Commissioner

**4.** (1) The State Government may appoint one or more persons to be the Special Commissioner of Commercial Taxes.

(2) The Special Commissioner shall have such powers, and shall be entitled to perform such duties, of the Commissioner as the State Government may, by notification, specify.

(3) Any reference to the Commissioner in this Act shall, in respect of the powers and duties specified in the notification under sub-section (2), be deemed to include a reference to the Special Commissioner.

(4) Any person appointed as the Special Commissioner under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Special Commissioner.

Additional

**5.** (1) The State Government may appoint one or more persons to be the

Commissioner

Additional Commissioner of Sales Tax, and such person or persons shall assist the Commissioner.

(2) An Additional Commissioner shall have such powers, and shall be entitled to perform such of the duties, of the Commissioner as the State Government, by notification, specify.

(3) Any reference to the Commissioner in this Act shall, in respect of the powers and duties specified in the notification under sub-section (2), be deemed to include a reference to an Additional Commissioner.

(4) Any person appointed as the Additional Commissioner under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Additional Commissioner.

Other persons  
appointed to assist  
the Commissioner

6. (1) The State Government may appoint such other persons to assist the Commissioner as it thinks fit and may specify the area or areas over which such persons shall exercise jurisdiction.

(2) The persons appointed under sub-section (1) shall exercise such powers as may be conferred or prescribed by this Act or delegated to them in writing by the Commissioner under sub-section (4) of section 3.

(3) Any person appointed to assist the Commissioner, under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such person ceases to be the person to assist the Commissioner.

Appellate and  
Revisional Board

7. (1) The State Government may constitute a West Bengal Tax Appellate and Revisional Board for discharging the functions as referred to in Section 87.

(2) The State Government such number of members of the Appellate and Revisional Board as the State Government thinks fit and shall appoint one of the members of the Appellate and Revisional Board to be the President thereof (hereinafter referred to in this section as the President).

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

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

(5) The functions of the Appellate and Revisional Board may be discharged by any of the members sitting either or singly, or in Benches of two or more members, as may be determined by the President.

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

Provided that if, at any time, the Appellate and Revisional Board consists of two members and they are divided, the decision of the Appellate and Revisional Board shall be that of the President.

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

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

(8) The Appellate and Revisional Board shall have the power to award costs in any matter decided by it for such amount as it may consider reasonably justified in the facts and circumstances of the cases.

(9) The amount of cost awarded by the Appellate and Revisional Board against a dealer shall be recoverable from him as if it were the tax due from him under this Act and, in case of default by him, such dues shall be recovered as an arrear of land revenue:

Provided that the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913, shall not apply to a proceeding for recovery of any cost awarded under this sub-section.

(10) On the cost being awarded by the Appellate and Revisional Board against the State Government, the Commissioner shall arrange for payment of such cost.

(11) The President or any member of the West Bengal Commercial Taxes Appellate and Revisional Board appointed under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed as the President or the member of the Appellate and Revisional Board under this Act and shall continue in office as such till he ceases to be such President or member.

**8A.** (1) The State Government may, by notification, establish a Commission to be known as the West Bengal Value Added Tax Settlement Commission (hereinafter referred to as the "Settlement Commission") to discharge the function assigned to it under the Act.

(2) The Settlement Commission shall consist of not less than three members.

(3) No person shall be eligible for appointment as a member of the Settlement Commission, unless—

(a) he is an Additional Commissioner or a Special Commissioner;

or

(b) he has been, prior to his retirement on superannuation from the service of the State Government, an Additional Commissioner or a Special Commissioner.

(4) A member of the Settlement Commission shall hold office for a term of two years from the date on which he enters upon his office

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Establishment of  
West Bengal  
Value Added Tax  
Settlement  
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Filing of application  
to Settlement  
Commission.

or until he attains the age of sixty-two years, whichever is earlier.

- (5) The other terms and conditions of appointment, salary or allowances payable to a member shall be such as may be prescribed.
- (6) A member of the Settlement Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
- (7) The Settlement Commission shall sit in the bench of three members at such place, and discharge its functions in such manner, as may be prescribed.

- 8B.** (1) A dealer who intends to make an application for settlement of any case to the Settlement Commission, shall—
- (a) in case of any pending case, within one hundred and twenty days from the date of coming into force of this section; or
  - (b) in any other case, within one hundred and twenty days from the date of receipt of notice of demand, the date of commencement of proceedings under section 93 or the date of registration of a dealer as a sick unit, as the case may be, apply, in such form, and in such manner, as may be prescribed.

Provided that an appeal which has been preferred after the expiry of the period prescribed for filing of such appeal, shall not be taken into consideration for the purpose of this section.

- (2) The dealer shall, in his application, state the terms and conditions on which he is willing to settle the case.

*Explanation.*—For the purpose of this section, “case” means—

- (a) any proceedings arising out of an offence alleged to have been committed under section 93;
- (b) a notice of demand served to a dealer for realisation of tax, interest or penalty, if any, on an assessment which is inconsistent with an assessment made earlier under the Act due to application of different rate of tax in respect of any goods or non-admissibility of a claim of such dealer in respect of this assessment, in spite of the fact that no amendment in the provisions of, or no addition, alteration or modification in the Schedule to, the Act has been made during the period of such earlier assessment and this assessment or in spite of the fact that a particular practice or procedure has been followed by the dealer in respect of such earlier assessment;
- (c) a notice of demand served to a dealer for realisation of tax, interest or penalty, if any, on an assessment made under the Act where the dealer claims by producing verifiable documents that the rate of tax made applicable in respect of any goods in such assessment is different from the rate of tax applicable in respect of such goods under the normal trade practice;
- (d) a notice of demand served to a dealer for realisation of tax, interest or penalty, if any, on an assessment made under the Act, where such amount of tax, interest or penalty, if any, remains unrealised on the date

Proceedings  
before Settlement  
Commission.

of its registration as a sick unit with the Board for Industrial and Financial Reconstruction.

- 8C.** (1) On receipt of the application under section 8B, the Settlement Commission shall give an opportunity of hearing to the dealer making such application.
- (2) After hearing the dealer concerned, the Settlement Commission shall refer the matter to the Commissioner for obtaining his views thereon.
- (3) Where the Commissioner on the reference of the application under sub section (2) for his views, finds that such application is not a fit case for settlement by the Settlement Commission, the Settlement Commission shall, *prima facie*, reject such application based on such findings of the Commissioner.
- (4) Where the Commissioner on the reference of the application under sub-section (2) for his views, agrees to the terms and conditions of the dealer, the Settlement Commission shall prepare a report, in writing, in respect of such terms and conditions of settlement.
- (5) The Settlement Commission shall, after preparing the report under sub-section (4), forward it to the State Government for approval, and upon approval of such report by the State Government, the Settlement Commission shall settle the case on payment by the dealer concerned of such sum as may be determined by it and in such manner as may be prescribed.
- (6) The Settlement Commission shall settle the case within a period of three months from the date of receipt of the application and in case the dealer and the Commissioner cannot agree to the terms and conditions of settlement, the application shall stand rejected at the expiry of the period of such three months.
- (7) The provision of section 91 shall apply, *mutatis mutandis*, to the Settlement Commission.

Bar on further  
proceedings in  
respect of case  
settled by  
Settlement  
Commission.

**8D.** Upon settlement of the case by the Settlement Commission under section 8C,—

- (a) the demand involved in the case shall be deemed to have been fully satisfied and the pending case or cases shall not be proceeded with any further; or
- (b) no proceedings by way of review or revision shall be taken in respect of such case; or
- (c) the proceedings as referred to in clause (a) of *Explanation* to section 8B shall not be further proceeded with.’;

Persons appointed  
under the Act to be  
deemed to be  
public servants.

**9.** All persons appointed under this Act to exercise any power or to perform any function thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

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### CHAPTER III

#### Incidence and levy of tax.

Incidence of tax

**10.** (1) Every dealer, who is liable to pay tax immediately before the appointed day under any provision, other than section 15 of the West Bengal since Tax Act, 1994, and who would have continued to be so liable under the said Act on such appointed day had this Act not come into force, shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax under this Act on all his sales, other than those referred to in section 14, effected on and from such appointed day.

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(2) Every dealer to whom the provisions of sub-section (1) do not apply and whose gross turnover of sales calculated from the commencement of the year ending on the date immediately before the appointed day, exceeds the taxable quantum, as applicable to him under the West Bengal since Tax Act, 1994, on the last day of such year shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to be tax under this Act on all his sales, other than those referred to in section 14, effected on and from such appointed day.

(3) Every dealer to whom the provisions of sub-section (1) or sub-section (2) do not apply, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act, be liable to a tax under this Act,—

- (a) on all his sales, other than those referred to in section 14, of goods which have been imported by him from any place outside West Bengal with effect from the date on which the effects first sale of such goods; or
- (b) on all his sales, other than those referred to in section 14, of goods effected on or after the date immediately following the day on which his turnover of sales calculated from the commencement of any year exceeds, at any time within such year, such taxable quantum as may prescribed, and <sup>1</sup>[different taxable quantum may be prescribed for different goods or for different classes of dealers:]

Provided that the taxable quantum as may be prescribed under this clause shall not exceed five lakh rupees.

(4) Every dealer who has been registered under sub-section (2) of section 24 for his application under clause (b) of sub-section (1) of that section, on any date prior to the date on which his turnover of sales exceeds the taxable quantum referred to in clause ( b) of sub-section (3), he shall be liable to pay tax on all his sales from the date of such registration.

(5) Every dealer who incurs liability to pay tax under sub-section (3) of section 27C, shall, notwithstanding that his turnover of sales does not exceed the taxable quantum referred to in clause (b) of sub-section (3), also be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on sales by him of goods from the date of transfer of business.

(6) Every dealer who incurs liability to pay tax under sub-section (2) or sub-section (3) or sub-section (4) of section 14, shall, notwithstanding that his turnover of sales does not exceed the taxable quantum referred to in clause (b) of sub-section (3), also be liable, in addition to the tax payable by him under



section 14, to pay tax on sales of goods effected by him under the section on and from the day he incurs liability to pay tax under that section.

(7) Any dealer who is liable to be tax under the Central Sales Tax Act, 1956, shall, notwithstanding that his turnover of sales under the Act does not exceed taxable quantum referred to in clause (b) of sub-section (3), also be liable to pay tax under this Act on all sales of goods effected by him on and from the date on which he becomes liable to pay tax under that Act.

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(8) Every dealer who has become liable to pay tax under the section, shall continue to be so liable unto the expiry of three consecutive years commencing on and from the appointed day and such further period after the date of such expiry as may be prescribed, during each of which, --

- (a) he has not effected any sale of goods imported by him from outside into West Bengal; or
- (b) his turnover of sales has failed to exceed the taxable quantum referred to in clause (b) of sub-section (3),

and on expiry of such three years or such further period, his liability to pay such tax shall cease:

Provided that where a dealer has become liable to pay tax under sub-section (6) or sub-section (7) and has not separately incurred liability to pay tax under the sub-section (3), he shall continue to be so liable until his liability ceases under section 14 or under the Central since Tax Act, 1956, as the case may be.

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(9) The provisions of sub-section (3), or sub-section (4), or sub-section (5) or sub-section (6), or sub-section (7), as the case may be, shall apply to every dealer whose liability to pay tax ceases under the sub-section (8) as if such dealer has not ever become liable to pay tax under this section .

(10) The Commissioner shall, after making such inquiry as he making necessary and after giving the dealer an opportunity of being heard, fix the date on and from which such dealer has become liable to pay tax under the section.

[ 1. Substituted w.e.f. 1.4.2005 by S. 6(3) of WB Act XIII of 2005 for "different taxable quantum may be prescribed for different classes of dealers:".]

Incidence of tax on purchase of raw jute.

**11.** (1) Every dealer who, as an occupier of a jute mill or a shipper of a jute, has been liable immediately before the appointed day to pay tax under section 12 of the West Bengal Sales Tax Act, 1994 and who would have continued to be so liable on such appointed day under that Act had this Act not come into force, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act and subject to the provisions of sub-section (3), be liable to pay tax on all his purchases of raw jute in West Bengal with effect from the appointed day.

(2) Every dealer, being an occupier of a jute in or a shipper of jute, to whom the provisions of sub-section (1) do not apply, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act and subject to the provisions of sub-section (3), be liable to pay tax on all his purchases of raw jute in West Bengal from the date of first purchase effected on or after the appointed day.

(3) The dealer referred to in sub-section (1) or sub-section (2), as the case

may be, shall be liable to pay tax on all his purchases of raw jute in West Bengal after deducting therefrom such purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or, is within the meaning of section 3 of the Central Sales Tax Act, 1956 or in the course of import of goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act

(4) Every dealer who incurs liability to pay tax under the section, shall continue to be so liable until the expiry of three consecutive years commencing on or after the appointed day and such further period after the date of such expiry as many prescribed, during each of which, he has not effected any purchase of raw jute in West Bengal.

(5) The provisions of sub-section (2) shall apply to every dealer whose liability to pay tax ceases under sub-section (4) as if such dealer had not ever become liable to pay tax under this section.

Contingent liability to pay tax on purchase.

<sup>1</sup>[**12.** (1) Every registered dealer, other than those enjoying composition under sub-section (3), sub-section (3A), or sub-section (3B), of section 16, or sub-section (4) of section 18, shall, in addition to the tax payable under any other provisions of this Act, be liable to pay tax on that part of his turnover of purchases which represents —

- (a) purchases of goods which are not meant for the purposes specified in clause (a) to clause (i), of sub-section (4) of section 22; or
- (b) purchases of goods specified in the negative list appended to section 22 where no input tax credit or input tax rebate is allowed.

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(2) Every registered dealer enjoying composition under sub-section (3), sub-section (3A), or sub-section (3B), of section 16, or sub-section (4) of section 18, shall, in addition to the tax payable under any other provisions of this Act am a be liable to pay tax on his turnover of purchases.]

[1. Substituted w.e.f. 01.08.2006 by S. 12(5) of WB Act XVIII of 2006 for the following —

**“12.** (1) Every dealer liable to pay tax under section 10 or section 14 or sub-section (3) of section 27C, and the registered under section 24 shall, in addition to the tax payable under any other provisions of this Act, be liable to pay tax on all his purchases in West Bengal from any person, whether a dealer or not, after deducting therefrom

- (a) purchases of goods, sales of which are declared tax-free under section 21;
- (b) purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956 or in the course of import of goods into, or export of the goods out of the territory of India within the meaning of section 5 of that Act;
- (c) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a registered dealer in West Bengal;
- (d) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a dealer in West Bengal who has applied for registration within thirty days of his incurring liability to pay tax under sub-section (2) of section 23 and who has issued a tax invoice;

Provided that where the application for registration of the dealer has been rejected, no deduction shall be allowed on such purchases, from the date of order of rejection of the application;

- (e) such other purchases as may be prescribed.

(2) The burden of proving that any purchase effected by a dealer is not liable to tax under sub-section (1) shall lie on such dealer.”]

**13. Omitted.**

Liability to pay tax on transfer of property in goods involved in the execution of works contract.

**14. (1)** Notwithstanding anything contained elsewhere in this Act, any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract in West Bengal shall be deemed to be a sale of those goods by the person making the transfer and a purchase of those goods by the person to whom such transfer is made.

(2) Every dealer, who is liable on the day immediately before the appointed day to pay tax under section 15 of the West Bengal Sales Tax Act, 1994, and who would have continued to be so liable under the said Act on such appointed day had this Act not come into force, shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1), from such appointed day, at the rate specified in section 18.

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(3) Every dealer to whom the provisions of sub-section (2) do not apply and whose contractual transfer price calculated from the commencement of the year ending on the day immediately before the appointed day exceeds the amount prescribed under section 15 of the West Bengal Sales Tax Act, 1994, on the last day of such year shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) from such appointed day, at the rate specified in section 18.

(4) Every dealer to whom the provisions of sub-section (2) or sub-section (3) do not apply, shall, if it is contractual transfer price calculated from the commencement of any year, exceeds five lakh rupees at any time within such year, be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on Andhra from the day immediately following the day on which such contractual transfer price first exceeds five lakh rupees.

(5) Every dealer who has been registered under sub-section (2) of section 24 for his application under clause (b) of sub-section (1) of that section, on any date prior to the date on which his contractual transfer price exceeds five lakh rupees, shall be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the date of such registration.

(6) Every dealer who incurs liability to pay tax under sub-section (3) of section 27C, shall, notwithstanding that his contractual transfer price does not exceed five lakh rupees, also be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on transfer by him of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the date of transfer of business.

(7) Every dealer who incurs liability to pay tax under section 10 or section 11,

shall, notwithstanding that his contractual transfer price does not exceed five lakh rupees, also be liable, in addition to the tax payable by him under any other provisions of this Act, to pay tax on transfer by him of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the day in the incurs liability to pay tax under that section.

(8) Every dealer who has become liable to pay tax under the section, shall continue to be so liable until the expiry of three consecutive years commencing on or after the appointed day, during each of which his contractual transfer price does not exceed five lakh rupees and such further period after the date of such expiry as many prescribed, and on the expiry of such three years or for the period, his liability to pay such tax shall cease :

Provided that where a dealer has become liable to pay tax under sub-section (7) and has not incurred liability to pay tax under sub-section (4), he shall continue to be so liable until his liability ceases under section 10 or section 11.

(9) The provisions of sub-section (4), or sub-section (5), or sub-section (6), as the case may be, shall apply to every dealer who is liability to pay tax ceases under sub-section (8) as if such dealer had not ever become liable to pay tax under the section.

(10) The Commissioner, after making such enquiry as he making necessary and after giving the dealer an opportunity of being heard, shall fix the date on and from which such dealer shall become liable to pay tax under the section.

Liability of a casual dealer to pay tax.

**15.** Every casual dealer shall be liable to pay tax—

- (a) on all his sales in West Bengal of goods brought by him from any place outside West Bengal either by way of purchase from a person, or procured by him otherwise, and
- (b) on his every purchase of goods in West Bengal, after deducting therefrom—
  - (i) purchases of goods, sales of which are declared tax-free under section 21;
  - (ii) purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-state trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of goods into, or export of the goods out of the territory of India within the meaning of section 5 of that Act;
  - (iii) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a registered dealer in West Bengal:

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Provided that the burden of proving that any purchase effected by the casual dealer is not liable to tax shall be on such casual dealer.

Levy of tax on sales.

**16.** (1) Subject to the provisions of sub-section (2), the tax payable by a dealer, who is liable to pay tax under section 10, or sub-section (3) of section 24 or

sub-section (3) of section 27C on his turnover of sales, shall be levied on such part of his turnover of sales as the remains after deducting therefrom—

- (a) sales of goods dated tax-free under section 21;
- (b) sales of goods which are shown to the satisfaction of the Commissioner not to have taken place within West Bengal, or to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act;

<sup>1</sup>[(ba) sales of goods which are zero-rated as specified in Schedule AA;]

- (c) such other sales on such conditions and restrictions as many prescribed.

(2) The tax payable by a dealer on the turnover of sales as referred to in sub-section (1), shall be levied—

- (a) at the rate of one *per centum* of such part of his turnover of sales as represents sales of any goods specified in Schedule B;

<sup>2</sup>[(b) at the rate of four *per centum* of such part of his turnover of sales as represents sales of—

- (i) such capital goods, as the State Government may, by notification specify; and

- (ii) any goods specified in Schedule C;]

- (ba) at the rate of twelve decimal five zero *per centum* of such part of his turnover of sales as represents sales of any goods specified in Schedule CA;

- (d) at such rate as may be fixed by the State Government under section 19, on such part of his turnover of sales as represents sales of any goods specified in Schedule D.

*Explanation.*— For the purpose of this sub-section, it is hereby declared that the export of the goods out of the territory of India shall be zero rated i.e. the tax paid under this Act shall be refunded or adjusted, as the case may be, against the output tax payable, if any, by a dealer.

(2A) When taxable goods are sold together with containers or packing materials, notwithstanding anything contained in sub-section (2), the rate of tax applicable to such containers or packing materials, as the case may be, shall be the same as that applicable to the goods contained, or packed, and the sale price of the containers or packing materials, whether shown separately or not, shall be included in the sale price of the goods.

(2B) Where the sale of any goods, which is exempt from tax, is packed in any container or in any packing material, then notwithstanding anything contained in sub-section (2), the sale of such container or packing material shall also be exempt from tax.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any registered dealer having liability to pay tax under this Act, may, at his option,—

- (a) if his gross sales in the year ending on the day preceding the appointed day does not exceed fifty lakh rupees ; or
- (b) if his turnover of sales in the preceding year commencing on or after

- the appointed day <sup>3</sup>[does not exceed fifty lakh rupees, or]
- <sup>4</sup>[(c) if his turnover of sales during the period from the commencement of the year in which he gets himself registered to the date of his registration, does not exceed fifty lakh rupees,]

pay tax at such compounded rate not exceeding one *per centum* of the total turnover of sales of such dealer in the year for which such option is required to be exercised, and subject to such conditions and restrictions as many prescribed, for each tax period of the year in view of tax payable under sub-section (2) on all his sales:

Provided that the registered dealer having liability to pay tax under this Act as stated in this sub-section shall not include—

- (a) an importer; or
- (b) a manufacturer; or
- (c) a dealer engaged in execution of works contracts; or
- <sup>5</sup>[(ca) a dealer who has purchased tea sold under the auspices of any tea auction centre in West Bengal duly authorised by the Indian Tea Board; or]
- (d) a dealer who transfers goods otherwise than by way of sale within or outside the State; or
- (e) a dealer who sells goods within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (f) a dealer who sells goods in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956:

Provided further that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act:

Provided also that a registered dealer who, in addition to the purchase of goods in course of his business in a year, have also received goods from the supplier within or outside West Bengal, on branch transfer or on consignment basis, for which no price has been paid, shall not be entitled to opt for payment of tax under such compounded rate:

Provided also that if during the period of enjoyment of payment of tax at compounded rate, turnover of sales of a dealer exceeds fifty lakh rupees, he shall become ineligible to pay tax under this sub-section from the commencement of the month immediately following the month during which his turnover of sales exceeded such sum.

<sup>6</sup>[(3A) Notwithstanding anything contained in sub-section (1) or sub-section (2), a registered dealer being a club having liability to pay tax under the Act, selling goods in West Bengal to its members or others, may, at its option, pay tax, in lieu of tax payable under sub-section (2), for each tax period of a year, at such compounded rate not exceeding eight *per centum* as the State Government may, by notification, specify, on the turnover of sales of such goods on which tax is payable, subject to such restrictions and conditions as may be prescribed:

Provided that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act.

(3B) Notwithstanding anything contained in sub-section (1) or sub-section (2), a registered dealer having liability to pay tax under the Act, who makes sale by way of transferring the right to use any goods as mentioned in sub-clause (c) of clause (39) of section 2, may, at his option, pay tax, in lieu of tax payable under sub-section (2), for each tax period of a year, at such compounded rate not exceeding two *per centum* as the State Government may, by notification, specify, on the turnover of sales of such goods on which tax is payable, subject to such restrictions and conditions as may be prescribed:

Provided that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act.]

(4) Notwithstanding anything contained in sub-section (2) and sub-section (2A), any registered dealer, who imports into or manufactures such goods in West Bengal as may be notified by the State Government, may, at his option, pay, in lieu of the <sup>7</sup>[tax at such rate on the maximum retail price of such goods as may be specified in that notification, and different rates may be fixed for different items of such goods:]

Provided that where a dealer has purchased any goods,—

(a) from an importer or a manufacturer upon payment of tax on the maximum retail price of such goods; or

(b) from another registered dealer where tax on the maximum retail price of such goods was paid in West Bengal in an earlier occasion,

the purchasing dealer, irrespective of whether he is registered or not, while making resale of such goods in West Bengal, shall, notwithstanding anything contained elsewhere in the Act, be entitled to recover from the buyer the amount of tax paid by him at the time of purchase of such goods under such conditions and restrictions, and in such manner, as may be prescribed.

(5) Any registered dealer, who intends to opt for payment under sub-section (3) of this section, shall exercised his <sup>8</sup>[option for a year, or a part of the year in which he gets himself registered,] by making an application to the Commissioner in such manner, and within such time, as may be prescribed.

[1. . Inserted w.e.f. 01.04.2006 by S. 12(6)(a) of WB Act XVIII of 2006.

2. Substituted by S.6(4)(a) of WB Act XIII of 2005 w.e.f. 01.4.2005 for “(b) at the rate of four *per centum* of such part of his turnover of sales as represents sales of —

(i) such capital goods, as the State Government may, by notification, specify; and  
(ii) any goods specified in Schedule C;”;

3. Substituted by S.6(4)(b)(i) of WB Act XIII of 2005 w.e.f. 01.4.2005 for "does not exceed fifty lakh rupees, ".

4. Inserted by S.6(4)(b)(ii) of WB Act XIII of 2005 w.e.f. 01.4.2005 .

5. Inserted by S.6(4)(b)(iii) of WB Act XIII of 2005 w.e.f. 01.4.2005.

6 . Inserted w.e.f. 01.08.2006 by S. 12(6)(b) of WB Act XVIII of 2006.

