

**THE UTTAR PRADESH VALUE ADDED TAX ACT, 2008****No. 433 (2)-79-V-1-08-1(ka)-1-2008*****Dated Lucknow, February 27, 2008***

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Mulya Samvardhit Kar Adhiniyam, 2008 (Uttar Pradesh Adhiniyam Sankhya 5 of 2008) as passed by the Uttar Pradesh legislature and assented to the Governor on February 26, 2008:-

**THE UTTAR PRADESH VALUE ADDED TAX ACT, 2008****(U.P. Act No. 5 of 2008)*****[As passed by the Uttar Pradesh Legislature]*****AN****ACT**

*to provide for introducing Value Added System of taxation for the levy and collection of tax on sale or purchase of goods in the State of Uttar Pradesh and for matters connected therewith and incidental thereto.*

IT IS HEREBY enacted in the fifty-ninth year of the Republic of India as follows:

**CHAPTER I****Short Title and Commencement**

**1. Short title, extent and commencement.** (1) This Act may be called the Uttar Pradesh Value Added Tax Act, 2008.

- (2) It extends to the whole of Uttar Pradesh.
- (3) It shall be deemed to have come into force on January 1, 2008

**Short Comments****GENERAL GUIDING PRINCIPLES BY COURTS****AFFIDAVIT**

Affidavit can be treated as an evidence in support of application for condonation of delay.

*Nand Lal Baburi vs. C.T.T. 2002 NTN (Vol. 21) 703*

Averments made in the affidavit contrary to the record – Acceptance of Affidavit unjustified.

*R. L. Virendra & Co. vs. C.T.T. 2006 NTN (Vol. 31) 8*

### PRINCIPLES FOR INTERPRETATION OF AMENDING ACT ETC.

#### Amendment Act:

In interpreting an amending Act, it is permissible to have regard, and sometimes it may be necessary to do so, to the history of the amendment and the reasons which led to its enactment. It would then be pertinent to see what was the evil or mischief that existed before and had to be cured and how the cure or remedy has been provided.

*Burmah Shell Oil Storage and Distributing Company of India Ltd., Madras and Others vs. State of Madras (1968) 21 STC 227 (Mad.)*

#### Title and Preamble:

It is settled rule that to ascertain legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the list of the general purpose and object of the Act itself. The title and preamble, whatever their value might be as aids to the interpretation of the statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself.

*Poppat Lal Shah vs. State of Madras (1953) 4 STC 188 (SC).*

#### Purpose and effect of amending Acts:

A consolidating Act is one that codifies and consolidates existing law, but a consolidating and amending Act does not merely codify or consolidate laws; it also amends and alters the law as then prevailing. No retrospective effect to any provision is to be presumed till expressly or impliedly manifest from the language employed.

*C.S.T. vs. Modern Mercantile Works (1976) 38 STC 372 (Bom.).*

#### ADMISSION AGAINST LAW

A wrong admission is of no consequence. A fiscal liability which cannot be fastened on a person under law, cannot be fastened on the mere admission.

*Gee Kay Tobacco Products Private Ltd. vs. C.T.T. 2005 NTN (Vol. 27) 374*

#### ASPECT THEORY

The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position - The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement - Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam - However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction.

*Bharat Sanchar Nigam Ltd. vs. Union of India & Ors. 2006 NTN (Vol. 29) 307 ;*

*Ponds India Ltd. (Merged with H.L. Ltd.) vs. C.T.T. 2008 NTN (Vol. 37) (SC) 169*

**CONSTRUCTION OF STATUTES**

While interpreting constitutional provisions, the widest possible construction according to their ordinary meaning should be adopted.

*Amrit Banaspati Company Ltd. vs. State of Punjab* 2001 NTN (Vol. 19) 484 (P&H)

Exclusory clause should be construed strictly and not in accordance with the dictionary meaning to give a wider interpretation of any exclusory clause. Common parlance test should be applied.

*Shanti Pulses vs. C.T.T.* 2002 NTN (Vol. 20) 63

While interpreting a statute, substantive provisions have to be given due weight. A proviso has only restrictive operation.

*P.P. George vs. State of Kerala & Ors.* 2002 NTN (Vol. 21) 475

It is one of the canons of interpretation that when too literal an adherence to the words of a statute leads to absurdity, it is open to a court to so interpret the statute as will obviate an absurd result.

*Ayodhya Prasad Suklal vs. The Crown* (1951) 2 STC 44 (Nagpur).

Plain meaning of terms of the section is to be adopted to give legal effect.

*STO vs. Kanhaiyalal Chaudhary & Others* (1958) 9 STC 747 (SC).

The expressions used in a statute should ordinarily be understood in a sense in which they best harmonise with the object of the Legislature.

*New India Sugar Mills Ltd. vs. C.S.T., Bihar* (1963) 14 STC 316 (SC).

If two interpretations are possible, the one that would be in consonance with the object of the legislation should be accepted and the court should lean towards a construction which avoids inconveniences and injustice to the parties.

*Singareni Collieries Co. Ltd. vs. C.C.T., Hyderabad* (1966) 12 STC 838 (A.P.) reversed in (1966) 17 STC 197 (SC).

When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the court is entitled and bound to ascertain for what purpose and between which persons, the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical ends.

*State of Gujarat vs. Raman Lal Sankal Chand & Co.* (1965) 16 STC 329 (Guj.)

It is settled rule that there should be a harmonious reading of all the provisions of a statute and no provision should be rendered as serving no purpose, as a result of giving a wide construction to some other provision. Every effort should be made to secure a harmonious reading and construction of the several provisions of the Act as a whole.

*F.K. Hasheeb & Co. vs. State of Madras* (1966) 17 STC 38 (Mad.).

An Act of the Legislature is intended to be fairly workable and in the absence of a statutory provision or a compelling reason courts should always lean to construct a statute in such a manner as to achieve and secure its object.

*Om Parkash Rajinder Kumar vs. Sh. K.K. Opal ETO (Enf.) Amritsar* (1961) 19 STC 153 (Pb. FB).

A decision of Court takes colour from the question involved. Few lines cannot be picked for inference.

*Gujrat Co-operative Milk Marketing Fed. Ltd. vs. A.C. 2003 NTN (Vol. 22) 311*

Statutes must be considered as a whole.

*Mercury Laboratories Pvt. Ltd. vs. State of U.P. 2000 NTN (Vol. 16) 178*

Construction, reducing statute to futility must be avoided. Intention of legislature is to be looked into.

*C.I.T. vs. Bulk Carriers 2003 UPTC 280 (SC)*

#### **BINDING FORCE OF THE JUDGMENT OF HIGH COURT**

Where there is no appeal or review against an order, it continues to be binding between the parties even if it has lost precedent value due to contrary decisions of larger bench or higher Court.

*C.S.T. vs. Abdul Ghani Banne Mian 2000 NTN (Vol. 16) 236*

*Chandra Stamping Works vs. C.T.T. 2000 NTN (Vol. 16) 406*

#### **CLAUSES IN CONTRACT**

Few clauses in contract are not to be read in isolation. The substance of the contract has to be looked into.

*Hindustan Shipyard Ltd. vs. State of A.P. 2000 NTN (Vol. 17) 644*

#### **CONSTITUTIONAL TORTS**

The Violation of Constitutional rights by Public functionaries attracts action for torts and the State has vicarious liability to pay compensation.

*N.C. Jain vs. Secy. Govt. of U.P. 2001 NTN (Vol. 19) 563*

#### **CONTEMPORANEA EXPOSITION**

Where a fundamental aspect has been followed year after year for many years, it would not be appropriate to allow the position to change in subsequent years.

*Smithkline Beecham Consumer Healthcare Ltd. vs. D.C.C.T. 2002 NTN (Vol. 21) 761*

Contemporaneous exposition by administrative authorities is very useful and relevant guide for interpretation of expressions used in a Statute and Government orders.

*India Extrusion vs. C.C.T. 2002 NTN (Vol. 20) 275*

#### **CONTEMPT OF COURT – POWER OF SUPREME COURT**

Supreme Court has inherent jurisdiction to take action of contempt of subordinate Courts including Tribunals and it may take suo motu action in the matter.

*ITAT vs. V.K. Agarwal 1999 NTN (Vol. 14) 25*

#### **DEEMING PROVISIONS**

Court must assume such state of affairs as real and the consequence which flow therefrom should be given effect to.

*Vijay Kumar Surendra Kumar vs. S.T.O. 1999 NTN (Vol. 14) 449*

**DEFINITION**

Plain construction of the special definition of the word in a particular Act must prevail.

*Ashirwad Insat Udyog vs. S.L.C. 1998 NTN (Vol. 13) 801*

**DELEGATED LEGISLATION**

Power given to Commissioner to notify evasion prone goods for payment of Advance Tax is not excessive delegation. Goods subjected to tax only are to be notified and is therefore not discriminatory.

*Fantasy Sales Corporation V/s Sales Tax Inspector, Walayar [2000] 7 VST 323 (Ker.)*

**DOUBLE TAXATION**

Imposition of sales tax and service tax on sale of SIM card does not tantamount to double taxation. Different aspects of the same transaction can be assessed to tax by different legislatures.

*Escotel Mobile Communications Ltd. vs. Union of India & Ors. 2002 NTN (Vol. 21) 451*

**DEPARTMENTAL CIRCULAR**

Circulars and Clarifications issued by the department is binding on revenue.

*C.C.E. vs. Usha Martin Industries 1998 NTN (Vol. 12) 746*  
NATIONAL LAW NEWS & VIEWS  
 A fortnightly VAT/GST Law Reporter

Circular contrary to Notification or Legislative enactment has no legal force. The circulars may be binding upon the department, but not upon the assessee or Court.

*Paswara Petrochem Ltd. vs. C.T.T. 2002 NTN (Vol. 21) 486*

Circular can not override statutory Notification.

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 Email: nlnbp@gmail.com  
*C.T.T. vs. Kajaria Ceramics Ltd. 2000 NTN (Vol. 16) 89*

Circular issued by the Commissioner is binding upon the authorities.

*Raghunath Laxminarain Spices Pvt. Ltd. vs. State of U.P. 2000 NTN (Vol. 17) 493; Ajai Kumar & Company vs. C.S.T. 2001 NTN (Vol. 19) 11; Eskay Remedies vs. State of U.P. 2003 NTN (Vol. 22) 85; C.T.T. vs. Parikh Gramodyog Sansthan 2003 NTN (Vol. 23) 629 C. C. E. vs. Sharma Chemical Works 2004 NTN (Vol. 24) 28; C.T.T. vs. Moti Lal Dali Chand Pvt. Ltd., Kanpur 2007 NTN (Vol. 34) 195; Ratan Industries (P) Ltd. vs. Addl. C.T.T. 2004 NTN (Vol. 24) 308; Shakti Gramodyog Sansthan vs. C.T.T., Lucknow 2007 NTN (Vol. 35) 183; C.T.T. vs. Bhartya Charmodhyog Sangh, Saket Colony, Agra 2007 NTN (Vol. 33) 340*

Regardless of Interpretation put by court on a particular provision of law, if a circular issued by Commissioner Places a different interpretation the interpretation put by the Circular shall be binding upon the revenue .

*C.T.T. vs. International Office Machine 2004 NTN (Vol. 25) 810*

Circular and orders issued by the Commissioner were not binding on the assessee and it was open to the assessee to claim the benefit of various exemption notification issued from time to time without having any regard to the circulars and orders, if the terms and conditions were satisfied by the assessee.

*Padinjarekara Agencies Limited vs. State of Kerala 2008 NTN (Vol. 37) (SC) 53*

Even an erroneous circular or the circular contrary to the statutory provisions would be binding upon the authorities of the department.

*Shiva Electronics (India) Pvt. Ltd. vs. C.T.T. Lucknow (All.) 223*

#### **DECLARATION OF LAW BY HIGH COURT OR SUPREME COURT – RETROSPECTIVE OPERATION**

Once the High Court or the Supreme Court declared the law it cannot be said that it became the law only on the pronouncement of the judgment by the Court but that would be deemed to always be the same as has been declared by the Court.

*U.P. Khandsari Works vs. C.S.T. 1993 NTN (Vol. 3) 236 ; Rai Bareli Flour Mill Pvt. Ltd. vs. C.T.T., U.P. 2005 NTN (Vol. 27) 252*

#### **DICTIONARY MEANING**

Dictionary meaning should not be used while interpreting exclusionary clauses of a notification. Only that meaning should be given which would achieve rather than frustrate the object of granting exemption. Common parlance test should be applied.

*Shanti Pulses vs. C.T.T. 2002 NTN (Vol. 20) 63*

#### **DOCTRINE OF MERGER – DISMISSAL OF SPECIAL LEAVE PETITION BY SUPREME COURT**

Dismissal of SLP by Supreme Court by non speaking orders does not amount to affirmation of the view of High Court. Speaking order may amount to declaration of law under Article 141 but still it does not amount to merger of the order of High Court into the order of Supreme Court.

*Kunhayammed and Others vs. State of Kerala 2000 NTN (Vol. 17) 685*

#### **DOCTRINE OF MERGER**

An order that has merged in the order of higher court can not be rectified .

*C.S.T. vs. Behari Lal Raghbir Saran, Moradabad 2004 NTN (Vol. 25) 843*

#### **DOCTRINE OF MERGER**

The decision of inferior Court does not always merge in the order of superior Court. The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized.

*Kunhayammed and Ors. vs. State of Kerala 2000 NTN (Vol. 17) 685*

#### **EFFECTIVE DATE OF NOTIFICATION**

From the date of publication in official Gazette - Date of Knowledge of Notification to the Public not relevant.

*C.S.T. vs. India Petroleum, Aligarh 2004 NTN (Vol. 25) 1053*

#### **ENTRIES IN SCHEDULE – GENERAL ENTRY VS. SPECIAL ENTRY**

When a commodity which may fall in two entries, the special entry has to be preferred against general entry.

*Replica Agencies vs. State of Andhra Pradesh 2002 NTN (Vol. 20) 146*

#### **ESTOPPEL**

The decision taken by Department in previous years cannot act as an estoppel for contrary view in subsequent year.

*State of A.P. vs. Rashtria Ispat Nigam Ltd. 2002 NTN (Vol. 20) 232*

Promissory estoppel has to be pleaded and established and other party should have opportunity to answer the same.

*State of Rajasthan vs. Bhatnagar Cement Co. (P) Ltd. 2002 NTN (Vol. 20) 155*

#### FREEDOM OF TRADE AND COMMERCE

Constitution of India Article 301, 304(a), Punjab VAT Act, 2005 Schedule A Entry 49 and Schedule B Entry 152 – Levy of tax on sugar imported from out side State while sugar manufactured inside State exempt – Levy discriminatory – Article 304 of the Constitution of India authorizes the State Legislature to levy tax on goods imported from other States or Union Territories, but levy of such tax should not discriminate between the goods so imported and similar goods manufactured or produced within the State – Clause (a) of Article 304 of the Constitution of India though worded in a positive language has a negative aspect – It is, in truth, a provision prohibiting discrimination against the imported goods vis-à-vis the goods manufactured or produced within the State.

*Nand Kishore & Co., Ludhiana vs. State of Punjab 2008 NTN (Vol. 38) (P&H) 100*

#### GROUPING UNDER THE SAME ENTRY

The facts that certain articles are mentioned under the same heading in a Statute does not mean that they all constitute one commodity - The mention of Bodies, chassis of motor vehicles in the same entry does not mean that they all constitute one commodity.

NATIONAL TAX NEWS & VIEWS  
A fortnightly (AT 587) Law eMagazine

*Tractors 2004 NTN (Vol. 25) 869*

#### GENERAL EXEMPTION

If general exemption is granted by Notification under the local Act no separate notification is required under CST Act.

*Anandi Roller Flour Mills Ltd. vs. C.C.T. (AP) 2001 NTN (Vol. 19) 472*

#### HIGH COURT STAY ORDER – VACATION

An order passed by the Court is the order, which remains in operation unless and until it is vacated, modified or varied by the Court itself or by the higher authority – The judicial order unless vacated or modified by the Court or by the higher court remains in operation and is binding on the parties - It cannot be no-nest – To recapitulate the fact the stay order passed by this Court came to an end on the dismissal of the writ petition on 16-7-1992 and not earlier to it.

*C.S.T. vs. Bharat Oil and Rice Mill, Meerganj 2004 NTN (Vol. 25) 779*

#### HINDI VERSION AND ENGLISH VERSION OF LEGISLATION

If there is a conflict between the two versions of Notification then English version would prevail. However, if there is no conflict than help of Hindi version can be taken to find out whether the word used in English version includes a particular item or not.

*Park Leather Industry (P) Ltd. vs. State of U.P. 2001 NTN (Vol. 18) 231*

#### PUBLICATION OF NOTIFICATION IN OFFICIAL GAZETTE

Publication of Notification in official Gazette is sufficient for enforcement of Notification.

*Union of India & Ors. vs. Ganesh Das Bhorej 2000 NTN (Vol. 17) 572*

**VALIDITY OF PROVISIONS – CHALLENGE – AUTHORITY CREATED BY STATUTE**

Validity of the provisions cannot be challenged in revision. Revision proceedings are creation of Statute and Authority created by a Statute cannot question the virus of the provisions of the Statute.

*Meerut Development Authority vs. C.S.T. 2000 NTN (Vol. 17) 851*

**SUBSEQUENT NOTIFICATION**

When there is no ambiguity in original notification, subsequent notification is not to be considered.

*Indian Aluminium Company vs. A.C.C.T. (A) 2001 NTN (Vol. 18) 84*

**SUPREME COURT – DECLARATION OF LAW**

Declaration of law by Supreme Court can be applied in the cases of other parties.

*Fizz Drinks P. Ltd. vs. State of Haryana 2001 NTN (Vol. 19) 530*

**SWEARING OF AFFIDAVIT**

Swearing of affidavit before High Court by the clerk of Counsel is serious lapse.

*Mercury Laboratories Pvt. Ltd. vs. State of U.P. and Others 2000 NTN (Vol. 16) 178*

**PRESUMPTION OF SERVICE OF REGISTERED LETTERS & VIEWS**

Under Section 27 of U.P. General Clauses Act, 1904 there is a presumption that the registered letter must have been delivered to the assessee. The presumption is rebuttable, in the absence of rebuttal service cannot be denied on mere assertion of non receipt.

*Tanuk Pharma (i) Ltd. vs. C.T.T. 2002 NTN (Vol. 20) 120*

**LEGISLATIVE COMPETENCE – JUDICIAL PRONOUNCEMENT**

The legislature can enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and can create a situation which if it has existed earlier, the Court would not have made pronouncement.

*Kajaria Ceramics Ltd. vs. State of U.P. 2003 NTN (Vol. 22) 424*

**JUDICIAL DISCIPLINE**

Two Judge Bench of Supreme Court even if it doubts the correctness of the decision of Constitution Bench is bound to follow the decision of Constitution Bench. At most they could have referred the matter to larger Bench.

*BPC Ltd. vs. Mumbai Sharmik Sangha 2001 NTN (Vol. 19) 481*

The Judgment of High Court is binding on every Tribunal or quasi judicial authorities functioning in the State.