7. Substituted w.e.f. 01.08.2006 by S. 12(6)(c) of WB Act XVIII of 2006 for “tax payable by him on sale price of such goods under this section, tax at full rate on the maximum retail price of such goods in the manner as may be prescribed:”

8. Substituted by S.6(4)(c) of WB Act XIII of 2005 w.e.f. 01.4.2005 for "option for a year" .]

Levy of tax on  
sales by casual

**16A.** (1) The tax payable by a casual dealer under clause (a) of section 15 shall

dealer.

be levied on such part of his sale price which remains after deducting therefrom—

- (a) sales of goods declared tax-free under section 21;
- (b) sales of goods which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act.

(2) The tax payable by casual dealer as referred to in sub-section e), shall be levied at the rate of tax applicable to the sale of such goods under sub-section (2) of section 16.

<sup>1</sup>[Levy of tax on turnover of purchases.]

<sup>1</sup>[17. (1) The tax payable by a dealer, who is liable to pay tax on his turnover of purchases under section 11 or section 12, shall be levied—

- (a) in the case of a dealer liable to pay tax under section 11, at the rate of two *per centum* on such part of the turnover of purchases of raw jute as referred to in sub-section (3) of section 11; and
- (b) in the case of a dealer liable to pay tax under section 12, at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16, on his taxable turnover of purchases.

(2) The expression "taxable turnover of purchases" as stated in clause (b) of sub-section (1), shall mean, in the case of a registered dealer, that part of his turnover of purchases, which remains after deducting therefrom—

- (a) purchases of goods, sales of which are declared tax-free under section 21;
- (b) purchases of goods which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956 or in the course of import of goods into, or export of the goods out of the territory of India within the meaning of section 5 of that Act;
- (c) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a registered dealer in West Bengal;
- (d) such other purchases as may be prescribed.

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(3) The burden of proof shall lie on the dealer who claims any purchase not liable to be taxed under sub-section (1).]

[1. Substituted w.e.f. 01.08.2006 by S. 12(7) of WB Act XVIII of 2006 for the following —

“17. (1) The tax payable by a dealer, who is liable to pay tax on his turnover of purchases under section 11 or section 12, shall be levied—

- (a) at the rate of two per centum of such part of his turnover of purchases of raw jute under section 11 as defined in sub-clause (a) and sub-clause (b) of clause (54) of section 2; or
- (b) at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16 on such part of the turnover of purchases as it represents touches his under section 12 as defined in sub-clause (c) of clause (54) of section 2:



Provided that in calculating the tax payable under the clause (a) by a dealer, who is the occupier of a jute mill, on his turnover of purchases of raw jute during the period, the purchase price in respect of any quantity of raw jute sold and despatched by him during such period subsequent to his purchase thereof to any place within West Bengal shall be deducted from such turnover of purchases.]

<sup>1</sup>[Levy of tax on purchases by casual dealers.]

**17A.** The tax payable by a casual dealer shall be levied on his purchases, as referred to in clause (b) of section 15, at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16.

[1. Substituted w.e.f. 01.04.2005 by S. 12(8) of WB Act XVIII of 2006 for "Levy of tax on purchases by casual dealers at contractual transfer price." ]

Levy of tax on contractual transfer price.

**18.** (1) Subject to the provision of sub-section (2), the net tax payable by a dealer, who is liable to pay tax under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C for transfer of property in goods involved in the execution of works contract, shall be levied on his taxable contractual transfer price—

(a) at the rate of four *per centum*, where goods represents those specified in section 14 of the Central Sales Tax Act, 1956; and

<sup>1</sup>[(aa) at the rate of four *per centum*, where goods represents those involved in printing of materials, and]

(b) at the rate of twelve decimal five zero *per centum*, where goods represents other than those <sup>2</sup>[specified in clause (a) or clause (aa)].

(2) The expression "taxable contractual transfer price" as stated in sub-section (1), shall mean, in the case of the dealer who is liable to pay tax on transfer of property in goods involved in the execution of a works contract under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C, that part of his contractual transfer price during any period which remains after deducting therefrom—

(a) contractual transfer of goods, sales of which are declared tax-free under section 21;

(b) charges towards labour, service and other like charges as may be prescribed;

(c) all amounts paid to the sub-contractors for execution of the works contract, whether fully or in or; and

(d) such other contractual transfers as many prescribed:

Provided that no deduction under clause (c) shall be made unless the dealer claiming deduction, produces proof to the satisfaction of the Commissioner that—

(a) the sub-contractor is registered dealer liable to pay tax under this Act; and

(b) such amount of deduction is included in his return referred to in section 32; and

(c) tax under sub-section (1), in respect of such amount of deduction has been paid by him.

(3) Where in respect of contractual transfer price referred to in clause (10) of section 2, the works contractor does not maintain proper accounts, or the

accounts maintained by him are not found by the assessing authority to be worthy of credence, and the amount actually incurred towards charges for labour and other services, or profit relating to supply of labour and services, or the taxable contractual transfer price for applying proper rate of tax, are not ascertainable, such charges for labour and services, or such profit, or such taxable contractual transfer price shall, for the purpose of deduction is, notwithstanding anything contained elsewhere in this section, be determined on the basis of such percentage of the value of the works contract as may be prescribed and the different percentage is may be prescribed for different types of works contract.

(4) Notwithstanding anything contained elsewhere in this section, any registered dealer, who is liable to pay tax under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C, for transfer of property in goods involved in the execution of works contract, and who is not engaged in—

- (a) making sale as referred to in sub-clause (ii) of clause (g) of section 2 of the Central Sales Tax Act, 1956; or
- (b) making sale in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956; or
- (c) transferring goods otherwise than by way of sale for execution of works contract outside the State,

may, at his option, pay tax at such compounded rate not less than two *per centum* and not exceeding five *per centum* of the aggregate of the amount received or receivable by such dealer and subject to such conditions and restrictions as many prescribed, for each month of the year in view of the amount of tax payable by him under sub-section (1):

Provided that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act.

[1. Inserted by S.6(5)(a) of WB Act XIII of 2005 w.e.f. 01.5.2005.

2. Substituted by S.6(5)(b) of WB Act XIII of 2005 w.e.f. 01.5.2005 for "specified in clause (a)" .]

Power of the State Government to fix rates of tax on sales of goods specified in Schedule D.

**19.** The State Government may, by notification, fix the rate of tax, with prospective or retrospective effect, not exceeding thirty *per centum* of the turnover of sales of goods specified in Schedule D, and different rates may be fixed for different items of such goods.

Power of the State Government to amend Schedules.

**20.** The State Government, after giving by notification not less than fourteen days' notice of its intention so to do, may, by light notification, with prospective or retrospective effect, add to, and, or alter any Schedule to this Act.

Tax-free sale of goods.

**21.** No tax shall be payable under this Act on sale of goods specified in column (2) of Schedule A, subject to the conditions and exemptions, if any, set out in the corresponding entry in column (3) thereof.

Zero-rated sale.

**21A.** (1) Notwithstanding anything contained in section 16 or section 16A, sale of goods between persons, whether dealer or not, or organisations as specified

in column (2) of Schedule AA, shall be zero-rated as defined in clause (59) of section 2.

(2) Where any goods are sold in the course of export within the meaning of section 5 of the Central Sales Tax Act, 1956, such sales shall be zero-rated as defined in clause (59) of section 2.

Input tax credit or input tax rebate by a registered dealer.

**22.** (1) Every registered dealer other than those specified elsewhere in the Act, shall be entitled to claim an input tax credit or input tax rebate, as defined in clause (19) of section 2, and in such manner, and subject to such conditions and restrictions, as may be prescribed.

(2) The input tax credit or input tax rebate, as referred to in sub-section (1), shall be allowed to <sup>1</sup>[the registered dealer who has purchased taxable goods (hereinafter referred to as the "purchasing dealer") during a tax period for use by him in West Bengal] subject to the provisions as laid down in sub-section (3) to sub-section (20).

(3) Where any registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under this Act, without entering into a transaction of sale, issues to another dealer tax invoice with the intention to defraud the Government revenue, the Commissioner may, after making such inquiry as he thinks fit and after giving the dealers a reasonable opportunity of being heard, deny the benefit of input tax credit or input tax rebate to such dealers issuing or accepting such tax invoice, either prospectively or the prospectively, for the full tax period from such date as he may deem fit and proper.

(4) <sup>2</sup>[Subject to the other provisions of this section, the input tax credit or input tax rebate shall be allowed] to the extent of the amount of tax paid or payable by the purchasing dealer on his purchase of taxable goods, other than such taxable goods as specified in the negative list appended to this section, made in the State from a dealer when such goods are purchased for—

- (a) sale or resale by him in West Bengal; or
- (b) sale in the course of inter-State trade of commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (c) use as containers or materials for packing of taxable goods intended for sale, in the State or in the course of inter-State trade of commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- <sup>3</sup>[(ca) use as containers or materials for packing of goods intended for sale in the course of export out of India within the meaning of section 5 of the Central Sales Tax Act, 1956; or]
- (d) use as raw materials and consumable stores required for the purpose of manufacture of taxable goods intended for sale in the State or in the course of inter-State trade of commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (e) use as containers or packing materials for use in the packing of goods so manufactured as referred to in clause (d) above; or
- (f) use in the execution of works contract; or
- (g) use as capital goods required, for the purpose of manufacture or resale

of taxable goods or for execution of works contract, as the case may be, and purchases of such goods are capitalised in the books of accounts of such manufacturer, works contractor or reseller, as the case may be; or

(h) use as raw materials, capital goods and consumable stores required for the purpose of manufacture of any goods to be sold in the course of export under section 5 of the Central Sales Tax Act, 1956, and containers or packing materials for use in the packing of goods so manufactured; or

(i) making zero-rated sales other than those referred to in clause (h) above:

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

(5) The input tax credit or input tax rebate shall not be claimed by the purchasing dealer until he receives—

(a) original tax invoice as referred to in sub-section (1) of section 64 issued in the prescribed manner evidencing the amount of tax, from the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, from whom he has purchased the goods:

Provided that if the original tax invoice issued to a registered dealer is lost from his custody, the purchasing dealer shall, on making an application to the Commissioner in such manner as may be prescribed, be entitled to claim input tax credit or input tax rebate on the strength of the order, if any, issued by the Commissioner under this sub-section; and

(b) original invoice, cash memo, or bill, as referred to in sub-section (2) or sub-section (3) of section 64, as the case may be, issued in the prescribed manner, from the unregistered dealer from whom he has purchased the goods.

(6) If the input tax credit or input tax rebate available to a registered dealer for a year exceeds the output tax for that year, the excess input tax credit or input tax rebate shall be carried forward to the next year, in the manner as may be prescribed.

(7) Where the taxable goods purchased are—

(a) despatched outside the State otherwise than by way of sale; or

(b) used as raw materials, consumable stores in a manufacture of taxable goods, or in the packing of goods so manufactured, and the goods so manufactured or despatched outside the State otherwise than by way of sale,

the registered dealer shall be entitled to input tax credit or input tax rebate of the amount of input tax paid or payable under clause (18) of section 2 calculated at the applicable rate which exceeds the amount calculated at the rate of four per centum:

Provided that no input tax credit or input tax rebate shall be allowed to such dealer unless the amount of input tax calculated at the applicable rate

exceeds the amount calculated at the rate of four per centum:

Provided further that where a registered dealer has already enjoyed input tax credit or input tax rebate at a rate which is more than the rate he is eligible under this sub-section, his input tax credit or input tax rebate shall be reversed to the extent to which he is not eligible.

(8) Notwithstanding anything contained elsewhere in the Act, when a dealer availing deferment of payment of tax under clause (8), or tax holiday under clause (b), or a remission of payment of tax under clause (c), of sub-section (1) of section 118, as the case may be, purchases within West Bengal, taxable goods which are used as raw materials and consumable stores in the manufacture of taxable goods or in the packing of goods so manufactured, or which are used as capital goods required for the purpose of manufacture of taxable goods, such dealer shall not be entitled to input tax rebate during the period of such enjoyment which shall be accumulated and carried forward until the expiry of such period of deferment, or tax holiday, or remission, as the case may be:

Provided that such dealer shall be entitled to such accumulated input tax credit or input tax rebate after the expiry of such period of deferment, tax holiday or remission, as the case may be, in such manner and subject to such conditions and restrictions, as may be prescribed:

Provided further that where in certain circumstances the output tax on sale of such goods in West Bengal by such dealer is not deferred, exempted, remitted, as the case may be, such dealer shall be entitled to input tax credit or input tax rebate in respect of purchases of such taxable goods within the Bengal:

Provided also that where the goods manufactured by using such goods have been exported out of the territory of India, such dealer shall be entitled to refund of input tax credit or input tax rebate in respect of such purchases of taxable goods within West Bengal.

<sup>4</sup>[(8A) Notwithstanding anything contained elsewhere in this Act, a dealer as referred to in sub-section (8), in lieu of allowing his input tax credit or input tax rebate to be accumulated and carried forward until the expiry of his period of deferment, or tax holiday, or remission, as the case may be, may, at his option, and subject to such conditions and restrictions as may be prescribed, be entitled to refund of seventy-five *per centum* of the accumulated input tax credit or input tax rebate in respect of any quarter of a year in such manner as may be prescribed.]

(9) Notwithstanding anything contrary contained elsewhere in this Act, a registered dealer as referred to in sub-section (1), shall be entitled to input tax credit or input tax rebate on taxable goods, other than capital goods, lying in stock of such dealer on the date on which he became liable to pay tax under this Act irrespective of the fact that such dealer has not paid input tax under this Act, in such manner and subject to such conditions and restrictions, as may be prescribed, when such goods are purchased for—

- (a) sale or resale by him in West Bengal; or
- (b) sale in the course of inter-State trade of commerce within the meaning of

section 3 of the Central Sales Tax Act, 1956; or

- (c) use as containers or materials for packing of taxable goods intended for sale, in the State or in the course of inter-State trade of commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (d) use as raw materials and consumable stores required for the purpose of manufacture of taxable goods intended for sale in West Bengal or in the course of inter-State trade of commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (e) use as containers or packing materials for use in the packing of goods so manufactured as referred to in clause (d) above; or
- (f) use in the execution of works contract; or
- (g) use as raw materials and consumable stores required for the purpose of manufacture of any goods to be sold in the course of export under section 5 of the Central Sales Tax Act, 1956, and containers or packing materials for use in the packing of goods so manufactured; or
- (h) making zero-rated sales other than those referred to in clause (g) above:

Provided further that the burden of proof that such goods are meant for the purposes mentioned in clause (a) to clause (h), shall lie on such dealer.

(10) The methods used by a registered dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied, shall be fair, reasonable and uniform throughout the year:

Provided that the Commissioner may, after giving a registered dealer an opportunity of being heard and for reasons to be recorded in writing, reject the method adopted by such dealer and redetermine the amount of input tax credit or input tax rebate.

(11) Every registered dealer availing of the input tax credit or input tax rebate shall maintain such registers and books of accounts, and such accounts as referred to in section 63, in such manner, as may prescribed.

(12) Notwithstanding anything contained elsewhere in the section, no input tax credit or input tax rebate shall be allowed for purchases—

- (a) made from a registered dealer who has been allowed to pay tax at a compounded rate under sub-section (3) <sup>5</sup>[, or sub-section (3A), or sub-section (3B), of section 16 or sub-section (4) of section 18]; or
- (b) made in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (c) made in the course of import from outside the country within the meaning of sub-section (2) of section 5 of the Central sales tax act That, 1956; or
- (d) made for use in business as defined in sub-clause (a) of clause (5) of section 2, but are subsequently used for any other purposes; or
- (e) of such goods and under such circumstances, as are specified in the negative list appended to the section.

(13) Where —

- (a) a registered dealer—

- (i) purchases goods for the purposes specified in sub-section (4) and such goods are used fully or partly for purposes other than those specified in that sub-section; or
  - (ii) purchases goods and such goods are used fully or partly, for such purposes for which enjoyment of input tax credit or input tax rebate is not permissible; or
  - (iii) purchases goods and avail input tax credit or input tax rebate on such purchases on which he is not entitled to enjoy input tax credit or input tax rebate, or
- (b) a registered dealer has enjoyed input tax credit or input tax rebate, in respect of goods other than the capital goods lying in stock on the appointed day, or under sub-section (9), but such goods, prior to such enjoyment or after, has been so damaged or destroyed that such goods are unsaleable,

the input tax credit or input tax rebate, if availed of, for such goods, shall be reversed to that extent to which he is not eligible in the tax period during which such use has taken place, in such manner as may be prescribed.

(14) Where a registered dealer has purchased any taxable goods from a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, and if the application for registration of the selling dealer is rejected subsequently, the purchasing registered dealer shall be entitled to input tax credit or input tax rebate against such purchases made till the date of order of rejection of such application.

(15) Where a transferee, lessee, or licensee is a dealer deemed to be registered under section 27B or where a transferee, lessee, or licensee is a dealer who has incurred liability to pay tax under section 27C and is registered under section 24, as the case may be, such transferee, lessee, or licensee shall after making adjustments by way of reverse credit, if any, arising out of such transfers, be entitled to the input tax credit or input tax rebate, lying unutilised in the account of transferor, lessor, or licensor, as the case may be, subject to the satisfaction of the Commissioner that such input tax credit or input tax rebate has not earlier been availed of by such transferor, lessor, or licensor.

(16) Where any purchaser being a registered dealer to whom a credit note or a debate note has been issued under section 44, as a consequence of which the input tax credit or input tax rebate availed of by him in any period in respect of which the purchase of goods relates, becomes either short or excess, such a registered dealer shall compensate such short or excess by adjusting the amount of input tax credit or input tax rebate allowed to him in respect of the tax period in which the credit note or debate note, as the case may be, has been issued subject to such conditions as may be prescribed.

(17) The <sup>6</sup>[net tax credit for a tax period or a part thereof] shall be determined in the following manner, namely:—

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

Where—

"A" represents the amount of input tax credit or input tax rebate, for

the tax period, which the dealer is entitled to under sub-section (1) subject to other provisions of this section and including input tax credit or input tax rebate availed in short of the eligible amount as referred to in sub-section (16) during the preceding tax periods not exceeding twelve English calendar months;

"B" represents outstanding input tax credit or input tax rebate brought forward as determined from the previous tax period;

"C" represents reverse tax credit as determined under the second proviso to sub-section (7) or sub-section (13) <sup>7</sup>[or sub-section (15)] and includes the amount of input tax credit or input tax rebate availed in excess of the eligible amount as referred to in sub-section (16).

(18) The State Government may, by notification, specify any class of dealers that shall not be entitled to input tax credit or input tax rebate whether in full or in part.

(19) Where a registered dealer transfers any goods to an auctioneer or a broker or any other agent, such auctioneer or broker or any other agent shall not be entitled to get input tax credit or input tax rebate.

(20) The burden of proof on the admissibility of the amount of input tax credit or input tax rebate, shall lie on the <sup>8</sup>[registered purchasing dealer].

### NEGATIVE LIST

[See sub-section (4) and sub-section 12 (e) of section 22.]

#### List of goods not eligible for input tax credit or input tax rebate

Serial No. (1)	Description of goods (2)	Exceptions (3)
1.	Air-conditioning units, air coolers, fans and air circulators.	When the registered dealer is in the business of dealing in such goods.
2.	All automobiles including commercial vehicles, and two and three wheelers, and spare parts for repair and maintenance thereof.	When the registered dealer is in the business of dealing in such automobiles or spare parts.
3.	Crude oil.	When the registered dealer is in the business of dealing in crude oil or of manufacturing any goods taxable under the Act using crude oil as a raw material.
4.	Food, beverages and tobacco products.	When the registered dealer is in the business of dealing in such goods.



- 74 of 1956.
5. Building materials, namely, bricks, sand, cement, stone-chips, iron and steel as referred to in section 14 of the Central Sales Tax Act, 1956, marble, tiles, doors, windows, sanitary fittings, bathroom fittings, drain pipes and all other materials used in construction, reconstruction or repair of a civil structure or parts thereof. <sup>9</sup>[When the registered dealer is a works contractor and uses such goods in the execution of works contracts, or when the registered dealer is in the business of dealing in such goods.]
  6. Office equipments. When the registered dealer is in the business of dealing in such goods.
  7. Furniture, fixture including electrical fixtures and fittings. When the registered dealer is in the business of dealing in such goods.
  8. Taxable goods which are used as capital goods, raw materials, considerable stores required in the manufacture of goods specified in Schedule A or used in the packing of goods so manufactured and not sold in the course of export.
  9. Goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees including any residential accommodation.
  10. Goods used for personal consumption or received as gifts.
  11. Taxable goods purchased for use in business other than that as defined in sub-clause (a) of clause (5) of section 2.
  - <sup>10</sup>[12. Coal, furnace oil, or any other fuel used for any purpose. When the registered dealer is in the business of dealing in such goods.
  13. Generators and parts and accessories thereof used for When the registered dealer is in the business of dealing in such goods.]

captive generation.

- [1. Substituted w.e.f. 01.04.2005 by S. 12(9)(a) of WB Act XVIII of 2006 for "the dealer who has purchased taxable goods (hereinafter referred to as the "purchasing dealer") during the tax period".
2. Substituted w.e.f. 01.04.2005 by S. 12(9)(b)(i) of WB Act XVIII of 2006 for "The input tax credit or input tax rebate shall be allowed".
3. Inserted w.e.f. 01.04.2005 by S. 12(9)(b)(ii) of WB Act XVIII of 2006.
4. Inserted w.e.f. 01.04.2005 [N. 1594 FT dt. 13.9.06] by S. 12(9)(c) of WB Act XVIII of 2006.
5. Substituted w.e.f. 01.08.2006 by S. 12(9)(d) of WB Act XVIII of 2006 for "of section 16 or sub-section (4) of section 18".
6. Substituted w.e.f. 01.04.2005 by S. 12(9)(e)(i) of WB Act XVIII of 2006 for "net tax credit shall be determined".
7. Substituted w.e.f. 01.04.2005 by S. 12(9)(e)(ii) of WB Act XVIII of 2006 for "or proviso to sub-section (15)".
8. Substituted w.e.f. 01.04.2005 by S. 12(9)(f) of WB Act XVIII of 2006 for "registered dealer".
9. Substituted w.e.f. 01.08.2006 by S. 12(9)(g)(i) of WB Act XVIII of 2006 for "When the registered dealer is a works contractor, or when the registered dealer is in the business of dealing in such goods."
10. Inserted w.e.f. 01.08.2006 by S. 12(9)(g)(ii) of WB Act XVIII of 2006.]

## CHAPTER IV

### **Registration of a dealer, enrolment of a transporter, carrier or transporting agent, demand of security, and amendment or cancellation of registration of a dealer or enrolment of a transporter, carrier or transporting agent, information to be furnished by a casual dealer, dealer in certain cases.**

#### PART I

### **Registration of a dealer, enrolment of a transporter, carrier or transporting agent, demand of security, amendment or cancellation of registration either *suo motu* or on the basis of information by a dealer and amendment or cancellation of enrolment of a transporter, carrier or transporting agent.**

Bar to carry on business as a dealer without being registered.

**23.** (1) No dealer who has become liable to pay tax under <sup>1</sup>[section 10, or section 11, or section 14], shall carry on business as a dealer unless he gets himself registered:

Provided that the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed time as specified in sub-section (2), for such registration, is engaged in such business, and where such application has not been disposed of:

<sup>2</sup>[Provided further that where a dealer has become liable to pay tax under the provisions of section 10 and deals in only such goods as specified in Schedule A, such dealer may, notwithstanding anything contained in this sub-section, carry on business without getting himself registered.]

(2) A dealer referred to in sub-section (1) shall, <sup>3</sup>[within ninety days] from the date from which he has become liable to pay tax under section 10, or section 11, or section 14, or sub-section (3) of section 27C, make an application for registration to the Commissioner as provided in sub-section (1) of section 24.

(3) Notwithstanding anything contained in sub-section (1), where a dealer has become liable to pay tax under sub-section (1) of section 10, or sub-section (1) of section 11, or sub-section (2) of section 14 and is registered under the West Bengal Sales Tax Act, 1994, on the day immediately preceding the appointed day, she shall be deemed to have been registered under the Act:

West Ben. Act  
XLIX of 1994.

Provided that no such dealer shall be deemed to have been registered under the Act, if he has applied for cancellation of his certificate of registration under any of the provisions of the West Bengal Sales Tax Act, 1994, and such application is pending before the appropriate authority on the appointed day:

Provided further that where it registration number has been allotted under the Act to a dealer referred to in the first proviso anytime before the appointed day, such registration number shall be deemed to have been cancelled on the appointed day as if no such number had ever been allotted to such dealer.

(4) If a dealer who is required by sub-section (1) to get himself registered, sales, without reasonable cause, to make an application for registration within the time allowed under sub-section (2), the Commissioner may, by an order in writing, after giving the dealer an opportunity of being heard, impose upon such

dealer by way of penalty a sum not less than five hundred rupees for each month of default, in such manner as may be prescribed.

- [1. Substituted w.e.f. 01.08.2006 by S. 12(10)(a) of WB Act XVIII of 2006 for "section 10, or section 11, or section 14, or sub-section (3) of section 27C".
2. Inserted by S.6(6)(a) of WB Act XIII of 2005 w.e.f. 01.4.2005.
3. Substituted w.e.f. 01.08.2006 by S. 12(10)(b) of WB Act XVIII of 2006 for "within ninety days" which was earlier substituted for "within thirty days" by S.6(6)(b) of WB Act XIII of 2005 w.e.f. 01.4.2005.]

Registration of a dealer.

**24. (1) Every dealer—**

- (a) who is required by section 23 to be registered, shall, or
- (b) who is not required by section 23 to be registered but intends to be registered at any time, may,

make an application for registration in the prescribed manner to the prescribed authority, and such application shall be a company by a declaration in the prescribed form duly filled up and signed by the dealer making the application.

(1A) A dealer who is deemed to have been registered under sub-section (3) of section 23 shall, <sup>1</sup>[within one hundred and twenty days from the appointed day or such further time as may be allowed by the Commissioner], submit such information, to such authority and in such manner, as may be prescribed.

(2) If such prescribed authority is satisfied that the application for registration referred to in sub-section (1) is in order, she shall registered the applicants and grant him a certificate of registration in such form, within such period, in such manner, and subject to such conditions and restrictions, <sup>2</sup>[as may be prescribed:]

<sup>3</sup>[Provided that where the application is not disposed of by the prescribed authority within the prescribed period, the dealer shall be deemed to have been registered on the expiry of such period.]

(2A) If the prescribed authority is satisfied that the information provided by the dealer as referred to in sub-section (1A) is in order, she shall, in such manner as may be prescribed and <sup>4</sup>[within ninety days] from the date of furnishing such information, issue a certificate of registration under the Act to such dealer in the prescribed form which shall be effective from the appointed day:

<sup>5</sup>[Provided that at the dealer does not submit the information as required under sub-section (1A), the Commissioner may, after giving the dealer an opportunity of being heard, cancelling the registration number, if any, allotted to him under the Act and his certificate of registration granted under clause (f) of section 119.]

(3) Any dealer who has been registered under sub-section (2) shall, on an application made under clause (b) of sub-section (1), be liable to pay tax on all sales of goods or on execution of works contract effected by him from the date from which his certificate of registration is granted.

- [1. Substituted w.e.f. 01.04.2005 by S. 12(11)(a) of WB Act XVIII of 2006 for "within one hundred and twenty days from the appointed day" which was originally substituted by S.6(7)(a) of WB Act XIII of 2005 w.e.f. 01.4.2005 for "within sixty days".

2. Substituted w.e.f. 01.08.2006 by S. 12(11)(b) of WB Act XVIII of 2006 for "as may be prescribed."
3. Inserted w.e.f. 01.08.2006 by S. 12(11)(c) of WB Act XVIII of 2006.
4. Substituted by S.6(7)(b) of WB Act XIII of 2005 w.e.f. 01.4.2005 for "within thirty days".
5. Substituted w.e.f. 01.04.2005 [N. 1594 FT dt. 13.9.06] by S. 12(11)(d) of WB Act XVIII of 2006 for " Provided that where a dealer fails to submit such information within the time referred to in sub-section (1A) without showing any reasonable cause, his registration number, if any, allotted under the Act, or his certificate of registration granted under clause (f) of section 119, shall be deemed to have been cancelled on the expiry of such time and the dealer shall, for all purposes of the Act, be deemed not to have been registered."]

<sup>1</sup>[Special provision for registration.

**24A.** (1) Notwithstanding anything contained in sub-section (1) and sub-section (2) of section 24, a dealer who is liable to pay tax under section 10, or section 11, but has failed to apply for registration under the Act, may, at his option, make an application for registration in the prescribed form to the prescribed authority under section 24 by the 31st day of October, 2006, along with a declaration by such dealer giving particulars were sales for year or part thereof, and proof of payment of tax, in lieu of tax payable under sub-section (2) of section 16, at the rate of one per centum on turnover of sales on which tax is payable as referred to in sub-section (1) of section 16, in respect of the period commencing on and from the appointed day and ending on the day preceding the date of filing such application:

Provided that the provisions of this sub-section shall not apply to any dealer,—

- (a) if any notice for determination of his liability under any of the provisions of the Act has been issued to him under section 66; or
- (b) if any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 67 on or after the appointed day; or
- (c) if any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 66 of the West Bengal Sales Tax Act, 1994 during the period of three years preceding the appointed day.

West Ben. Act XLIX of 1994.

(2) If the application referred to in sub-section (1) filed by a dealer is found to be in order and the tax according to the declaration have been paid, the prescribed authority shall grant registration to such dealer within thirty days from the date of receipt of such application.

(3) The registration certificate issued under sub-section (2) shall be effective from the date of order granting such registration:

Provided that where the dealer makes an application together with the declaration and receipted challans showing payment of tax and such application is not disposed of by the registered in authority within thirty days from the date of receipt of such application, the dealer shall be deemed to have been registered on expiry of such period.

(4) Notwithstanding anything contained in section 64, a dealer who has made an application under sub-section (1) shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act, during any period prior to the date of the order granting such registration.]

Enrolment of transporters, carriers or transporting agents.

[1 . Inserted w.e.f. 01.08.2006 by S. 12(12) of WB Act XVIII of 2006.]

**25.** (1) For carrying out the purposes of section 73, section 80, section 81, every transporter, carrier or transporting agent operating lease transporting business in West Bengal for transporting any consignment of goods into, or outside, or within, West Bengal shall apply and obtain from the Commissioner a certificate of enrolment in such manner, and within such time, as may be prescribed.

(2) If a transporter, carrier or transporting agent, who is required by subsection (1) to get himself enrolled, fails, without reasonable cause, to make an application for enrolment within the prescribed time, the Commissioner may, by an order in writing and after giving such transporter, carrier or transporting agent an opportunity of being heard, impose upon such transporter, carriers or transporting agent a penalty of a sum not exceeding one thousand rupees for each month of default, in the manner as may be prescribed.

Security to be furnished by dealer, casual dealer or any other person including transporter, carrier or transporting agents.

**26.** The Commissioner may, by an order in writing, for good and sufficient reason to be recorded therein, demand from any dealer, casual dealer or any other person feuding transporter, carrier or transporting agent, a security in such circumstances and in such manner as may be prescribed.

Amendment of certificate of registration.

**27.** The prescribed authority may from time to time and any certificate of registration in accordance with the information furnished under sections 27A, 27B, 27C or otherwise received, after due notice to the dealer, and such amendment may be made with retrospective effect in such circumstances, and subject to such restrictions on conditions, as may be prescribed.

Information to be furnished by a registered dealer regarding change of business.

**27A.** If any registered dealer—

- (a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any change in the ownership of his business, or discontinues his business or changes his place of business or opens a new place of his business; or
- (b) discontinues or changes his factory or warehouse or opens a new factory or warehouse; or
- (c) changes the name of nature of his business or effects any change in the class of classes of goods in which he carries on his business and which is or are specified in his certificate of registration; or
- (d) in the case of a company, effects any change in the constitution of its board of directors; or
- (e) accepts digital signature certificate issued under the Information Technology Act, 2000, or
- (f) opens a new bank account or closes and existing bank account relating to the business,

he shall, within the prescribed time and in the prescribed manner, inform the prescribed authority accordingly and if any such dealer dies, is legal

representative shall, in the like manner, inform the said authority.

Transfer of  
business by a  
registered dealer.

**27B.** Where the ownership of the business of registered dealer is transferred absolutely by sale, gift, bequest, inheritance or otherwise, or transferred by way of lease, and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall, for all the purposes of the Act (except for the liabilities under this Act already discharged by such dealer), be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the certificate of registration of such dealer had initially been granted to the transferee or lessee, and the transferee or the lessee shall, on application to the Commissioner, be entitled to have the certificate of registration amended accordingly.

Partial transferor  
business by a  
registered dealer.

**27C.** (1) Where the ownership of a part, division or unique of the business of a registered dealer is transferred by sale, gift, bequest, inheritance or otherwise, or transferred by way of a lease or licence, and if the transferee, lessee or licensee, as the case may be, carries on such business as a part of his existing business or a new business in some other name, he shall, for the purposes of this Act (except for the liabilities under this Act already discharged by the transferor for lessor or licensor, as the case may be) be deemed to be a dealer in the fourth in the matter of payment of any tax, penalty or interest payable by or due from the transferor for lessor or licensor, as the case may be, in respect of all the periods immediately preceding the date of such transferred in relation to such part, division or unit.

(2) If the transferee, lessee or licensee is a registered dealer and carries on the business referred to in sub-section (1), he shall, by an application under section 27, get his certificate of registration duly amended.

(3) If the transferee, lessee or licensee is not a dealer registered under this Act and if the transferee carries on business from such part, division or unit, he shall, notwithstanding anything contained in section 10, section 11, or section 14, be liable to pay tax under this Act, and be liable for registration under section 24, from the date of such transfer.

(4) Where the transferee, lessee or licensee is deemed to be a dealer in default under sub-section (1) for any amount of tax, penalty or interest payable by, or due from, the transferor for lessor or licensor, as the case may be, such amount of tax, penalty or interest shall be recoverable from such transferee, lessee or licensee under section 55.

Declaration in  
respect of the  
manager or other  
officers of a  
registered dealer.

**27D.** Every registered dealer shall send a declaration to such authority, within such period and in the such manner, as may be prescribed, stating the names of the manager and all officers of other designations who are responsible for ensuring compliance with any requirement made of such dealer under this Act, and in the event of any change of such manager or other officers, the dealer shall send a revised declaration in the like manner to the said authority within such time as may be prescribed.

Penalty for contravention of the provisions of sections 27A, 27B, 27C, or 27D.

**27E.** Where a dealer fails to furnish the information as referred to in section 27A, section 27B, section 27C, or section 27D within such time as may be prescribed, the Commissioner may, after giving the dealer an opportunity of being heard, by an order in writing, impose upon such dealer by way of penalty a sum not exceeding five thousand rupees in such manner as may be prescribed.

Amendment of certificate of enrolment.

**28.** The Commissioner may amend any certificate of enrolment granted under sub-section (2) of section 25, in accordance with the information furnished by a transporter, carrier or transporting agent, as the case may be, or otherwise received, after due notice to such transporter, carrier or transporting agent, as the case may be and such amendment may be made with retrospective effect in such circumstances and in such manner, and subject to such restrictions on conditions, as may be prescribed.

Cancellation of certificate of enrolment.

**28A.** (1) A certificate of enrolment granted to a transporter, carrier or transporting agent under sub-section (2) of section 25, shall be cancelled by the Commissioner where he, after giving a reasonable opportunity of being heard, is satisfied that the business of transporting goods of such transporter, carrier or transporting agent, as the case may be, has discontinued or has ceased to exist, and such cancellation shall take effect from the date of such order.

(2) The cancellation of the certificate of enrolment may be made on an <sup>1</sup>[application of the transporter, carrier or transporting agent] or *suo motu* on the satisfaction of the appropriate authority.

[1. Substituted w.e.f. 01.04.2005 by S. 12(13) of WB Act XVIII of 2006 for "application of the dealer".]

Cancellation of certificate of registration.

**29.** (1) A certificate of registration granted to a dealer <sup>1</sup>[under sub-section (2) or sub-section (2A)] of section 24, shall be cancelled by the appropriate authority where such authority, after giving a reasonable opportunity to such dealer of being heard, is satisfied that—

(a) the dealer has ceased to carry on business or has ceased to exist at his case of business; or

(b) the dealer has ceased to be liable to pay tax under sub-section (8) of section 10, section 11, <sup>2</sup>[sub-section (8) of section 14; or]

<sup>3</sup>[(c) the dealer has obtained the certificate of registration on the basis of documents or representations, which have subsequently been found false or incorrect by <sup>4</sup>{such appropriate authority; or}]

<sup>5</sup>[(d) the dealer has issued tax invoice to another dealer without entering into a transaction of sale, whether in full or in part, or has issued tax invoice showing tax for an amount in excess of the amount involved in a transaction of sale but has not deposited the tax in full, or has issued tax invoice in contravention of the provisions of section 64; or

(e) the dealer has defaulted in furnishing any return under section 32 together with receipted challan showing payment of net tax and interest payable, if any, according to such return within the prescribed date or the time as extended by the Commissioner; or



(f) the dealer has failed to pay the net tax or interest payable or tax due or interest due under this Act.]

(2) The cancellation of the station may be made on an application of the dealer or *suo motu* on the satisfaction of the appropriate authority.

(3) The cancellation of registration shall take effect from the date of order for such cancellation.

<sup>6</sup>[(4) Where a dealer, within thirty days or within such further time as may be allowed by the appropriate authority from the date of cancellation of his certificate of registration under clause (e) or clause (f) of sub-section (1), submits the return and pays the net tax along with interest payable under section 33 or section 34A, or tax due or interest due, as the case may be, and makes an application to the appropriate authority for restoration of his certificate of registration, the appropriate authority shall, by an order in writing, restore the certificate of registration of such dealer with effect from the date of cancellation of such certificate as if the certificate were in force during the period in which it remained cancelled.]

[1 . Substituted w.e.f. 01.08.2006 by S. 12(14)(a)(i) of WB Act XVIII of 2006 for "under sub-section (2)".

2. Substituted by S.6(8)(a) of WB Act XIII of 2005 w.e.f. 01.4.2005 for "sub-section (8) of section 14 ".

3. Inserted by S.6(8)(b) of WB Act XIII of 2005 w.e.f. 01.4.2005.

4. Substituted w.e.f. 01.08.2006 by S. 12(14)(a)(ii) of WB Act XVIII of 2006 for "such appropriate authority."

5. Inserted clauses (d), (e) and (f) w.e.f. 01.08.2006 by S. 12(14)(a)(iii) of WB Act XVIII of 2006.

6. Inserted w.e.f. 01.08.2006 by S. 12(14)(b) of WB Act XVIII of 2006.]

Option for cancellation of registration under specified circumstances.

**30.** (1) Notwithstanding anything contained in section 29 a registered dealer who does for manufacture goods in West Bengal for sale, may apply in the prescribed manner, to the prescribed authority, for cancellation of his registration under this Act, if, during the year in which such application is made and during the year immediately preceding such year, he has dealt exclusively in tax-free goods specified in Schedule A.

(2) If the prescribed authority is satisfied that the application made under sub-section (1) is in order, he shall cancel the registration.

(3) A registered dealer whose registration has been cancelled under sub-section (2), shall continue to be liable to pay tax in accordance with the provisions of sub-section (9) of section 10 in the event of making any sale of goods taxable under this Act subsequent to such cancellation of registration, but during the period of such liability to pay tax, he shall, within thirty days from the date of incurring such liability, apply for registration under section 24 and such application shall be disposed of in accordance with the provisions of that section.

## PART II

### Other information to be furnished by a casual dealer, a dealer, etc.

Statement to be furnished by persons, dealing in transporting, carrying, shipping or clearing, forwarding or warehousing etc.

**30A.** If, in the opinion of the State Government, there is appreciable evasion of tax in respect of any goods, the State Government may, by notification, specify such goods, and their upon every person dealing in transporting, carrying, shipping or clearing, forwarding or warehousing such goods, whether as owner or lessee or awkward were of a warehouse, shall furnish a statement of declaration in such form, within such time, in such manner, and for such period and to such authority, as may be specified in the notification.

Information to be furnished by dealers in respect of transfer of goods otherwise than by way of sale.

**30B.** If, in the opinion of the State Government, it is necessary to obtained information relating to transfer of goods otherwise than by way of sale in West Bengal, it may, by notification, call upon dealers or such class or classes of dealers as may be specified in the notification to furnish such information relating to such goods in such manner, at such intervals, for such period and to such authority, as may be specified in the notification.

<sup>1</sup>[Penalty for non-furnishing of information or] furnishing of incorrect information under section 30B.

**30C.** (1) Where—

- (a) a dealer has failed to furnish information as required under section 30B, or
- (b) upon verification of the information in the statement furnished under section 30B by a dealer relating to transfer of goods otherwise than by way of sale in West Bengal, it comes to the knowledge of the Commissioner that—
  - (i) any of the particulars furnished in such statement is not correct or compete; or
  - (ii) the goods transferred by such dealer otherwise than by way of sale in West Bengal have not been accounted for by the dealer's head office, or brunt of his, or agent, as the case may be; or
  - (iii) the agent of such dealer is not traceable or is not in existence at the address furnished in such statement; or
  - (iv) the agent of the dealer to whom they transfer of goods has been made otherwise than by way of sale denies to have any knowledge of the goods claimed to have been transferred to him by the dealer; or
  - (v) the goods have not been transported by the transporter named in such statement under any consignment note or railway receipt referred to in the said statement,

the Commissioner may, in such manner as may be prescribed, impose on such dealer, by way of penalty, a sum, not less than fifteen *per centum* but not exceeding twenty-five *per centum* of the value of the goods so claimed to have been transferred by him.

(2) If any penalty is imposed under sub-section (1) for concealment of any sale with an intent to evade payment of tax thereon in respect of any period,

such sale shall be excluded in determining the turnover of sales in respect of such period for the purpose of imposition of penalty, if any, under sub-section (1) of section 96.

[1. Substituted w.e.f. 01.04.2005 by S. 12(15) of WB Act XVIII of 2006 for "Penalty for non-furnishing or" in the marginal note.]

Compounding of penalty that may be imposed on the section 30C.

**30D.** (1) Subject to such conditions as may be prescribed, any dealer to whom the notice has been issued proposing imposition of penalty under sub-section (1) of section 30C, may, before the date fixed in such notice for hearing, at his option, compound the penalty proposed to be imposed, as mentioned in such notice, and the Commissioner may, at his discretion, accept from such dealer, by way of composition of penalty proposed to be imposed under sub-section (1) of that section, an amount equal to ten *per centum* of the value of goods claimed by the dealer to have transferred by him otherwise than by way of sale in West Bengal in the statement furnished by him under section 30B.

(2) On payment in full of the amount referred to in sub-section (1), the proceedings commenced against the dealer under sub-section (1) of section 30C shall not be proceeded with further.

Statements, accounts or declarations to be furnished by registered dealer's and penalty for months furnishing the same.

**30E.** (1) Every registered dealer shall, in the manner as may be prescribed, submit before the prescribed authority such statements, accounts or declarations within such time as may be prescribed and shall verify that such statements, accounts or declarations are true to the best of his knowledge and belief.

<sup>1</sup>[(2) If a registered dealer fails to submit statements, accounts or declarations referred to in sub-section (1), he shall be liable to pay a penalty not exceeding five thousand rupees for each default, in the manner as may be prescribed.]

[1. Inserted w.e.f. 01.08.2006 by S. 12(16) of WB Act XVIII of 2006.]

Statements to be furnished by casual dealers.

**30F.** A casual dealer liable to pay tax under section 15, shall in the prescribed manner, submit a statement in writing giving his permanent residential address and particulars of such sale or purchase along with receipted copy of challan as proof of a means of tax for such sale or purchase to the Commissioner.

## CHAPTER V

### Payment of net tax or any other tax, interest, penalty, furnishing of returns, and deduction of amount at source towards payment of tax, etc.

Payment of net tax or any other tax, interest, penalty.

- 31.** Any amount—
- (a) of net tax or any other tax payable or the two, for a tax period or payable according to a return referred to in sub-section (1) of section 32, or
  - (b) of the interest payable under section 33 or section 34 or section 34A, or
  - (c) of tax payable after assessment under section 45, or section 46, or section 48, or
  - (d) of penalty imposed under any provisions of this Act, or
  - (e) other than those referred to in clause (a), clause (b), clause (c), or clause (d), payable or due under this Act,
- shall be paid into an appropriate Government Presenting, in such manner, at such interval, and within such time, as may be prescribed.

Adjustment of reverse credit.

- 31A.** any amount of reverse the date as referred to <sup>1</sup>[in clause (36C)] of section 2 arising in a tax period shall be adjusted within the said tax period in such manner and subject to such conditions and restrictions, as may be prescribed.

[1. Substituted w.e.f. 1.4.2005 by S. 6(9) of WB Act XIII of 2005 for "in clause (36B)".]

Furnishing of return by dealer.

- 32.** (1) Every dealer liable to pay tax under the Act of every other dealer, if so required by the Commissioner by a notice served in the prescribed manner, shall furnish such returns by such dates and to such authority as may be prescribed.

(2) Every dealer required by sub-section (1) to furnish a return shall, before furnishing such return, payable for amount of the net tax and interest, if any, payable according to such return, in the manner as provided in section 31 and shall furnish along with such return, a receipt from the appropriate Government Treasury referred to in that section showing the payment of such amount:

Provided that where a dealer is required by sub-section (1) to furnish return for any return period is unable to make payment of the full amount of the net tax or interest payable according to such return, such dealer shall furnish return without making payment of the full amount of the net tax or interest payable according to such return along with an application that using the reasons to the Commissioner for extension of time for making payment of the unpaid amount of net tax or interest payable upto the extended date of payment:

Provided further that the Commissioner may, if he is satisfied on the reasons adduced by the dealer in the application referred to in the first proviso, extend, by an order in writing, the time for making payment of such unpaid amount of the net tax and interest if any, payable thereon on such terms and conditions as he may deem fit and proper.

(3) If any dealer who has furnished a return under sub-section (1), discovers any omission or error in any return furnished by him, he may, at any time

before the date prescribed for furnishing of the next return by him, furnish a revised return, and if the revised return shows a greater amount of net tax or interest to be payable than what was shown in the original return, it shall be accompanied by a receipt showing payment of the extra amount or the amount of net tax and interest if any, payable thereon in the manner as provided in section 31.

(4) Where it deduction of an amount is made under sub-section (1) of section 40 from the payment of any sum to a dealer for execution of the works contract, and such amount is deposited under sub-section (2) of tax section, the deduction of such amount shall be deemed to be a payment of tax by such dealer on the date of such deduction, and he shall furnish along with his return required under sub-section (1) of this section, in respect of such amount a copy of the certificate of deduction referred to in sub-section (3) of section 40, duly certified by such dealer, as a proof of such payment of tax:

Provided that where a dealer does not received the certificate of deduction under sub-section (3) of section 40 on all before the prescribed date of furnishing of return for a return period, he shall furnish return stating the fact in writing, and shall undertake to furnish the copy of such certificate of deduction within fifteen days from issue of such certificate to him under sub-section (3) of section 40.

(5) A dealer liable to pay tax under sub-section (1) or sub-section (2), as the case may be, of section 10 but not yet registered, shall furnish return in respect of the return period starting on or from such appointed day and pay tax in accordance with the provisions of this Act.

Interest for non-payment or delayed payment of net tax payable or for non-reversal of input tax credit of input tax rebate.

**33.** (1) Where a dealer required to furnish return under sub-section (1) of section 32, furnishes return in respect of any return period by the prescribed date or thereafter but fails to make full payment of net tax payable, under sub-section (2) of section 32, in respect of any tax period within such return period by the prescribed date, he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of net tax and upto the date prior to the date of payment of such net tax or, <sup>1</sup>[upto the date preceding the date of commencement of proceeding under section 55] or, upto the date prior to the date of provisional assessment under section 45 or assessment under section 46 or section 47 or section 48, as the case may be, whichever is earlier, in respect of such return period upon so much of the amount of net tax payable by him according to such return as remains unpaid:

Provided that where such dealer admits in writing that the amount of net tax payable in respect of any such tax period within the return period is an amount which is either more or less than what has been original shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of net tax payable for such tax period according to such admission as remains unpaid.

(2) Where a dealer required to furnish return under sub-section (1) of section 32, fails to furnish such return by the prescribed date or thereafter in respect of

any return period before the provisional assessment under section 45 <sup>2</sup>[or the assessment under section 46] or section 48, as the case may be, and on such provisional or other assessments full amount of net tax payable for such period is found not to have been paid by him by the prescribed date, he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date of payment of such net tax in respect of each tax period and <sup>3</sup>[upto the date prior to the date] of provisional assessment under section 45 or rebate under section 46 or section 48, as the case may be, in respect of such return period upon so much of the amount of net tax payable by him according to such assessment as remains unpaid:

Provided that where the provisional assessment under section 45 or an assessment under section 46 or section 48 is made the four more than one return period and such assessment does not show separately the net tax payable for the tax period is within such return period is in respect of which interest is payable under this sub-section, the Commissioner shall apportion the net tax payable for the tax periods within such return periods on the basis of such assessment.

(3) <sup>4</sup>[Where a dealer required to adjust any amount of reverse credit by way of deducting input tax credit or input tax rebate] as referred to in section 31A in respect of a particular tax period, fails to do so, he shall pay a simple interest upon such amount at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of net tax for such tax period and upto the date prior to the date of payment of such net tax or, upto the date of commencement of proceeding under section 55 or, upto the date prior to the date of provisional assessment under section 45 or assessment under section 46 or section 47, as the case may be, whichever is earlier.

- [1. Substituted w.e.f. 01.04.2005 by S. 12(17) of WB Act XVIII of 2006 for "upto the date of commencement of proceeding under section 55".
2. Subs. by S. 6 (10) (a) (i) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "section 45 of the assessment under section 46".
3. Subs. by S. 6 (10) (a) (ii) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "upto the prior to the date".
4. Subs. by S. 6 (10) (b) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "Where a dealer is required to reverse any amount of input tax credit or input tax rebate".]

Interest for non-payment or delayed payment of assessed tax.

**34.** (1) Where a dealer fails to make payment of any tax due after provisional or other assessments by the date specified in the notice issued under section 45 or section 46 or section 48 for payment thereof, he shall, subject to the provisions of sub-section (2), pay a simple interest at the rate of twelve *per centum per annum* for the period of default, calculated from the date next following the date specified in such notice upto the date of full payment of such tax or upto the date preceding the date of commencement of proceedings under section 55, whichever is earlier upon so much of <sup>1</sup>[the amount of tax due from him] according to such notice as remains unpaid.