*Monga Rice Mill vs. State of Haryana 2001 NTN (Vol. 19) 635*

Judgment of Larger Bench - The Decisions of smaller Benches of Supreme Court can not over rule the judicial decision of larger Bench.

*India Oil Corporation Ltd. and another vs. State of U.P. and others 2004 NTN (Vol. 24) 135*

Law Declared by Supreme Court - The law laid down by the Supreme Court is the law of land and is binding on all the courts and quasi judicial authorities in India - The Tribunal can not ignore the law laid down by the Supreme Court - The lower Courts are duty bound to consider the rulings of higher courts seriously - The lower Authorities can not ignore the decision of Appellate Court merely because it is not acceptable to department - It is not ground for not following it unless its operation is stayed by competent court.

*Deys Medical Stores Limited vs. C.T.T., U. P. 2004 NTN (Vol. 24) 222*

#### JUDICIAL PROPRIETY

One of the Members of the Tribunal had exercised jurisdiction as a revisional authority as regards these cases - Propriety demands that Member Tribunal should have recused from the Bench - High Court directed Haryana Tax Tribunal to hear the matter afresh, taking into consideration the preliminary objections, raised by the petitioner as well.

*Ravindra Tubes Ltd. & Jindal Ind. Ltd. vs. State of Haryana 2007 NTN (Vol. 32) (P&H) 329*

#### JUDICIAL REVIEW

Role of Judiciary - The State should not be hampered by the court particularly in tax and social regulatory measure unless legislation is clearly unconstitutional - The Court should exercise restraint.

*Rapti Commission Agency vs. State of U.P. & Others 2003 NTN (Vol. 23) 724*

#### INTERPRETATION OF CONSTITUTIONAL PROVISIONS

While interpreting Constitutional provision, the widest possible construction according to their ordinary meaning should be adopted.

*Amrit Banaspati Company Ltd. vs. State of Punjab 2001 NTN (Vol. 19) 484*

Scope of Entry - Entry 52 of List II of 7th Schedule of the Constitution of India has not over riding effect on Articles 301 and 304 of the Constitution of India. Entries in Schedule only define and delimit the area of Legislation - They are not source of power.

*India Oil Corporation Ltd. and another vs. State of U.P. and others 2004 NTN (Vol. 24) 135*

#### INTERPRETATION OF JUDGMENT

A decision of court takes its colours from the question involved - Few lines can not be picked up for inference.

*Gujrat Co-operative Milk Mkg Fed. Ltd. vs. A.C (A) TT 2003 NTN (Vol. 22) 311*

#### INTERPRETATION OF TAXING STATUTES

All parts of the Statute or Sections must be construed together.

*C.I.T. vs. Punjab Financial Corp. 2002 UPTC 1145 (P&H)*

A Statute should be read in ordinary natural and grammatical sense. In interpretation of taxing Statutes there is no equity in tax.

*Bindal Batteries Pvt. Ltd. vs. State of U.P. 2002 NTN (Vol. 22) 76*

Common parlance meaning to be adopted.

*A.D.C.T. vs. Life Guard Distributors 2001 NTN (Vol. 19) 456*

In taxing Statutes entries are not to be understood in their scientific and technical meaning. The term and expression used in "tariff" have to be understood by their popular meaning.

*C.S.T. vs. Gulati and Company 2003 NTN (Vol. 23) 989*

Use in common parlance of a commodity can be the basis of categorization for taxability in Trade Tax - Himani Boroplus is commonly and generally available in a cosmetic or general merchandise shop and not in a medicine shop. It is generally and commonly used during winter to protect skin and to make it smooth. It is commonly known as cosmetic and not as a medicine. It may have some antiseptic effect but that will not classify it as medicine. It is not intended to be used for treatment, mitigation or prevention of disease. Entry of cosmetic is much wide to include all cosmetic not only used for beautification but also for care of skin. A product, which is used for care of skin, must necessarily have some antiseptic effect but that will not take out the product from cosmetic and to bring under medicine.

*C.T.T. vs. Singhal Brothers, Hathras 2006 NTN (Vol. 29) 71*

*Ponds India Ltd. vs. C.T.T. 2006 NTN (Vol. 29) 131*

Subsequent entry - When does subsequent have effect on the interpretation of earlier Notifications? - No doubt subsequent notification can be looked into for interpreting the entry of a Notification relating to the earlier period, but when there is any ambiguity in the entry of the Notification or pre-amended entry requires any interpretation - If there is no ambiguity in the entry of the Notification, which is relevant to this year under consideration, the same should only be considered - It is always open to the Legislature to include or exclude any item from the entry of any Notification or to classify any item by issuing specific Notification in respect thereof - Subsequent Notification No. 1223 Dated 31.03.1992 classifying the photocopier separately, only means, that the photocopy machine was specifically classified and was deemed to be excluded from any other entries.

*Macneill and Magor Ltd. vs. C. T. T. 2005 NTN (Vol. 26) 6*

(i) Items in the taxing Statute must be included in its sense in which they are sold by the dealer and purchased by the customers - (ii) The operation of a notification has to be adjusted not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent - (iii) Classification of goods should be according to their popular meaning as they are understood in their commercial sense and not as per the scientific or technical meaning - (iv) How the product is identified by the class or section of people dealing with or using the product, is also a test when the Statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable.

*Indo Italian Amusement Park Ltd. vs. C.T.T. 2005 NTN (Vol. 28) 107*

Duty of Courts - While interpreting an entry in a taxing statute, the Court's role would be to consider the effect thereof, upon considering the same from different angles - Different tests are laid down for interpretation of an entry in a taxing statute namely dictionary meaning, technical meaning, users point of view, popular meaning etc. - It is true that the Court must bear in mind the precise purpose for which the statute has been enacted, namely, herein for the purpose of collection of tax, but the same by itself would not mean that an assessee would be made to pay tax although he is not liable therefore, or to pay higher rate of tax when is liable to pay at a lower rate.

*Ponds India Ltd. (Merged with H.L. Ltd.) vs. C.T.T. 2008 NTN (Vol. 37) (SC) 169*

If there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another residuary entry, the former should be preferred.

*Mauri Yeast India Pvt. Ltd. vs. State of U.P. & Anr. 2008 NTN (Vol. 37) (SC) 57*

Interpretation adopted in classification dispute need not be the same while interpreting the language of exemption notification which has to be read on its own terms.

*Padinjarekara Agencies Limited vs. State of Kerala (SC) 53*

If an entry had been interpreted consistently in a particular manner for several assessment years, ordinarily it would not be permissible for the Revenue to depart therefrom, unless there is any material change.

*Ponds India Ltd. (Merged with H.L. Ltd.) vs. C.T.T. 2008 NTN (Vol. 37) (SC) 169*

Interpretation to be adopted - Where two interpretations are possible the interpretation which is favourable to assessee should be adopted.

*Deys Medical Stores Limited vs. C.T.T., U. P. 2004 NTN (Vol. 24) 222*

Subsequent Notification - In case of ambiguity in earlier Notification help of subsequent Notification can be taken - Decision in Pappu Sweets and Biscuits vs. C. T. T. (1998 NTN (Vol. 13) (SC) 721) followed.

*C. T. T. vs. U.P. Straw and Agro Product Ltd. 2004 NTN (Vol. 24) 275*

Literal Interpretation - In selecting out of different interpretations the court will adopt just, reasonable and sensible one - A interpretation which result in hardship, serious inconvenience, injustice, absurdity or anomaly will be avoided.

*Hind Lamps Limited vs. C.S.T., Lucknow 2004 NTN (Vol. 24) 254*

Ordinary meaning to be adopted - Word can not be imported in the Statute.

*Vam Organic Chemicals State of U.P. & Others 2003 NTN (Vol. 22) 283*

Ordinary meaning - A Statute should be read in ordinary natural and grammatical sense - In interpretation of taxing Statutes there is no equity in tax.

*Bindal Batteries Pvt. vs. State of U.P. 2003 NTN (Vol. 22) 76*

*Contemporanea Expositio* - In the instant case, all the Assessing Authorities except one have taken the view ever since the year 1997-98 that part of computer and computer peripherals are exempted from levy of tax. Further, the revisional authorities have also not exercised the suo moto power conferred on them under Sections 21 and 22-A(2) of the Act thereby impliedly approving the decisions of the Assessing Authorities. All these indicate that the Assessing/Revisional Authorities and the Commissioner, till the objection was raised by the Deputy Accountant General, have understood that the Notification exempted parts of computer and computer peripherals from levy of turnover tax under Section 6-B of the Act. The Commissioner also, in the Circular Annexure-H, filed in the High Court, has clarified that parts of computer and computer peripherals are exempted from levy of turnover tax under Section 6-B of the Act. The contemporaneous interpretation placed by the Assessing Authorities and also the clarification issued by the Commissioner supports the view taken by the Court that parts of computer and computer peripherals are exempted from levy of turnover tax.

*State of Karnataka & Others vs. Balaji Computers & Others 2007 NTN (Vol. 32) (SC) 161*

Items in the taxing Statute must be construed in the sense in which they are sold by the dealer and purchased by the customers – (ii) The operation of a notification has to be adjusted not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent – (iii) Classification of goods should be according to their popular meaning as they are understood in their commercial sense and not as per the scientific or technical meaning – (iv) How the product is identified by the class or section of people dealing with or using the product, is also a test when the Statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable.

*Indo Italian Amusement Park Ltd. vs. C.T.T. 2005 NTN (Vol. 28) 107*

It is well established principle that the exemption notifications are to be construed strictly, reference may be made to State of Jharkhand & Others vs. Tata Cummins Ltd., and another, 2006 (4) SCC 57 and Kartar Rolling Mills vs. Commissioner of Central Excise, New Delhi, 2006 (4) SCC 772. If the intention of the legislature is clear and unambiguous, then it is not open to the courts to add words in the exemption notification to extend the benefit to other items which do not find mention in the notification. In the present case, there is no ambiguity in the expression used in the G.O. The intention of the State Government is clear that only gold bullion and specie is entitled to the concessional rate of tax. Under the circumstances, the same cannot be extended to the silver as claimed by the assessee.

*Orient Traders vs. Commercial Tax Officer, Tirupati 2008 NTN (Vol. 37) (SC) 33*

Exemption provisions - In taxing statute one has to look merely at what is clearly said - There is no room for any intendment - There is no equity about a tax - There is no presumption as to a tax - Nothing is to be read in, nothing is to be implied - Once can only look fairly at the language used.

*C.T.T. vs. Laxmi Leather Cloth Industries 2008 NTN (Vol. 36) (All.) 67*

Notification granting exemption for industrial development should be interpreted purposefully.

*Mahabharat Traders Company vs. C.T.T. 2000 NTN (Vol. 16) 351*

Provisions for exemption are meant for the purposes of increasing the production of the goods and promoting the development of the industries in the State. Such provisions though be construed strictly but should be construed in reasonable and purposive manners.

*C.T.T. vs. Kajaria Ceramics Ltd. 2000 NTN (Vol. 16) 89*

Provisions granting Exemption or concession in rate of tax – As a general rule, all exemptions or other concessions granted under the statute should be strictly construed as they create inequalities before the law and any interpretation adopted should not extend the benefit beyond the express language used in the notifications granting them.

*Swapna Bone Meal Co. (P) Ltd. vs. S.T.E. & Ors. 2008 NTN (Vol. 37) (Ker.) 107*

Provision granting incentive for promoting economic growth and development in taxing Statutes should be liberally construed and restriction place on it, should be reasonably construed so as to advance the objective of the provision.

*Modipon Fibres vs. C.T.T. 2000 NTN (Vol. 16) 351*

Provisions of Special Acts - Provisions of Special Acts like U. P. Trade Tax Act, 1948 will prevail over General provisions of Society Registration Act - Provisions of Section 8 of Society Registration Act are not bar against recovery under U. P. Trade Tax Act.

*Naresh Chander Gupta vs. The District Magistrate and others 2003 NTN (Vol. 22) 358*

Purposeful interpretation - Taxing Statutes - Equity - While interpreting the Statutes the words and context both should be considered - Purposeful interpretation should be adopted - In taxing statutes too where equitable interpretation is possible; it should be preferred to the literal construction - Case laws and Mimansa discussed in detail.

*State Trading Corporation of India Ltd. vs. C. S. T. 2003 NTN (Vol. 23) 884*

Reasonable and purposeful interpretation - Provisions granting incentive for promotion of economic growth should be interpreted in reasonable and purposeful manner.

*Etah Steels Pvt. Ltd., Lalitpur vs. C.T.T. 2003 NTN (Vol. 22) 112*

Retrospective amendment and curtailment of exemption is not legal and valid.

*State of Rajasthan vs. Bhatnagar Cement Co. Pvt. Ltd. 2002 NTN (Vol. 20) 155*

Validity of Legislation - The court should narrowly construct the provisions of legislation if that is necessary to sustain its constitutional validity - The decisions in Steel Authority of India and Naptha Jhakari's case distinguished - The provisions of Section 8-E read down to save its constitutional validity.

*Rapti Commission Agency vs. State of U.P. & Others 2003 NTN (Vol. 23) 724*

Where language of notification is clear, the help of object and reasons is not required.

*State of Kerala vs. Vattukulam Chemicals Indus. 2001 NTN (Vol. 19) 630*

Words of a Statute must prima-facie be given their ordinary meaning.

*Commercial Plastics vs. State of A.P. 2002 (32) STJ 199*

#### IMMUNITY FROM TAX – OLD NEWS PAPER – CONSTITUTION OF INDIA SCHEDULE VII, LIST II, ENTRY 54

Constitution of India did not intend to immunize the obsolete and discarded newspapers which are used for packing and allied purposes and not for reading purposes.

*Ushodaya Enterprises Ltd. vs. C.C.T. 1999 NTN (Vol. 14) 58*

#### LIMITATION - CONDONATION OF DELAY IN FILING APPEAL, ETC.

Reason for late filing was sickness of one of the partners actively involved in carrying on the business – Delay was not condoned – Appeal before Tribunal failed – Held – On account of illness of sole working partner the delay in filing the appeal appears to be sufficiently explained.

*Shiv Construction Company vs. C.T.T., U.P. Lucknow 2007 NTN (Vol. 34) 387*

Delay due to gross negligence and latches on the part of the assessee – Rejection of application for condonation of delay justified.

*Shree Chemicals, Ghaziabad vs. C.T.T. 2006 NTN (Vol. 31) 44*

Delay of seven years and 255 days - Evidence not led to substantiate claims - Applicant neither vigilant about his rights nor careful - Application for condonation of delay rightly rejected.

*Hindon Ispat Limited vs. C.T.T. U.P., Lucknow 2006 NTN (Vol. 31) 475*

"Sufficient cause" is established from the record itself that applicant was prosecuting its case under Section 30 and was under bonafide believe that case be re-opened - The illness after receipt of order under Section 30 has not disputed.

*B. K. Steel Furnitures vs C. T. T. 2004 NTN (Vol. 25) 1093*

“Sufficient Cause” –In the matter of Condonation of delay the approach of the Court should be justice oriented – Revisions allowed subject to payment of Rs. 500/- as cost in each of the revisions.

*Nav Bharat Paper Products. vs. C.T.T. 2004 NTN (Vol. 25) 1119*

‘Sufficient cause’ –If the dealer was prosecuting its case under Section 30 of the Act and filed the appeal after rejection of the application under Section 30 of the Act the reason was ‘sufficient’ for the purposes of condonation of delay - In the matter of condonation of delay liberal and pragmatic view should be taken and not pedantic.

*Bharat Coal Depot vs. C.S.T. 2004 NTN (Vol. 25) 1228*

Delay caused on account of illness of clerk of counsel who could not handover the paper to counsel - Rules of Limitation are not meant to destroy the rights of the parties; rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. The expression “each day’s delay” must be explained does not mean that a pedantic approach should be made, but a pragmatic view should be taken.

*C.P. Enterprises vs. C.T.T. 2006 NTN (Vol. 29) 31*

#### FAULT OF COUNSEL

Fault of Counsel –Tribunal was not justified in refusing to condone the delay when there was no fault on the part of dealer.

*NATIONAL TAX NEWS & VIEWS  
A fortnightly VAT/GST Law Reporter  
Neeraj International vs. T.T.T., Ghaziabad 2004 NTN (Vol. 25) 124*

Latches on the part of Advocate are sufficient for condonation of delay.

*Shahroz Akhtar vs. C. S. T. 2003 NTN (Vol. 22) 322*

Government Department – “Sufficient cause” – U.P. Trade Tax Act, 1948, Section 9, Indian Limitation Act, Section 5 –Applicant one of the unit of Railway could not file appeal within time because of delay in granting permission for filing appeal by the Head Office –There is sufficient cause for not filing the appeal within time.

*Divisional Superintendent, Northern Railway vs. C.S.T. 2005 NTN (Vol. 27) 389*

Sufficient Cause - Medical certificate can not be rejected merely because it was issued by Child Specialist and continuation of business during period of illness of proprietor can not be ground for rejection of application - The child Specialist can also treat an adult patient - Business can be carried on with the help of employees - Approach of Tribunal decried.

*Radhey Shyam Shree Krishna vs. C. T. T. 2003 NTN (Vol. 23) 870*

Delay of 303 days - Ex parte Assessment Order stated to had been given to Advocate for necessary action - Advocate did not file appeal - On recovery proceedings enquiry revealed that appeal was not filed - Application for condonation of delay rejected by the First Appellate Authority and the Tribunal - Rejection of application not sustainable.

*Indian Packaging vs. T.T.T., Ghaziabad and Ors. 2006 NTN (Vol. 30) 359*

Cause of delay stated to be illness of both of the Directors of the company - Medical certificates alongwith affidavits produced - Issuance of medical certificates acknowledged by the doctors - On enquiry assessing authority found that one of the Directors has signed returns and applications for Form 31 - Application for condonation of delay wrongly rejected by the Tribunal.

*Rum Plast Pvt. Ltd., Kanpur vs. C.T.T. 2006 NTN (Vol. 30) 354*

Appeal by the Commissioner- Delay on account of officers being busy in elections and time taken in seeking approval for filing appeal - Delay to be condoned.

*C.T.T. vs. Krishna Contractor, Modinagar 2006 NTN (Vol. 30) 376*

Medical certificate can not be disbelieved because it was issued by Vaidya - Delay condonation application wrongly rejected by Tribunal.

*Ganesh Prasad and Brothers vs. C.T.T. 2003 NTN (Vol. 22) 265*

Appeal could not be typed due to non-availability of typist - Tribunal committed an error in not condoning the short delay of 7 days in preparing the appeal.

*CST, U.P. vs. Bhushan Coal Suppliers, Jaunpur 2003 NTN (Vol. 22) 301*

The delay due to wrong noting by counsel should be condoned.

*India Shoe Centre vs. C. S. T. 2003 NTN (Vol. 22) 202*

Rules of Limitation are not meant to destroy the rights of parties - Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay - Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law - A different approach has to be considered in matter of Government appeals.

*Goramal Hari Ram Ltd. vs. T. T. T. 2003 NTN (Vol. 23) 1080*

The Court can not direct condonation of more than the period provided in Statute.