(2) Where as a result of an order under section 84, section 85, section 86, section 87 or section 88 <sup>2</sup>[the amount of tax due is modified], the interest

payable under sub-section (1) shall be determined or re-determined on the basis of such modified amount and the excess interest paid, if any, shall be refunded.

<sup>3</sup>[(3) Where as a result of an order under section 84, section 85, section 86, section 87 or section 80 the amount of tax due is modified as stated in sub-section (2), the interest shall be payable at the rate of twelve *per centum* per annum for the period of default, calculated from the date next following the date specified in the notice original issued under section 45 or section 46 or section 48 for payment thereof upto the date of full payment of such tax due or upto the date preceding the date of commencement of proceedings under section 55, whichever is earlier, upon so much of the amount of modified tax due as remains unpaid.]

- [ 1. Subs. by S. 6 (11) (a) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "the amount of tax payable by him".
- 2. Subs. by S. 6 (11) (b) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "the amount of tax payable is modified".
- 3. Inserted by S. 6 (11) (c) of W.B. Act XIII of 2005 w.e.f. 1.4.2005. ]

Interest for failure to make payment of tax as referred to in clause (a) of section 118

**34A.** Where a registered dealer fails to make payment of tax as referred to in clause (a) of sub-section (1) of section 118 in the prescribed manner and by the prescribed date he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of tax and ending on the date prior to the date of payment of such tax or upto the date of commencement of proceedings under section 55 , whichever is earlier, upon so much of the amount of tax payable by him according to such return as remains unpaid.

Exemption from payment of interest.

**35.** Notwithstanding anything contained in section 33 or section 34, or section 34A, no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as many prescribed.

Interest payable by Commissioner.

**36.** The Commissioner shall, in the prescribed manner, pay a simple interest at the rate of twelve per centum per annum for the period of daily in making refund to certain class of persons referred to in section 61, or to a dealer of the amount of tax paid indexes which arises out of an order of under section 84, section 85, section 86, section 87 or section 88, <sup>1</sup>[from the first day of the month next following three months from the date of such order] or to the date on which the refund is made in the manner referred to in section 62, upon the amount of tax refundable to him according to such order.

- [1. Subs. by S. 6 (12) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for "from the first day of the month next following the date of such order".]

Rounding off of net tax or any other tax payable for calculation of interest.

**37.** In calculating the interest payable under section 33, section 34, section 34A four section 36, the amount of net tax or any other tax payable or due in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and if such part is less than fifty rupees, it shall be ignored.

Rounding off of amount of net tax or any other tax, or penalty.

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

Collection of tax only by dealers liable to pay tax.

**39.** (1) No dealer who is not liable to pay tax under this Act shall collect, in respect of any sale of goods by him, any amount of tax under this Act and no dealer who is liable to pay tax under this Act, shall make any such collection except in accordance with the provisions of this Act.

(2) If any dealer contravenes the provisions of sub-section (1), he shall, notwithstanding anything contained elsewhere in this Act, deposit the amount collected in such contravention into an appropriate Government Treasury within thirty days from the date of such collection and intimate the Commissioner of such deposit along with a receipt from such Treasury or Bank showing payment of such amount.

(3) The Commissioner shall on an application made by the buyer in respect of sales of goods to him referred to in sub-section (1) and on such terms and conditions as he may deem fit and proper refund to such buyer the tax or the excess tax, as the case may be, collected from such buyers and deposited by the dealer in the manner referred to in sub-section (2):

Provided that no application from any buyer shall be entertained unless the same is made <sup>1</sup>[within twelve months from the date on which the tax or excess tax, as the case may be, is paid or such further period as may be allowed by the Commissioner] and the application is supported by relevant <sup>2</sup>[tax invoice, invoice, cash memo or bill] issued by the dealer.

(4) If a dealer is in default in depositing in accordance with the provisions of sub-section (2), the amount collected in contravention of the provisions of sub-section (1), the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, direct the dealer that he shall pay by way of penalty a sum not less than the amount of tax so collected but not exceeding twice the amount of tax so collected by him in contravention of the provisions of sub-section (1).

[1. Substituted w.e.f. 01.08.2006 by S. 12(18)(a) of WB Act XVIII of 2006 for "within twelve months from the date on which the tax or excess tax, as the case may be, is paid".

2. Substituted w.e.f. 01.08.2006 by S. 12(18)(b) of WB Act XVIII of 2006 for "cash memo or bill".]

Deduction at source from payment to a dealer against execution of works contract.

**40.** (1) Notwithstanding anything contained in section 32 or any rules made thereunder or any terms of a contract to the contrary, any person responsible for paying any sum to any dealer for execution of a works contract referred to in section 14, wholly or partly in pursuance of a contract between such dealer and—

- (a) Government,
- (b) a local authority,
- (c) a corporation or a body established by or under any law for the time being in force,



- (d) a company incorporated under the Companies Act, 1956, including a Government undertaking, 1 of 1956.
- (e) a co-operative society registered or deemed to be registered under the West Bengal Co-Co-operative Societies Act, 1983, West Ben. Act XLV of 1983.
- (f) an educational institution, or
- (g) a promoter,

shall, at the time of payment of such sum in cash or by issue of a cheque or draft or any other mode of payment, <sup>1</sup>[deduct an amount towards tax equal to—

- (i) two *per centum*, when such contractor is registered under the Act and such registration is valid on the date of making such payment; or
- (ii) four *per centum*, in all other cases:];

Provided that no deduction under this sub-section shall be made,—

- (i) where the payment is made as advance prior to the commencement of the execution of such works contract; or
- (ii) where no transfer of property in goods (whether as goods or in some other form) is involved in the execution of such works contract; or

[(iii) \*\*\* ]

Provided further that no deduction under the sub-section shall be made in respect of that part of payment to the dealer which represents his contractual transfer price of the goods as referred to in clause (a) of sub-section (2) of section 18, where such dealer declares in writing to that effect claiming exemption from tax.

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

- (i) his assignee, if any,
- (ii) the person who develops or claims the land, the person who constructs, reconstructs, converts, renovates or extends, and the person who transfers, such building, if such persons are different,
- (iii) a society registered under the West Bengal Societies Registration Act, 1961, West Ben. Act XXVI of 1961.
- (iv) any firm, board or other association of persons established by or under any law for the time being in force, but excluding those referred to in clauses (a) to (f) of this sub-section.

(2) Where deduction of an amount is made under sub-section (1),—  
 the person making such deduction shall be possessed the amount so deducted into an appropriate Government Treasury within such time, in such manner and in such form or challan as may be prescribed; or  
 in the case of the person who adopts "public works system of accounting" and makes such deduction, he shall transfer the amount so deducted to the appropriate head of account through account statement in the manner prescribed, which is required to be sent periodically to the Accountant General,

West Bengal, and such transfer shall be deemed to be a deposit of the amount so deducted by the person making such deduction on the basis of such statement.

(3) After such deposit of the amount under sub-section (2), the person who makes the deduction and deposit, shall, within fifteen days from the date of such deposit, issued to the dealer a certificate in the prescribed form for each deduction separately and send a copy of receipted challan or a copy of the account statement referred to in sub-section (2), as the case may be, to the Commissioner along with the relevant certificate of deduction and such document as may be prescribed.

(4) On receipt of certificate of deduction referred to in sub-section (3), the deposit of an amount of the dealer referred to in sub-section (2), shall be adjusted by the Commissioner towards tax liability of the dealer and the section 18, and shall constitute a good and sufficient discharge of the liability of the person deducting such amount to the dealer to the extent of the amount deducted and deposit.

(5) Where any person, while paying any sum to a dealer, contravenes the provisions of sub-section (1), sub-section (2) or sub-section (3), he shall be personally liable for such contravention, and the Commissioner may, after giving him an opportunity of being heard, by order in writing and in such manner as may be prescribed, impose on such person a penalty, not exceeding twice the amount required to be deducted and deposited by him into the appropriate Government Treasury.

(6) Where the dealer from whose account any amount has been deducted under sub-section (1) and deposited under sub-section (2) proves to the satisfaction of the Commissioner that he is not liable to pay tax under section 14 and such amount was not wholly or partly payable by him under this Act, the Commissioner shall refund or adjust the amount refundable to the dealer in such manner as may be prescribed.

- [1. Substituted w.e.f. 01.08.2006 by S. 12(19)(a) of WB Act XVIII of 2006 for "deduct an amount towards tax equal to two per centum of such sum being the in respect of such works contract:".
2. Omitted w.e.f. 01.08.2006 by S. 12(19)(b) of WB Act XVIII of 2006 the clause "(iii) where the dealer produces the certificate from the Commissioner under sub-section (2) of section 99 that he has no liability to pay tax under section 14 or that he has paid tax payable by, or due from, him under that section:".]

**CHAPTER VI**  
**Scrutiny and verification of returns and statements and documents furnished by a dealer, casual dealer, and audit of accounts and other documents maintained by a dealer.**

**PART I**  
**Scrutiny and verification of returns furnished by, and audit of accounts and other documents maintained by, a dealer.**

Scrutiny of returns.

**41.** (1) Every return, furnished under sub-section (1) of section 32, shall be scrutinised by the Commissioner to ascertain the correctness of calculation of input tax credit or input tax rebate and net tax, including application of proper rate of tax, payable according to such return, and the payment of <sup>1</sup>[interest payable under sub-section (1) of section 33, if any, and payment of such net tax and interest.]

(2) If any mistake is detected upon the scrutiny made under sub-section (1), the Commissioner shall, in the prescribed manner, S upon the dealer who has filed such return, a notice requiring him to rectify the mistake or to pay the amount of net tax payable in deficit along with the interest payable under sub-section (1) of section 33, if any, within the date specified in such notice.

(3) The notice referred to in sub-section (2) shall not be issued to any dealer after the expiry of four months from the day on which a return has been furnished, under sub-section (1) of section 32.

(4) If upon scrutiny made under sub-section (1), a dealer is found to have pay the net tax, or interest, in excess of the amount payable as per such return, the Commissioner shall inform the same to the dealer within one month from the date of completion of such scrutiny.

[1. Substituted w.e.f. 01.08.2006 by S. 12(20) of WB Act XVIII of 2006 for "interest payable under sub-section (1) of section 33, if any."]

Verification of returns.

**42.** (1) Where the Commissioner, for reasons to be recorded in writing, has reason to believe that the dealer has furnished incorrect statement of his turnover of purchases or turnover of sales or contractual transfer price or incorrect particulars of his purchases of sales or contractual transfer price or has claimed excess amount of input tax credit or input tax rebate in a return furnished under sub-section (1) of section 32, he may verify the statement and particulars furnished in such return with reference to the accounts, registers or documents, including those in the form of electronic records, maintained or kept by such dealer.

(2) If upon verification of return made under sub-section (1), the Commissioner is not satisfied that the return furnished by the dealer is correct and complete, he shall proceed to make assessment of the dealer as referred to in section 46 or section 48, as the case may be.

(3) No verification shall be made under sub-section (1) after the assessment of the dealer is initiated under section 46 or section 48.

Audit of accounts.

**43.** (1) <sup>1</sup>[Notwithstanding anything contained in section 45, section 47 and section 49] and subject to such conditions, restrictions and in such manner, as may be prescribed, the Commissioner shall, from among registered dealers, select on a random basis, or upon information or otherwise, such percentage, or such transfer classes of dealers, as may be prescribed, for audit of the accounts, registers or documents, including those in the form of electronic records, maintained or kept by such dealer for any year or part thereof, not being a period which has ended five years previous to the date of selection.

(2) After a selection made under sub-section (1), the Commissioner shall, with due notice to the dealer so selected, proceed to audit of the accounts, registers and documents, including those in the form of electronic records, maintained or kept by the dealer to verify the correctness of returns furnished and the admissibility of various claims including the input tax credit or input tax rebate or refund, for the year or part thereof referred to in sub-section (1).

(3) The Commissioner shall, after considering all the evidence produced in course of the proceedings or collected by him, or to the best of his judgment where the dealer has failed to comply with the notice issued under sub-section (1) prepare a report stating his observation therein regarding the correctness of returns, admissibility of various claims of the dealer for the period for which such audit is made.

(4) Any audit under the section shall be completed within six months from the date on which the selection is made by the Commissioner:

Provided that where the Commissioner is satisfied that audit in respect of such dealer cannot be completed within six months from the date of selection, he may, upon giving the dealer an opportunity of being heard and for the reasons to be recorded in writing, extended the period for another six months:

Provided further that the order of such extension shall be made within six months from the date of selection for audit and such order shall be immediately communicated to the dealer.

[1. Substituted w.e.f. 01.08.2006 by S. 12(21) of WB Act XVIII of 2006 for "Notwithstanding anything contained in section 47 and section 49".]

Credit and debit notes.

**44.** (1) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax chargeable under this Act in respect of that sale, the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, making the sale shall provide the purchaser with a credit note and the purchaser shall provide such dealer making the sale, with a debit note containing such requisite particulars as may be prescribed.

(2) Where the tax invoice has been issued and the tax chargeable under this Act in respect of the sale exceeds the amount of tax charged in that tax invoice, the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, making the sale shall provide the purchaser with a debit note and the purchaser shall provide such dealer making the sale, with a credit note containing such requisite particulars as may be prescribed.

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the dealer making the sale to the purchaser, and a debit note will be issued by the purchaser to the dealer making the sale, containing such requisite particulars as may be prescribed:

Provided that where the goods sold or purchased in a year is returned or rejected in a subsequent year, within a period of six months from the date of sale or purchase, the credit note issued by the seller of the debit note issued by the purchaser shall be adjusted with the turnover of sales or turnover of purchases, as the case may be, in the year in which such goods are returned or rejected.

## **PART II**

### **Scrutiny and verification of statements and documents furnished by a casual dealer.**

Scrutiny and verification of statements and documents furnished by a casual dealer.

**44A.** (1) If the statement and documents, furnished under section 30F shall be scrutinised by the Commissioner to ascertain the correctness of calculation of tax payable, including application of proper rate of tax, according to such statement submitted in writing.

(2) If any mistake is detected upon the scrutiny made under sub-section (1), the Commissioner shall, in the prescribed manner, serve upon the casual dealer who has filed such statement, a notice in such form as may be prescribed, requiring him to pay the amount of tax in deficit, if any, within the date specified in such notice.

(3) If upon scrutiny made under sub-section (1), a casual dealer is found to have paid tax in excess of the amount payable as per such statement, the Commissioner shall inform the same to the casual dealer within one month from the date of completion of such scrutiny.

(4) Where the Commissioner, for reasons to be recorded in writing, has reason to believe that a casual dealer has furnished incorrect statement of his sale or purchase in the statement furnished under section 30F, he may verify such statement.

(5) If upon verification of the statement referred to in sub-section (4), the Commissioner is not satisfied that the statement furnished by such as soon dealer are correct and complete, he shall proceed to make assessment of the casual dealer as referred to in sub-section (2) of section 48.

**CHAPTER VII**  
**Provisional assessment and assessment upon hearing and  
determination of interest.**

Provisional  
assessment.

**45.** (1) Where the dealer required to furnished returned for the period under sub-section (1) of section 32,—

- (a) fails to furnish such return; or
- (b) furnishes such return but fails to make an application to the Commissioner for extension of date of payment, of the unpaid amount of net tax and interest, if any, as referred to in the first proviso to sub-section (2) of section 32; or
- (c) furnishes such return but fails to make payment of net tax of interest thereon in accordance with the terms and conditions and within such time as may be specified by the Commissioner as referred to in the first proviso to sub-section (2) of section 32; or
- (d) furnishes such return but fails to make payment of the unpaid amount of net tax or interest and where the Commissioner has rejected his application for extension of date of payment as referred to in the first proviso to sub-section (2) of section 32,

the Commissioner or any other person appointed under sub-section (1) of section 6 to assist him, may, notwithstanding anything contained in section 46, proceed to assess the dealer provisionally for that period:

Provided that no provisional assessment under the section in respect of return period shall be made following the expiry of six months from, the prescribed date for furnishing such return or the extended date for making payment of net tax, as the case may be:

Provided further that in completing the time limit as specified in the first proviso for making any provisional assessment under the section, the period during which the Commissioner is a restrained from commencing or continuing any proceedings from such provisional assessment by an order of a tribunal or any court, shall be excluded.

<sup>1</sup>[(2) In making a provisional assessment under this section, the Commissioner or other authority as referred to in sub-section (1), shall—

where the dealer has failed to furnish return, assess the net tax of the dealer for the relevant return period on the basis of past returns or past records, and where no such returns or records are available, on the basis of information received by the Commissioner or such other authority, and determine the interest payable by the dealer for the relevant return period; or

where the dealer furnishes return but fails to make an application to the Commissioner, or fails to make payment of the net tax or interest, or fails to make payment of the unpaid amount of net tax or interest as mentioned in clause (b), clause (c) and clause (d), respectively, of sub-section (1), assess on the basis of return furnished the net tax, and determine the interest payable or unpaid amount of interest, for the relevant period,

and impose a penalty not exceeding twice the assessed amount of net tax or the unpaid amount of net tax, as the case may be, and fix a date for production of

documentary evidence for removing the cause for making the provisional assessment under sub-section (3), and shall direct the dealer by a notice to pay the assessed amount of net tax or the unpaid amount of net tax, as the case may be, with the interest payable or remaining unpaid and penalty imposed, in such manner, and within such date, as may be prescribed.]

<sup>2</sup>[(3) If the dealer produces documentary evidence on or before the date fixed under sub-section (2) for removing the cause for which the provisional assessment has been made under sub-section (2), the authority mentioned in sub-section (1) shall close the proceedings initiated under this section and the provisional assessment made under sub-section (2) shall stand revoked.]

<sup>3</sup>[(4) Where the dealer fails to take action in accordance with the provisions of sub-section (3) after receipt of demand notice issued under sub-section (2), but —

furnishes the return alongwith receipted copy of challan showing full payment of net tax according to such return and the interest payable thereon, for the period in respect of which provisional assessment has been made under sub-section (2), and also submits receipted copy of challan showing payment of a sum equal to twenty *per centum* of the amount of net tax paid, or five thousand rupees, whichever is higher, by way of penalty, on or before the date fixed for payment of the amount demanded in the demand notice, the Commissioner or such other authority mentioned in sub-section (1) shall close the proceedings initiated under this section and the provisional assessment made under sub-section (2) shall stand revoked; or

furnishes receipted challan showing full payment of the net tax, the interest payable according to the demand notice and fifty *per centum* of penalty demanded in such notice, on or before the date fixed for payment of the amount specified in such demand notice without furnishing the return, the provisional assessment made under sub-section (2) shall stand revoked to the extent of demand of net tax, interest and balance fifty *per centum* of penalty.]

(5) Nothing contained in this section shall prevent the Commissioner from making assessment under section 46 and any net tax or interest paid, and penalty paid in excess of the fifty *per centum* of the amount of penalty imposed against provisional assessment or assessments, as the case may be, shall be adjusted against net tax and interest payable on assessment made under that section.

[1, 2 & 3. Substituted w.e.f. 01.08.2006 by S. 12(22)(a), (b) & (c) of WB Act XVIII of 2006 respectively for the following sub-sections —

“(2) The Commissioner or any other authority as referred to in sub-section (1), shall assist the dealer on the basis of past returns, or past records, and where no such returns or records are available, on the basis of information received by the Commissioner and where the dealer fails to pay the net tax for any tax period within the date extended by the Commissioner, shall impose a penalty not exceeding twice the amount of tax so assessed and direct the dealer by a notice to pay the amount of tax assessed, interest determined and penalty imposed in such manner and within such date as may be prescribed.

“(3) Notwithstanding anything contained elsewhere in this section, if the dealer produces

documents the evidence for furnishing return and receipted copy of challan showing full payment of net tax and interest, if any, on or before the date fixed under sub-section (2) for such purpose, the said authority shall close the proceedings initiated under the section.”

“(4) If the dealer furnishes receipted challans showing full payment of net tax and interest payable according to such demand notice and fifty *per centum* of penalty demanded in such notice served under sub-section (2), on or before the date of the men mentioned in such notice, the provisional assessment shall stand revoked to the extent of demand of net tax, interest and balance fifty *per centum* of penalty.”]

Assessment after giving notice to registered dealer.

**46. (1) Where—**

- (a) no return has been furnished by a registered dealer for any return period of a year; or
- (aa) return has been furnished by a registered dealer without paying net tax or interest for any of the tax period within the prescribed date, or within such date, as may be extended by the Commissioner; or
- (b) a registered dealer fails to make payment of the amount of net tax or interest, in deficit within the date specified in a notice issued under sub-section (2) of section 41; or
- (c) upon verification of return under sub-section (1) of section 42, or upon any enquiry, or upon report received under section 43, or otherwise, the Commissioner is not satisfied that return furnished by a registered dealer is correct and complete; or
- (d) upon search or seizure of accounts, registers of documents, or of goods of a registered dealer, the Commissioner has reasons to believe that the registered dealer has not accounted for any turnover of sales or turnover of purchases in the return furnished by such dealer or in the accounts, registers of documents referred to in section 63; or
- (e) a refund has been made to a registered dealer <sup>1</sup>[under clause (a) or clause (aa)] of section 61; or
- (f) a registered dealer brings to the notice of the Commissioner, in writing, within six months from the end of any year that due to error in fact or in law, an amount of net tax or interest has been paid by him in excess of what was actually payable by him for any return period of that year and the Commissioner is satisfied on the grounds adduced by such registered dealer; or
- (g) a registered dealer other than a dealer enjoying deferment, exemption or remission of tax under clause (a), or clause (b), or clause (c) of sub-section (1) of section 118, as the case may be, <sup>2</sup>[ at his option, does not carry forward the excess amount of input tax credit or input tax rebate, which has accumulated during a year, to a return period in the following year and brings to the notice of the Commissioner, in writing, within three months from the end of the following year that he wants refund of the excess amount of input tax credit or input tax rebate which has accumulated during that year]; or
- (h) a registered dealer has closed his business; or
- (i) the Commissioner deems it fit and proper for any other reason,

the Commissioner shall, after giving a notice to such dealer, proceed in such



manner as may be prescribed to assess to the best of his judgment the amount of<sup>3</sup>[net tax payable by such dealer in respect of such year or part thereof], as he may deem fit and proper:

Provided that for the assessment is initiated upon receipt of the report under section 43, the Commissioner shall arrive at an independent decision on the discrepancies, anomalies or evasion or any other matter recorded in such report:

Provided further that no assessment shall be made under the section for the period for which an assessment made under sub-section (2) of section 45<sup>4</sup>[has not been revoked under sub-section (4)] of the section, and action has been taken under section 55, or appeal is pending under section 84 or application for revision is pending under section 87 in respect of such assessment:

Provided also that if on appeal or revision, the provisional assessment order of under section 45 is either annulled or set aside with a direction to make fresh assessment, no further action shall be taken under section 45 and assessment for that period shall be made a fresh under the section and such assessment shall be completed within two years from the date of order made in appeal or revision.

(2) While making an assessment under sub-section (1), the Commissioner may, if he is satisfied—

- (a) that the dealer has defaulted in furnishing any return as required under section 32 without any reasonable cause; or
- (b) the dealer has furnished such return but has failed to pay the full amount of net tax for any tax period within the prescribed date or within such date as extended by the Commissioner,

direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding fifty *per centum* of the amount so assessed.

(3) The Commissioner shall—

- (a) in making the assessment under sub-section (1) and imposing the penalty under sub-section (2), give the dealer a reasonable opportunity of being heard; and
- (b) after making such assessment or imposing such penalty, issued to the dealer a notice directing him to pay the net tax payable, interest determined and penalty imposed upon such assessment in such manner as may be prescribed.

- [1. Substituted w.e.f. 01.08.2006 by S. 12(23)(a) of WB Act XVIII of 2006 for “under clause (a)”.
2. Substituted w.e.f. 01.04.2005 by S. 12(23)(b) of WB Act XVIII of 2006 for " brings to the notice of the Commissioner, in writing, within three months from the end of the following year that he wants refund of the excess amount of input tax credit or input tax rebate which has accumulated during that year and which has remained unadjusted at the end of the said following year".
3. Substituted w.e.f. 01.04.2005 by S. 12(23)(c) of WB Act XVIII of 2006 for " net tax payable by such dealer in respect of such year or in respect of any return period of such year".
4. Substituted w.e.f. 01.08.2006 by S. 12(23)(d) of WB Act XVIII of 2006 for "has not been revoked under sub-section (3)".]

Assessment as per return.

**47.** (1) Where the Commissioner does not proceed to assess any registered dealer under sub-section (1) of section 46 for any year or any return period of such year and where the provisional assessment made under such dealer in respect of such year or return period has been revoked under sub-section (3) of section 45, the Commissioner shall accept the return furnished by the dealer for such year or any return period of such year as correct and complete and assessment in respect of such year or such period shall be deemed to have been made by him.

(2) Upon making an assessment under sub-section (1), the Commissioner shall inform the dealer who is assessed under that sub-section in such manner and within such time as may be prescribed.

(3) Where an assessment is deemed to have been made under sub-section (1) in respect of a registered dealer relating to any year or part of the year and where it appears to the Commissioner on information or otherwise that in a return furnished by such registered dealer under section 32 in respect of any period of such year or part of year,—

(a) certain sale price for part thereof, contractual transfer price or part thereof, has not been disclosed in such return, or has escaped levy of tax thereon at the appropriate rate, erroneously or otherwise, or

<sup>1</sup>[(aa) certain purchase price or part thereof has not been disclosed in such return, or has escaped levy of tax thereon at the appropriate rate, erroneously or otherwise, or]

(b) the deductions from the turnover of sales were claimed under sub-section (1) of section 16 in such return, erroneously or otherwise, in excess of what is admissible under sub-section (1) of that section, or the deductions so claimed in such return are not supported by evidence referred to in sub-section (1) of that section, or

(c) excess amount of input tax credit or input tax rebate has been enjoyed by the dealer for that period, and no reverse credit for such excess amount has been made by such dealer,

which has resulted in a reduction of the amount of net tax payable by such registered dealer or the State Government has suffered loss of revenue on any of the grounds referred to in clause (a), or clause (b), or clause (c), after this sub-section on account of such registered dealer in the spirit of such year or part of such year, the Commissioner shall, within a period of four years from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1), after giving such registered dealer a reasonable opportunity of being heard, reopened such assessment by an order in writing in the prescribed manner for making a fresh assessment of tax under sub-section (1) of section 46:

Provided that the fresh assessment under sub-section (1) of section 46 for such year shall be made, notwithstanding the provisions of section 49, on any date within two years from the date of passing the order in writing for reopening the assessment in respect of such year, which is deemed to have been made in accordance with the provisions of sub-section (1) of this section.

(4) Where a registered dealer brings to the notice of the Commissioner by

making an application to him within six months from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1) in respect of any year that due to his error in fact or in law, and amount of net tax for interest has been paid by him in excess of what was payable in respect of any return period falling within such year, and the Commissioner may, if he is *prima facie* satisfied about such error in fact or in law, within one year from the date of receipt of such application, for the open such assessment, by an order in writing, for making a fresh assessment of tax for such year under sub-section (1) of section 46.

[1. Inserted w.e.f. 01.08.2006 by S. 12(24) of WB Act XVIII of 2006.]

Assessment of tax payable by dealers other than registered dealers.

**48.** (1) If upon information which has come into his position, the Commissioner is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered or has not been registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of the assessment the amount of net tax payable by the dealer in respect of such period and, in making such assessment, shall give the dealer a reasonable opportunity of being heard and after making such assessment, the Commissioner shall issue to the dealer a notice in the prescribed form directing him to pay the amount of net tax found to be payable upon such assessment in such manner as may be prescribed.

(2) Where—

(a) the Commissioner upon verification as referred to in sub-section (5) of section 44A is not satisfied that the statement and documents submitted under section 30F by a casual dealer provide correct and complete information, or

(b) the casual dealer has failed to submit the statement and documents referred to in section 30F within the time specified therein,

the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment, the amount of tax due from such casual dealer in respect of purchases of sales made by him and in making such assessment, shall give the casual dealer a reasonable opportunity of being heard and after making such assessment, the Commissioner shall issue to the casual dealer a notice in the prescribed form directing him to pay the amount of tax found to be due upon such assessment in such manner as may be prescribed.

Limitation for assessment.

**49.** (1) No assessment under section 46 of section 47 shall be made after the 30th day of June next following the expiry of two years from the end of the year in respect of which are part of which they assessment is made.

(2) (a) No assessment under sub-section (1) of section 48 shall be made after the 30th day of June next following the expiry of six years from the end of the year in respect of which are part of which they assessment is made.

(b) No assessment under sub-section (2) of section 48 shall be made after the 30th day of June next following the expiry of six years from the end of the year during which sales or purchases as referred to in clause (a) and clause (b) of section 15 were made for which the assessment is required to be made.

(3) Notwithstanding anything contained in sub-section (1), or sub-section (2), when a fresh assessment is required to be made in pursuance of an order under section 84, section 85, section 86 of section 97, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within two years from the date of such order.

(4) In completing the time limited by sub-section (1), sub-section (2), or sub-section (3), for making any assessment under section 46, or section 47, or section 48, the period during which the Commissioner is restrained from commencing or continuing any proceedings from such assessment by an order of an authority under the Act, or a Tribunal or any court shall be excluded.

Determination of interest.

**50.** (1) Where the Commissioner is satisfied that the dealer is liable to pay interest under section 33, section 34 or section 34A, he shall, in such manner as may be prescribed, determine the amount of interest payable by such dealer.

(2) If on such determination, any additional amount of interest is found to be payable by the dealer or any excess amount of interest is found to be refundable to the dealer, the Commissioner shall issue a notice, in the prescribed manner, to such dealer directing him to pay such additional amount or informing him of the excess amount paid, as the case may be.

(3) No determination of interest under sub-section (1) in respect of interest payable under section 33 shall be made after the date of assessment under section 46 of section 48, as the case may be, in respect of the period for which interest is determined.

Rectification of mistake in determination of interest.

**51.** (1) Where there is an apparent mistake in the determination of interest under sub-section (1) of section 50, the Commissioner may, on his own motion or upon application made by a dealer, within twenty-four months from the date of such determination of interest, and rectify the amount of interest payable by such dealer or refundable to such dealer and issue a fresh notice for payment of interest in the manner prescribed under that section.

(2) Where on rectification of the amount of interest under sub-section (1), any excess amount is found refundable to a dealer, the Commissioner shall, in the manner referred to in section 62, refund such excess amount of interest to such dealer.

Assessment without prejudice to prosecution for any offence.

**52.** Any assessment of tax or determination of interest made under this Act shall be without prejudice to any prosecution instituted for an offence under this Act.

Assessment after partition or disruption or dissolution of Hindu Undivided Family, firm, or other association of persons and net tax, penalty or interest payable by

**53.** (1) Where a dealer is a Hindu Undivided Family, firm or other association of persons, and such family, firm or association is partitioned, disrupted or dissolved, as the case may be,—

(a) the net tax, penalty or interest payable under this Act by such family, firm or association of persons for the period upto the date of such partition, disruption or dissolution shall be assessed, imposed for determined as if no such partition, disruption or dissolution had taken

a sole proprietor.

place and all the provisions of this Act, shall apply accordingly; and  
(b) every person who was, at the time of such partition, disruption or dissolution, a member of the Hindu Undivided Family, partner of a firm or member of an association of persons, and the legal representative of any such person, who is deceased, shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment,

of the net tax, penalty or interest payable under this Act by such family, firm or association of persons for the period upto the date of such partition, disruption or dissolution, whether assessment of such tax, imposition of such penalty or determination of such interest is made prior to, or after, such partition, disruption or dissolution.

(2) Where a dealer carrying on a business as the sole proprietor dies and the business is partitioned, disrupted or discontinued upon his death, the executor or administrator of, or the legal heir to, the estate of such deceased dealer shall pay net tax or any other tax, penalty or interest payable by or due from, such deceased dealer out of such estate, and such executor, administrator or legal heir shall, notwithstanding the provisions of clause (11) of section 2, be deemed to be a dealer under this Act for the purposes of assessment of tax, determination of interest, and imposition of penalty and payment, recovery and the refund of tax, penalty or interest, and all the provisions of this Act relating to appeal, revision or review in respect of the tax assessed, or penalty imposed or interest determined, shall apply accordingly.

**CHAPTER VIII**  
**Recovery of tax, penalty and interest and refund.**

Certain transfers of immovable property by a dealer to be void.

**54.** (1) Where during the period commencing on the date of service of a notice of demand under sub-section (2) of section 45, or clause (b) of sub-section (3) of section 46, or section 48, or sub-section (2) of section 50, or sub-section (1) of section 51 or any other provisions of the Act and ending on the date of service of notice by the authority competent, to issue such notice, under clause (a) or clause (b) of sub-section (1) of section 55, as the case may be, any dealer without having made fully payment of net tax or any other tax, interest, or penalty payable or due, as the case may be, under this Act, specified in such notice of demand as aforesaid, creates a charge on, or transfers or delivers possession (by way of sale, mortgage, gift, exchange or any other mode of transfer of right, title or interest) of, any of his immovable properties in favour of other person, such charge, transfer or delivery of possession shall be void as against any claim in respect of the amount of net tax or the other tax, interest, or penalty payable or due from such dealer:

Provided that the provisions of this section shall not apply to a dealer unless—

- (a) the amount or the aggregate of the amounts specified in the notice as aforesaid, payable or due from him, for payment of net tax or any other tax, interest, or penalty exceeds one lakh rupees; or
- (b) the value of the immovable property on which a charge is created, or which is transferred, or the possession of which is delivered, by him exceeds five lakh rupees.

(2) Notwithstanding anything contained in sub-section (1), most charge of transfer or delivery of possession of immovable property shall be void if it is made *bona fide* and for adequate consideration.

Recovery of tax, penalty and interest, appointment of Tax Recovery Officer, etc.

**55.** (1) Any amount of net tax or any other tax, interest or penalty due, under this Act from a dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person, which remains unpaid after the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder, directing payment of such amount of net tax or other tax, interest, or penalty, shall be recoverable—

- (a) as an arrear of land revenue as if it were payable to the Collector, or
- (b) by the Tax Recovery Officer in accordance with the provisions of sub-section (2) of the section, section 56, section 57, section 58, or section 59 and the rules regulating the procedure for recovery of net tax or any other tax, interest, or penalty as may be prescribed, where the State Government directs by general or special order so to do in respect of such class or classes of dealers having their places of business in such area or areas as may be specified in such order.

(2) Where any amount of net tax or any other tax, interest, or penalty is recoverable in accordance with the provisions of clause (b) of sub-section (1),

the Commissioner may send to the Tax Recovery Officer a certificate under his signature specifying the amount of such net tax or other tax, interest, or penalty due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person (hereinafter referred to as the certificate-debtor), and the Tax Recovery Officer shall, on receipt of such certificate, proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules as may be prescribed:—

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

(3) The Commissioner may send a certificate under sub-section (2), notwithstanding that proceeding for recovery of such net tax or other tax, interest, or penalty have been initiated or are continuing by any other mode.

(4) For the purposes of this section, section 56, section 57, section 58 or section 59 and the rules as may be prescribed for the purpose, the State Government may, by notification, appoint such number of Tax Recovery Officers as it may deem fit, and specified in the notification the area or area over which they shall exercise jurisdiction.

(5) Where a certificate has been sent to a Tax Recovery Officer, he shall cause to be served upon the certificate-debtor, in such manner and form as may be prescribed, a notice and a copy of the said certificate.

(6) On the service of notice of any certificate under sub-section (5) upon a certificate-debtor,—

- (a) any private transfer or delivery of any of his immovable property situated in the area in which the certificate is sent, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and
- (b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate-debtor, wherever situated, to which if it other charge created subsequently to the service of the said notice shall be postponed.

(7) The certificate-debtor may, within thirty days from the service of the notice required under sub-section (5), or where the notice has not been duly served, then, within thirty days from the execution of any process for enforcing the certificate, present to the Tax Recovery Officer to whom the certificate is sent, or present to the Tax Recovery Officer who is executing the certificate, a petition, in such form as may be prescribed, signed and verified in such manner as specified in those rules, denying his liability in whole or in part.

**56.** (1) The Commissioner may forward the certificate referred to in sub-section (2) of section 55 in respect of a certificate-debtor to—

- (a) the Tax Recovery Officer within whose registration such certificate-debtor carries, or added, on his business or within whose jurisdiction the principal place of business is situated or within

Tax Recovery  
Officer to whom  
certificates to be  
forwarded.

- whose jurisdiction the goods are seized under section 76; or
- (b) the Tax Recovery Officer within whose jurisdiction such certificate-debtor resides or any movable or immovable property of such certificate-debtor is available or situated.

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

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

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

Amendment of certificates for tax recovery.

**57.** (1) Notwithstanding that a certificate has been forwarded to a Tax Recovery Officer, the Commissioner shall have the power to withdraw or cancel such certificate or two car at any radical or arithmetical mistake in such certificate.

(2) The Commissioner shall intimate to the Tax Recovery Officer any order withdrawing or cancelling a certificate or any correction made by him under sub-section (1) of this section.

Validity of certificates for tax recovery.

**58.** (1) When the Commissioner for words a certificate to a Tax Recovery Officer under sub-section (2) of section 55, it shall not be open to the certificate-debtor to dispute before the Tax Recovery Officer the propriety or correctness of the assessment of net tax or any other tax, determination of interest or imposition of penalty, under this Act and no objection to such certificate on any such ground shall be entertained by the Tax Recovery Officer.

(2) It is hereby declared that where any amount of net tax or other tax, penalty or interest is recoverable in accordance with the provisions of clause (a) of sub-section (1) of section 55, the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913, shall not apply to any proceedings for the recovery of such amount of net tax or other tax, penalty or interest.

Ben. Act III of 1913.

Transmission of certificates for tax recovery to Collector in certain cases.

**59.** Notwithstanding anything contained in section 55, where any amount of net tax or other tax, penalty or interest due from a certificate-debtor cannot be recovered by the Tax Recovery Officer by any one of the modes referred to in that section and where the Tax Recovery Officer has information that such certificate-debtor owns any property outside West Bengal, the amount of such



net tax or other tax, penalty or interest remaining unpaid shall be deemed to be an arrear of land revenue as if it were payable to the Collector, and the Tax Recovery Officer shall apply to the Collector of the district in West Bengal in which such certificate-debtor carries on his business, as his principal case of business or his goods have been seized, as the case may be, for recovery of the same amount in accordance with the provisions of the Revenue Recovery Act, 1890.

1 of 1890.

Spatial mode of recovery of tax, penalty and interest by Commissioner.

**60.** (1) Notwithstanding the forwarding of a certificate under section 55 for recovery of any amount of net tax or any other tax, interest, or penalty, the Commissioner may, at any time or from time to time, by notice in the prescribed form, require any person from whom money is due or may become due to a dealer or any person who holds or may subsequently hold money for, or on account of, such dealer, to deposit into an appropriate Government Treasury under the appropriate head of account, either forthwith upon the money becoming due or being held or 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 such dealer in respect of the arrears of such net tax or other tax, interest, or penalty or the whole of the money when such money is equal to or less than that amount.

(2) A notice under the section may be issued to any person who holds or may subsequently hold any money for, or on account of, the dealer jointly with any other person, and for the purposes of the section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(3) A copy of the notice shall be forwarded to the dealer at his last address known to the Commissioner and, in the case of a joint account, to all the joint-holders at their last addresses known to the Commissioner.

(4) Save as otherwise provided in the section, every person to whom a notice is issued under the section shall be bound to comply with such notice, and in particular, where any such notice is issued to the post office, banking company or insurer, it shall not be necessary for any passbook, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement of the like being made before the payment is made, notwithstanding any rule, practice or requirement to the contrary.

(5) Any claim respecting any money, which is due or to become due or is being held or may subsequently be held and in relation to which a notice under the section has been issued, arising after the date of such notice, shall be void as against any demand contained in such notice.

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

(7) The Commissioner may, at any time or from time to time, amend or

revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice.

(8) The appropriate Government Treasury shall grant a receipt for any amount paid in compliance with a notice issued under this section, and the person so paying the amount shall be fully discharged from his liability to the dealer to the extent of the amount so paid.

(9) Any person discharging any liability to the dealer after receipt of the notice under this section shall be personally liable to the Commissioner to the extent of his own liability to the dealer so discharged or to the extent of the liability of such dealer for any amount due under this Act, whichever is less.

(10) If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be a dealer in default in respect of the amount specified in the notice, and further proceedings may be taken against him for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt.

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

Provided that any dues exempt from attachment in execution of the decree of the civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any payment required to be made under this section.

5 of 1908.

Explanation.— For the purposes of this section, "dealer" shall include a casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person, for whom or on whose account money is demanded for payment of net tax or any other tax, interest, or penalty under this section.

Recovery of admitted amount of net tax or any other tax, interest or penalty [from a dealer ].

**60A.** When a dealer furnishes a return under section 32 including dairying, or otherwise admits in writing, his liability to the any net tax or any other tax, interest, or penalty in respect of a certain period notwithstanding anything contained elsewhere in this Act, such amount of net tax or other tax, interest or penalty shall be deemed to have been quantified on the date of filing of such return or making such admission, as the case may be, and all the provisions of section 55, section 56, section 57, section 58, section 59, section 60, shall be applicable mutatis mutandis on such quantified net tax or other tax, interest or penalty.

[ 1. Subs. by Sec. 6 (13) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for the words "from a dealer other than registered dealer". ]

Refund to certain class of persons.

**61.** Subject to such restrictions and conditions as may be prescribed, the Commissioner shall, in the prescribed manner, refund—

- (a) to a registered dealer, who owns an industrial unit in the Software Technology Park, or who owns an Export Oriented Unit within the meaning of the Export and Import Policy as formulated under section 5

22 Of 1992.

of the Foreign Trade (Development and Regulation) Act, 1992, situated anywhere in West Bengal outside a Special Economic Zone or Software Technology Park the amount of tax realised or realisable from him by another registered dealer in respect of the purchases in West Bengal—

- (i) of goods for use directly in the manufacture of goods by him in such unit for sale by him in the course of export within the meaning of section 5 of the Central Sales Tax Act, 1956, 74 of 1956.
  - (ii) <sup>1</sup>omitted
  - (iii) of goods, being the containers or other packing material for packing of the goods manufactured in such unit;
- <sup>2</sup>[(aa) to a registered dealer, who is not liable to pay tax under section 14, and whose nature of business is such that <sup>3</sup>[for any return period the input tax credit exceeds the output tax payable for such return period under this Act, the excess amount of net tax credit over output tax for such return period,] where—
- (i) the rates of tax on principal inputs are higher than the rates of tax of the goods on which output tax is payable by such registered dealer in respect of all his sales, or
  - (ii) the payment for all sales of such registered dealer <sup>4</sup>[for the return period] are received through bank and such sales are made—
    - (A) to various departments of the Central or the State Government, or
    - (B) to registered dealers in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or 74 of 1956.
    - (C) in the course of export out of India within the meaning of section 5 of the Central Sales Tax Act, 1956; ]
- (b) to the Consulates, the amount of tax realised or realisable from them by a registered dealer in respect of taxable goods purchased by them in West Bengal for their personal or official use; or
  - (c) to the specialised agencies of the United Nations Organisation, the amount of tax realised or realisable from them by a registered dealer in respect of purchases of taxable goods by them in West Bengal for their official use.

[ 1. Omitted by West Bengal Finance Act, 2005 w.e.f. 2005.

2. Inserted by Sec. 6 (14) of W.B. Act XIII of 2005 w.e.f. 1.4.2005.

3. Substituted w.e.f. 01.08.2006 by S. 12(25)(a) of WB Act XVIII of 2006 for "for any year the input tax credit exceeds the output tax payable for such year under this Act, the excess amount of net tax credit over output tax for such year,".

4. Substituted w.e.f. 01.08.2006 by S. 12(25)(b) of WB Act XVIII of 2006 for "during the year".]

Refund of tax etc.  
paid in excess.

- 62.** Subject to other provision of this Act, the Commissioner shall, in the manner and within the time, as may be prescribed, refund to a dealer any amount of tax, penalty or interest paid by such dealer in excess of the

amount due from him under this Act and also excess of net tax credit over output tax payable under this Act.

**CHAPTER IX**  
**Maintenance of accounts etc. by a dealer.**

Maintenance of accounts, records, etc.

**63.** (1) Every dealer required to furnish return, under sub-section (1) of section 32, shall maintain and keep a true and up-to-date account of the quantity and value of the goods purchased or manufactured or sold by him or used in execution of works contract or held by him in stock and shall maintain and keep such registers or accounts, in such form as may prescribed, in addition to the books of accounts that a dealer maintains or keeps for the purposes of his business:

Provided that—

a registered dealer, or a dealer who has applied for registration within thirty days from the date of his incurring liability to pay tax under sub-section (2) of section 23, other than those required to pay tax at compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18 or any other dealer as may be prescribed, shall maintain a true and up-to-date account of his input tax, input tax credit and output tax;

in case of any other dealer, such dealer shall maintain a true and up-to-date account of his output tax only.

(2) Every dealer referred to in sub-section (1) shall keep at his principal place of business all accounts, registers, documents including those in electronic form and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, which may be required by the Commissioner for the purpose of inspection under sub-section (2) of section 66, and shall not keep or remove elsewhere such accounts, registers, documents and certificate except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner.

21 of 2000.

Compulsory issue of tax invoice, cash memo or bill.

**64.** (1) Subject to the first proviso to sub-section (3) of section 16 and first proviso to sub-section (4) of section 18, if a registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, <sup>1</sup>[sells any goods ], he shall issue in the prescribed manner, to the purchaser a serially numbered tax invoice as referred to in clause (48) of section 2, signed and dated by him or his regular employee, showing such particulars as may prescribed, and he shall also keep the counterfoil or duplicate of such tax invoice, duly signed and dated:

Provided that where registration certificate of a registered dealer has been cancelled by the appropriate authority from the particular date, or where the application for registration of a dealer as referred to above is rejected from a particular date, any tax invoice issued by such dealer shall be treated as an invoice instead of pay tax invoice from that date.

<sup>2</sup>[Provided further that a registered dealer or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, may, at his option, issue in the prescribed manner a serially numbered invoice or bill or cash memorandum, signed and dated by him or his regular employee, showing such particulars as

may be prescribed, in respect of sales of goods by him to any dealer, not being a dealer registered under the Act, or to a casual dealer or to the Government or to any person, and such registered dealer shall keep the counterfoil or duplicate of such invoice or bill or cash memorandum, duly signed and dated by him or his regular employee.]

(2) If a dealer to whom sub-section (1) does not apply and who has become liable to pay tax under any provision of his Act sells any goods to any person, he shall issue in the prescribed manner to the purchaser a serially numbered invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such invoice, cash memorandum or bill, duly signed and dated.

(3) If a dealer to whom sub-section (1) or sub-section (2) does not apply, sells any goods exceeding one hundred rupees in value in any one transaction to any person, he shall issue to the purchaser a serially numbered invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such invoice, cash memorandum or bill, duly signed and dated:

Provided that if the State Government is of the opinion that the requirement under the section shall cause hardship to a certain class of classes of dealers included in sub-section (3), and that such requirement should, subject to fulfilment by any class of classes of dealers of certain conditions and restrictions to be imposed to ensure that there is no edition of tax, be dispensed with, it may prescribe by rules such class of classes of dealers, and such conditions and restrictions subject to which the requirement of the section in respect of such class of classes of dealers shall be dispensed with.

(4) (a) Notwithstanding anything contained elsewhere in the Act, if the Commissioner, on an application made in the prescribed manner, by a registered dealer and after making such enquiries as he may consider necessary, is satisfied that a dealer is not in a position to furnish the tax invoice referred to in sub-section (1) of section 64 on account of the loss of such tax invoice for reasons beyond his control, the Commissioner may, by an order in writing exempt such dealer from furnishing such tax invoice, subject to such conditions as may be prescribed and to such further conditions, if any, as may be specified by the Commissioner in the order.

(b) Any order passed by the Commissioner under clause (a) shall be final.

[ 1. Substituted by S. 6 (15) (a) of W.B. Act XIII of 2005 w.e.f. 1.4.2005 for “sells any goods to any person”.

2. Inserted by S. 6(15)(b) of W.B. Act XIII of 2005 w.e.f. 1.4.2005. ]

Imposition of penalty for non-issue or improper issue of tax-invoice, invoice, cash memo or bill.

**65.** If a registered dealer or any other dealer contravenes the provisions of section 64, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, directed that he shall pay, in the manner as may be prescribed, by way of penalty, a sum equal to double the

amount of tax or five thousand rupees, whichever is greater, which could have been levied under this Act in respect of the sales referred to in that section where—

- (a) no tax invoice or invoice or cash memorandum or bill, as the case may be, as referred to in section 64, has at all been issued, or
- (b) tax invoice or invoice or cash memorandum or bill, as the case may be, has been issued not in accordance with the provisions of section 64:

Provided that if such registered dealer or dealer proves to the satisfaction of the Commissioner that he deals exclusively in goods specified in Schedule A, sales of which are declared tax-free under section 21, the Commissioner may exempt such registered dealer or dealer from payment of penalty or impose such lesser amount of penalty as he deems fit and proper.

**CHAPTER X**  
**Furnishing of information, production, inspection, search and seizure of accounts, registers and documents of a dealer, casual dealer or any other person and sealing of any place, room and *almirah*, etc.**

Furnishing of information, production, explanation and inspection of accounts, registers and documents.

**66.** <sup>1</sup>[(1) The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner may, subject to such conditions as may be described, require any dealer, casual dealer or any other person—

- (a) to produce before him any accounts, registers or documents, whether in the form of electronic record or not, or
- (b) to produce before him digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, or
- (c) to furnish any information relating to—
  - (i) stock of goods held by such dealer, casual dealer or person, or
  - (ii) purchases or sales of goods made by such dealer, casual dealer or person, or
  - (iii) purchases and uses of goods in execution of works contract by such dealer, casual dealer or person, or
  - (iv) receipts or deliveries of goods made by such dealer, casual dealer or person, or
  - (v) any receipts or payments, including loans, made by such dealer, casual dealer or person, or
  - (vi) any other matter,
- (d) to explain to him any account, register or document, including those in the form of electronic record, produced by such dealer, casual dealer or person,

21 of 2000.