*Singh Enterprises vs. C.C.E., Jamshedpur and Others 2008 NTN (Vol. 36) (SC) 9*

Delay in filing appeal because proprietor of the Firm had suffered with a head injury in accident and was confined to bed – Tribunal rejected the delay Condonation application – High Court held - In matters of Condonation of delay pedantic approach should not be adopted - It must be examined as to whether party applying for Condonation of delay was gaining any benefit by causing such delay and if no such benefit or motive can be noticed ordinarily delay should be condoned - Present case relates to imposition of tax - If the dealer is permitted to file Second Appeal and it is heard on merits it may succeed and may not liable to pay tax. Such an opportunity should be given to a party who may be entitled to establish that it was not liable to pay any tax - Liability of unlawful tax is not comprehended in law – Delay condoned.

*Shivam Traders vs. C.T.T., U.P. Lucknow 2008 NTN (Vol. 36) (All.) 27*

Order served on the dealer after 8 months of expiry of limitation. The reason for such inordinate delay remains unexplained. It must be presumed that the order was not passed on the purported date. Order quashed.

*Ushodaya Enterprises Ltd. vs. C.C.T. 1999 NTN (Vol. 14) 58*

#### ORDER OF REVERSAL

The order of the Tribunal being one of reversal it was expected from it to deal all aspects as were dealt with by the authorities below before recording a finding of reversal – It is open to the Tribunal to take a different view but not without taking into consideration those aspects of the case which were taken into consideration by the authorities below.

*C.S.T. vs. Doneria Pvt. Ltd 2004 NTN (Vol. 25) 773*

**PRINCIPLE OF ESTOPPEL**

Whether principle of estoppel applies on the question of wrong admission (or admission against law)? – Held – No – Principle of estoppel does not apply on the question of wrong admission (or admission against law). Any admission made in ignorance of legal right or under duress cannot bind the maker of the admission.

*Gee Kay Tobacco Products Private Ltd. vs. C.T.T. 2005 NTN (Vol. 27) 374*

**PRINCIPLE OF RETURN OF DOCUMENT BY A COURT HAVING NO JURISDICTION FOR PRESENTATION BEFORE AN APPROPRIATE COURT OR FORUM AND EXCLUSION OF TIME SPENT**

This principle is applicable in proceedings under section 30(3) of U. P. TRADE TAX ACT, 1948.

*Rai Bareilly Flour Mills vs. The trade Tax Tribunal 2004 NTN (VOL. 25) 852*

**PROPOSED ENACTMENT**

Whether the benefit provided in any proposed enactment can be taken as a ground for non-payment of tax? - Held - No - The argument that the petitioner did not pay the amount of tax in view of the Finance Bill, 1996 introduced in the Parliament is wholly unacceptable. The petitioners could not have imagine the final shape of the Act to be enacted by the Parliament and refrain from paying tax by assuming that its liability to pay tax would be liquidated by the amended provision.

*Jagdamba Foods Ltd. vs. State of Bihar 2005 NTN (Vol. 26) (P&H) 171*

**PROCEDURAL RETROSPECTIVE AMENDMENT**

Whether applicable to case where proceedings have been closed? - Held - No - It is settled law that procedural retrospective amendment cannot be made applicable in a case where the proceedings have been closed and had become final and inasmuch as procedural requirement cannot be complied with.

*Punjab State vs. Moradabad vs. C.S.T. 2004 NTN (Vol. 25) 1122*

**PURPOSIVE INTERPRETATION – PROVISIONS FOR CONCESSION**

Retrospective amendment and curtailment of exemption is not legal and valid.

*State of Rajasthan vs. Bhatnagar Cement Co. Pvt. Ltd. 2002 NTN (Vol. 20) 155*

**PRECEDENT – CONFLICTING DECISIONS OF SUPREME COURT OF CO-EQUAL BENCHES**

High Court is free to disregard the latter decision if it contains apparent flaw in reasoning. The latter need not be followed automatically.

*Ushodaya Enterprises Ltd. vs. C.C.T. 1999 NTN (Vol. 14) 58*

**PROMISSORY ESTOPPEL**

Principle of estoppel cannot be applied against the dealers. Equity is out of place in tax law.

*Om Traders vs. C.T.T. 2002 NTN (Vol. 21) 508*

**RETROSPECTIVE AMENDMENT**

Notification having effect of increasing liability to tax of a dealer should not be retrospective unless there is a clear provision in the Statute in this connection.

*Ganesh International vs. A.C. and Another* 2001 NTN (Vol. 18) 43

*Agarwal Metal Suppliers vs. C.T.T.* 2002 NTN (Vol. 21) 594

State Government is competent for retrospective legislation.

*Premier Enterprises vs. C.T.O.* 2001 NTN (Vol. 19) 393

A legislation may be made to commence retrospectively. Amendment Act is not retrospective merely because it applies also to those to whom pre-amended Act was applicable.

*Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co.* 2000 NTN (Vol. 17) 596

An Amendment or legislation, which is constitutionally valid, cannot be struck down merely due to its retrospective operation.

*Mycon Construction Limited vs. State of Karnataka* 2002 NTN (Vol. 20) 327

**RETROSPECTIVE OPERATION OF ORDER OF (CANCELLATION/ MODIFICATION) QUASI JUDICIAL AUTHORITY**

Orders (Cancellation/modification) passed by quasi judicial Authority can not be operative with retrospective effect unless and until such a power is conferred on such Authority by the Statute.

*C.T.T. vs. Mentha and Allied Products Pvt. Ltd.* 2004 NTN (Vol. 25) 916

**REVIEW APPLICATION**

Every authority having a power to decide the issue and pass the order has also power to consider the review application under the General Clauses Act even if the review application is in strict sense, not maintainable under the General Clauses Act. U.P. Trade Tax Rules, 1948.

*Deki Electronics Limited vs. C.T.T.* 2005 NTN (Vol. 26) 225

**RULE OF CONSTRUCTION NOSCUNTER A SOCIIS**

Rule of construction noscunten a sociis means "one is known by his companion". The meaning of word or expression is to be gathered from surrounding word that is from the context.

*Brindavan Bangle Stores & Ors. vs. A.C.C.T.* 2000 NTN (Vol. 16) 205

**SPECIFIC ENTRY VS. GENERAL ENTRY**

When resort should be made to residuary/general entry? – Held – Resort has to be had to the residuary/general entry only when a liberal construction of the specific entry cannot cover the goods in question. The language of Entry 97 (b) clearly shows, by use of the phrase "other than those specified elsewhere" that it is not only a residuary entry but also that electronic systems, instruments etc. may be classified under other entries.

*State of Maharashtra vs. Bradma of India Ltd.* 2005 NTN (Vol. 27) 1

**STATEMENT OF COUNSEL**

The statement of the Counsel of the dealer cannot be accepted as an admission so as to bind the respondents, having regard to the requirements of Section 80 of the Evidence Act. Excluding the statement of Counsel there was no material on the record of the case that the plant and machineries were moveable properties and in the absence of any other material, the statement of Counsel cannot be accepted as an admission to bind the dealer and it shall not be in the interest of justice to fasten the liability on the applicant on the admission made by the Counsel.

*Gee Kay Tobacco Products Private Ltd. vs. C.T.T. 2005 NTN (Vol. 27) 374*

**STATUTE IN PARI MATERIA – TO BE LOOKED**

Term not defined in Act and Notification – Meaning in similar enactment can be looked into.

*C.T.T. vs. Kajaria Ceramics Ltd. 2000 NTN (Vol. 16) 89*

**STAY ORDER**

Stay order in respect of past dues - Whether stay order in respect of past dues constitutes bonafide reason for non-payment of current dues? - Held - No - The interim direction given by the Supreme Court was confined to past dues which were subject matter of litigation before the High Court in CWP No. 12776 of 1993. To put it differently, the stay order passed by the Supreme Court on 19-1-1996 had nothing to do with the tax payable by the petitioner in future. Therefore the petitioner's plea that it had laboured under a bonafide belief that the purchase tax was not payable in respect of period from 1-1-1996 to 31-3-1996 is wholly untenable.

*Jagdamba Foods Ltd., Karnal vs. State of Haryana 2005 NTN (Vol. 26) (P&H) 171*

**"SUFFICIENT CAUSE"**

The word "sufficient cause" is quite elastic and the approach of the court in such cases should be justice oriented.

*Jai Kisan Arhat Kendra vs. C.T.T. 2004 NTN (Vol. 25) 899*

**SUPPLEMENTS TO ORDER**

Whether a public order can be supplemented by fresh reasoning in the shape of affidavit or otherwise? - Held - No - Order are not like old wine becoming better as they grow older - Allegations made for the first time in counter affidavit can not be considered.

*Shilpa Knitwears vs. State of U. P. 2004 NTN (Vol. 24) 129*

**SANCTION OF PRESIDENT**

Where the principal Act has already sanction of the President and amendment does not alter the basic character of existing Statute then the absence of Presidential assent cannot be made a ground for its invalidation.

*Amrit Banaspati Co. Ltd. vs. State of Punjab 2001 NTN (Vol. 19) 484*

**TECHNICAL MISTAKE IN APPLICATION**

A technical mistake in application does not warrants its rejection - Procedure is designed to facilitate justice - Rejection of application on technical ground will not serve the interest of justice - Decision in AIR 1955 SC 125, AIR 1983 SC 355 followed.

*C.S.T. vs. Ansari Bricks Field 2004 NTN (Vol. 24) 527*

**TRANSFER OF CASE**

A change of Court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both parties contend together they can avoid a Court and get a Court of their own choice. Such an option cannot be given to the parties.

*Mahabir Prasad Singh vs. Jacks Aviation (P) Ltd. 1999 NTN (Vol. 14) 149*

**TRIBUNAL – HOW APPEAL TO BE DECIDED**

Tribunal being the last Court of fact should advert to the explanation given by the dealer and thereafter consider the various objections and record its finding - Since it has not been done order of Tribunal is vitiated and the matter requires reconsideration by the Tribunal.

*Anjani Coal Agency vs. C. T. T. 2005 NTN (Vol. 26) 397*

**TWO PARALLEL ENTRIES EXISTING SIMULTANEOUSLY**

One entry omitted – Whether items covered under omitted entry should be treated to be covered by the remaining entry? – A general principle can be drawn from this judgment that two parallel entries will not include the item thereof in the remaining entry.

*Madura Coats Limited vs. C.S.T. 2004 NTN (Vol. 25) 879*

**WORDS & PHRASES****Accessories**

Any thing manufacture for use in aid or addition falls under the term accessories.

*CST vs. Indian Explosive Ltd. 2003 NTN (Vol. 22) 307*

**Agency**

The essence of agency is to sell the goods not as his own property, but as property of the principal who continues to be the owner of the goods and who is therefore liable to account for the proceeds - Case law on sale and agency discussed.

*C.T.T. vs. Sunil Kumar Goel 2003 NTN (Vol. 23) 764*

**Agricultural Implements**

Belts, Pulley and attachments when sold seperately by itself are not agricultural implements - Decision in State of Punjab vs. Hindson Pvt. Ltd. followed.

*Hariraj Industries, Agra vs. CST 2003 NTN (Vol. 23) 659*

**"Charge"**

The meaning of the term "charge on the property" is to be found in Section 100 of the Transfer of Property Act, in which it has been equated to a "simple mortgage", and it has also been laid down therein that, in the absence of a specific provision in any law, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of a charge. Thus, while Section 24(1) of the Act gives the tax dues only the status of a simple mortgage over the properties of the defaulter, Section 24(2) gives these dues a priority over all other claims against that property except claims for land revenue and of Land Development Bank.

*B. Suresh Chand vs. State of T.N. and Anr. 2007 NTN (Vol. 32) (Mad.) 124*

**Determination**

The word determination presupposes application of mind and expression of the conclusion - It connotes the official determination and a not mere opinion of finding.

*Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. 2004 NTN (Vol. 24) 165*

**Doctrine of Per incurriam –**

Is applicable where by inadvertence a binding precedent or relevant provisions of the Statute have not been noticed by the Court - "Per incurriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned.

*C.T.T. vs. Calcutta Perfumery Works (P) Ltd. 2007 NTN (Vol. 33) 69*

**"Drugs 'includes' Cosmetic – Meaning of –**

The word includes gives a wider meaning to the words or phrases in the statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include.

*Ponds India Ltd. (Merged with H.L. Ltd.) vs. C.T.T. 2008 NTN (Vol. 37) (SC) 169*

**"For the purpose of this Act"**

The expression "for the purpose of this Act" must also given effect as "for the purpose of all the provisions of the said Act".

*Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. 2004 NTN (Vol. 24) 165*

**Mention**

The word mention means 'describe' or 'state' and more.

*I.T.C. Agro Tech. Ltd. etc. vs. C.T.O. & Ors. 2001 NTN (Vol. 19) 541*

**"Namely" - Meaning of -**

In this case, while considering what is the meaning that is required to be given to the word 'namely' employed in the circular issued by the State of Bombay directing that no primary or secondary school shall from the date of the order, admit to a class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English wherein it is explained by stating 'namely' Anglo-Indians and citizens of non-Asiatic descent has observed that ordinarily the word 'namely' imports enumeration of what is comprised in the preceding clause and it ordinarily serves the purpose of equating what follows with the clause described before. Further, the word 'namely' has also been explained in the said decision and also in the Oxford English Dictionary as 'that is to say'. In this connection, it is useful to refer to the observation made by the Court in paragraph 12 of the judgment which reads as under:

*State of Karnataka & Others vs. Balaji Computers & Others 2007 NTN (Vol. 32) (SC) 161*

**PERSON**

In the case of a private limited company, Directors cannot be termed as person. The company as a whole is a juristic person.

*C.T.T. vs. J.P. Plastic Pvt. Ltd. 2001 NTN (Vol. 19) 513*

**PRESUMPTION**

Presumption can be rebutted by evidence of facts but conclusive presumption stands on a different footing, it can not be altered.

*Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. 2004 NTN (Vol. 24) 165*

**RECORD**

In taxing Statute "Record" has to be taken to be the record, as it existed on the date of passing assessment order.

*C.T.T. vs. Gulati and Company 2003 NTN (Vol. 23) 989*

**SUCH AS**

The use of word 'such as' is illustrative and not exhaustive.

*Smithkline Beecham Consumer Healthcare Ltd. vs. D.C.C.T. 2002 NTN (Vol. 21) 761*

**THAT IS TO SAY**

"That is to say" is not word of limitation but for explanation or illustration.

*Mercury Laboratories Pvt. Ltd. vs. State of U.P. 2000 NTN (Vol. 16) 178*

**THEREUPON**

It is often construed to refer to a succession of events in the order of sequence of their performance rather than as adverb of time. The words of great significance and must be given its full effect.

*Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. 2004 NTN (Vol. 24) 165*

**UNLESS THERE IS ANYTHING REPUGNANT IN THE SUBJECT OR CONTEXT**

Even where definition is exhaustive, it is possible for the words to have a somewhat different meaning in different Sections of the Act depending upon the subject or the context.

*I.C. Agro Tech Ltd. vs. C.T.O. 2001 NTN (Vol. 19) 541*

**USE**

Machinery imported for setting up an industrial unit can not be covered under the term "use" - The term should take colour from the term "sale" and consumption - However the matter left for final decision by appropriate authority which can have benefit from the opinion of court.

*India Oil Corporation Ltd. & Anr. vs. State of U.P. & others 2004 NTN (Vol. 24) 135*

**WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA****WRIT – FOR DAMAGES**

In exceptional cases the Court can grant damages in writ jurisdiction.

*Ram Singh vs. State of U.P. 2000 NTN (Vol. 17) 727*

**WRIT PETITION – WHEN MAINTAINABLE AND WHEN NOT****ALTERNATIVE REMEDY**

Writ petition pending for a long time cannot be rejected on the ground of alternative remedy. Alternative remedy is not absolute bar.

*Brooke Bond India Ltd. vs. State of U.P. 2000 NTN (Vol. 17) 841*

In view of two conflicting decisions of High Court the Appellate Authority or even the Tribunal will not be in the position to take a contrary view – The petitioner should not be relegated to alternative remedy, as the conflict should be resolved.

*Camphor and Allied Products Ltd. vs. State of U. P. 2004 NTN (Vol. 24) 316*

Where the question is of recurring nature and does not involve disputed questions of facts, the petitioner should not be relegated to the alternative remedy of appeal – Decision in 2003 NTN (Vol. 22) (Cannon India Pvt. Limited vs. State of U. P.) followed.

*Camphor and Allied Products Ltd. vs. State of U. P. 2004 NTN (Vol. 24) 316*

Notices issued on the basis of Circulars of higher authorities - Assessing Authority bound to follow the direction - No point in forcing the dealer to appeal before lower authorities.

*Vam Organic Chemicals Ltd. vs. State of U.P. & Others 2003 NTN (Vol. 22) 283*

The alternative remedy is not absolute bar. Self imposed restriction by the courts to not exercise discretion under Article 226 in appropriate cases.

*Gujrat Co-operative Milk Mkg Federation Ltd. vs. A.C (A) TT 2003 NTN (Vol. 22) 311*

Writ petition challenging jurisdiction of authorities under State Sales Tax Law taxing inter-State transaction should not be disallowed on the ground of alternative remedy of appeal - Once a sale is prima facie found to be inter-State sale one, the citizen has right to seek protection under Article 226 of the Constitution against the action of authorities under State Sales Tax Law.

*Guljag Industries Ltd. vs. State of Rajasthan and Anr. 2003 NTN (Vol. 23) 608*

Alternative remedy - Not an absolute bar – Constitution of India does not debar entertainment of writ petitions but it is a self imposed limitation – Whenever the action of Check-Post officer smacks of arbitrariness, the power of Judicial review is available with this Court under Article 226 even if alternative remedy of appeal is available – Whether exercise of power in a given situation was called for or not is a question which has to be decided from case to case and no principle of universal application could be laid down.

*Xcell Automation. vs. Govt. of Punjab and Anr. 2007 NTN (Vol. 33) (P&H)184*

Writ filed by assessee for mandamus directing to respondent to assess the turnover of photocopiers as electronics goods under U. P. Trade Tax Act and Central Sales Tax Act - Writ can not be dismissed on the plea of alternative remedy - Because facts are undisputed and recurring in nature - Only question of law involve - Hence alternative remedy is not absolute bar to writ petition.

*Canon India Private Limited vs. State of U.P. & Ors. 2003 NTN (Vol. 22) 126*

Assessing Authority mechanically applied the principles laid down by the Apex Court without analyzing the facts – Alternative remedy – Not an absolute bar where the action is wholly without jurisdiction.

*Assotech Realty Pvt. Ltd. vs. State of U.P. & Anr. 2007 NTN (Vol. 34) 67*

It is well settled that where the controversy is likely to be of a recurring nature and it does not involve disputed questions of fact it should be decided by the High Court instead of relegating the petitioner to alternative remedy of appeal etc. - The controversy in the present case is likely to be of a recurring nature and it does not involve disputed questions of fact.

*Barco Electronic Systems (P) Ltd. vs. State of U.P. and others 2004 NTN (Vol. 25) 1272*

#### **ALTERNATIVE REMEDY – POSITION OF SUPREME COURT IN APPEAL AGAINST ORDER OF HIGH COURT ADMITTING WRIT –**

Where after elaborate consideration High Court found the statutory remedy to be not efficacious can entertain the writ petition notwithstanding the fact that alternative remedy is available to the petitioner. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Supreme Court decline to consider the question of availability of alternative remedy.