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

(2) All accounts, registers, documents, whether in the form of electronic record or not, referred to in sub-section (1), and all goods kept in any place of business of any dealer, casual dealer or any other person, shall, at all reasonable time, open to inspection by the Commissioner, Special Commissioner, Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner.

(3) Any dealer, casual dealer or any other person, who is found to be in position or control of such account, register or documents, whether maintained in the form of electronic record or not, shall provide, the Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner, with the necessary facility to inspect such accounts, registers or other documents.

<sup>2</sup>[(4) The Commissioner, the Special Commissioner, the Additional Commissioner or any other person appointed under sub-section (1) of section 6 may require any authority under the State Government or the Central Government or any of local authority or a statutory body or a trust or any other body corporate to furnish information and to produce documents for the purpose of levy of any tax or collection of any tax imposed by the State or for



carrying out any other purposes of the Act.]

[1. Substituted w.e.f. 01.04.2005 by S. 12(26) of WB Act XVIII of 2006 for the following :  
“(1) The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner may, subject to such conditions as may be described, require any dealer, casual dealer or any other person—  
to produce before him any accounts, registers or documents, whether in the form of electronic record or not, or  
to produce before him digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, or  
to furnish any information relating to—  
stock of goods held by such dealer, casual dealer or person, or  
purchases or sales of goods made by such dealer, casual dealer or person, or  
purchases and uses of goods in execution of works contract by such dealer, casual dealer or person, or  
receipts or deliveries of goods made by such dealer, casual dealer or person, or  
any other matter,  
to explain to him any account, register or documents, including those in the form of electronic records, produced by such dealer, casual dealer or person, as may be deemed necessary for the purposes of this Act.”.

2. Inserted by S. 6(16) of WB Act XIII of 2005 w.e.f. 1.4.2005.]

Furnishing of information or statement by the bank, post office, railway, website holder, transporter etc.

**66A.** (1) The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assess the Commissioner, may require, by notice, any bank, post office, railway, Controller and certifying authority as defined in the Information Technology Act, 2000, website holder, owner or occupier or lessee of a warehouse, shipper, transporter, carrier, or transporting agent to furnish to him any information of statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts, registers, documents, including those in the form of electronic records, or other records in the possession of such bank, post office, railway, Controller or certifying authority, website holder, owner or occupier or lessee of a warehouse, shipper, transporters, carrier, or transporting agent for examination for the purposes of this Act.

21 of 2000.

Seizure of accounts of a dealer or casual dealer or any other person.

**67.** If the Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under the sub-section (1) of section 6 to assist the Commissioner, has reason to suspect, upon information or otherwise, that any dealer, casual dealer, or any other person, is evading any tax, or is attempting to evade payment of any tax, or has failed to deposit any tax, as the case may be, he may, for reasons to be recorded in writing, seize such accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media of such dealer or casual dealer or person, as may be necessary, <sup>1</sup>[and shall grant such dealer or casual dealer or person, a receipt for such accounts, registers of documents, including those in the form of electronic record, or any computer or electronic media] seized by him and shall retain all or any of them only for such period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act:

Provided that—

(a) the Commissioner or the Special Commissioner or the Additional

Commissioner shall not retain any of the <sup>2</sup>[accounts, registers or documents, including those in the form of electronic records, or any computer or electronic media, seized under this section] for the period exceeding one year from the date of the seizure unless he records in writing the reasons therefor, and

- (b) any person appointed under sub-section (1) of section 6 to assist the Commissioner shall not retain any of the <sup>3</sup>[accounts, registers or documents, including those in the form of electronic records, or any computer or electronic media, seized under this section] for a period exceeding one year from the date of the seizure unless he states the reason in writing therefor and obtains sanction of the Commissioner in writing in respect thereof.

- [ 1. Substituted by S. 6(17)(a) of WB Act XIII of 2005 w.e.f. 1.4.2005 for “and shall grant to such dealer or casual dealer or person, a receipt for such accounts, registers or documents”.  
2. Substituted by S. 6(17)(b)(i) of WB Act XIII of 2005 w.e.f. 1.4.2005 for “accounts, registers or documents, including those in the form of electronic record, seized by him under the section”.  
3. Substituted by S. 6(17)(b)(ii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for “accounts, registers of documents, including those in the form of electronic records, seized by him under this section”. ]

Entry and search of place of business or any other place.

**68.** (1) For the purposes of section 66 or section 67, the Commissioner, a Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, may enter and search—

- (a) any place of business of any dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse or any other person, or  
(b) any other place,

where the Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, has, upon information received or otherwise, reason to believe that, such dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or person keeps or is, for the time being, keeping any accounts, registers or documents, whether in the form of electronic record or not, or any stock of goods, for the purpose of business.

(2) The Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, may, before, or after, or while, entering or searching any place, referred to in clause (a) or clause (b) of sub-section (1),—

- (a) break open any door or window of a house, room or warehouse where, or  
(b) break open any *almirah*, cabinet, safe, locker, drawer, box or receptacle in which, or  
(c) open any electronic media in which,

the Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, has reason to believe, such or any other dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or person, keeps or is, for the time being, keeping any account,

register or document, whether in the form of electronic record or not, or any stock of goods, for the purpose of his business.

Sealing of any  
place or almirah,  
cabinet, safe,  
locker, drawer etc.

**69.** The Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, may, subject to such conditions and restrictions as may be prescribed, seal any house, room, warehouse, *almirah*, cabinet, safe, locker, drawer, box, or receptacle in which, he has reason to believe, a dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or any other person, keeps or is, for the time being, keeping any account, register or documents, whether in the form of electronic record not, or any stock of goods, for the purpose of business.

## CHAPTER XI

### Maintenance of accounts by transporter, carrier or transporting agent and inspection, search and seizure of such accounts.

Maintenance of accounts by transporter, carrier or transporting agent, and inspection.

**70.** (1) Notwithstanding anything contained in any other law for the time being in force, every transporter, carrier or transporting agent, to whom the provisions of section 25 apply, shall maintain, in the prescribed form, proper account of taxable goods transported by him into, or outside, or within, West Bengal on account of any person, being a consignee or consignor, as the case may be, and shall, on demand by the Commissioner, furnish such information in the Commissioner as may be required by the Commissioner in relation to transport of such goods by such transporter, carrier or transporting agent.

(2) The accounts referred to in sub-section (1), and goods referred to in the sub-section and stored in a godown or warehouse in West Bengal, shall be open to inspection by the Commissioner at all reasonable time.

Entry into the place of, and search and seizure of accounts of, in transporter, carrier or transporting agent.

**71.** Where any transporter, carrier or transporting agent fails to maintain proper account in the prescribed form, or fails to furnish information to the Commissioner, as required by sub-section (1) of section 70, or the Commissioner has reason to believe that the account referred to in sub-section (1) of section 70 is relevant for the purpose of carrying out any investigation or holding any inquiry into any case of alleged or suspected evasion of tax as the less malpractices collected there is, the Commissioner may—

- (a) enter and search any place of transporting business or any other place where such transporter, carrier or transporting agent, for the time being, keeps any accounts, registers or documents, including those in the form of electronic records, in relation to transport of goods; and
- (b) for reasons to be recorded in writing, seize such accounts, registers or documents.

Power of the Commissioner to stop delivery of goods and seizure of such goods.

**72.** (1) Where any transporter, carrier or transporting agent has—

- (a) received any consignment of taxable goods from a dealer, casual dealer, or any other person in West Bengal for transport of such consignment to any place outside, or within West Bengal, or
- (b) transported into West Bengal any consignment of taxable goods on account of a dealer, casual dealer, or any other person, and

the Commissioner has information that such dealer, casual dealer, or person is not in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, or consignment note or any document of like nature in respect of any consignment of goods referred to in clause (a), or clause (b), the Commissioner may direct such transporter, carrier or transporting agent, by an order in writing, that—

- (i) the consignment of goods referred to in clause (a) shall not be transported outside, or within, West Bengal, or
- (ii) the consignment of taxable goods referred to in clause (b) shall not be delivered,

till the matter is investigated into by the Commissioner or till a period of fifteen

days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881) expires from the date of communication of such direction to the transporter, carrier or transporting agent, whichever is earlier.

(2) where the Commissioner, after causing an enquiry about the existence of such dealer, casual dealer, person, is satisfied that such dealer, casual dealer, person—

- (a) is in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, consignment note or any document of like nature, he shall, forthwith with drawer, by an order in writing, his direction issued under sub-section (1) to such transporter, carrier or transferring agent; or
- (b) is not in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, consignment note or any document of like nature, the transport of the consignment of taxable goods by such transporter, carrier or transporting agent, to any place into or within, or outside, West Bengal, shall be deemed to be in contravention of the provisions of section 73, or section 81, as the case may be, and the Commissioner shall, after giving such transporter, carrier or transporting agent, a reasonable opportunity of being heard, seize such consignment of goods under section 76.

## CHAPTER XII

### Measures to regulate transport of goods; checkpoints; seizure of goods; imposition of penalty; disposal of seized goods, etc.

Restriction on movement of goods.

**73.** (1) To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport, port, post office or any checkpoint setup under section 83 or from any other place any consignment of goods except in accordance with such restrictions and conditions as may be prescribed.

(2) Subject to the restrictions and conditions prescribed under sub-section (1), any consignment of goods may be transported by any person after he furnishes in the prescribed manner such particulars in such form of the label from such authority or in such other form as may be prescribed.

(3) Subject to such restrictions and conditions as may be prescribed, nothing in sub-section (1) shall apply to—

- (a) duly accredited diplomatic personnel attached to foreign consulates for other diplomatic offices,
- (b) organisations and specified agencies of the United Nations,
- (c) *Khadi* and Village Industries Commission,
- (d) Embarkation Headquarters, Shipping Section, Customs Group, Ministry of Defence, Government of India, Kolkata, or
- (e) such other persons, organisations or institutions as may be prescribed.

Interception, detention and search of goods vehicles, load carried by a person and search of warehouse etc.

**74.** For the purpose of verifying whether any consignment of goods are being or have been transported in contravention of the provisions of section 73 of section 81, <sup>1</sup>[the Commissioner, the Special Commissioner, the Additional Commissioner, or as the case may be, any of such persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under the section,] may, subject to such restrictions as may be prescribed,—

- (a) intercept, detain and search at any place referred to in sub-section (1) of section 73, any goods vehicle or any load carried by the person, or
- (b) search at any warehouse or at any other place in which, according to his information, such goods so transported in contravention of the provisions of section 73 have been stored, or
- (c) intercept, detain and search at any checkpoint or at any other place referred to in sub-section (2) of section 81, any goods vehicle or any load carried by a person.

[ 1. Substituted by S. 6(18) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner". ]

Stock of goods stored in undisclosed warehouse in contravention of section 73.

**75.** (1) If any registered dealer has not disclosed any warehouse in his application for registration made under sub-section (1) of section 24, or has not furnished information under clause (b) of section 27A regarding change of his warehouse or opening of a new warehouse for amendment of his certificate of registration under section 27 and if any stock of goods is found in such warehouse after search made <sup>1</sup>[under section 74 by the Commissioner, the Special Commissioner, the Additional Commissioner or as the case may be, any

of such persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under this section,] it shall be used that such dealer has transported such goods in contravention of section 73 and stored in those goods in such warehouse, under such dealer—

(a) explains to the satisfaction of <sup>2</sup>[such authority], the reasons for not disclosing the warehouse or furnishing the information under clause (b) of section 27A,

(b) produces on demand by <sup>3</sup>[such authority] and explains to the satisfaction the stock registered or any account of stock showing entry of such goods therein and purchase in, tax invoice, invoice or cash memo, challan or any document of like nature within twenty-four hours or within such time as may be granted to him upon an application made in writing by such dealer.

(2) Where the dealer prairie for time under clause (b) of sub-section (1), <sup>4</sup>[the authority referred to in sub-section (1)] shall allow the time to produce before him the documents referred to in that clause, and shall meanwhile seal such warehouse up to the time allowed by him.

[ 1. Substituted by S. 6(19)(a) (i) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "under section 74 by the Commissioner".

2. Substituted by S. 6(19)(a) (ii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

3. Substituted by S. 6(19)(a) (iii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

4. Substituted by S. 6(19)(b) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner". ]

Seizure of goods.

**76.** (1) Where, upon interception or search referred to in clause (a), or clause (c), of section 74, <sup>1</sup>[the Commissioner, the Special Commissioner, the Additional Commissioner, or as the case may be, any of such persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under this section, has reason to believe] that any goods are being transported in contravention of the provisions of section 73, of section 81, he shall first detain the vehicle carrying such goods for the period not exceeding forty-eight hours and, if the person bringing, importing of receiving or carrying such goods fails to furnish such particulars in such form, or such documents, as may be prescribed under section 73, or section 81, shall thereafter seize such goods together with any container or other materials for the packing of such goods:

Provided that in completing the period of detention not exceeding forty-eight hours, Sunday or a public holiday declared under the Negotiable Instruments Act, 1881, shall be excluded:

26 of 1881.

Provided further that <sup>2</sup>[the authority referred to in this sub-section] may, at the option of the transporter, carrier or transporting agent from whom the goods are seized, in writing, this custody of such seized goods to him in the manner prescribed, and allow him to transport such seized goods up to the warehouse, of such transporter, carrier or transporting agent, in West Bengal as declared by him, on the express conditions that such transporter, carrier or transporting agent, shall keep such seized goods in the said warehouse and that he shall not delivered such seized goods to any person including the consignee or owner of such seized goods so transported by him before the proceedings, if any,

initiated against the consignee or owner of such seized goods under section 77 is concluded:

Provided also that <sup>3</sup>[such authority] may take physical possession of such seized goods from the custody of such transporter, carrier or transporting agent, even before the conclusion of the proceedings under section 77 where such transporter, carrier or transporting agent, communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody after the expiry of sixty days from the date of storing of such seized goods in his warehouse.

(2) Where, upon search of any warehouse or any other place referred to in clause (b) of section 74, <sup>4</sup>[the Commissioner, the Special Commissioner, the Additional Commissioner or as the case may be, any of such persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under this section, has reason to believe] that any goods transported in contravention of the provision of section 73, have been stored in such warehouse or other place, he shall seize such goods together with container or any other materials for the packing of such goods or in case such goods are not seized, he may seal such warehouse:

Provided that <sup>5</sup>[the authority referred to in this sub-section] may, at the option, in writing, of the person from whom the seizure of goods is made under this sub-section, gave custody of such seized goods to such person on the express conditions that he shall keep such seized goods in the warehouse, or at any other place, referred to in clause (b) of section 74, where the seizure has been made, and that he shall not dispose of such seized goods in any manner before the proceedings, if any, initiated in respect of such seized goods under section 77 is concluded:

Provided further that <sup>6</sup>[such authority] may take physical possession of such seized goods from the custody of such person even before the conclusion of the proceedings under section 77 where such person communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody after the expiry of sixty days from the date of giving of custody of such goods to him.

(3) If the dealer fails to produce <sup>7</sup>[before the authority referred to in sub-section (1) of section 75], the documents referred to in clause (b) of sub-section (1) of section 75 and fails to satisfy him that the goods found in such warehouse have not been transported in contravention of section 73, <sup>8</sup>[such authority shall], for reasons to be recorded in writing, seize the goods and grant a receipt specifying the items of goods so seized.

[ 1. Substituted by S. 6(20)(a)(i) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner has reason to believe".

2. Substituted by S. 6(20)(a)(ii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

3. Substituted by S. 6(20)(a)(iii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

4. Substituted by S. 6(20)(b)(i) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner has reason to believe".

5. Substituted by S. 6(20)(b)(ii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

6. Substituted by S. 6(20)(b)(iii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner".

7. Substituted by S. 6(20)(c)(i) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "before the Commissioner".



8. Substituted by S. 6(20)(c)(ii) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "the Commissioner shall". ]

Penalty for transporting goods in contravention of section 73 or section 81.

**77.** (1) If any goods are seized under section 76, the Commissioner may, the by an order in writing, imposed upon the transporter, carrier or transporting agent or any other person from whom such goods are seized **or** the owner of such goods, where particulars of the owner of such goods are available, or where there is no claimant of such goods at the time of such seizure, any person who subsequently establishes his claim of ownership for possession of such goods, after giving such transporter, carrier or transporting agent or person or owner, as the case may be, a reasonable opportunity of being heard, a penalty of a sum not exceeding fifty *per centum* of the value of such goods as may be determined by him in accordance with the rules made under this Act:

<sup>1</sup>[Provided that the sum of penalty that may be imposed under this sub-section shall be—

- (a) thirty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods does not exceed four *per centum*;
- (b) fifty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods exceeds four *per centum*.]

(2) A penalty imposed under sub-section (1) shall be paid by the transporter, carrier or transporting agent or the person or the owner of goods, as the case may be, into an appropriate Government Treasury, by such date as may be specified by the Commissioner in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of the notice:

Provided that the Commissioner may, upon application made by the transporter, carrier or transporting agent or the person or the owner of goods, as the case may be, for reasons to be recorded in writing, extend the date of payment of the penalty for such period as he making fit.

(3) The goods seized under section 76 shall be released in the prescribed manner on payment of the penalty imposed under sub-section (1).

(4) If the penalty is not paid by the date specified in the notice issued under sub-section (2), the Commissioner may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods so seized under section 76 in open auction and remit the sale proceeds thereof to a Government Treasury.

(5) Notwithstanding anything contained in sub-section (3),—

- (a) the person to whom the Commissioner has, under sub-section (4) of section 3, delegated his power for revision under section 86, pending disposal of an application for revision against an order for imposition of penalty referred to in sub-section (1), or
- (b) the Commissioner, where there is no application for revision under section 86,

may, for reasons to be recorded in writing, direct release of the goods seized under section 76 on such terms and conditions as he may deem fit.

(6) Notwithstanding anything contained in sub-section (4), the Commissioner

may, subject to such rules as may be made under this Act, where the goods seized under section 76 are—

- (a) of perishable nature, or
- (b) required to be used by a specified date,

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

(7) The proceeds of sale of the goods referred to in sub-section (4) or sub-section (6) shall be applied in the prescribed manner for payment in the following order of priority:—

- (a) first, for incidental charges, if any, relating to auction sale of such goods;
- (b) secondly, for expenses, if any, for storage of such goods;
- (c) thirdly, for penalty imposed under sub-section (1);

and the balance of the proceeds of sale, if any, shall be paid to the owner of the goods or, if his particulars are not available, to the persons from whom such goods were seized under section 76, upon application within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to the satisfaction.

[1. Substituted w.e.f. 01.08.2006 by S. 12(27) of WB Act XVIII of 2006 for —

“Provided that the sum of penalty that may be imposed under this sub-section shall not exceed—

fifteen *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods does not exceed four *per centum*;

thirty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods exceeds four *per centum* but does not exceed twelve decimal five zero *per centum*;

fifty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods exceeds twelve decimal five zero *per centum*.”]

Penalty for contravention of the provisions of second proviso to sub-section (1), or first proviso to sub-section (2), of section 76.

**78. Where—**

- (a) a transporter, carrier or transporting agent, referred to in the second proviso to sub-section (1) of section 76, at his auction, takes custody of any goods seized under sub-section (1) of that section and thereafter contravention the provisions of the second proviso to sub-section (1) of section 76 by delivering such seized goods to any person including the consignee or owner of such seized goods, or
- (b) a person, referred to in the first proviso to sub-section (2) of section 76, at his auction, takes custody of any goods seized under sub-section (2) of that section and thereafter contravenes the provisions of the first proviso to sub-section (2) of section 76 by disposing of such seized goods,

without prior permission, in writing, of the Commissioner, the Commissioner shall, after giving such transporter, carrier or transporting agent of the person, as the case may be, a reasonable opportunity of being heard, imposed upon him a penalty, in the test tiger, not exceeding twenty-five *per centum* of the market value of such seized goods in West Bengal.

Penalty for contravention of the provisions of section 73 when goods transported are not available.

**79.** Where the goods are, or have been, transported by a dealer, casual dealer, transporter, carrier or transporting agent or any other person in contravention of restrictions or conditions prescribed under section 73 and such goods are not available for seizure under sub-section (1) of section 76, the Commissioner shall, after giving such transporter, carrier or transferring agent or the person a reasonable opportunity of being heard, impose a penalty of a sum not exceeding twenty-five *per centum* of the market value of such goods in such manner as may be prescribed.

Regulatory measures for transport of goods through West Bengal.

**80.** (1) When a goods vehicle, transporting any goods, other than goods specified in Schedule A as tax-free, enters into West Bengal, and such vehicle transporting such goods is found for any place outside West Bengal, the transporter, carrier or transporting agent or any other person transporting such goods, shall have to make, in the prescribed manner, the declaration on the body of the consignment note or on a document of like nature that the goods being so transported in his vehicle shall not be unloaded, delivered or sold in West Bengal and he shall also specify in such declaration that name of the last checkpost through which the vehicle transporting such goods shall move outside West Bengal:

Provided that if there is any possibility of transshipment in West Bengal of the goods so carried by such transporters, carrier or transfer ingredient or any other person, he shall also declare the same on the body of the consignment note or on the document of like nature while making this preparation and shall, thereafter, notably in the particulars of the new vehicle when such transshipment is actually made even when, after leaving the first checkpost, any transshipment of such goods is made by such transporter, carrier or transporting agent or any other person, under any compelling circumstances:

Provided further that the provisions of this sub-section shall not apply where the transporter, carrier of transporting agent or any other person transporting such goods proves to the satisfaction of the Commissioner for such as the authority is maybe prescribed, that the transporter such goods insert vehicle is in the course of export within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956, to such country as the State Government may by notification specify.

(2) For the purpose of sub-section (1), the consulate note of the documents of like nature containing the declaration together with such other documents as may be prescribed, shall be produced before the Commissioner or such other authority as may be prescribed, at the first checkpost that the transporter, carrier or transporting agent or any other person reaches after entry of the vehicle into West Bengal or, where such vehicle is intercepted before it reaches the first checkpost, before such other authority as may be prescribed, at the place where the vehicle is intercepted.

(3) A consignment note or a document of like nature containing the declaration produced in accordance with the provisions of sub-section (2) shall, in the manner prescribed, be countersigned by the Commissioner or the other authority referred to in sub-section (2), as the case may be, and such consignment note and other documents, duly countersigned, shall be returned to

the transporter, carrier or transporting agent or any other person:

Provided that the Commissioner, or the authority referred to in sub-section (2), may, before countersigning the consignment note or a document of like nature containing the declaration produced, demand from such transporter, carrier or transferring agent or any other person, by murdering title, a reasonable amount of security, if he is satisfied that the transporter, carrier or transporting agent or any other person, has failed to produce before the Commissioner or such authority, at the last checkpoint as specified in sub-section (4), any consignment note or a document of like nature containing the declaration made by him in respect of any goods transported in a good vehicle by him on any previous occasion:

Provided further that the security furnished shall be released to such transporter, carrier or transporting agent or the person, if the Commissioner or the authority demanding the security under the first proviso is satisfied that the vehicle carrying the goods, for which the consignment note or the document of like nature containing the declaration had been countersigned on furnishing of security has exited from West Bengal:

Provided also that if the transporter, carrier or transporting agent or any other person, fails to produce before the Commissioner or the authority referred to in sub-section (2), the evidence of exit from West Bengal of the vehicle carrying the goods, referred to in the second proviso, within a reasonable time from such exit, the security shall be adjusted against the penalty which may be imposed upon the transporter, carrier or transporting agent or the person, under sub-section (6) or under section 79.

(4) The transporter, carrier or transporting agent or any other person shall carry with him the consignment note or the document of like nature containing the declaration duly countersigned under sub-section (3) while transporting the goods through which Bengal and produce such consignment note or document of like nature before the Commissioner of the authority referred to in sub-section (2), at the last checkpoint that he reaches before the exit of the vehicle with such goods from West Bengal, and the Commissioner or the authority referred to in sub-section (2), shall, in the prescribed manner, endorse such consignment note or document of like nature evidence in exit from West Bengal of the vehicle transporting the same goods as are specified in such consignment note and return the same to the transporter, carrier or transporting agent or any other person:

Provided that after leaving the first checkpoint where any transshipment of goods is made by the transporter, carrier or transporting agent or any other person under any compelling circumstances and if the fact of such transshipment was not declared by him at the first checkpoint as required under the first proviso to sub-section (1), he shall adduce reasons for doing so before the Commissioner or the authority referred to in sub-section (2), at the last checkpoint along with supporting evidence wherever necessary, and if the Commissioner or the authority referred to in sub-section (2), is satisfied with the reasons adduced or evidence produced by such transporter, carrier or transporting agent or any other person, he shall endorse the countersigned

consignment note or document of like nature containing the declaration as required under that sub-section and return the same to the transporter, carrier or transporting agent or any other person allowing movement of the vehicle carrying such goods outside West Bengal.

(5) The Commissioner of the authority referred to in sub-section (2) may, subject to such conditions and restrictions as may be prescribed, intercept at any case, other than those referred to in sub-section (2) and sub-section (4), within West Bengal any goods vehicle and requires the transporter, carrier or fast putting agent or any other person to produce before him the declaration and other documents referred to in sub-section (2) and search such goods vehicle for verification of the goods with the declaration and other documents produced, if any, by the transporter, carrier or transporting agent or any other person.