*State of H.P. vs. Gujarat Ambuja Cement Ltd. 2005 NTN (Vol. 28) 71*

#### **AGAINST SHOW CAUSE NOTICE**

Writ petition against simple show cause notice not maintainable.

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*Yogendra Rubber Works vs. A.C. (A) 1998 NTN (Vol. 12) 67*

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Writ petition against notice under Section 21 is maintainable - Alternative remedy is not a sufficient reason for refusing a party quick relief by writ or prohibiting an authority acting without jurisdiction from continuing such action.

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*Samrat Trading Company vs. The State of U.P. 2003 NTN (Vol. 23) 1033*

Email: ntntn@ntn.com

Writ petition against show cause notice, based upon Circular of Commissioner is entertainable - The notice is wholly without jurisdiction and it is not expected that authorities will go beyond the Circular - Alternative remedy is not absolute bar.

*Goodage Rubber Works vs. State of U.P. and others 2003 NTN (Vol. 23) 553*

Writ against simple show cause notice - High Court entertained the petition under Article 226 - Order challenged before Supreme Court - High Court was not justified in entertaining the petition.

*State of U.P. vs. Anil Kumar Ramesh Chandra Glass Works 2006 NTN (Vol. 30) (SC) 311*

#### **EXERCISE OF JURISDICTION**

The High Court should not exercise jurisdiction unless the order of lower authority is perverse or is passed in violation of principles of natural justice.

*C.T.T. vs. U.P. Paper Corporation Pvt. Ltd. 2001 NTN (Vol. 18) 229*

Writ petition against an order can not be entertained by Court if there is alternative remedy of appeal - The entertainment of writ petition by the court is entirely matter of discretion of court.

*Rama Dairy Products Ltd. vs. Se., U. P. Kr Utpr Mandi Samiti 2003 NTN (Vol. 22) 475*

**AGAINST PROVISIONAL ASSESSMENT ORDER**

Writ petition against provisional assessment order not maintainable - The dealer has opportunity to raise points in appeal under Section 9 of the Act - Writ petition is not maintainable.

*Khandelwal Soya Industries Ltd. vs. State of U. P. 2003 NTN (Vol. 23) 899*

**CHALLENGE TO CONSEQUENTIAL ORDER WITHOUT CHALLENGING BASIC ORDER**

The challenging of consequential order without challenging the basis order is not permissible - The rule of exclusion of writ jurisdiction is not a law but discretion to be exercised by the Court - If the case requires any kind of evidence etc. the writ court may not exercise its extraordinary jurisdiction at all.

*Smt. Shakuntala Devi & ors. vs. T. T. O., Ghazipur & ors. 2004 NTN (Vol. 24) 420*

**FOR ISSUING DIRECTION TO THE ASSESSING AUTHORITY NOT TO MAKE PROVISIONAL ASSESSMENTS**

**Not maintainable.**

*Sareen Sports Industries vs. Deputy C.T.T. Meerut 2006 NTN (Vol. 31) 426*

**SUBSEQUENT DEVELOPMENT**

Subsequent development during the pendency of writ petition can be taken into consideration for getting relief.

*Chander Sheela Mills (P) Ltd. vs. State of U.P. 1999 NTN (Vol. 14) 158*

**2. Definitions.** In this Act, unless there is anything repugnant in the subject or context;

- (a) "**appellate authority**" means the authority to whom an appeal lies under section 55;
- (b) "**assessing authority**" means any person -
- (i) appointed and posted by the State Government; or
  - (ii) appointed by the State Government and posted by the Commissioner; or
  - (iii) appointed and posted by the Commissioner, and empowered under rules framed under this Act to perform all or any of the functions of the assessing authority under this Act.
- [See Rules 4(10), 5(1)]
- (c) "**assessment year**" means the period of twelve months commencing on the first day of April of a calendar year;
- (d) "**board**" means the Uttar Pradesh State Tax Board established under section 78.
- (e) "**business**" in relation to business of buying or selling goods includes-

- (i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern;
  - (ii) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period);
  - (iii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste or byproducts, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever, which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern, works contract or lease, but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods.
- (f) **“capital goods”** means any plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation used for manufacture or processing of any goods for sale by a dealer and includes:-
- (i) components, spare parts and accessories of such plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation;
  - (ii) moulds and dies;
  - (iii) storage tank;
  - (iv) pollution control equipment;
  - (v) refractory and refractory materials;
  - (vi) tubes and pipes and fittings thereof;
  - (vii) lab equipments, instruments and accessories,
  - (viii) machinery, loader, equipment for lifting or moving goods within factory premises, or
  - (ix) generator and boiler used in manufacture of goods for sale by him but for the purpose of section 13, does not include:-
    - (i) air-conditioning units or air conditioners, refrigerators, air coolers, fans, and air circulators if not connected with manufacturing process;

- (ii) an automobile including commercial vehicles, and two or three wheelers, and parts, components and accessories for repair and maintenance thereof;
  - (iii) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees.
  - (iv) vehicle used for transporting goods or passengers or both;
  - (v) capital goods used in the execution of a works contract; and
- <sup>1</sup>[(vi) Omitted]
- (g) "**Commissioner**" means the person appointed by the State Government as the Commissioner of Commercial Taxes and includes a Special Commissioner of Commercial Taxes, an Additional Commissioner of Commercial Taxes and a Joint Commissioner of Commercial Taxes.
- [See relevant rules including Rule 74]
- (h) "**dealer**" means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes, -
- (i) a local authority, body corporate, company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;
  - (ii) a factor, broker, arhati, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as heretofore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not;
  - (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal;
  - (iv) a Government which, whether in the course of business or otherwise, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration;
  - (v) any person who acts within the State as an agent of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-

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<sup>1</sup>. Omitted vide Noti. No. 1724(2)/LXXIZ-V-1-1 (ka) 14/2008 dt. 29.08.08 w.e.f. 16.07.08 (U.P. Act No. 19 of 2008). Before omission the sub-clause (vi) of Clause (f) of Section 2 was as follows:

(vi) captive power plant used for generation of electrical energy and its parts, components and accessories for repair and maintenance thereof;

- (A) a mercantile agent as defined in Sale of Goods Act, 1930 or
- (B) an agent for handling of goods or documents of title relating to goods; or
- (C) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment;
- (vi) a firm or a company or other body corporate, the principal office or head quarter whereof is situated outside the State, having a branch or office in the State, in respect of purchases or sales, supplies or distribution of goods through such branch or office;
- (vii) any person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (viii) any person who carries on the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash or for deferred payment or other valuable consideration;
- <sup>2</sup>(ix) *a railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found to be false, forged or not verifiable, or the owner or person in-charge of a vehicle who obtained authorization for transit of goods from the officer in-charge of entry check post but failed to deliver the same to the officer in -charge of the exit check post;*
- (x) *an owner or person in-charge of a godown, cold storage or warehouse who stores commercial goods, other than those of transporters except those referred to in sub-clause (ix) of clause (h) of Section 2.*
- Provided** that a person who, not being a body corporate, sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant, lessee or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods, be treated as a dealer;
- (i) "**declared goods**" means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in the inter-State trade or commerce;

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<sup>2</sup>. Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-clauses (ix) and (x) of Clause (h) of Section 2 were as follows:

(ix) railway container contractor, transporter or any other carrier or a forwarding agent of goods including owner of a cold storage who fails to disclose the complete address of consigner or consignee or if disclosed name and address of consigner or consignee is bogus, forged or not verifiable;

(x) an owner or person in-charge of a godown or warehouse who stores commercial goods;

- (j) "**document**" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter and includes-
- (i) an electronic document including data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; and
  - (ii) such other document as may be notified by the State Government.
- (k) "**erstwhile Act**" means the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948)
- (l) "**exempt goods**" means any of the goods mentioned or described in column (2) of the Schedule-I;
- (m) "**goods**" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares or securities;
- (n) "**import**" In relation to any goods, means to bring or receive any goods at any place within the State from any place situated outside the State where journey of such goods originates from such place outside the State and terminates at any place within the State;
- (o) "**importer**" means a dealer who brings or receives any goods into the State from any place outside the State and includes a dealer -
- (i) who makes first sale of such goods brought or received into the State from any place outside the State; or
  - (ii) who receives any goods into the State on behalf of any other person from any place outside the State; or
  - (iii) on whose behalf any goods are received into the State from any place outside the State by any other person;
- (p) "**input tax**", in relation to a registered dealer who has purchased any goods from within the State, means the aggregate of the amounts of tax,-
- (i) paid or payable by such registered dealer to the registered selling dealer of such goods in respect of purchase of such goods; and

- (ii) paid directly to the State Government by the purchasing dealer himself in respect of purchase of such goods where such purchasing dealer is liable to pay tax under this Act on the turnover of purchase of such goods;

<sup>3</sup>*[Provided that tax paid or payable in respect of transfer of right to use any goods shall not form part of the input tax.]*

- (q) "**lease**" means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by installments;
- (r) "**lessee**" means any person to whom the right to use goods for any purpose is transferred under a lease;
- (s) "**lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease;
- (t) "**manufacture**" means producing, making, mining, collecting, extracting, mixing, blending, altering, ornamenting, finishing, or otherwise processing, treating or adapting goods, but does not include such manufacture or manufacturing processes as may be prescribed;
- (u) "**manufacturer**" in relation to any goods mentioned or described in column (2) of Schedule IV, means a dealer who, by application of any process of manufacture, after manufacture of a new commercial commodity inside the State, makes first sale of such new commercial commodity within the State, whether directly or otherwise; and includes a selling agent who makes first sale of such new commodity on behalf of the person who has manufactured it;
- (v) "**non-vat goods**" means any of the goods mentioned or described in column (2) of Schedule-IV;
- (w) "**officer-in-charge of a check-post or barrier**" includes an officer not below the rank of assessing authority posted at a check post or barrier;

[See Rules 4 (10), 5(2)]

- (x) "**place of business**" means any place where a dealer carries on business and includes-
- (i) any shop, ware-house, godown or other place where a dealer stores his goods;
- (ii) any place where a dealer produces or manufactures goods;

<sup>3</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

- (iii) any place where a dealer keeps his books of accounts and documents;
- (iv) any place where a dealer executes the works contract or where the right to use goods is exercised;
- (v) in a case of a dealer who carries on business through an agent (by whatever name called), the place of business of such agent;
- (y) "**purchase price**" means the amount payable by a purchaser to a seller as consideration for the purchase of any goods made by or through him after deducting the amount, if any refunded to the purchaser by the seller in respect of any goods returned to such seller within such period as may be prescribed.

**Explanation:** Purchase price does not include-

- (i) the amount representing the cost of outward freight or cost of installation, charged by the seller from the purchaser of goods if such amount has been shown separately on sale invoice or tax invoice issued by the seller;
  - (ii) amount of tax if such amount is shown separately on the sale invoice or tax invoice;
  - (z) "**registered dealer**" means a dealer registered under section 17 or section 18;
  - (aa) "**registering authority**" means the officer empowered under the rules framed under this Act to deal with issue, suspension, cancellation of registration certificate or any other matter related to registration under this Act and includes an authority;
- [See Rules 4(10), 5(1), 5(4), 32(13)]
- (ab) "**re-sale**" means a sale by any person, of any goods in the same form and condition in which such goods were purchased by such person;
  - (ac) "**sale**" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration and includes,-
    - (i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
    - (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

- (iii) the delivery of goods on hire purchase or any other system of payment by installments;
  - (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
  - (v) the supply of goods by an association or body of persons (whether incorporated or not) to a member thereof for cash, deferred payment or other valuable consideration;
  - (vi) the supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration and such delivery, transfer or supply of any goods under sub-clause (i) to sub-clause (vi) above shall be deemed to be sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made.
- (ad) **"sale price"** means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally followed in trade, but inclusive of any sum charged for anything done by the dealer in respect of goods at the time of or before the delivery of such goods, other than cost of outward freight or delivery or cost of installation in cases where such cost is separately charged;

**Explanation:**

- (i) In a case in which any duty payable by a dealer is deferred for a period or in a case in which point of payment of any duty is shifted, amount of such duty shall be deemed part of the sale price;
- (ii) The price of packing material in which any goods are packed shall be deemed part of sale price of goods sold.
- (iii) Sale price of goods in relation to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, shall be determined after deducting the aggregate of actual amount incurred towards labour and services, amount of profit relating to supply of labour and services and such other amounts as may be prescribed from the total amount received or receivable in respect of such works contract;

- (iv) In respect of transfer of right to use goods, any goods for any purpose (whether or not for a specified period) sale price means the valuable consideration received or receivable in respect of such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of contract;
- <sup>4</sup>[(v) *Tax charged or chargeable shall not form the part of the sale price;*
- (vi) *Cash or trade discount at the time of sale as evident from the invoice shall be excluded from the sale price but any ex post facto grant of discounts or incentives or rebates or rewards and the like shall not be excluded from the sale price;]*
- (ae) **“Schedule”** means any of the Schedule appended to this Act;
- (af) **“Settlement Commission”** means the Commission constituted under section 62;
- <sup>5</sup>[(ag) **“tax”** means a tax leviable under this Act, on the sale or purchase or both, as the case may be, of goods other than news paper; and shall include,-
- (i) *composition money either at an agreed rate or in lump sum, as the case may be, payable, in lieu of actual amount of tax due on turnover of sales, in accordance with provisions of section 6 or section 6A;*
- (ii) *amount of reverse input tax credit;*
- <sup>6</sup>[(iii) *the amount of additional tax leviable under Section 3-A;]*
- <sup>7</sup> [(ah) **“taxable dealer”** means *the person who is liable to pay tax under this Act;*]

<sup>4</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

<sup>5</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the clause (ag) of Section 2 was as follows:

(ag) **“tax”** means a tax leviable under this Act, on the sale or purchase of goods other than newspapers; and shall include, –

(a) tax or lump sum, as the case may be, payable, in lieu of actual amount of tax due on turnover of sales, in accordance with provisions of section 6; or

(b) amount of reverse input tax credit;

<sup>6</sup> . Inserted vide Noti. No. 1125(3)/79-V-1-09-1 (ka) 11/2009 dt. 27.08.09 w.e.f. 27.5.2009 (U.P. Act No. 21 of 2009).

<sup>7</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the clause (ah) of Section 2 was as follows:

- (ai) "**taxable goods**" means any goods except goods mentioned or described in column 2 of Schedule I;
- (aj) "**tax invoice**" means a bill or a cash memo issued in the prescribed form and manner by a registered selling dealer to a registered purchasing dealer or to a person or body referred to in clauses (ii), (iii), (iv) and (v) of sub-section (1) of section 22 in respect of sale of any goods except exempt goods and non-vat goods;
- (ak) "**tax period**" means period for which a dealer is liable to submit a tax return of turnover and tax under section 24 and where a dealer either commences or discontinues his business during any tax period, tax period includes part of such tax period during which business of the dealer has remained in existence;
- (al) "**tax return**" means any return of turnover and tax prescribed or required to be furnished under this Act or the rules made thereunder;
- (am) "**taxable turnover of purchase**" means turnover obtained after deducting from the gross turnover of purchase such amounts as may be prescribed;
- (an) "**taxable turnover of sale**" means turnover obtained after deducting from the gross turnover of sale such amounts as may be prescribed;
- (ao) "**Tribunal**" means the Tribunal constituted under section 57;
- (ap) "**Turnover of purchase**" with its cognate expressions means the aggregate of the amounts of purchase prices paid or payable in respect of purchase of goods made by a dealer either directly or through another dealer, whether on his own account or on account of others, after deducting the amount, if any, paid or payable by the seller in respect of any goods returned to such seller within such period as may be prescribed;
- (aq) "**turnover of sale**" means the aggregate of amount of sale prices of goods, sold or supplied or distributed by way of sale by a dealer, either directly or through another, whether on his own account or on account of others;
- (ar) "**vehicle**" means any kind of mode of transportation used for carriage of goods including motor vehicle constructed or adapted for the carriage of goods, or any other motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers including every wheeled conveyance, pull or push cart including animal drawn cart, animal, trailer, trolley, bicycle, tricycle, carrier and such other mode of transportation as may be specified in the notification issued by the State Government in this behalf;

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(ah) "**taxable dealer**" means a dealer who is liable to pay tax in accordance with provisions of sub-section (2) of section 3 read with provisions of sub-section (5) of the said section;

- (as) **"vessel"** includes any container, ship, barge, boat, raft, timber, bamboo or floating materials propelled in any manner;
- <sup>8</sup>[(at) **"Web Site"** means World Wide Web of the Department of Commercial Taxes of Uttar Pradesh with such domain "up.nic.in" and with address "http://comtax.up.nic.in" or any other website notified by the State Government.]
- (au) **"works contract"** includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

### Short Comments

#### Section 2: Definitions

##### Clause (a) "appellate authority"

##### Authorities under the act are not court

Authorities created by the State Government to collect the taxes, performing certain quasi judicial functions are not Court.

NATIONAL TAX NEWS & VIEWS  
A fortnightly VAT & GST Law Itz, etc.

*Brothers vs. C.S.T. 1974 (34) STC 60*

##### Clause (e) "business"

##### Canteen sales – liable to tax

Government of India undertaking running canteen for the welfare of its workers liable to tax in respect of its activities of canteen because, incidental and ancillary activities are included in the term business.

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*Bharat Heavy Electricals Ltd. vs. C.S.T. 2000 NTN (Vol. 17) 792*

Activities of sale by canteen fall within the ambit of business. Sales to employees through canteen amounts to carrying on business of buying and selling.

*C.S.T. vs. British India Corporation 2003 NTN (Vol. 22) 337*

##### Government Department – Department of Military Engineering Service – Material Supplied for Construction

Cement, steel and other material supplied to carry out the work of construction in works contract – The activities of Department are covered by the definition of "business".

*Garrison Engineering vs. C.T.T. 2000 NTN (Vol. 17) 863*

<sup>8</sup>. Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the clause (at) of Section 2 was as follows:

(at) **"Web Site"** means World Wide Web of the Department of Commercial Taxes of Uttar Pradesh with such domain "tradetax.nic.in" and with address "http://tradetax.nic.in" or any other website as may be notified by the State Government.

**Incidental or ancillary sales – When “business” and when not –**

Where the main activity of the person or body are not business then the connected, incidental or ancillary activities of sales would not normally amount to business unless an independent intention to conduct business in these connected, incidental or ancillary activities is established by the revenue.

*State of Tamil Nadu vs. Board of Trustee of the Port of Madras 1999 NTN (Vol. 14) 482*

Incidental or ancillary sales come within the ambit of business only when the main activities are business.

*State of Tamil Nadu vs. Board of Trustee of the Port of Chennai 1999 NTN (Vol. 14) 482; C.S.T. vs. Maha Prabandhak Jal Sansthan 2000 NTN (Vol. 17) 777*

**Railway**

Activity of the transportation is the activity of commerce within the definition of ‘business’.

*Divisional Superintendent Engineering (C) vs. C.T.T. 2006 NTN (Vol. 30) 163*

**Sale of machinery after closure of entire business – not incidental**

Sale of machinery by the dealer after closure of entire business can not be treated to be a transaction of business.

NATIONAL LAW NEWS & VIEWS  
A fortnightly VAT/GST Law Reporter

*Parilla Industries 1992 NTN (Vol. 1) 388J*

**Note:** Against this decision, SLP of the State has been dismissed by the Supreme Court on 7-5-1993. (See 1993 (90) STC 1 (FRSC))

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**Transport Company – Casual Dealer – Sale of unserviceable old, obsolete and unutilized parts –**

Transport Company engaged in providing transport facility – Sales of unserviceable old, obsolete and unutilized parts by the company are covered under the term “business”.

*State of Orissa vs. Orissa Road Transport Co. Ltd. 1997 NTN (Vol. 11) 854*

**Trust – Religious trust – Sales of books and pamphlets and other literature**

Trust established with the object of spreading message of Sri Sai Baba is not carrying on business in respect of its sale of Books, pamphlets and other literature and not a dealer.

*C.S.T. vs. Sai Publications Fund 2002 NTN (Vol. 20) 305 (SC)*

**Clause (h) “dealer”****Collector of Custom – Sale of confiscated goods**

Collector of Custom selling the confiscated goods under the provisions of Custom Act is dealer under State Sales Tax Act.

*Collector of Custom vs. State of West Bengal 1999 NTN (Vol. 15) 652*

**Government Department – Central Government Department – Power of State government to impose sales tax**

Not barred.

*Collector of Custom vs. State of West Bengal 1999 NTN (Vol. 15) 652 (SC)*

### Government Department – No commercial activity – Not dealer

The Government department not engaged in commercial dealings is not covered under the term “dealer”. Commercial activity is a must for treating the department as dealer.

*State of Haryana vs. Government of India Photolitho Press 2002 NTN (Vol. 20) 197*

### Hospital

Supplying medicines, surgical items, vaccines, X-ray items etc. to its indoor patients during the course of their treatment comes does not comes within definition of ‘Dealer’ under Section 2(t) of the Bihar Finance Act, 1981.

*Tata Main Hospital vs. State of Jharkhand & Ors. 2008 NTN (Vol. 36) (JHC) 149*

### Jal Sansthan – not dealer

Main activity of Jal sansthan is to ensure the supply of pure drinking water and not for carrying out any business of buying or selling. Jal sansthan cannot be treated as dealer.

*C.S.T. vs. Maha Prabandhak Jal Sansthan 2000 NTN (Vol. 17) 777*

### Pawn broker is dealer

Pawn broker is a ‘dealer’ and carries on business within the meaning of the State General Sales Tax Act and Rules when he causes the sales of unredeemed articles/goods, occasioned by the default of the pawner through (statutory) Auctioneer.

*Karnataka Pawan Brokers Assn. vs. State of Karnataka 1998 NTN (Vol. 13) 764*

### Clause (m) “goods”

#### Drawings, designs, manuals – are goods.

Drawings, Designs, Manuals when put on media are goods.

*Assoc. of Electronic Companies Ltd. vs. C.C. 2002 NTN (Vol. 20) 73*

#### Duty entitlement pass book & trading licence are goods.

Duty entitlement pass Book and other tradeable licenses are goods and not actionable claim.

*Philco Exports vs. S. T.O. 2001 NTN (Vol. 19) 696;*

*Yasha Overseas vs. C. S. T. 2008 NTN (Vol. 37) 129 (SC)*

### Electromagnetic waves or radio frequencies

Telephone communication and other accessories giving access to telephone exchange with or without instruments - What are “goods” in telecommunication for the purposes of Article 366(29A)(d)? - Goods do not include electromagnetic waves or radio frequencies for the purpose of Article 366(29A)(d). The goods in telecommunication are limited to the handsets supplied by the service provider.

*Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Ors. 2006 NTN (Vol. 29) 307 (SC)*

### Factory building, plant and machinery, factory shed, administrative buildings

On a plain reading of definition of "goods", it is crystal clear that the "goods" means moveable properties. It excludes immovable properties. Plant and machineries when fastened to or attached to earth is immovable property. From a reading of the contract in question as a whole, it is clear that entire factory premises including the plant and machinery, administrative buildings, shed, furniture etc. were transferred on lease and license. When plant as a whole is leased out or given license to manufacture including the plant and machinery, it is immovable property and plant and machinery are not liable to be taxed for their use - U.P. Trade Tax Act, 1948, Section 2 (d).

*Gee Kay Tobacco Products Private Ltd. vs. C.T.T. 2005 NTN (Vol. 27) 374*

### Import licence/R.E.P. licence are goods.

*Vikas Sales Corporation vs. C.C.T. 1996 NTN (Vol. 9) 80 (SC)*

*Mirza Tanners Ltd. vs. State of U.P. 1997 NTN (Vol. 11) 865*

### Lottery tickets – are not goods

Lottery tickets are not covered under the term goods.

*Sunrice Associates vs. Govt. of NCT of Delhi 2006 NTN (Vol. 30) 61 (SC)*

### SIM Card

What a SIM card represents is ultimately a question of fact as has been correctly submitted by the States. In determining the issue, however the Assessing Authorities will keep in mind the following principles: If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon.

*Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India 2006 NTN (Vol. 29) 307*

**Computer Software packages (branded software) (Branded software) - Term "all materials, articles and commodities"** used in the definition of the term "Goods" includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc- This term includes all such properties - The software programmes have all these attribute.

*Tata Consultancy Services vs. State of A.P. 2004 NTN (Vol. 25) 1141*

**DEPB (Duty Entitlement Passbook)" – Import License or Replenishment License (REP License) -** Constitution Bench decision in Sunrise does not alter the position in regard to levy of tax on sale of REP License and on that issue the three-Judge Bench decision in Vikas continues to hold the field - DEPB has an intrinsic value that makes it a market commodity - Therefore, DEPB, like REP License qualifies as 'goods' within the meaning of the Sales Tax laws of Delhi, Kerala and Mumbai and its sale is exigible to tax – Constitution of India Article 366(29-A) – Sale of goods Act, 1930.

*Yasha Overseas vs. C.S.T. & Ors. 2008 NTN (Vol. 37) (SC) 129*

**Clause (n) "Import"**

Kanpur dealer sold goods to Gwalior dealer. A part of consignment delivered in transit to the revisionist for sale in transit. Revisionist cannot be treated as an importer until there is a finding of re-entry of goods in the State of U.P.

*Rama Kanyt & Company vs. C.T.T. 2000 NTN (Vol. 16) 10*

**Clause (ac) "sale"****Replacement under warranty**

Free replacement under warranty does not constitute sale. The transfer of property in the parts replaced under warrant is part of original sale of product.

*Geo Motors vs. State of Kerala 2001 NTN (Vol. 19) 520*

**SIM card supply**

Supply of SIM Card is sale as well as service. Sales Tax and Service Tax both are leviable on such consideration. Different aspects of the same transaction can be assessed to tax by different legislatures.

*Escotal Mobile Communications Ltd. vs. Union of India 2002 NTN (Vol. 21) 451*

**Sale or Works contract**

To determine the real nature of the transaction, the clauses in the contract are not to be read in isolation but the substance of the contract has to be looked into.

*Hindustan Shipyard Ltd. vs. State of A.P. 2000 NTN (Vol. 17) 644*

**Telephone Department**

Telephone service is nothing but service. However, hand set supplied by service provider would not be service but sale.

*Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Ors. 2006 NTN (Vol. 29) 307*

**Tender forms sale by Maharashtra state electricity board**

Sales of Tender Forms by the Maharashtra State Electricity Board to various parties who intended to submit tender with the Board cannot be regarded as sale which can be subjected to tax.

*Maharashtra State Electricity Board vs. State of Maharashtra 1998 NTN (Vol. 12) 354*

Sale - As defined in the Act after Constitution Amendment and Works Contract (as defined in the Act after Constitution Amendment) – Manufacture, supply, installation and commissioning of Elevators and Lifts – Transaction is "sale" and not works contract.

*State of Andhra Pradesh vs. Kone Elevators (India) Ltd. 2005 NTN (Vol. 27) 5*

Works contract – Construction of Flats – Karnataka Sales Tax Act, 1963 Sections 2 (t), 5-B, 29(1), 2(e) – Whether the appellant who engaged in property development involving construction and building of flats and subsequent sale thereof liable to tax under Section 5-B in view of law laid down by Supreme Court in Raheja Development Corporation? – Held – Doubt expressed – Matter referred to larger Bench.

*Larsen & Tourbo Ltd. and Anr. vs. State of Karnataka 2008 NTN (Vol. 38)(SC) 137*

## CHAPTER – II

### Incidence, Levy and Rate of Tax

**3. Incidence and levy of tax.** (1) Subject to the other provisions contained in this Act, every dealer shall be liable to pay tax under this Act, for each assessment year, on his taxable turnover of sale or purchase or both, as the case may be, of taxable goods, at such rates and at such point of sale or purchase as provided under section 4 or section 5:

**Provided** that tax shall be levied on and charged from every dealer on such sales and purchases as are made on or after the date on which the dealer becomes liable for payment of tax in accordance with provisions of sub-section (3) or sub-section (5), as the case may be.

- (2) Where a dealer carries on business for part of any assessment year he shall, subject to the other provisions contained in this Act, be liable to pay tax on the taxable turnover of sale or purchase or both, as the case may be, of taxable goods, at such rates and at such point of sale or purchase as provided under section 4 or section 5, where such sales or purchases are affected during the period in which he is liable for payment of tax in accordance with the provisions of sub-section (3) or sub-section (5).
- (3) Dealers, of the class mentioned in column (2) against the serial no. mentioned in column (1), shall be liable to pay tax on sales or purchases or both, as the case may be, where such sales or purchases of goods are made by them on or after the date mentioned in column (3) against the same serial no. of the table below:

Serial No.	Class of dealers	Date
(1)	(2)	(3)
1.	(i) Dealers whose registration certificate, under this Act, is effective on January 1, 2008	January 1, 2008
	(ii) Dealers whose registration certificate, issued under the Central Sales Tax Act, 1956, is valid on January 1, 2008	
	(iii) Dealers who hold any imported taxable goods in opening stock on January 1, 2008	

(iv)	Dealers who hold any taxable goods in opening stock on January 1, 2008 where such goods have been manufactured, processed or packed by using or consuming of any imported goods	
(v)	Dealers who hold any taxable goods in opening stock on January 1, 2008 where such goods have been manufactured, processed or packed by using or consuming any goods purchased after furnishing to the selling dealer any form of declaration or certificate prescribed under the erstwhile Act or the rules framed there under.	
(vi)	Dealers who hold any goods in opening stock on January 1, 2008 where such goods have been purchased after furnishing to the selling dealer any form of declaration or certificate prescribed under the erstwhile Act or the rules framed thereunder.	
(vii)	Dealers who, in the assessment year of commencement of this Act, have commenced exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, on any date before January 1, 2008 and- (a) whose aggregate, of the turnover of such purchase and turnover of such sale, of all goods, as defined hereunder, during the assessment year of commencement of this Act, from first day of the business during such assessment year, has, on or before January 1, 2008, exceeded the taxable quantum as provided in sub-section (4); and (b) who have not made any change in the nature of their business before their aggregate of turnovers as stated in clause (a) has exceeded the taxable quantum as provided in sub-section (4).	

	(viii)	Dealers who have been carrying on exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, of any goods during the assessment year immediately preceding first assessment year under this Act and whose aggregate, of the turnover of such purchase and turnover of such sale, of all goods, as defined hereunder, during such preceding assessment year had exceeded the taxable quantum as provided in sub-section (4).	
	(ix)	Dealers who, in the year of commencement of this Act, have, before January 1, 2008,- (a) made an inter-state sale of any taxable goods; or (b) made a sale in the course of the export of the goods out of the territory of India; or (c) consigned any taxable goods outside the State except by reason of a sale and such goods are delivered in the other State without a sale; or (d) brought or received any taxable goods from any place outside the State;	
2.	Dealers, who with or without any other kind of business, import any taxable goods on or after January 1, 2008		Date on which a dealer receives taxable goods for the first time
3.	Dealers who obtain registration certificate under the Central Sales Tax Act, 1956 on or after January 1, 2008		Date from which registration certificate is effective
4.	Dealers, who, with or without any other kind of business, make sale of any taxable goods in the course of inter-State trade or commerce on or after January 1, 2008		Date on which a dealer makes first sale of any taxable goods in the course of inter-State trade or commerce

5.	Dealers, who, with or without any other kind of business, on or after January 1, 2008, make a sale, in the course of export of the goods out of the territory of India, of any taxable goods or make such sale of any exempt goods where in manufacture, processing or packing of such exempt goods any taxable goods have been used, consumed or utilized	Date on which a dealer makes first sale of the goods in the course of export of the goods
6.	Dealers, who, with or without any other kind of business, consign any taxable goods on or after January 1, 2008 at any place outside the State except by reason of a sale and such goods are delivered in the other State without a sale	Date on which a dealer for the first time consigns any taxable goods outside the State
7.	Dealers who have been carrying on exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, of any goods from a date prior to January 1, 2008 or dealers who commence such business on or after January 1, 2008 and- (i) whose aggregate, of the turnover of such purchase and turnover of such sale of taxable goods, as defined hereunder, in any assessment year including assessment year of the commencement of this Act, from first day of business during such assessment year, exceeds <i>the taxable quantum</i> as provided in sub-section (4) of this section on any date after January 1, 2008; and (ii) who do not make any change in the nature of their business before their aggregate of the turnovers as stated in clause (a) exceeds the taxable quantum as provided in sub-section (4) of this section	Date on which aggregate of the turnovers of purchase from within the State and turnover of sale within the State or both, as the case may be, of all goods of a dealer, as defined hereunder, for the first time in any assessment year exceeds the taxable quantum

9[8.	<p>(i) A railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found bogus, forged or not verifiable; or the owner or person in-charge of a vehicle who obtained authorization for transit of goods from the officer in-charge of entry check post but failed to deliver the same to the officer in-charge of the exit check post,</p> <p>(ii) an owner or person in-charge, of a godown or cold storage or warehouse other than a transporter except those covered under clause(i) who fails to disclose the name and address of the owner of any taxable goods stored in such godown, cold storage or warehouse other than transporter except those covered under clause(i) if discloses such name and address of owner of taxable goods is found bogus, forged or not verifiable,</p>	First date on which any taxable goods are found in the possession or custody,]
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<sup>9</sup>. Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the entry at Sl. No. 8 of sub-section (3) of Section 3 was as follows:

8.	<p>Transporter or any other carrier or a forwarding agent or railway container contractor of goods where such transporter, carrier or forwarding agent or railway container contractor fails to disclose the name and address of the consignee or consigner in Uttar Pradesh or if disclosed name and address of consigner or consignee is bogus, forged or not verifiable or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of any taxable goods, which are held in possession or custody or carried in his vehicle; or</p> <p>An owner or person in-charge, of a godown or cold storage or warehouse who fails to disclose the name and address of the owner of any taxable goods stored in such godown, cold storage or warehouse.</p>	First date on which any taxable goods are found in the possession or custody,
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9.	Dealers who do not fall in any of the classes mentioned against serial Nos. 1 to 8 above and who obtain registration certificate voluntarily under section 18.	Date from which registration certificate is effective
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**Provided** that a dealer who exclusively deals in purchase or sale, or both, as the case may be, of exempt goods, shall not be liable to pay tax under this Act.

**Explanation (1)**— For the purposes of this sub-section and sub-section (5) the expression "aggregate of turnover of purchase from within the State and turnover of sale within the State or both, as the case may be, of all goods" shall mean the aggregate of the turnover of-

- (a) purchase of all taxable goods where such purchases are made by the dealer from within the State from persons other than registered dealers; and
- (b) sale of all goods except goods included in clause (a) where such sales are made by the dealer within the State

**Explanation (2)**— Where a dealer falls in more than one category, mentioned in column 2 of the table given above, then he shall be liable for payment of tax with effect from the earliest date of all dates mentioned in column (3) of the table referred to above.

- (4) Taxable quantum referred to in sub-section (3) shall be five lakh rupees.

<sup>10</sup>**Provided** that where a dealer carries on business during part of an assessment year, taxable quantum shall be partial amount of five lakh rupees which shall be computed on pro rata basis and for this purpose part of the month shall be taken as full month.

- (5) Every dealer who has once become liable for payment of tax shall continue to be so liable till the date on which he discontinues his business:

[See Rules 6, 20(2)(a)]

- (6) For the purposes of this Act, following shall be determined in the prescribed manner:-

- (a) Turnover of sale of goods-
  - (i) involved in the execution of works contract in which property in goods is transferred; or
  - (ii) in cases of transfer of right to use any goods;
- (b) Taxable turnover of sale; and
- (c) Taxable turnover of purchase.

<sup>10</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

- (7) Where in respect of transfer of property in goods involved in the execution of a works contract, the 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 and profit relating to supply of labour and services are not ascertainable, for the purpose of determining turnover of sale of goods under sub-clause (i) of clause (a) of sub-section (6) such charges for labour and other services and such profits, may be determined on the basis of deduction of such percentage of the value of works contract as may be prescribed and different percentages may be prescribed for different types of works contract.
- (8) Amount of tax, for which a dealer is liable for payment under any provision of this Act, shall be paid in the prescribed manner.
- (9) Notwithstanding anything to the contrary in this Act, where any goods are sold or purchased together with any packing materials, sale or purchase of packing material shall, notwithstanding the fact that contracts of sale or purchase of such goods and such packing material have been made separately or price of sale or purchase, as the case may be, of the goods and the packing material has been shown separately,-
- (a) be liable to tax under this Act at the rate applicable to sale or purchase of the goods sold or purchased together with such packing materials;
  - (b) not be liable to any tax under this Act if the sale or purchase of such goods is exempt from tax at the hands of the dealer.
- (10) Where tax is payable, and has been so paid by a commission agent on any turnover of sale or purchase or both, as the case may be, of any goods on behalf of his principal, the principal shall not be liable to pay tax in respect of such turnover.
- <sup>11</sup>[(11) *Subject to such conditions as may be prescribed, the State Government may permit any power project industrial unit engaged in generation, transmission and distribution of electrical energy, having aggregate capital investment of Rs.1000 crore or more to own the tax liabilities of a dealer of such sales as are made to that unit.*]

**Explanation:** For the purposes of this Act, the dissolution of a firm or association of persons or partition of a Hindu Undivided Family or transfer by a dealer of his business shall be deemed to be cessation or discontinuance of business.

#### Short Comments

##### Section 3 "Incidence and levy of tax"

This section is the charging section under the VAT Act. It levies tax on taxable turnover of sales, purchases or both which is according to section 4 or 5.

<sup>11</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>12</sup> **[3-A. Levy of Additional Tax.** (1) Notwithstanding anything to the contrary contained in any other provision of this Act but subject to the provisions of sub-section (2), every dealer liable to pay tax under this Act shall be liable to pay in addition to the tax payable under any other provision of this Act, an additional tax on the taxable turnover of sale or purchase of goods or both, at such rate not exceeding five percent, as may be specified by the State Government by notification in the Gazette. Different rates may be specified in respect of different goods or different classes of goods.