(6) Where after the search of the vehicle made under sub-section (5), the Commissioner or the other authority referred to in sub-section (2) is satisfied, for reasons to be recorded in writing, that the transporter, carrier or transporting agent or any other person has contravened the provisions of this section, he may, after giving the transporter, carrier or transporting agent or any other person a reasonable opportunity of being heard, imposed, by an order to be passed in the prescribed manner, such penalty, not exceeding twenty-five *per centum* of the market value of the goods so transported, as may be determined by him in accordance with the rules made under this Act.

(7) Any penalty imposed under sub-section (6) shall be paid by the transporter, carrier or transporting agent or person into a Government Treasury or the Reserve Bank of India by such date as may be specified by the Commissioner or the other authority referred to in sub-section (2) in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of service of the notice:

Provided that the Commissioner of the other authority referred to in sub-section (2) may, for reasons to be recorded in writing, extend the date of such payment.

(8) Until the penalty imposed under sub-section (6) is paid and a receipt showing payment of such penalty is furnished and the declaration referred to in sub-section (2) is produced, the goods so transported shall be detained by the Commissioner or the other authority referred to in sub-section (2) who imposed such penalty.

(9) If the penalty is paid by the date specified in the notice referred to in sub-section (7) and the transporter, carrier or transporting agent or person, furnishes the consignment note or the document of like nature containing the declaration in accordance with the provisions of the section, the Commissioner or the other authority referred to in sub-section (2) who imposes the penalty shall countersign the consignment note or the document of like nature containing the declaration and the documents in accordance with the provisions of this section and allow the vehicle to resume its journey.

(10) If the penalty is not paid by the date specified in the notice referred to in sub-section (7), the goods shall be seized by the Commissioner or the other

authority referred to in sub-section (2) under whose order such goods are detained:

Provided that where the goods are not available for detention and the penalty imposed under sub-section (6) is not paid, realisation of such penalty shall be made under section 55.

(11) Notwithstanding anything contained in sub-section (8) and sub-section (10), the Commissioner or the authority referred to in sub-section (2), pending final disposal of an application for revision under section 86 against an order of imposition of penalty under the section, may direct transport of the goods through West Bengal on such terms and conditions as he may consider fit and proper.

(12) Subject to such restrictions and conditions as may be prescribed, the Commissioner may sell the goods seized under sub-section (10) in open auction or otherwise, and remit the proceeds of sale thereof to a Government Treasury.

(13) The proceeds of sale of the goods referred to in sub-section (12) shall be applied in the prescribed manner for payment in the following order of priority:—

- (a) firstly, the incidental charges, if any, relating to sale in auction or otherwise;
- (b) secondly, the expenses, if any, for storage of such goods seized under sub-section (10);
- (c) thirdly, the penalty imposed under sub-section (6);

and the balance of such proceeds of sale, if any, shall be paid in the prescribed manner to the owner of such goods seized under sub-section (10).

(14) Subject to the provisions of sub-section (10) and sub-section (12), if such transporter, carrier or transporting agent or person fails to produce the consignment note or the documents of like nature containing the declaration countersigned under sub-section (3) or sub-section (9) before the Commissioner or the authority referred to in sub-section (2), as required under sub-section (4) within such time as may be specified in the consignment note or the documents of like nature containing the declaration, it shall be presumed that the goods so transported have been sold in West Bengal by such transporter, carrier or transporting agent or person, and he shall be deemed to be a dealer under this Act.

(15) The provisions of this Act shall, for the purposes of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to the transporter, carrier or transporting agent or person to be deemed to be a dealer under sub-section (14).

(16) If the State Government is, at any time, of the opinion that it would be in the public interest so to do, it may, by notification, exempt from such date, for such period, and subject to such terms and conditions, as may be specified therein, any class or classes of goods from the operation of the provisions of this section.

Measures to prevent evasion of tax on sales within West Bengal.

**81.** (1) Where a transporter, carrier or transporting agent or any other person carries from any place in West Bengal in a goods vehicle, any consignment of goods, or any load is carried by a person and such vehicle is bound for any

place outside West Bengal, he shall, in addition to the document of title to the goods, carry with him, in respect of such goods,—

<sup>1</sup>[(a) where carriage is caused by sale of such goods, two copies of tax invoice or invoice or bill or cash memorandum issued by the seller of such goods and a way bill in the prescribed form in case of such goods or class of goods, as the State Government may, by notification, specify, and such other documents as may be prescribed, or]

<sup>2</sup>[(b) where carriage is caused otherwise than by way of sale of such goods, two copies of forwarding note, delivery challan or document of like nature and a way bill in the prescribed form in case of such goods or class of goods, as the State Government may, by notification, specify, and such other documents as may be prescribed:]

Provided that the provisions of this sub-section shall not apply where the transporter, carrier or transporting agent or any other person carrying such goods proves to the satisfaction of the Commissioner that consequent upon a sale of such goods in the course of export within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956, his goods vehicle carrying such goods is bound for such country as the State Government may, by notification specify.

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(2) The transporter, carrier or transporting agent or any other person while carrying the goods referred to in sub-section (1), shall stop the vehicle at the checkpost or at any place when so required by the Commissioner, and produce the documents referred to in sub-section (1) along with the document of title to such goods before the Commissioner, and the Commissioner shall, wherever necessary after verification, countersign the documents referred to in clause (a) or clause (b), as the case may be, of sub-section (1).

(2a) Where it appears to the Commissioner that—

- (a) due to failure of any dealer, casual dealer or any other person, no way bill in the prescribed form or such document as mentioned in clause (a) of sub-section (1), could be produced by such transporter, carrier or transporting agent or person before him, or
- (b) the way bill in the prescribed form or such document, as mentioned in clause (a) of sub-section (1), produced is fake, false or incorrect in respect of description, quantity, weight and value of the goods transported, or
- (c) the consignor of the goods, does not exist at the address declared in the way bill in the prescribed form or such document as mentioned in clause (a) of sub-section (1), or
- (d) the consignor of the goods does not exist at the address declared in the documents as mentioned in clause (b) of sub-section (1),

he shall, for reasons to be recorded in writing, seize such goods under section 76 at any checkpost, or at any place, referred to in sub-section (2).

(3) If the State Government is, at any time, of the opinion that it would be in the public interest so to do, it may, by notification, exempt from such date, for such period, and subject to such conditions, as may be specified therein, any class or classes of transporter, carrier or transporting agent or person carrying

any class or classes of goods referred to in sub-section (1) from carrying the documents referred to in that sub-section.

[1. Substituted w.e.f. 01.08.2006 by S. 12(28)(a) of WB Act XVIII of 2006 for "(a) where carriage is caused by a sale of such goods, two copies of tax invoice or bill or cash memorandum issued by the seller of such goods and such other documents as may be prescribed" which was earlier substituted by S. 6(21)(a) of WB Act XIII of 2005 w.e.f. 1.4.2005 for —

"(a) where carriage is caused by sales of such goods,—

the tax invoice or invoice or bill or cash memorandum issued by the seller of such goods and a way bill in the prescribed form and of the level from such authorities such manner, as may be prescribed; or

two copies of the tax invoice or invoice or bill or cash memorandum issued by the seller of such goods and such document, containing description, quantity or weight and value of the goods and such other particulars as may be prescribed, or".

2. Substituted w.e.f. 01.08.2006 by S. 12(27)(b) of WB Act XVIII of 2006 for "(b) where carriage is caused otherwise than by a sale of such goods, two copies of the forwarding note, delivery challan or document of like nature, by whatever name called, issued by the owner or consignor of such goods, [and such other documents as may be prescribed:]" wherein the bracketed portion was substituted by S. 6(21)(b) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "and a way bill and such other documents as referred to in clause (a) above".]

Exemption from operation of provisions of section 80 and section 81.

**82.** Nothing in section 80 or section 81 shall apply to transport of any goods where such goods are transported buy or on behalf of—

- (a) the King of Nepal or Bhutan, the Royal Family of Nepal or Bhutan, or the Government of Nepal or Bhutan;
- (b) Government or a local authority;
- (c) a diplomatic or consular office, any organisation or specialised agency of the United Nations;
- (d) Indian Red Cross Society or a Charitable Institution for charitable purposes recognised by Government;
- (e) An official on transfer as personal effects;
- (f) Such other person or organisation, and in such circumstances, as may be prescribed.

Setting up of checkposts.

**83.** If the State Government is of the opinion that it is necessary so to do with a view to preventing evasion of tax in respect of sale or purchase of goods or execution of works contract in West Bengal, it may, by notification, set up checkposts or barriers for carrying out the purposes of section 73, section 80 or section 81 at such places within West Bengal as may be specified in such notification.



## CHAPTER XIII

### Appeal, revision, review, power of taking evidence on oath and reference.

Appeal against  
provisional or  
other assessment.

**84.** (1) Any casual dealer or dealer may, in the prescribed manner, <sup>1</sup>[appeal to the Commissioner, the Special Commissioner, the Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under the section] against a provisional assessment or any other assessment, within forty-five days or such further period as may be allowed by the said authority for cause shown to the satisfaction from the receipt of the notice of the one in respect thereof:

Provided that no appeal shall be entertained by the said authority unless he is satisfied that the amount of tax, penalty of interest, as the case may be, as the appellant may admit to be due from him has been paid:

Provided further that where the payment of tax due from the dealer stands deferred under section 116, and appeal shall, notwithstanding that the tax admitted to be due from him has not been paid, be entertained.

(2) Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may, for reasons to be recorded in writing,—

(a) confirm, reduce, enhance or annul the provisional assessment or any other assessment, or

<sup>2</sup>[(b)

Provided that any appeal, which is entertained under sub-section (1), shall, if not disposed of before the 31st December next following the expiry of two years from the date of its presentation, be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full:

Provided further that the appropriate appellate authority may, before expiry of the period mentioned in the first proviso, obtained from the Commissioner an extension of time mentioned in that proviso and where the Commissioner, for reasons to be recorded in writing, extends the time, such appeal may be disposed of during the period of one year immediately following the period mentioned in the first proviso:

<sup>3</sup>[Provided also that in computing the period mentioned in the first proviso for disposal of any appeal, the period during which the appropriate appellate authority is restrained from disposing of or continuing any proceedings for such appeal by an order of an authority under the Act or a tribunal or any court, shall be excluded.]

(3) While acting in accordance with the provisions of clause (b) of sub-section (2), the appellate authority may set aside any part of the provisional assessment or any other assessment and, if he does so, the assessing authority shall make a fresh assessment in respect of such part or parts only, and the remaining part or parts of the previous assessment shall remain unaltered and valid.

(4) Pending disposal of an appeal referred to in sub-section (2), the appellate authority may, on application, at his discretion and subject to such conditions and restrictions as may be prescribed, stay realisation of the amount of tax,

interest or penalty in dispute wholly or in part.

*Explanation.*— For the purposes of this section, section 85, section 86 <sup>4</sup>[, section 87 or section 88],—

- (a) the expression "provisional assessment" means—
  - (i) provisional assessment for tax and imposition of penalty under section 45,
  - (ii) determination of interest under section 50, or
  - (iii) rectification of mistake in determination of interest under section 51;
- (b) the expression "any other assessment" means—
  - (i) assessment of tax and imposition of penalty under section 46 and section 48,
  - (ii) determination of interest under section 50, or
  - (iii) rectification of mistake in determination of interest under section 51;
- (c) "notice of demand" means any notice served in accordance with the provisions of this Act for realisation of the tax, interest or penalty referred to in clause (a) and clause (b).

[1. Substituted w.e.f. 01.08.2006 by S. 12(29)(a) of WB Act XVIII of 2006 for "appeal to the prescribed authority".

2. Substituted w.e.f. 01.08.2006 by S. 12(29)(b) of WB Act XVIII of 2006 for "(b) when such authority is satisfied that it is not practicable or desirable to act in accordance with the provisions of clause (a), set aside the provisional assessment or any other assessment and direct the assessing authority to make fresh assessment after such further inquiry as may be directed:".

3. Inserted by S. 6(22) (a) of WB Act XIII of 2005 w.e.f. 1.4.2005.

4. Substituted by S. 6(22)(b) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "or section 87".]

Suo motu revision  
by Commissioner.

**85.** (1) Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise <sup>1</sup>[a provisional assessment under section 45, or any other assessment under section 46] or section 48, or deemed to have been made under sub-section (1) of section 47 or order passed by a person appointed under sub-section (1) of section 6 to assist him.

(2) Notwithstanding anything contained elsewhere in the Act, where an assessment in respect of the dealer for any period is taking up under clause (c) or clause (d) of sub-section (1) of section 46, the Commissioner may, on his own motion, revise the orders of assessments under section 45, or section 46, or section 47 or section 48 for the previous five years also.

[ 1. Substituted by S. 6 (23) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "a provisional assessment under section 46".]

Revision by  
Commissioner  
upon application.

**86.** <sup>1</sup>[(1)] Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner or the prescribed authority may, upon application, revise any order other than an order referred to in section 87 and an order of provisional assessment or any other assessment against which and appeal lies under section 84, passed by a person appointed under sub-section (1) of section 6 to assist him:

Provided that <sup>2</sup>[any application for revision filed] against the observations made in the audit report as referred to in sub-section (3) of section 43, shall, if not disposed of before the expiry of ninety days from the date of its presentation, be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full:

Provided further that the appropriate revisional authority may, before the expiry of the period mentioned in the first proviso, obtain from the Commissioner an extension of time mentioned in that proviso and where the Commissioner, for reasons to be recorded in writing extend the time, such revision may be disposed of during the period of three months immediately following the period of ninety days as referred to in the first proviso:

<sup>3</sup>[Provided also that in computing the period mentioned in the first proviso for disposal of any application for revision, the period during which the appropriate revisional authority is restrained from disposing of or continuing any proceedings for such revision by an order of an authority under the Act, or a tribunal or any court, shall be excluded.]

<sup>4</sup>[(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, upon application filed during the period commencing from the 1st day of July, 2006 and ending on the 30th day of June, 2008, revise a final appellate or revisional order from an order of provisional assessment or any other assessment.]

*Explanation.*— For the purposes of this section, the expression "any order" also includes the following,—

- (a) an order of seizure of accounts of the dealer or casual dealer or any other person, made under section 67;
- (b) an order of sealing any house, room, warehouse, almirah, cabinet, safe, locker, drawer, box, or any receptacle, made under section 69;
- (c) an order of seizure of accounts of the transporter, carrier or transporting agent made under section 71;
- (d) an order of seizure of goods of any person, made under section 76.

[1. Renumbered as "(1)" w.e.f. 01.07.2006 by S. 12(30) of WB Act XVIII of 2006.

2. Substituted by S. 6(24)(a) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "any revision filed".

3. Inserted by S. 6(24)(b) of WB Act XIII of 2005 w.e.f. 1.4.2005.

4. Inserted w.e.f. 01.07.2006 by S. 12(30) of WB Act XVIII of 2006.]

Revision by  
Appellate and  
Revisional Board.

**87.** (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Appellate and Revisional Board may, upon application, revise a final appellate or revisional order from an order of provisional assessment or any other assessment:

Provided that where an applicant fails to appear in person or through an authorised agent on the date and at the time and place fixed for hearing on <sup>1</sup>[the application for revision preferred by him], the Appellate and Revisional Board may, in its discretion, dismiss such application for such default of the applicant:

Provided further that the Appellate and Revisional Board may, upon application filed by an applicant within forty-five days from the date of the

order of dismissal of an application for revision for default passed by it under the first proviso or within such further time as it may allow for cause shown to the satisfaction, restore the application for revision so dismissed.

(2) Where during the pendency of an application for revision preferred by a casual dealer or dealer under sub-section (1) before the Appellate and Revisional Board, the Commissioner, having discovered-

(a) any error or omission, whether in fact or law, in the final appellate or revisional order referred to in sub-section (1), or

(b) any concealment, by a casual dealer of his sales or purchases, or, by a dealer of his turnover of sales or purchases or contractual transfer price by such dealer or claim for his deduction of any of turnover of sales or purchases or contractual transfer price or claim for lower rate of tax payable under this Act,

(c) any claim by a dealer of excess amount of input tax credit or input tax rebate, or

(d) any non-reversal by a dealer of input tax credit or input tax rebate to the extent of disentitlement,

is of the opinion that the amount of tax assessed is liable to be enhanced from what has been in the order of a revisional assessment or any other assessment or in the final appellate or revisional order in the matter of the amount of tax so assessed, as the case may be, he may, subject to such rules as may be made, file, at any time before the application for revision is finally heard by the Appellate and Revisional Board, a memorandum bringing to its notice he error or omission referred to in clause (a) or the concealment by, the casual dealer of his sales or purchases or, the dealer of his turnover of sales or purchases or contractual transfer price or incorrect statement by him of the particulars referred to in clause (b) or claim by a dealer of any excess amount of input tax rebate referred in clause (d).

(3) The Appellate and Revisional Board shall, while proceeding to revise under the sub-section (1) any final appellate or revisional order from order of provisional assessment or any other assessment, entertain the memorandum filed under sub-section (2) as an application by the Commissioner for revision and pass such revisional order as it deem fit.

(4) Where the Commissioner, after revision made by the Appellate and Revisional Board under sub-section (1), discovers any concealment by, a casual dealer of his sales or purchases or dealer of his turnover of sales or purchases or contractual transfer price or incorrect statement by a dealer of particulars of sales or purchases or contractual transfer price or claim for deduction of any part of turnover of sales or purchases or contractual transfer price or claim for lower rate of tax or any claim by a dealer of excess amount of input tax credit claim or input tax rebate or any non-reversal of input tax credit or input tax

rebate to the extent of his disentitlement, he may, subject to such rules as may be made, make, within four years from the date of order of the Appellate and Revisional Board, an application to the Appellate Revisional Board, and the Appellate and Revisional Board, may thereupon, after giving the Commissioner and the casual dealer or the dealer a reasonable opportunity of being heard, review its order passed under sub-section (1) and pass such order as it may deems fit.

<sup>2</sup>[(5) Notwithstanding anything contained in sub-section (1), no application shall be filed before the Appellate and Revisional Board, during the period commencing from the 1st day of July, 2006 and ending on the 30th day of June, 2008, against any final appellate or revisional order from an order of provisional assessment or any other assessment.]

- [1. Substituted by S. 6(25) of WB Act XIII of 2005 w.e.f. 9.8.2005 for "the application for revision preferred to him".
2. Inserted w.e.f. 01.07.2006 by S. 12(31) of WB Act XVIII of 2006. ]

Review of an order.

**88.** Subject to such rules as may be made, any provisional assessment or any other assessment made or order passed under this Act or the rules made thereunder by any person appointed under sub-section (1) of section 3, section 4, or section 5 or sub-section (1) of section 6 may be reviewed by the person passing it upon application or on his own motion, and, subject to the rules as aforesaid, the Appellate and Revisional Board may, in the like manner and for reasons to be recorded in writing, review any order passed by it, either on its own motion or upon an application:

Provided that if the Commissioner considers it is necessary to modify any order passed either by any of his predecessors-in-office, or by any person in the rank of Special Commissioner or Additional Commissioner when such person ceases to hold the rank of the Special Commissioner or the Additional Commissioner, the Commissioner may review any such order.

<sup>1</sup>[Application by assessing authority for revision under section 87.

**88A.** Where any assessing authority is aggrieved by any order being—

- (a) a final appellate order passed under section 84 by an Assistant Commissioner or a Deputy Commissioner or an Additional Commissioner, or
- (b) a final order passed under section 85 or section 86 or section 88 by an Assistant Commissioner, a Deputy Commissioner or an Additional Commissioner revising or reviewing a final appellate order passed under section 84 in respect of a provisional assessment or any other assessment,

such assessing authority may make an application, without any fees, for revision under section 87 of such order to the Appellate and Revisional Board.]<sup>1</sup>

- [ 1. Inserted by S. 6 (26) of WB Act XIII of 2005 w.e.f. 9.8.2005.]

<sup>1</sup>[Power of Commissioner to

**88B.** (1) If the Commissioner considers that any order passed by a Special

revise orders  
prejudicial to  
revenue.

Commissioner or an Additional Commissioner or any person appointed under sub-section (1) of section 6 is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the dealer or casual dealer or person likely to be affected an opportunity of being heard and after making or causing to be made such inquiry, if any, as he deems necessary, pass such order as the circumstances of the case justify, including an order enhancing or modifying any assessment, or canceling or setting aside any assessment and directing a fresh assessment or revising or canceling or setting aside any other order made under this Act by any such authority and directing a fresh order to be passed under this Act.

(2) No order shall be made under sub-section (1) after the expiry of four years from the date of the order sought to be revised:

Provided that in computing the period mentioned under this sub-section, the period during which any proceedings under this section is stayed by an order of an authority under this Act or a tribunal or any court, shall be excluded.]<sup>1</sup>

[ 1. Inserted by S. 6 (26) of WB Act XIII of 2005 w.e.f. 9.8.2005 .]

Appeal, review or  
revision in certain  
cases.

**89.** An appeal, review or revision in respect of any order passed in the matter of tax recoverable under clause (b) of sub-section (1) of section 55, section 56, section 57 or section 59 shall lie in the manner, and to the authority, as may be prescribed.

Reasonable  
opportunity to be  
given to the person  
likely to be  
adversely affected.

**90.** Before any order under section 84, section 85, section 86, section 87 or section 88, which is likely to affect any person adversely, is passed, such person shall be given a reasonable opportunity of being heard.

Power of taking  
evidence on oath.

**91.** The Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely,—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses,

and any proceedings under this Act before the Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purpose of section 196, of the Indian Penal Code.

5 of 1908.

45 of 1860.

Reference to the  
Tribunal.

**92.** (1) Within sixty days from the date of passing by the Appellate and Revisional Board of any order under section 87 affecting any liability of any casual dealer or any dealer to pay tax, penalty of interest under this Act, such

casual dealer or dealer, by application in writing accompanied by a fee of one hundred rupees, or the Commissioner, by application in writing, may require the Appellate and Revisional Board to refer to the Tribunal any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Appellate and Revisional Board refuses to make such difference, the applicant may, within ninety days of such refusal, either—

- (a) withdraw his application and if he does so, the fee, if any paid, shall be refunded; or
- (b) apply to the Tribunal against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-section (2) the Tribunal is not satisfied with the correctness of the decision of the Appellate and Revisional Board, it may require the Appellate and Revisional Board to state the case and refer it, and, on the receipt of such requisition, the Appellate and Revisional Board shall state and refer the case to the Tribunal accordingly.

(4) If the Tribunal is not satisfied that the statements in a case referred to it under this section are sufficient to enable it to determine the question of law raised thereby, it may refer the case back to the Appellate and Revisional Board to make such addition thereto or alterations therein as it may direct in this behalf.

(5) The Tribunal upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Appellate and Revisional Board a copy of such judgment under the seal, and the signature of the Registrar of the Tribunal, and the Appellate and Revisional Board shall dispose of the case accordingly.

(6) Where a reference is made to the Tribunal under the section, the costs (including fees) shall be in the discretion of the Tribunal.

(7) The payment of the amount, if any, of tax, penalty or interest due in accordance with the order of the Appellate and Revisional Board in respect of which an application has been made under sub-section (1), shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the amount of tax, penalty or interest paid in excess shall be refunded in accordance with the provisions of section 62.

**CHAPTER XIV**  
**Offences and penalties, special provision for liability to prosecution and  
compounding of offences.**

Offences and  
penalties.

- 93.** (1) Whoever—
- (a) fails to reverse input tax credit or input tax rebate as required by section 22; or
  - (b) carries on business as a dealer without furnishing the security demanded under section 26; or
  - (c) [neglects or refuses to furnish information as required by section 27A, or furnishes such information which is found to be incorrect; or]<sup>1</sup>
  - (d) [neglects or refuses to furnish information as required by section 30B, or furnishes such information which is found to be incorrect; or]<sup>2</sup>
  - (e) fails to pay full amount of net tax or any other tax payable for any tax period or in accordance with the provisions of sub-section (2) of section 32; or
  - (f) fails to make payment of interest payable under section 33 or section 34 or section 34A; or
  - (g) fails to comply with the provisions of section 63; or
  - (h) [neglects or refuses to furnish information as required by section 66A, or furnishes such information which is found to be incorrect; or]<sup>3</sup>
  - (i) contravenes the provisions of section 73; or
  - (j) fails to make fully payment of penalty imposed under section 79; or
  - (k) fails to comply with any requirement under section 81;

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both and, a court having jurisdiction may, in addition to any fine as aforesaid, order confiscation of any goods seised under section 76 for the offence of contravention of section 73.

(2) Whoever carries on business as a dealer in contravention of sub-section (1) of section 24 shall be punishable with simple imprisonment which may extend to one year or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence.

(3) Whoever, being a transporter, carrier or transferring agent, operates in contravention of section 25, his transport business in West Bengal of transporting any consignment of taxable goods into, or outside, or within, West Bengal without obtaining a certificate of enrolment or contravenes the provisions of the second proviso to sub-section (1) of section 76, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.



(3A) Whoever, being a transporter, carrier or transporting agent, fails or neglects to comply with—

(a) the provisions of section 70, or

(b) the direction of the Commissioner under sub-section (1) of section 72, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(3B) <sup>4</sup>[Whoever contravenes the express conditions referred to in the provisions] of the first proviso to sub-section (2) of section 76, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(4) Whoever—

(a) issues or produces a fake or fabricated tax invoice referred to in clause (48) of section 2;

(b) fails to submit before the prescribed authority statements, accounts for the provisions under section 30E, within prescribed time;

(c) furnishes a false return referred to in section 32; or

(d) fails without reasonable cause to furnish a return under section 32;

(e) refuses to comply with any requirement under section 66;

<sup>5</sup>[(f) tampers with or breaks open any sealing done under section 69,] shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years and with fine not exceeding ten thousand rupees or with both, and when the offence is a continuing one, with a daily fine, not exceeding fifty rupees, during the period of the continuance of the offence.