(2) No additional tax under sub-section (1) shall be levied and paid on,-

- (a) The turnover of sale or purchase or both as the case may be, of goods specified in column 2 of Schedule-I and Schedule-III;
  - (b) the turnover of sale or purchase or both as the case may be, of goods declared to be of special importance in the inter-State trade or commerce under Section 14 of the Central Sales Tax Act, 1956;
  - (c) such sale or purchase, or sale or purchase of such goods by such class of dealers, as may be specified in the notification issued by the State Government under Clause (c) of Section 7.
- (3) The amount paid under sub-section (1) shall be eligible for input tax credit in accordance with the provisions of Section 13.
- (4) Any dealer who avails the facility of composition of tax under Section 6 shall also be eligible for availing the facility of composition with respect to additional tax.
- (5) The additional tax leviable under this Section shall cease to be levied after a period of five years from the date of publication of the notification issued by the State Government.

**4. Levy of tax on turnover of sale.** (1) The tax, payable on sale of goods under this Act, shall be levied and paid on the taxable turnover of sale of-

- (a) goods named or described in column (2) of the Schedule II, at every point of sale and at the rate of four percent;
- (b) goods named or described in column (2) of the Schedule III at every point of sale and at the rate of one percent;
- (c) goods named or described in column (2) of the Schedule IV at the point of sale mentioned in column (3) and at the rate of tax mentioned in column (4) of the Schedule against such goods;

<sup>12</sup> . Inserted vide Noti. No. 1125(3)/79-V-1-09-1 (ka) 11/2009 dt. 27.08.09 w.e.f. 27.5.2009 (U.P. Act No. 21 of 2009).

- (d) goods named or described in column (2) of the Schedule V at every point of sale and at the rate of twelve and half percent;

**Provided** that in respect of goods mentioned in column (2) of Schedule IV, the State Government may, by notification, declare different rates of tax, not exceeding fifty percent, in respect of different goods or class of goods.

**Provided further** that turnover of sale of textile and sugar except khandsari sugar, mentioned or described in column (2) of Schedule II, shall be liable to tax from such date and at such rate, not exceeding four percent, as may be notified by the State Government.

- (2) In respect of any entry of any Schedule, explanation or clarification, if any, given in footnotes of such Schedule, shall be deemed to be a part of such entry of such Schedule.
- (3) Where a dealer, selling any goods, <sup>13</sup>[is not entitled to realize or has not realized if entitled] amount of tax, payable by him on the turnover of sale of such goods, separately on tax invoice, sale invoice, cash memo or bill from the purchaser of the goods, amount of tax payable by him on the turnover of such sale shall be computed using the formula-

$$\text{Amount of tax payable} = \frac{\text{Rate} \times \text{aggregate of sale prices}}{100 + \text{Rate of tax}}$$

- (4) The State Government may, by notification in the Gazette, amend any entry of any Schedule, add any new entry in any of the Schedule and in the like manner omit any entry of any Schedule.

[See Rules 7, 8, 9, 11]

- (5) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

<sup>13</sup> . Substituted for the words "is not entitled to realize" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

**5. Levy of tax on turnover of purchase.** (1) Every dealer, who, in the course of business, makes purchase of <sup>14</sup>[any taxable] -

- (i) <sup>15</sup>[goods other than] non-vat goods from a person other than a registered dealer; or
- (ii) non-vat goods, the earlier sale or purchase of which has not suffered levy of tax either under the provisions of the erstwhile Act or under the provisions of this Act, <sup>16</sup>[shall be liable to pay tax levied on] the turnover of purchase of such taxable goods except non-vat goods or turnover of purchase of non-vat goods or both, as the case may be.

[See Rules 11, 17]

- (2) Tax on the turnover of purchase of taxable goods referred to in clause (i) or clause (ii) of sub-section (1) shall be levied at the same rate at which turnover of sale of such goods is liable to tax in accordance with the provisions of section 4.

**6. Composition of tax liability.** (1) Notwithstanding anything contained in any other provision of this Act, but subject to other provisions of this section and the directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover of sale in lieu of tax that may be levied by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

<sup>17</sup>**Provided** that in the case of a dealer not being a dealer executing works contract, who carries on exclusive business of re-sale of goods within the State after their purchase from a registered dealer within the State and whose turnover on sale of such goods, for any assessment year, does not exceed fifty lakh rupees or his turnover, for the assessment year preceding that assessment year, has exceeded fifty lakh rupees, the State Government may notify a rate percent on sale of such goods. Different rates may be notified for different goods;]

<sup>14</sup> . Substituted for the words “any taxable goods” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>15</sup> . Substituted for the words “other than” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>16</sup> . Substituted for the words “shall be liable to pay tax on” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>17</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the first proviso of sub-section (1) of Section 6 was as under:-

Provided that in case of a dealer who carries on exclusive business of re-sale of goods within the State after their purchase from within the State and whose turnover of sale of such goods, for any assessment year, is neither likely to exceed fifty lakh rupees nor his such turnover, for the assessment year preceding such assessment year, has exceeded fifty lakh rupees, the State Government may notify a rate percent on sale of such goods. Different rates may be notified for different goods:

**Provided further** that any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

- <sup>18</sup>[(2) Any dealer, who opts for payment of composition money under this section, shall not be entitled to claim credit of input tax under section 13 in respect of purchase of goods which are re-sold by him during the period in which he is liable to pay composition money under this section or in respect of purchase of goods which have been used, consumed or utilized in manufacture or processing of goods which are sold by him during such period and where the dealer has claimed credit of input tax in respect of any such goods, the same shall stand reversed and the dealer shall pay such amount of reverse input tax credit in accordance with the provisions of section 14.
- (3) Any dealer who opts for payment of composition money under this section shall not issue any tax invoice and shall not realize any amount from the purchaser by way of tax or by giving it a different name or colour.
- (4) A dealer who makes purchase of any goods from a dealer, who has opted for payment of composition money under this section, shall not be entitled to claim credit of input tax in respect of goods purchased from such dealer.]
- [See Rules 20(2), 20(3), 45(10), 73]
- <sup>19</sup>[(5) Where the turnover of sales, in case of a dealer who has opted to pay composition money under first proviso of sub-section (1) exceeds Rs. fifty lakh, he shall be liable to pay tax at the rate provided under section 4 on and from the day the turnover exceeds Rs. fifty lakh.

<sup>18</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution sub-sections (2), (3) and (4) of Section 6 were as under:-

(2) Any dealer, who opts for payment of lump sum under this section, shall not be entitled to claim credit of input tax under section 13 in respect of purchase of goods which are re-sold by him during the period in which he is liable to pay tax or lump sum, as the case may be, under this section or in respect of purchase of goods which have been used, consumed or utilized in manufacture or processing of goods which are sold by him during such period and where the dealer has claimed credit of input tax in respect of any such goods, the same shall stand reversed and the dealer shall pay such amount of reverse input tax credit in accordance with provisions of section 14.

(3) Any dealer who opts for payment of tax or a lump sum, as the case may be, under this section shall not issue any tax invoice and shall not realise any amount from the purchaser of goods by way of tax or by giving it a different name or colour.

(4) A dealer who makes purchase of any goods from a dealer, who has opted for payment of tax or a lump sum, as the case may be, under this section, shall not be entitled to claim credit of input tax in respect of goods purchased from such dealer.

<sup>19</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

**Explanation:-** For the purposes of sub-sections (1) and (5) where a dealer carries on business during a part of an assessment year, annual turnover shall be partial amount of fifty lakh rupees which shall be computed on pro rata basis and for this purpose part of a calendar month shall be counted as a full month.]

### Short Comments

#### Section 6 “Composition of tax liability”

**Explanatory note:** Section 6 is almost similar to section 7-D of the UPTT Act. The new feature is that the dealer cannot claim input tax credit or it can charge the tax on sale once he has taken the composition scheme. The purchaser cannot claim ITC if the seller opted for Composition Scheme.

Once the Composition Scheme is entered into, neither of the parties could resile from it.

*Bhadauria Gram Seva Sansthan vs. ACST 2006 NTN Vol.(29) 263(All)(FB).*

Dealer challenged the scheme on the basis of discrimination between dealers and has sought mandamus for acceptance of application - The distinction of turnover/stock can be made in composition scheme announced by the State Government - The Scheme is for small dealers who find it difficult to maintain regular account books - The dealers having stock more than Rs. 25 lacs constitutes a separate class - No discrimination - The State has wider powers under tax statutes.

NATIONAL TAX NEWS & VIEWS  
Lalaji & Sons vs. State of U.P. 2003 NTN (Vol. 22) 467

Composition Order is in the nature of agreement and is not revisable in exercise of revisional powers by Revisional Authority.

*Hindustan Construction Corpn. Gzd. vs. C.T.T. U.P. 2007 NTN (Vol. 34) 281*

Department can not challenge the agreement of compounding.

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*Khan Thekedar 2007 NTN (Vol. 33) 3*

A dealer, who has opted scheme of payment of composition money in lieu of tax payable by him on the turnover of goods but has neither manufactured any goods nor sold any goods during the period of composition, is liable to pay composition money.

*Bhadauria Gram Sewa Sansthan vs. A.C.S.T. 2006 NTN (Vol. 29) 263*

Dealer claiming benefit of Compounding Scheme on bricks produced during the period of Compounding Scheme – Whether tax can be levied on brick produced by a dealer during the period of Compounding Scheme? – Held – Compounding is in respect of tax payable on the turnover by the dealer. Admittedly bricks in stock were sold after 30-9-1992, during which applicant was not under Compounding Scheme, therefore, Tribunal rightly assessed the turnover relating to sale of brick.

*Arvind Brick Field vs. C.T.T. 2005 NTN (Vol. 28) 274*

Compounding agreement can be cancelled only when any fact has been concealed or any wrong details have been furnished.

*Vora Electric Service vs. State of U.P. 2005 NTN (Vol. 27) 160*

Order accepting composition application cannot be reviewed unless any concealment of fact, misrepresentation or any suppressed information was found.

*Vora Electric Service vs. State of U.P. 2005 NTN (Vol. 27) 160*

Reconstitution of Firm – Availability of benefit of compounding to new firm Compounding is a privilege given to the dealer and it is neither attached to business nor is transferable alongwith the business to new dealer.

*Narain Mahabir Prasad Sugar Cottage Ind. vs. State of U.P. (All.) 209*

**<sup>20</sup>[6-A. Compounding of tax and penalties in certain cases. (1)** *Notwithstanding anything to the contrary contained in any other provision of this Act, but subject to the directions of the Commissioner, the assessing authority may accept from any person other than registered dealer by way of composition money either in lump sum or at an agreed rate in lieu of tax or penalty leviable or impossible under this Act, where any person -*

- (a) *imports or attempts to import or abets the import of any goods, in contravention of the provisions of section 50 or section 51 with a view to evading payment of tax on sale of , -*
  - (i) *such goods; or*
  - (ii) *goods manufactured, processed or packed by using such goods; or*
- (b) *transports, attempts to transport any taxable goods in contravention of any provision of this Act; or*
- (c) *carries taxable goods in a vehicle or vessel and such goods has not been shown in the accounts, registers and other documents maintained in regular course of business*  
*a sum not less than the amount of tax involved under any provision of this Act but not more than three times of the amount of such tax or forty percent of the value of goods involved whichever is higher.*
- (2) *The provision of sub-section (1) shall not apply to those persons who do not disclose, before the assessing authority, the goods contained in the vessel or vehicle.*
- (3) *Any person who has paid composition money under sub-section (1) shall not for the same goods be required to,-*
  - (a) *furnish the return of the tax period under section 24;*
  - (b) *take registration under section 17;*
  - (c) *be assessed under any provision of this Act;*
  - (d) *be liable to tax under section 3.*

<sup>20</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**Explanation-** For the purposes of this section the assessing authority includes an officer not below the rank of Commercial Tax Officer empowered to exercise the powers under sections 45 or section 48 <sup>21</sup>[\*.]

**7. Tax not to be levied on certain sales and purchases.** No tax under this Act shall be levied and paid on the turnover of-

- (a) sale or purchase where such sale or purchase takes place -
  - (i) in the course of inter-state trade or commerce; or
  - (ii) outside the State; or
  - (iii) in the course of the export out of or in the course of the import into, the territory of India;

[See Rule 7]

- (b) sale or purchase of any goods named or described in column (2) of the Schedule I or;
- (c) such sale or purchase; or sale or purchase of such goods by such class of dealers, as may be specified in the notification issued by the State Government in this behalf:

**Provided** that while issuing notification under clause (c), the State Government may impose such conditions and restrictions as may be specified.

**Explanation:** For the purposes of this Act, sections 3, 4 and 5 of the Central Sales Tax Act, 1956, shall apply respectively for determining whether or not a particular sale or purchase of any goods falls under any of the sub-clauses (i), (ii) and (iii) of clause (a).

#### Section 7 "Tax not to be levied on certain sales and purchases"

The scope of erstwhile Section 4 UPTT Act has been enlarged. It has been made more comprehensive so as to exclude the taxability in certain conditions enumerated in the above clauses instead of putting an exclusionary clause in each relevant section.

**8. Liability on fraudulent issuance and procurement of tax invoice and sale invoice.** Notwithstanding anything to the contrary contained in any other provision of this Act and without prejudice to the provisions of section 54, where it is found that any dealer has issued tax invoice or sale invoice without making actual sale of goods shown in such invoice then the selling dealer and the purchasing dealer who has received such invoice, jointly and severally, be liable for payment of an amount equal to amount of tax shown to have been charged in such invoice:

**Provided** that before taking any action under this section, persons concerned shall be given an opportunity of being heard.

[See Rules 72, 73]

<sup>21</sup> . The words "or posted at the check post" omitted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010).

**9. Liability of firm, association of persons and Hindu undivided family.** (1) Subject to the provisions of this Act, where the dealer is a firm or association of persons or a Hindu Undivided Family -

- (a) such firm or association and every person who is a partner of such firm or a member of such association or Hindu undivided family shall be liable jointly and severally for the payment of tax assessed and penalty imposed or any amount due under this Act and is payable by such firm or association or Hindu Undivided Family; and
- (b) where such firm or association or Hindu Undivided Family has discontinued its business, -
  - (i) tax, including penalty payable under this Act by such firm or association or Hindu Undivided Family up to the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place ; and
  - (ii) every person who was at the time of such discontinuance a partner of such firm or a member of such association or Hindu Undivided Family shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm or association or Hindu Undivided Family whether such assessment or penalty is imposed prior to or after such discontinuance, and, subject to as aforesaid, the provisions of this Act shall apply as if every such person or partner were himself a dealer:

**Provided** that where it is found that a change has occurred in the constitution of the firm or association, the firm or association as reconstituted as well as its members of the firm or association, as it existed before re-constitution, shall jointly and severally be liable to pay tax including penalty, if any, due from such firm or association for any period before its reconstitution.

- (2) Where the ownership of the business of any dealer, liable to pay, tax is transferred, the transferor and transferee shall jointly and severally be liable to pay the tax including penalty, if any, payable in respect of such business till the time of such transfer, whether the assessment is made or the penalty is imposed prior to or after such transfer.
- (3) Where a tax including penalty, if any, is recovered from a reconstituted firm or association under the proviso to sub-section (1) or from a transferee under sub-section (2), such firm or association or a transferee shall be entitled to recover the same from the person who was originally liable to pay the tax.

**10. Tax due from deceased person payable by his representatives.** (1) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer:

**Provided** that -

- (a) in respect of any liability of the deceased, his executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hand;
  - (b) any proceeding including the proceeding for recovery may be continued from the stage at which it was pending at the time of the death of the dealer.
- (2) The provisions of sub-section (1) shall *mutatis mutandis* apply to a dealer being a partnership firm, which may stand dissolved in consequence of the death of any partner.

[See Rule 47]

**11. Tax liability in case of minor or incapacitated person.** In the case of any guardian, trustee or agent of any minor or other incapacitated person, carrying on business on behalf of and for the benefit of such minor or other incapacitated person, the tax levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such person or other incapacitated person, if he were of full age and sound mind and if he were conducting the business himself; and all the provisions of this Act and the rules made thereunder shall apply accordingly.

**12. Liability in case of Court of Wards.** In the case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator General, the Official Trustee or any Receiver or Manager (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by him or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General, Official Trustee, Receiver or Manager, in like manner and in the same terms as it would be leviable upon and recoverable from the dealer, as if he were conducting the business himself, and all the provisions of this Act and the rules made thereunder shall apply accordingly.

**13. Input tax credit.** (1) Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of taxable goods purchased from within the State and mentioned in such clauses, subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause:

- (a) Subject to conditions given in column (2), every dealer liable to pay tax, shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such taxable goods are purchased on or after the date of commencement of this Act, be allowed credit of the amount, as input tax credit, to the extent provided in column (3) of the table below:

**TABLE**

<b>Serial No.</b>	<b>Conditions</b>	<b>Extent of amount of Input tax credit</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	If purchased goods are re-sold- (i) inside the State, or (ii) in the course of inter-state trade or commerce; or (iii) in the course of the export of the goods out of the territory of India.	Full amount of input tax
2.	If purchased goods are used in manufacture of (i) any goods except non-vat goods and where such manufactured goods are sold in the course of the export of the goods out of the territory of India; or (ii) any taxable goods except non-vat goods and where such manufactured goods are sold either inside the State or in the course of inter-state trade or commerce	Full amount of input tax
<sup>22</sup> 3.	<i>If purchased goods are –</i>	<i>Partial amount of input tax, which is</i>

<sup>22</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009). Before substitution the entry at Sl. No. 3 of clause (a) of sub-section (1) of Section 13 was as follows:

3.	If purchased goods are – (i) transferred or consigned outside the State otherwise than as a result of a sale; or (ii) used in manufacture of any taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.	Partial amount of input tax, which is in excess of rate prescribed under sub-section(1) of section-8 of the Central Sales Tax Act, 1956 of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government
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	<p>(i) transferred or consigned outside the State otherwise than as a result of a sale; or</p> <p>(ii) used in manufacture of any taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.</p>	<p>in excess of four percent of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government]</p>
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<sup>23</sup>(b) Input tax credit of full amount of input tax shall be allowed to every dealer, liable to pay tax, in respect of capital goods purchased on or after the date on which dealer becomes liable for payment of tax under this Act, if such goods are to be used in,-

- (i) manufacture of any taxable goods except non-VAT goods and where such manufactured goods is,-
- A- sold within the State or in the course of inter-State trade or commerce or in the course of the export of the goods out of the territory of India; or
- B- transferred or consigned outside the State otherwise than as a result of a sale; or
- (ii) manufacture of any exempt goods except non-VAT goods and where such manufactured goods are sold in the course of export of the goods out of the territory of India; or
- (iii) generation of electrical energy, when such energy is used for the manufacture of any taxable goods other than non VAT goods and such manufactured goods, is,-

<sup>23</sup> . Substituted vide Noti. No. 1724(2)/LXXIZ-V-1-1 (ka) 14/2008 dt. 29.08.08 w.e.f. 16.07.08 (U.P. Act No. 19 of 2008). Before substitution the clause (b) of sub-section (1) of Section 13 was as follows:

(b) Input tax credit of full amount of input tax shall be allowed to every dealer, liable to pay tax, in respect of capital goods purchased on or after the date on which dealer becomes liable for payment of tax under this Act, if such goods are to be used in manufacture of any-

(b.1) taxable goods except non-vat goods and where such manufactured goods are -

(i) sold within the State, in the course of inter-state trade or commerce or in the course of the export of the goods out of the territory of India; or

(ii) transferred or consigned outside the State otherwise than as a result of a sale;

(b.2) exempt goods except non-vat goods and where such manufactured goods are sold in the course of export of the goods out of the territory of India.