(5) Whoever has in his possession any prescribed form referred to in sub-section (2) of section 73 or sub-section (1) of section 81, not obtained by him or by his principal or agent in accordance with the provisions of this Act or any rules made thereunder, shall be deemed to have committed the offence of criminal breach of trust under section 405 of the Indian Penal Code, and every such person who commit such criminal breach of trust, shall, on conviction, be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(6) Whoever wilfully attempts in any manner to evade or defeat any tax imposed under this Act, shall, in addition to any other penalty provided by any law for the time being in force, be liable also for the offence of dishonest misappropriation of property under section 403 of the Indian Penal Code, and shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(7) Whoever knowingly produces incorrect accounts, registers, documents or electronic record or knowingly furnishes incorrect information or suppresses material information shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(8) Whoever obstructs any officer making inspection or search or seizure or taking other action under section 66, section 67, section 68, section 69, section 70, section 71, section 72, section 74, section 76, section 80 or section 81, shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(9) \* \* \* \*

(10) Whoever abets any of the offences mentioned in sub-section (2), sub-section (3), sub-section (3A), sub-section (5), sub-section (6), sub-section (7), shall, if the act of offence is committed in consequence of the abatement, be punishable with the same punishment as provided for the offence.

(11) Any offence punishable under sub-section (1), sub-section (2), sub-section (3), sub-section (4), or sub-section (10), shall be cognizable and bailable while that punishable under sub-section (3A), sub-section (5), sub-section (6), sub-section (7), sub-section (8), or sub-section (9), shall be, cognizable and non-bailable.

(12) In any prosecution for an offence under this Act which requires a culpable mental state on the part of accused, the court shall presume the existence of such culpable mental state until the contrary is proved.

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

*Explanation II.*— If any of the offences under sub-section (2), or clause (d) of sub-section (4) continues, such offence shall be deemed to be a continuing offence.

(13) No court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate shall try such offence.

(14) Notwithstanding anything contained elsewhere, in the Act, no prosecution for any offence enumerated hereinbefore shall be instituted in respect of the same fact for which a penalty has been imposed under any other provisions of the Act and subsequently paid by the dealer and no such penalty shall be imposed *vice versa*.

[ 1. Substituted by S. 6 (27)(a)(i) of WB Act XIII of 2005 w.e.f. 9.8.2005 for "(c) neglects or refuses or furnishes incorrect information as required by section 27A; or".

2. Substituted by S. 6 (27)(a)(ii) of WB Act XIII of 2005 w.e.f. 9.8.2005 for "(d) neglects or

refuses or furnishes incorrect information as required by section 30B; or”.

3. Substituted by S. 6 (27)(a)(iii) of WB Act XIII of 2005 w.e.f. 9.8.2005 for “(h) neglects or refuses or furnishes incorrect information as required by section 65A; or”.
4. Substituted by S. 6 (27)(b) of WB Act XIII of 2005 w.e.f. 9.8.2005 for "Whoever contravenes the provisions".
5. Inserted w.e.f. 01.08.2006 by S. 12(32) of WB Act XVIII of 2006. ]

Special provision for liability to prosecution.

**94.** (1) Where an offence referred to in section 93 has been committed by a dealer, every person who, at the time the offence was committed, was in charge of, and was responsible to the dealer for the conduct of, the business of the dealer, as well as the dealer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided under section 93, if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 93 has been committed by a dealer and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, as the case may be, of the dealer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Compounding of offences.

**95.** (1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence under clause (b), clause (c), clause (d), clause (e), clause (f) or clause (h) or clause (j) of sub-section (1), sub-section (2), sub-section (3), sub-section (3A), clause (c) or clause (d) of sub-section (4), sub-section (5), sub-section (6), sub-section (7), sub-section (9), or sub-section (10), of section 93, or under any rules made under this Act, may, either before or after the commencement of any proceedings against him in respect of such offence, at his option, compound such offence, and the Commissioner may, at his discretion, accept from such person, by way of composition of such offence, such sum not exceeding five lakh rupees as may be determined by the Commissioner.

(2) On payment in full of the sum determined by the Commissioner under sub-section (1),—

- (a) no proceedings shall be commenced against such person as aforesaid; and
- (b) if any proceedings have already been commenced against such person as aforesaid, such proceedings shall not be further proceeded with.

Penalty for concealment of sales, purchases, contractual transfer price or for furnishing of

**96.** (1) Where—

- (a) a dealer or casual dealer has conceded any sales or purchases or contractual transfer price, as the case may be, or any particulars thereof, or

incorrect particulars of sales or purchases or contractual transfer price or <sup>1</sup> [for claiming excess input tax credit] or input tax rebate.

- (b) a dealer, required to furnish return under sub-section (1) of section 32 has furnished incorrect statement of his turnover of sales or purchases or of contractual transfer price or incorrect particulars of such sales or purchases or contractual transfer price in the return furnished by him under sub-section (2) of that section or otherwise, or
- (c) any registered dealer has claimed excess amount of input tax credit or import tax rebate but has not reversed the same to the extent of his disentitlement,

with intent to reduce the amount of the next tax or any other tax payable by him, the Commissioner may, by way of a separate proceeding independent of any assessment, appeal, revision or review and after giving in the prescribed manner, such dealer a reasonable opportunity of being heard, by an order in writing direct that she shall, in addition to any tax levied or penalty imposed under this Act, pay, by way of penalty, a sum not exceeding twice the amount of tax which would have been avoided by him if such conceded sales or purchases or contractual transfer price or particulars thereof or incorrect statement of turnover of sales or purchases or contractual transfer price or incorrect particulars of such sales or purchases or contractual transfer price or claim of excess input tax credit or input tax rebate were not detected and taken into account or if turnover of sales or purchases or contractual transfer price or particulars of sales or purchases or contractual transfer price or input tax credit or input tax rebate furnished in returns or shown in his books of account were accepted as correct, as the case may be, in making an assessment or passing any order upon appeal, revision or review under the Act.

*Explanation.*— In this sub-section, the expression "tax levied" shall include the amount of tax determined afresh by an order passed upon appeal, revision or review, or by any order of assessment consequent upon such appeal, revision or review, under this Act.

(2) Any penalty imposed under sub-section (1) shall be paid by the dealer by such date as may be specified by the Commissioner in a notice issued for the purpose, and the date to be so specified shall not be less than fifteen days from the date of issue of such notice:

Provided that the Commissioner may, for reasons to be recorded in writing, extend the date of such payment or allow the dealer to pay the penalty imposed in such number of instalments as the Commissioner may determine.

[1. Substituted w.e.f. 01.04.2005 by S. 12(33) of WB Act XVIII of 2006 for "for claiming input tax credit" in the marginal note.]

**CHAPTER XV**  
**Miscellaneous.**

Indemnity of  
Government  
servant.

**97.** No suit, prosecution or other legal proceedings shall lie against any Government servant for anything which is in good faith done or intended to be done under this Act of the rules made thereunder.

Returns etc. to be  
confidential.

**98.** (1) All particulars contained in any statement made, return furnished or accounts, registers or documents including those in the form of electronic records produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than the proceedings before a criminal court, shall save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any Government servant to produce before it any such statement, return, accounts, registers or documents including those in the form of electronic records, order record or any part thereof, or to give evidence before it in respect thereof.

(2) If, save as otherwise provided in sub-section (3), any Government servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to any discloses of any of the particulars referred to in sub-section (1)—

- (a) for the purposes of any prosecution under the Indian Penal Code, the Prevention of Corruption Act, 1988, all this Act or any preliminary inquiry for ascertaining whether such prosecution lies,
- (b) in connection with any suit or proceeding in a civil court to which the State Government or any person appointed under this Act is a party and which relates to any matter arising out of any proceedings under this Act,
- (c) where it is necessary to make such discloses for the purposes of this Act,
- (d) to an officer of Government for the purpose of enabling such Government too lazy or realise any tax on duty imposed by it,
- (e) to an officer of Government for the audit of receipts and refunds of tax, penalty or interest under this Act,
- (f) in connection with an inquiry concerning allegations of corruption or official misconduct against any Government servant or for the purpose of taking disciplinary action against such Government servant,
- (g) in any inquiry into a charge of misconduct in connection with any proceeding under this Act against any legal practitioner, chartered accountant or other person entitled to appear on behalf of a dealer, casual dealer or any other person before the taxing authorities under this Act, to the authority competent to take disciplinary action against such legal practitioner, chartered accountant or other person,

- (h) to any officer of the State Government to enable such officer to perform his executive functions relating to the affairs of the State,
- (i) to any person for purposes other than those referred to in clause (a), clause (b), clause (c), clause (d), clause (e), clause (g) and clause (h), if the State Government considers such disclosure necessary in the public interest.

Clearance certificate.

**99.** Omitted w.e.f. 01.08.2006 by S. 12(34) of WB Act XVIII of 2006.

The earlier provision was :—

“(1) Notwithstanding anything contained in any other law for the time being in force, no Government, local authority, educational institution, or corporation or body corporate established by or under a Central or State Act shall enter into any works contract with any dealer for execution by him of such works contract and shall make payment to such dealer for execution of such works contract, or shall place order with, or make purchases of any goods from, any dealer or make any payment to such dealer for such purchases, unless the Commissioner certifies in the prescribed manner that such dealer—

- (a) has no liability to pay tax or has not defaulted in furnishing any return or returns together with the receipt of challan or challans showing payment of all tax payable <sup>1</sup>[under this Act or the West Bengal Sales Tax Act, 1994] or the Central Sales Tax Act, 1956,
- (b) has not defaulted in making payment of tax, otherwise payable by, or due from him <sup>2</sup>[under this Act or the West Bengal Sales Tax Act, 1994] or the Central Sales Tax Act, 1956, or
- (c) has made it satisfactory provision for securing the payment of tax by furnishing bank guarantee in favour of the Commissioner or otherwise,

as the case may be:

Provided that the provisions of this sub-section shall not apply to any payment where any amount is deductible from such payment under sub-section (1) of section 40.

(2) The application for the certificate required under sub-section (1) shall be made by the dealer referred to in that sub-section to the Commissioner and shall be in such form and shall contain such particulars as may be prescribed.

<sup>3</sup>[(3) Where the Commissioner, upon an application made by a dealer and after making such enquiry as he deems fit and proper, is satisfied and issues a certificate in the prescribed form to the effect that such dealer is not liable to pay tax under section 14 or that he has paid tax payable by, or due from, him under that section, payment may, notwithstanding anything contained in sub-section (1), be made to such dealer for execution by him of a works contract referred to in section 14 on production by him of such certificate of the Commissioner.]”

- [ 1. Substituted by S. 6 (28) (a) (i) of W. B. Act XIII of 2005 w.e.f. 9.8.2005 for the words "under this Act".
- 2. Substituted by S. 6 (28) (a) (ii) of W. B. Act XIII of 2005 w.e.f. 9.8.2005 for the words "under this Act".
- 3. Inserted by S. 6 (28) (b) of W. B. Act XIII of 2005 w.e.f. 9.8.2005. ]

Permit for execution-cum-sale.

**100.** To ensure that there is no evasion of tax, every person intending to organise an exhibition-cum-sale of goods, shall obtain from the prescribed authority a permit in such form, and in such manner, as may be prescribed.

Penalty for organising execution-cum-sale in contravention of section 100.

**101.** (1) Where any person contravenes the provision of section 100 by organising any exhibition-cum-sale without obtaining permit, the Commissioner, the Special Commissioner or the Additional Commissioner may, after giving such person an opportunity of being heard, imposed upon him the penalty not exceeding fifty thousand rupees.

(2) A penalty imposed under sub-section (1), shall be paid by the person upon whom it is imposed by such date as may be specified by the authority referred to in sub-section (1), in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of issue of such notice:

Provided that the authority may, for reasons to be recorded in writing, extend the date of payment of the penalty for such period, as he may think fit.

Determination of certain disputed questions.

**102.** (1) If any question arises, otherwise than in a proceeding before a court or, Tribunal or before a notice initiating assessment proceeding under section 46, is served upon the registered dealer, whether—

(a) any tax is at all payable in respect of any particular sale or purchase of goods, or if tax, is payable, the rate thereof ; or

(b) any goods shall be treated as capital goods within the meaning of sub-section (6) of section 2 or not,

the Commissioner may, upon application, in prescribed manner and with prescribed fees, determine such question by an order passed in writing after giving such dealer an opportunity of being heard.

(2) If any question, referred to in sub-section (1), arises from any order passed under any other provision of this Act, such question shall not be determined under this section.

**Sections 103 to 108** -- Omitted by West Bengal Finance Act, 2005 with effect from 01.04.2005.

Bar to proceedings in civil court.

**109.** (1) Save as provided in section 92, no assessment made it and no order passed under this Act or the rules made thereunder by the Commissioner, the Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, and no order passed by the Appellate and Revisional Board under this Act or the rules made thereunder shall be called into question in any civil court, and save as provided in section 84, section 85, section 86 or section 87, no appeal or application for revision or review shall lie against such assessment or order.

(2) Save as provided in section 89, no order passed by Tax Recovery Officer under this Act or the rules any Schedule F and no order passed upon an appeal or from review or revision of, any order of the Tax Recovery Officer in accordance with the provisions of this Act and the rules in Schedule F shall be called into question in any civil court, and, save as provided in section 89, no appeal, review or revision shall lie against such order.

Manner of payment of tax, penalty, interest, etc.

**110.** Where the manner of payment of any tax, penalty, or interest, payable by a person, or any sum determined by the Commissioner in compounding any offence, under this Act, is not provided specifically elsewhere in this Act, such tax, penalty, interest or sum shall be paid into an appropriate Government Treasury in the prescribed manner.

Power of Commissioner to collect statistics from dealers.

**111.** If the Commissioner considers that for the purpose of better administration of this Act, it is necessary to collect statistics relating to any matter dealt with by or under this Act, he may, by notification, call upon dealers

or such class or classes of dealers as may be specified in the notification, to furnish such information relating to any matter in respect of which it is necessary to collect statistics, in such form, containing such particulars, to such authorities, and at such intervals, as may be specified in the notification.

Power of State Government two prescribe rates of fees.

**112.** (1) Fees payable upon a memorandum of appeal or application for review or revision, or upon any other miscellaneous application or petition, other than an application referred to in sub-section (1) of section 92, for relief shall be such as may be prescribed:

Provided that any fee prescribed under this section shall not exceed one thousand rupees.

(2) The fee as aforesaid shall be paid in court-fee stamp to be affixed to the memorandum of appeal, application for review or revision or other miscellaneous application or petition, as the case may be, referred to in sub-section (1).

Power of State Government to engage any person, firm or company to collect certain information.

**113.** The State Government may, for the purpose of collection of information regarding existence of warehouse of dealers, or transporter, carrier or transporting agent, where goods are stored by them and the nature, quantity or value of such goods stored in such warehouse, engage the services of any person, firm or company to perform such work on such terms and conditions, as may be prescribed.

Power of State Government to make rules.

**114.** (1) The State Government may, by notification, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed, or to be provided for, by rules.

(3) In making any rules under this section, the State Government may direct that a breach thereof shall be punishable with fine not exceeding one thousand rupees and, when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of such offence.

Sailing in relation to sales outside West Bengal, inter-State sales, and sales in the course of import or export.

**115.** Nothing in this Act shall be construed to impose, or authorise the imposition of, tax on the sale or purchase of goods or on the execution of works contract where such sale or purchase or execution of works contract takes place—

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

Payment of tax in respect of industrial units enjoying Deferment, Remission and Tax Holiday.

**116.** (1) Notwithstanding anything contained in sub-section (2) of section 32, or sub-section (2) of section 45, or <sup>1</sup>[clause (b) of sub-section (3) of section 46] but subject to sub-section (2) of this section and section 118, the Commissioner may, in the prescribed manner and subject to such restrictions and conditions as may be prescribed, permit the output tax payable under this Act by a registered



dealer or a class or classes of dealers as may be prescribed, according to his returns referred to in sub-section (1) of section 32 or the tax payable by him according to the notice issued under sub-section (2) of section 45, or clause (b) of sub-section (4) of section 46,—

- (a) to be deferred in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such deferment under clause (a) of sub-section (1) of section 118; or
- (b) to be exempt in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such exemption under clause (b) of sub-section (1) of section 118; or
- (c) to be remitted in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such remission under clause (a) of sub-section (1) of section 118.

(2) Where the State Government considers it necessary so to do in the public interest, it may, after due consideration of certain factors as may be prescribed, relax the ceiling to such extent as may be prescribed.

[1. Substituted w.e.f. 01.04.2005 by S. 12(35) of WB Act XVIII of 2006 for "clause (b) of sub-section (4) of section 46".]

Penalty for contravention or misuse of provisions of section 116.

**117.** Where a dealer has contravened any of the provisions of section 116 or rules made thereunder or furnishes incorrect or fabricated statements or forged documents with the intention to deceive the Government, the Commissioner shall, after giving such dealer a reasonable opportunity of being heard, impose upon him a penalty, in the manner prescribed, a sum not exceeding one hundred *per centum* of such tax which would have been payable by such dealer had he not been <sup>1</sup>[granted such deferment or exemption or remission of tax].

[1. Substituted w.e.f. 01.04.2005 by S. 12(36) of WB Act XVIII of 2006 for "granted such deferment".]

Measures for registered dealer holding eligibility certificate under West Bengal Sales Tax Act, 1994.

**118.** (1) Notwithstanding anything contained elsewhere in this Act,—

- (a) where a registered dealer has been enjoying, or has been entitled to enjoy, the benefit of deferment of tax under section 40, section 42 or section 43, as the case may be, of the West Bengal Sales Tax Act, 1994, for a specified period or for a specified amount determined <sup>1</sup>[with respect to gross value of the fixed capital assets, and] who would have continued to be so illegible on such appointed day under that Act had this Act not come into force, may be allowed deferment of payment of output tax payable by him under this Act by the Commissioner, for the balance un-expired period or the balance eligible amount, as the case may be, with respect to gross value of the fixed capital assets, whichever expires earlier;
- (b) where a registered dealer was enjoying benefit of tax holiday under section 39 of the West Bengal Sales Tax Act, 1994, for a specified

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period, immediately before the appointed day and who would have continued to be so illegible on such appointed day under that Act had this Act not come into force, may be allowed such tax holiday<sup>2</sup>[by way of exemption of output tax] payable by him under this Act by the Commissioner for the balance unexpired period or until the aggregate of the benefit of exemption from payment of tax enjoyed by such dealer under section 39 of the West Bengal Sales Tax Act, 1994, computed from the first day of April, 2003, exceeds the limit of two hundred *per centum* of gross value of the fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed;

- (c) where a registered dealer has been enjoying, or has been entitled to enjoy, the benefit of remission of tax under section 41 of the West Bengal Sales Tax Act, 1994, for a specified period or for a specified amount determined<sup>3</sup>[with respect to gross value of the fixed capital assets, and] who would have continued to be so illegible on such appointed day under that Act had this Act not come into force, may be allowed remission of tax under this Act by the Commissioner, for the balance unexpired period or balance eligible amount with respect to gross value of fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.

(2) For the purposes of clause (a), clause (b) or clause (c), a complete British Calendar month shall be considered, wherever a part of a month is involved.

(3) For the purpose of clause (a), clause (b) or clause (c), the term "balance" means the period, or the eligible period, remaining unexhausted on the appointed day.

- [1. Substituted w.e.f. 01.04.2005 [N. 1594 FT dt. 13.9.06] by S. 12(37)(a) of WB Act XVIII of 2006 for "with respect to gross value of the fixed capital assets, immediately before the appointed day and".  
2. Substituted by S. 6 (29) of WB Act XIII of 2005 w.e.f. 1.4.2005 for "in a restricted manner by way of exemption from payment of ninety-five *per centum* of output tax".  
3. Substituted w.e.f. 01.04.2005 [N. 1594 FT dt. 13.9.06] by S. 12(37)(b) of WB Act XVIII of 2006 for "with respect to gross value of the fixed capital assets, immediately before the appointed day and".]

<sup>1</sup>[Amendment of eligibility certificate.]

<sup>1</sup>**[118A.** (1) Where any registered dealer referred to in sub-clause (a), or sub-clause (b), or sub-clause (c), of sub-section (1) of section 118—  
effects any change in the ownership of the business; or  
sells or otherwise disposes of the industrial unit in respect of which he has been granted the certificate of eligibility; or  
effects any change in the name of his business or class or classes of goods specified in his certificate of eligibility; or  
effects any change in the capacity of production of the industrial unit for which he has been granted the certificate of eligibility; or  
effects any change in the gross value of fixed capital assets of the industrial unit for the he has been granted the certificate of eligibility; or

effects any change in the location of the industrial unit for which he has been granted the certificate of eligibility; or  
installs pollution control equipment in the industrial unit,  
he shall, within such period, in such manner and subject to such restrictions and conditions, as may be prescribed, inform the prescribed authority accordingly and the prescribed authority may amend the certificate of eligibility in accordance with the information furnished to him.

(2) A registered dealer shall not be eligible for the benefit referred to in sub-clause (a), or sub-clause (b), or sub-clause (c), of sub-section (1) of section 118, if such dealer contravenes any of the provisions of sub-section (1).]

[1. Inserted w.e.f. 01.08.2006 by S. 12(38) of WB Act XVIII of 2006.]

Special provisions  
for waybills, rules,  
regulations,  
notifications or  
orders issued under  
West Bengal Sales  
Tax Act, 1994.

**119.** Notwithstanding anything contained elsewhere in this Act,—

- (a) all forms of waybill under the West Bengal Sales Tax Act, 1994 or the rules made thereunder and continuing in force on the day immediately before the appointed day, shall, with effect from such appointed day, continue in force and shall be used *mutatis mutandis* for the purposes for which they were being used before such appointed day until the State Government directs, by notification, the discontinuance of the use of such forms till such time as the State Government may, by notification, specify in this behalf;
- (b) all rules, regulations, notifications or orders made or issued under the West Bengal Sales Tax Act, 1994, and continuing in force on the day immediately before the appointed day shall continue to be in force on or after such appointed day in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder until they are repealed or amended;
- (c) any waybill obtained or obtainable by a dealer from any prescribed authority or any declaration furnished or to be furnished by or to a dealer under any of the Acts so repealed or the rules made thereunder in respect of any sale of goods before the appointed day shall be valid where such waybill is obtained or such declaration is furnished on or after such appointed day;
- (d) any waybill endorsed or any order passed before the appointed day under the West Bengal Sales Tax Act, 1994, or the rules made thereunder for the transport of any consignment of goods specified in Schedule IV or notified goods into West Bengal or outside West Bengal and continuing to be valid on the day immediately before the appointed day shall continue to be valid on or after such appointed day for the purposes as aforesaid unless the periods of validity of such waybill or order otherwise expires;
- (e) any application for waybill for transport of goods into West Bengal, pending on the day immediately before the appointed day, shall be deemed to have been made under this Act and shall be disposed off in accordance with the provisions of this Act.

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- (f) Notwithstanding anything contained elsewhere in this Act and the West Bengal Sales Tax Act, 1994, where a dealer registered under the West Bengal Sales Tax Act, 1994, is in possession of a certificate of registration thereunder on the day immediately before the appointed day and who is deemed to have been registered under sub-section (3) of section 23 of this Act, such certificate of registration shall be deemed to have been granted under this Act and shall continue to have effect till new registration certificate is issued under this Act, unless cancelled otherwise before such time as aforesaid, or within such time as the State Government prescribes by notification.

Option to make payment of deferred tax at discounted rate.

**120.** Notwithstanding anything contained elsewhere in this Act, dealers eligible for deferment of tax in accordance with clause (a) of sub-section (1) of section 118 shall have an option to make payment within the financial year, of tax deferred during the preceding year, on the basis of a discount formula, in such manner as may be prescribed.

West Bengal Sales Tax Act, 1994 not to apply on commodities governed by the West Bengal Value Added Tax Act, 2003.

**121.** (1) Nothing in the West Bengal Sales Tax Act, 1994, shall apply in relation to the goods which are governed by the West Bengal Value Added Tax Act, 2003, on and from the appointed day.

<sup>1</sup>[(2) Notwithstanding anything contained elsewhere in this Act, the provisions of this Act shall not —

- (a) affect any right, privilege, obligation or liability acquired, accrued or incurred under the West Bengal Sales Tax Act, 1994; or
- (b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against, or in respect of any contravention of any provision of the West Bengal Sales Tax Act, 1994; or
- (c) affect any investigation, legal proceeding or remedy, in respect of any such privilege, obligation or liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such forfeiture may be made and penalty or punishment may be imposed,

in respect of any transaction effected before the appointed day or in respect of any action relating to such transaction.]

[ 1. Inserted by S. 6 (30) of WB Act XIII of 2005 w.e.f. 1.4.2005 ]

Power to remove difficulties.

**122.** If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such orders shall be made after the expiry of a period of two years from the appointed day.

Amendment of  
West Ben. Act  
XLIX of 1994.

**123.** The West Bengal Sales Tax Act, 1994, shall be amended in the manner specified in the Schedule E to this Act.