- A- sold within the State or in the course of inter-State trade or commerce or in the course of export of the goods out of territory of India; or
- B- transferred or consigned outside the State otherwise than as a result of a sale; or
- (iv) generation of electrical energy where such energy is used for the manufacture of any exempt goods and such exempt goods is sold in the course of export of the goods out of territory of India;
- and the amount of input tax shall be computed and be claimed in prescribed manner.

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

- (a) if 90% of electrical energy generated is consumed for the purposes referred to in sub-clauses (iii) and (iv), 100% Input Tax may be claimed and be allowed as Input Tax Credit.
- (b) The expression 'generation of electrical energy' shall mean generation of electrical energy by using captive power plant including repairing and maintenance there.]
- (c) Subject to conditions mentioned in column (2) of the table under clause (a), every dealer who is liable to pay tax on January 1, 2008 shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such goods have been purchased within a period of six months ending on the date of commencement of this Act and where such goods-
- (i) are held in opening stock on January 1, 2008 in the same form and condition in which they were purchased; or
- (ii) have been used in manufacture of finished or semi-finished goods (in the process of manufacture of taxable goods except non-vat goods) or finished taxable goods, except non-vat goods and such finished or semi-finished goods are held in opening stock on January 1, 2008; and
- (iii) have suffered levy of tax under the erstwhile Act, be allowed credit of partial or full, as provided in column (3) against relevant entry of the said table, amount of input tax as input tax credit and for this purpose amount of input tax shall be computed in the prescribed manner.

[See Rule 19]

- (d) Subject to conditions mentioned in column (2) of the table under clause (a), every dealer, who becomes liable to pay tax on a date after January 1, 2008, shall, in respect of all taxable goods, except non-vat goods, capital goods and captive power plant, where such taxable goods have been purchased on or after January 1, 2008 but within a period of six months ending on the day preceding the date on which such dealer has become liable to pay tax and -
- (i) are held in opening stock, on the date on which the dealer has become liable to pay tax, in the same form and condition in which they were purchased;
  - (ii) have been used in manufacture of semi-finished goods (in the process of manufacture of taxable goods except non-vat goods) or finished taxable goods, except non-vat goods and such semi-finished or finished goods as are held in opening stock on the date on which the dealer has become liable to pay tax; or
  - (iii) have been purchased from a registered dealer after obtaining sale invoice bearing name and address of purchasing dealer, be allowed credit of partial or full, as provided in column (3) against relevant entry of the said table, amount of input tax as input tax credit and for this purpose amount of input tax shall be computed in the prescribed manner.
- (e) Every dealer who is liable to pay tax and who opts for payment of tax or lump sum under provisions of section 6, shall, in respect of all taxable goods, except non-vat goods, capital goods and captive power plant, which are held in stock at the end of the period during which provisions of section 6 remain applicable, be allowed credit of full or partial amount of input tax, as the case may be, in accordance with provisions of clauses (a) to (d) above, as may be applicable:

**Provided** that unless the State Government, in exercise of its powers under second proviso of sub-section (1) of section 4, issues notification prescribing rate of tax and point of tax in respect of sale of sugar or textile referred to therein, no facility of input tax credit, in respect of goods purchased for use in manufacture of said goods, shall be allowed under any of the aforesaid clauses.

<sup>24</sup>["(f) Notwithstanding anything to the contrary contained in this sub-section where goods purchased are resold or goods manufactured or processed by using or utilizing such purchased goods are sold, at the price which is lower than –

- (i) purchase price of such goods in case of resale; or
- (ii) cost price in case of manufacture.

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

<sup>25</sup>**[Explanation: For the purposes of this sub-section,-**

- (a) re-sale of goods includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.
- (b) goods required for use in manufacture of any goods shall not include goods required for running of captive power plant.]

- (2) Notwithstanding anything to the contrary in any provision of sub-section (1) credit of full or partial amount of input tax, in respect of all taxable goods, may be allowed to **co-developers & vendors** developer and units established in Special Economic Zone for authorized operations subject to such conditions as may be specified in the notification issued by the state government.

**Explanation** - For the purposes of this sub-section the word "co-developer" or "developer" and expressions "Special Economic Zone" or "authorised operations" shall have the meanings assigned to them in the Special Economic Zones

<sup>24</sup> . Inserted vide Noti. No. 1101(2)/LXXIX-V-1-10-1 (ka) 18/10 dt. 20.08.2010, w.e.f. 20.08.2010 (U.P. Act No. 19 of 2010).

<sup>25</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the Explanation was as follows:

**(w.e.f. 16.07.2008 to 27.02.2009)**

**Explanation:** For the purposes of this sub-section, for entry against serial No. 1 of the table under Clause (a), re-sale of goods includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

**(w.e.f. 1.1.2008 to 15.07.2008)**

**Explanation:** For the purposes of this sub-section, -

(a) for entry against serial no. (1) of the table under clause (a), re-sale of goods includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(b) goods, required for use in manufacture of any goods, do not include captive power plant, or parts, components and accessories of a captive power plant or any other goods required for running or maintenance of a captive power plant.

<sup>26</sup>[(3)(a) Where purchased goods are to be used or disposed of partially for the purpose specified in clause (a) of sub-section (1) or otherwise, the input tax credit may be claimed and be allowed proportionate to the extent they are used or disposed of for the purposes specified in such clause,

(b) Subject to the provisions of this section where during process of manufacture of vat goods, exempt goods and non vat goods except as by product or waste product are produced, the amount of input tax credit may be claimed and be allowed in proportion to the extent they are used or consumed in manufacture of taxable goods other than non vat goods and exempt goods

**Explanation:-** For the purpose of this sub-section the "exempt goods" shall include taxable goods other than non vat goods, which are disposed of otherwise than by way of sale within the State or in the course of inter-State- trade or commerce or sale in the course of export of goods out of the territory of India or sale out side the State.]

- (4) Except as provided otherwise in any provision of this Act or the rules framed thereunder, in respect of purchase of any goods in respect of which facility of input tax credit is admissible, input tax credit of the full amount of input tax can provisionally be claimed on the date on which tax invoice related to such goods is received by the dealer and where dealer himself is liable to pay tax in respect of purchase of any goods, on the date on which amount of tax payable is accounted for by the dealer in the account of <sup>27</sup>[tax payable by him and possesses the proof of payment of tax on the turnover of purchase liable to tax.]
- (5) Where a dealer has claimed input tax credit in respect of any goods under sub-section (4), but such goods; or goods manufactured by using such goods; or goods purchased by him or consuming such goods, are consigned outside the State or disposed of or dispossessed in a manner for which facility of input tax credit is not admissible or such facility is admissible for partial amount of input tax, the amount which is the difference, of the full amount of input tax and admissible amount of input tax credit, shall be deducted from the amount of the input tax credit, already claimed by the dealer by debiting such amount into the account of input tax credit maintained by him.

**Provided** that before debiting the amount of input tax credit reasonable opportunity of being heard shall be given to the dealer.

<sup>26</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (3) of Section 13 was as follows:

(3) Where purchased goods are to be used or disposed of partially for the purposes specified in clause (a) of sub-section (1), the input tax credit shall be claimed and allowed proportionate to the extent they are used or disposed of for the purposes specified in such clause.

<sup>27</sup> . Substituted for the words "tax payable by him" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

- (6) In the circumstances referred to in sub-section (5), the amount of difference of full amount of input tax and admissible amount of input tax credit, shall be debited by the dealer into the account of input tax credit maintained by him on the day on which –
- (i) goods, in respect of which credit of full amount of input tax was claimed; or
  - (ii) goods, manufactured by using goods in respect of which credit of full amount of input tax was claimed; or
  - (iii) where goods, in respect of which credit of full amount of input tax was claimed, are used or consumed in packing of any goods, such packed goods, are consigned outside the State; or disposed of or dispossessed by the dealer in a manner for which facility of input tax credit is not admissible or such facility is admissible for partial amount of input tax:  
**Provided** that where the dealer discontinues his business, full amount of input tax, which was claimed under sub-section (4), in respect of-
    - (i) goods held by the dealer in the same form and condition in which those were purchased; or
    - (ii) goods which have been used in manufacture of any goods held by the dealer, (whether in semi-manufactured or manufactured state);
    - (iii) goods which have been used or consumed in packing of any goods held by the dealer, in closing stock on the day on which he has discontinued business, shall before end of the tax period prescribed for submission of the tax return for the tax period in which business is discontinued, all be debited by the dealer into the account of input tax credit maintained by him.
- (7) Except where-
- (a) purchased goods; or
  - (b) manufactured goods which are manufactured by using purchased goods; or
  - (c) packed goods which are packed by using or consuming purchased goods are to be sold in the course of the export of the goods out of the territory of India, no credit of any amount of input tax shall be claimed by a dealer under sub section (4) and no facility of input tax credit shall be allowed to a dealer in respect of purchase of any goods where -
    - (i) sale of such goods by the dealer is exempt from payment of tax under clause (c) of section 7; or

- (ii) such goods are to be used or consumed in manufacture or packing of any goods and sale of such manufactured or packed goods by the dealer is exempt from payment of tax either under clause (b) or clause (c) of section 7.

<sup>28</sup>[(iii) such goods are for transfer of right to use such goods.]

- (8) Amount of admissible input tax credit for a tax period and for an assessment year shall be computed in the prescribed manner and shall be claimed and allowed within such time and in such manner as may be prescribed.

<sup>29</sup>[(9)(a) Where any goods, purchased from within the State, are sold by a principal through a selling agent or where any goods are purchased by a purchasing agent on behalf of a principal, input tax credit, in respect of purchase of such goods, shall be claimed by and be allowed to the principal in such manner as may be prescribed.]

<sup>30</sup>[(b) Where works contract is partially executed by a sub contractor, the amount of input tax credit, in respect of purchase of goods involved in the execution of works contract shall be claimed by and be allowed to the contractor or such sub contractor to the extent of purchase of goods by them.]

- (10) Every dealer, who claims input tax credit under this section, shall, in respect of input tax, input tax credit and inventory of goods, maintain such records and furnish such statements as may be prescribed.

- (11) Where it appears to the assessing authority that amount of input tax or amount of input tax credit shown in any statement furnished by any dealer is incorrect or is not worthy of credence, it may, after giving reasonable opportunity to such dealer and after making such inquiry as it may deem fit, determine the amount of input tax or amount of input tax credit, as the case may be, by making an order in writing:

**Provided** that where matter relates to any tax return submitted under section 24 or in any assessment proceedings under any section of this <sup>31</sup>[Act], proceedings shall be completed in accordance with provisions of relevant sections.

<sup>28</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

<sup>29</sup> . Sub-section (9) renumbered as (9)(a) vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>30</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>31</sup> . Substituted for the word "Ordinance" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>32</sup>**[Explanation]** For the purposes of this section, –

- (i) goods for use in manufacture of any goods includes goods required for use, consumption or utilization in manufacture or processing of such goods or goods required for use in packing of such manufactured or processed goods;
- (ii) manufacture of any goods includes processing of such goods and packing of such manufactured or processed goods; and
- (iii) where during the process of manufacture of any taxable goods any exempt goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of taxable goods. Conversely, where during the process of manufacture of any exempt goods any taxable goods are produced as by-product or waste-product; it shall be deemed that purchased goods have been used in the manufacture of exempt goods.

<sup>33</sup>*[(iv) where during the process of manufacture of any vat goods any non-vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of vat goods. Similarly, where during the process of manufacture of any non vat goods any vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of non vat goods.]*

[See Rules 21, 24, 26, 27, 28, 29, 30]

**14. Reverse input tax credit.** (1) Consistent with the provisions of this Act, the State Government may prescribe the circumstances in which and the goods in respect of which input tax credit shall be neither claimed nor allowed.

- (2) Where, in respect of any goods, a dealer has already claimed input tax credit against the provisions of this Act or the rules framed thereunder or has wrongly claimed input tax credit in respect of any goods, benefit of input tax credit to the extent it is not admissible, shall stand reversed and such amount of reverse input tax credit shall be deducted from the amount of input tax credit already claimed by the dealer in the tax period in which event giving rise to reverse input tax credit has occurred:

<sup>32</sup> . Substituted for the word, figure and brackets “Explanation (1)” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

<sup>33</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

**Provided** that where event, giving rise to reverse input tax credit, comes to the notice of the dealer after the tax return, for the tax period in which such event has occurred, has been submitted, the dealer shall be liable to pay such amount of reverse input tax credit within thirty days after the event comes to the notice of the dealer, along with simple interest at a rate of fifteen percent per annum for the period commencing on the date following the last date prescribed for submitting tax return of the tax period in which event has occurred and ending on the date on which amount has been deposited.

[See Rules 22, 23, 25, 28, 31]

**15. Net amount of tax payable and treatment of input tax credit exceeding tax liability.** (1) For any tax period, net amount of tax payable shall be computed using the following equation:

**Net amount of tax payable for any period = Gross amount of tax payable for such period – Gross amount of admissible input tax credit for the period**

Where-

- [a] gross amount of tax payable for the period is the aggregate of amounts of-
- (i) tax payable on the turnover of sale of goods made during the tax period;
  - (ii) tax payable on turnover of purchase of goods made during the tax period;
  - (iii) tax on the turnover of sale made during the period or any installment of lump sum falling during the period, as the case may be, payable under the provisions of section 6;
  - (iv) any other amount of tax payable; and
- [b] gross amount of admissible input tax credit for the period is the aggregate of amounts of-
- (i) input tax credit claimed in respect of purchase of goods made during the period less amount of reverse input tax credit, if any;
  - (ii) input tax credit carried forward from the immediately preceding tax period;
  - (iii) any installment of input tax credit in respect of goods held in opening stock on the date from which dealer has become liable to pay tax or in respect of purchase of capital goods;

- (iv) input tax credit in respect of goods held in opening stock on the date on which, in case of a dealer who has opted for payment of tax or a lump sum under section 6 of this Act, provisions of section 6 cease to apply and the dealer continues his business:

**Provided** that where a dealer has been allowed moratorium for payment of tax under section 42, gross amount of tax payable for the period shall not include amount in respect of which facility of moratorium is applicable. Amount for which facility of moratorium is applicable shall be paid by the dealer separately in accordance with provisions of section 42.

- (2) If, for any tax period, gross amount of admissible input tax credit under sub-section (1) exceeds the differential amount of gross amount of tax payable under that sub-section and the aggregate of amounts of tax paid by the dealer towards tax for such tax period, the excess amount of admissible input tax credit may be adjusted by the dealer against amount of tax payable in the tax return of the corresponding tax period under the Central Sales Tax Act, 1956 and where gross amount of such admissible input tax credit is a negative figure, the dealer, while computing net amount of tax payable under sub-section (1), shall add such amount to gross amount of tax payable by the dealer.

**Explanation:** For the purpose of this sub-section, expression "aggregate of amounts of tax paid by the dealer towards tax of such tax period" shall mean the aggregate of amounts of-

- (a) tax deposited by the dealer towards tax of such tax period;
- (b) tax deducted at source under provisions of section 34 in respect of any sale of goods where such tax is deducted during such tax period; and
- (c) refund adjusted towards tax of such tax period:

**Provided** that amount under clause (a), (b) or (c) shall not be included in the aggregate of amounts of tax paid by the dealer towards tax of such tax period unless the dealer furnishes adequate documentary proof in respect thereof alongwith tax return of such tax period.

- (3) Any excess amount of input tax credit left over after adjustment as provided in sub-section (2) shall be carried forward and be added to the amount of input tax credit for the next tax period:

<sup>34</sup>**Provided** that in case of a dealer whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority shall allow provisional refund of excess amount of input tax credit for any tax period in accordance with the provisions of section 41.]

- (4) Where a dealer has submitted returns for all tax periods of an assessment year, and if any amount of excess admissible input tax credit still exists according to the tax return of the last tax period, such excess amount of admissible input tax credit, subject to provisions of section 40, shall be refunded to the dealer within thirty days after the last date prescribed or allowed for submission of the return of last tax period of such assessment year.

**Provided** that excess amount of admissible input tax credit remaining in balance on the last day of the assessment year in which dealer has become liable for payment of tax, shall, subject to provision of sub-section (3), be carried forward to the first tax return of the next assessment year and any excess amount of input tax credit according to the tax return of the last tax period of later assessment year shall be refunded to the dealer within thirty days after the last date prescribed or allowed for submission of return of the last tax period of the such later assessment year.

- (5) Notwithstanding anything contained in sub-section (4) where a dealer discontinues business, refund of any excess amount of admissible input tax credit relating to last tax period of the assessment year during which business has been discontinued shall be allowed within Ninety days after the date of passing of assessment order for such assessment year.
- (6) Where tax return for any assessment year has not been submitted by the last date prescribed or allowed for submission of tax return of the last tax period of the assessment year, excess amount of admissible input tax credit, if any, for such assessment year, subject to provisions of sections 40 shall be refunded to the dealer within a period of Ninety days after the assessment order in respect of such assessment year has been passed.
- (7) Notwithstanding anything contained contrary to in sub-section (3) and subsection (4), any excess amount of admissible input tax credit left over in the tax return of the last tax period of any assessment year, at the option of the dealer, may be carried forward to the tax return of the first tax period of the succeeding assessment year.

<sup>34</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the proviso was as follows:

Provided that in case of a dealer whose main business is to sell goods in the course of the export of the goods out of the territory of India, subject to provision of section 41, assessing authority shall, on the application of the dealer, along with the proof of export, allow provisional refund of excess amount of input tax credit for any tax period, after the dealer has submitted return for such tax period, within thirty days from the last date prescribed for submission of tax return or from the date of submission of tax return, whichever is later.

**16. Burden of proof.** In any assessment proceedings where any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act including claim of any amount as input tax credit, shall lie upon him and assessing authority shall presume the absence of such circumstances.

[See Rule 73]

### Short Comments

#### Section 16 “Burden of proof”

##### Additional Evidence – Condition for Acceptance

Burden of proof upon the dealer and additional evidence can be adduced only if it was wrongly refused by the Assessing Authority or which after exercise of diligence was not within his knowledge.

*C.S.T. vs. Abdul Ghani Banne Mian 2000 NTN (Vol. 16) 236*

##### Additional Evidence – No Objection Raised

Where evidence is allowed to be let in without objection, it would not be open to the party aggrieved to raise objection at a subsequent stage.

*Shree Chandra Rakesh Kumar vs. S.T.O. 1997 NTN (Vol. 11) 503*

##### Additional Evidence – Opportunity to the Appellant

The First Appellate Authority and the Tribunal should have granted an opportunity to the assessee to produce additional evidence at the appellate stage u/s 12-B of the Act.

*Mittal & Co. (India) Ltd. vs. C.T.T. 1995 NTN (Vol. 6) 232*

##### Additional Evidence – Opportunity of Rebuttal

While admitting additional evidence an opportunity of rebuttal should have been given to other party.

*C.S.T. vs. Rama Brick Field 2000 NTN (Vol. 17) 814*

Where an opportunity of rebuttal was not granted to the Department the case could not be remanded for the purpose.

*Shree Chandra Rakesh Kumar vs. C.S.T. 503*

##### Application and reason necessary

Forms filed before Appellate Authority without any application and without reasons for admission as additional evidence – Refusal to consider application justified.

*Vindhyabasi Pratishtan vs. C.S.T. 1997 NTN (Vol. 10) 134*

##### No vested right to adduce additional evidence

Penalty for delay in deposit of tax – Financial condition taken before Assessing Authority – Heart ailment affidavit filed at first appeal stage – No vested right to adduce additional evidence.

*Jain Sons vs. C.T.T. 2000 NTN (Vol. 16) 13*

### Chapter III

#### Registration, Security and Maintenance of Accounts

**17. Registration of dealers.** (1) Every dealer liable to pay tax under this Act shall obtain registration certificate issued by the prescribed registering authority in the prescribed form.

- (2) Except as provided under sub-sections (3), (4) and (5), every dealer liable to pay tax shall, for issue of registration certificate, apply to the registering authority within a period of thirty days from the date on which such dealer has become so liable, in the prescribed form and manner along with proof of deposit of registration fee of one hundred rupees:

**Provided** that a dealer who fails to apply for issue of registration certificate within the time prescribed, without prejudice to any other liability under this Act, may apply after depositing late fee at the rate of rupees one hundred for every month or part thereof for the period of delay.

[See Rules 32(1), 32(2), 32(3), 32(4), 32(6), 32(14), 38]

- (3) <sup>35</sup>[Subject to the provisions of sub-section (5), every dealer] who has held immediately before January 1, 2008 a registration certificate or a provisional registration certificate issued under the erstwhile Act and is liable to pay tax under this Act from January 1, 2008, shall be deemed a registered dealer with effect from January 1, 2008:

**Provided** that where a dealer was required to pay any fee for renewal of the registration certificate under the provisions of the erstwhile Act, if the same has not been paid, the registration certificate shall not be deemed valid unless such dealer deposits renewal fee along with late fee of one hundred rupees within a period of thirty days from January 1, 2008.

- (4) In the case of a dealer, who is liable for payment of tax under this Act from January 1, 2008 and whose application for issue of registration certificate under the erstwhile Act, is pending on January 1, 2008, shall be deemed a registered dealer under this Act with effect from January 1, 2008 if –
- (i) registration certificate is issued to him under the erstwhile Act; and

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<sup>35</sup> . Substituted for the words "Every dealer" vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010).

- (ii) the dealer deposits renewal fee payable under erstwhile Act and late fee payable under this Act, if any, within thirty days from the date on which registration certificate is issued to him under the erstwhile Act.

<sup>36</sup>[(5)(a)Every dealer who holds a valid registration certificate issued under the erstwhile Act and is liable to tax under this Act, shall submit to the registering authority or the assessing authority, as the case may be, an application in the prescribed form and in the prescribed manner, for issue of registration certificate by such authority relating to validity of such certificate under this Act, within a period of fifteen months from January 1, 2008:

<sup>37</sup>**Provided** that if the Additional Commissioner posted in Zone is satisfied that circumstances exist preventing the dealer to submit the Application within the stipulated period, he may condone the delay and direct the registering authority or assessing authority, as the case may be, to process the application in accordance with the provisions of this Act and rules framed thereunder:

**Provided further** that no application for condoning the delay shall be entertained unless it is accompanied with the proof of –

- (i) payment of late fees of rupees five hundred per month or part thereof upto December 31, 2010 and rupees one thousand per month or part thereof after December 31, 2010 for the period of delay;
- (ii) filing of tax returns of all tax periods upto the date of submitting application; and
- (iii) payment of net tax along with interest due under this Act in tax return under Clause

<sup>36</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the sub-section (5) of Section 17 was as follows:

(5) Every dealer who holds a registration certificate issued under the erstwhile Act shall present it before the registering authority or the assessing authority, as the case may be, for necessary endorsement by such authority relating to validity of such certificate under this Act, within sixty days from January 1, 2008 or date on which registration certificate is issued under the erstwhile Act, whichever is later in such form as may be prescribed.

<sup>37</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 01.01.08 (U.P. Act No. 19 of 2010). Before substitution proviso of clause (a) of sub-section (5) of Section 17 was as follows:

Provided that if the assessing authority or the registering authority is satisfied that sufficient reasons exist preventing the dealer to submit the application within the said period, he may extend the period not exceeding one month, as he thinks fit on the application of the dealer who has deposited late fees at the rate of Rs. five hundred per month or part thereof.

*Provided also that no application under this clause shall be rejected without giving opportunity to the applicant of being heard.]*

- (b) If a dealer who holds the registration certificate issued under erstwhile Act, fails to submit the application to the assessing authority or registering authority for validation and issue of registration certificate under this Act, within the period referred to in clause (a) in prescribed form and manner, the registration certificate shall cease to have effect.]
- <sup>38</sup>[(6)(a) *No railway container contractor, air cargo operator, courier service provider, or owner or person in-charge of a godown, cold storage or warehouse other than transporter who stores commercial goods, shall operate its business of taxable goods in the State without being registered with the registering authority in such manner as may be prescribed. Any operator of such business shall apply within prescribed period for his registration to the registering authority in the prescribed manner;*
- (b) *a railway container contractor, an air cargo operator, a courier service provider, an owner or person in-charge of a godown, cold storage or warehouse other than transporter or carrier, who stores commercial goods shall maintain such records as may be prescribed;*
- (c) *every transporter or carrier who is covered under the Carriage By Road Act, 2007 shall furnish to the registering authority, such informations and documents as may be prescribed.]*
- (7) Where the registering authority is satisfied that -
- (a) the application for issue of registration certificate is in order;
- (b) the information furnished is correct and complete; and

<sup>38</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the sub-section (6) of Section 17 was as follows:

(6)(a) No transporter, carrier or transport agent or railway container contractor shall operate its transport business in the State relating to taxable goods without being registered with the registering authority in such manner as may be prescribed.

(b) A transporter or carrier or transporting agent or railway container contractor already operating transport business in the State relating to taxable goods shall, within a period of thirty days from January 1, 2008, apply to registering authority for registration in the prescribed manner.

(c) If a transporter or carrier or transporting agent or railway container contractor carries or transports any taxable goods in contravention of the provisions of this Act or the rules made thereunder, his registration shall be liable to be cancelled or suspended for such period as may be determined by the registering authority after giving him a reasonable opportunity of being heard.

(d) Every transporter or carrier or transporting agent or railway container contractor operating its transport business shall maintain such records as may be prescribed.

(e) No taxable goods shall be delivered by the transporter or carrier or transporting agent or railway container contractor unless the prescribed requirements have been complied with.

- (c) any requisite fee has been deposited and security where needed is furnished, the registering authority may, after making such inquiry as it may deem necessary, cause the dealer to be registered and issue registration certificate in the prescribed form and prescribed time.
- [See Rules 32(7), 32(8), 32(9), 32(10), 32(11), 32(12), 34, 35, 36]
- (8) If the dealer who has applied for issue of registration certificate does not fulfill any of the conditions mentioned in this section, or if any person having interest in the business is a defaulter in payment of any dues, relating to any other business, under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act, the registering authority, shall, after giving a reasonable opportunity of being heard to the applicant, reject the application by an order in writing.
- <sup>39</sup>[(9) *Subject to the provisions of sub-section (5) the registration certificate issued under the erstwhile Act and validly held under this Act shall be valid with effect from the date of commencement of this Act.*]
- (10) Subject to provisions of sub-section (9), every registration certificate shall remain in force till the date of discontinuance of business:
- (11) The registering authority, after giving reasonable opportunity of being heard to the dealer, may cancel his registration certificate with effect from the date -
- on which dealers' liability for payment of tax has ceased; or
  - on which the dealer has discontinued the business; or
- [See Rule 16(2)]
- (c) of order of cancellation
- the dealer has obtained registration certificate by fraud or by misrepresentation of facts; or
  - the dealer has failed to furnish security or additional security, as the case may be; or
  - the dealer has transferred any prescribed form of declaration or certificate obtained by him to any person against provisions of this Act or the rules made thereunder; or

<sup>39</sup>. Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the sub-section (9) of Section 17 was as follows:

(9) Registration certificate issued under the erstwhile Act and validly held under this Act shall be valid with effect from such date as may be prescribed.

- (iv) the dealer has permitted some other person to carry on business in his name; or
  - (v) the dealer has issued any tax invoice to a dealer without making actual sale of goods; or
  - (vi) where a transporter or carrier or transporting agent or railway container contractor fails to file return or otherwise acts in contravention of the provisions of this Act or rules made thereunder;
  - (vii) a person acts in contravention of provisions of section 43;
  - (viii) where a dealer has failed to pay the tax, penalty or other dues within three months of the date such tax, penalty or other dues become payable.
  - (ix) registration certificate has been cancelled for any other sufficient cause.
- (12) During cancellation proceedings under sub-section (11), where the registering authority is satisfied that the dealer will succeed in causing revenue loss, pending action for cancellation under sub-section (11), it may, after assigning reasons therefore, suspend the registration certificate by passing an order in writing, for the period during which the proceedings are pending.
- Provided** that if the dealer, by furnishing adequate security to the satisfaction of the registering authority, satisfies that revenue loss, if any, shall be made up by him, the registering authority may revoke the suspension of registration certificate.
- <sup>40</sup>[(13) *During the period of suspension of registration certificate under sub-section (12), the dealer shall be treated as unregistered dealer. However if the registering authority himself by an order in writing drops the proceeding of cancellation or the order of suspension passed by the registering authority is set aside by any competent court or authority under this Act, the dealer shall be treated as registered dealer during such period.*]
- (14) The registering authority, after considering any information furnished or otherwise received and after making such inquiry as it may deem fit, amend from time to time any certificate of registration which shall take effect:

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<sup>40</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the sub-section (13) of Section 17 was as follows:

(13) During the period of suspension of registration certificate under subsection (12), the dealer shall be treated as unregistered dealer.

- (a) in the case of change in the name, ownership or place of business, or opening of a new place of business, from the date of the event necessitating the amendment whether or not information in that behalf is furnished within the time prescribed under section 75.
- (b) in case of any addition or modification in the description of any goods or class of goods in the certificate of registration, from the date of event necessitating the amendment if information in that behalf is furnished within the time prescribed under section 75 and in any other case, from the date of receipt of request for such addition or modification by the registering authority or the assessing authority, as the case may be;
- (c) in case of deletion of any goods or class of goods, from the date of order of deletion.

**Provided** that where in consequence of a change in the ownership of a business, liability for payment of tax of any dealer ceases, the amendment of the certificate of registration shall take effect from the date on which information in respect of such change is furnished under section 75.

**Explanation (I)** - Any amendment of a certificate of registration under this subsection shall be without prejudice to the provisions of section 75 for tax or penalty <sup>41</sup>[imposable under this Act.]

**Explanation (II)**- For the removal of doubts, it is hereby declared that where a registered dealer-

- (a) affects a change in the name of his business; or
- (b) is a firm and there is a change in the constitution of the firm without dissolution thereof; or
- (c) is a trustee of a trust and there is a change in the trustees thereof; or
- (d) is a guardian of the ward and there is a change in the guardian; or
- (e) is a "Hindu Undivided Family" and the business of such family is converted into a partnership business with all or any of the coparceners as partners thereof,

then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the dealer or the firm the constitution whereof is changed, or the new trustees, or the new guardian or, as the case may be, the partners of such partnership business, to apply for a fresh certificate of registration, and on information being furnished in the manner required by section 75, the certificate of registration shall be amended.

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<sup>41</sup> . Substituted for the words "imposable, or any prosecution for an offence under this Act" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

- (15) The registration certificate shall not be cancelled or amended by the registering authority on its own motion unless the dealer has been given reasonable opportunity of being heard.

[See Rules 72, 73]

**18. Voluntary Registration.** (1) On January 1, 2008, a dealer, who is otherwise not liable to pay tax, and if such dealer either carries on business or intends to carry on business, may apply at any time on or after January 1, 2008 for issue of registration certificate in the form and manner prescribed under sub-section (2) of section 17 alongwith proof of deposit of fee prescribed under that sub-section.

- (2) Every other dealer who has held immediately before January 1, 2008 a registration certificate under the erstwhile Act but otherwise is not liable to pay tax under this Act, shall be deemed a voluntarily registered dealer under this Act provided he informs the registering authority within a period of thirty days from date of commencement of this Act in the form prescribed under sub-section (5) of section 17, of his intention to remain registered dealer under this Act:

**Provided** that where a dealer was required to pay any fee for renewal of the registration certificate under the provisions of the erstwhile Act, if the same has not been paid, such dealer's registration certificate shall not be deemed valid unless such dealer deposits renewal fee along with late fee of one hundred rupees within a period of thirty days from the date of the commencement of this Act.

[See Rule 32(4)]

- (3) A dealer to whom registration certificate is issued under the erstwhile Act after January 1, 2008, shall be deemed a registered dealer if such dealer, after depositing renewal fee and late fee, if any, informs the registering authority or the assessing authority, as the case may be, in the prescribed form, within thirty days from the date on which registration certificate is issued to him, of his intention to retain registration certificate voluntarily.

[See Rule 32(5)]

- (4) Provisions of sub-sections (5) and (7) to (14) of section 17 shall *mutatis mutandis* apply to every registration certificate issued or held under this section.

[See Rules 72, 73]

**19. Security in the interest of revenue.** (1) Where it appears necessary to the registering authority so to do -

- (a) for the proper realisation of any tax, penalty or other sums due or payable under this Act; or
- (b) for the proper custody or use of forms prescribed under this Act or the rules framed thereunder; or
- (c) as a condition for the grant or, as the case may be, the continuance in effect of registration certificate,

[See Rule 32(8)]

it may, by an order in writing and for reasons to be recorded therein, direct, before the grant or as the case may be, at any time while such certificate is in force, that the dealer or the person concerned shall furnish, in the prescribed manner and within such time as may be specified in the order such security or, if dealer or person concerned has already furnished such security, additional security of any nature, as may be specified, for all or any of the aforesaid purposes:

[See Rule 37]

**Provided** that a valid security or an additional valid security, furnished for any of the aforesaid purposes under the provisions of the erstwhile Act, shall also be deemed valid for such purpose under this Act, if the dealer informs his assessor of his intention to continue in effect such security or additional security alongwith undertaking from the sureties on the stamp paper of proper face value and denomination.

- (2) No dealer or the person concerned shall be required to furnish any security or additional security under sub-section (1) by the registering authority unless he has had an opportunity of being heard, and the amount of such security or additional security that may be required to be furnished by any dealer shall also in no case exceed the tax payable, in accordance with the estimate of such authority on the turnover of the dealer for the assessment year in which such security is required to be furnished.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) the Commissioner may, in respect of any goods notified by the Government in this behalf, by a general order in writing, direct that a cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.
- (4) Where the security furnished by a dealer or person concerned under sub-section (1) is in the form of a surety bond and any surety dies or becomes insolvent, the dealer or the person concerned shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate under section 17 or section 18 or the authority issuing the forms referred to in clause (b) of sub-section (1), as the case may be, and shall within sixty days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

- (5) The assessing authority may, by order and for good and sufficient cause, forfeit the whole or any part of the security furnished by a dealer or the person concerned -
- (a) for realising any amount of tax, penalty or other amount payable by the dealer or the person concerned; or
  - (b) if any dealer or person concerned is found to have misused any of the forms referred to in sub-section (1) or to have failed to keep them in proper custody;
- Provided** that no order shall be passed under this sub-section without giving the dealer or the person concerned an opportunity of being heard.
- (6) Where by reason of an order under sub-section (5) the security furnished by any dealer or the person concerned is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be directed by the assessing authority.
- (7) The registering authority may -
- (a) refuse to grant registration certificate; or
  - (b) suspend any registration certificate already issued; or
  - (c) refuse to issue any registration certificate to any dealer or the person concerned, who has failed to comply with an order under sub-section (1) or sub-section (3), or with the provisions of sub-section (4) or sub-section (6), until the dealer or the person concerned has complied with such order or such provisions, as the case may be;
- Provided** that no order under clause (a) or clause (b) above, shall be passed without giving the dealer or the person concerned an opportunity of being heard.
- (8) The registering authority may, on application by the dealer or the person concerned, order the discharge of the surety or refund any amount or part thereof deposited by way of security by the dealer or the person concerned under this section or under any other section if it is not required for the purpose of this Act.
- (9) An appeal under section 55 shall lie against an order passed under this section.
- (10) Any person aggrieved by an order of the appellate authority may, within ninety days of the service of the order on him but after furnishing the security, file an appeal before the Tribunal under section 57.
- (11) The provisions of this section shall *mutatis mutandis*, apply in relation to security required to be furnished under the order of any authority under this Act or the Court.

[See Rules 72, 73]

### Short Comments

#### Section 19 "Security in the interest of revenue"

Unless estimate of turnover of a dealer for the assessment year in question is complete, no additional security can be asked for.

*Kanha Vanaspati Ltd. vs. D. C. (Appeal) 1998 NTN (Vol. 12) 171*

The Commissioner while issuing a circular under demanding security can adopt any reasonable method so that cash security is demanded of an amount of tax which would be payable – Commissioner circular quashed.

*Giraj Stone Crusher Pvt. Ltd. vs. C.T.T. 2003 NTN (Vol. 22) 294*

The order demanding additional security adversely effects a dealer and it is necessary to give dealer opportunity of hearing.

*Aditya Trading Co. vs. State of U.P. 2000 NTN (Vol. 17) 619*

**20. Quoting of Taxpayers' Identification Number.** (1) Every registered dealer shall quote his Taxpayers' Identification Number, allotted to him on his registration certificate, on all correspondence made, statement and return submitted, information furnished and documents issued by him and on each copy of treasury challan while depositing amount of tax, fee or any other dues under this Act.

- (2) While making sale of any taxable goods, if purchaser of such goods demands, the selling dealer shall show his registration certificate.
- (3) While making purchases of any taxable goods, every purchasing dealer shall give his name, address and Taxpayers' Identification Number, to the selling dealer and the selling dealer shall mention such particulars on tax invoice, sale invoice, transport memo, challan or transfer invoice, as the case may be, issued by him.
- (4) Every registered dealer shall present registration certificate issued to him before an officer or official authorized by the State Government whenever required by such officer or official in connection with any proceedings under this Act.
- (5) Every dealer who possesses Permanent Account Number allotted under the Income-Tax Act, 1961, shall mention such number on annual return of turnover and tax and shall furnish such number whenever required by any authority under this Act.

[See Rules 32, 33]

**21. Accounts and documents to be maintained by dealers.** (1) Every taxable dealer shall keep and maintain a true and correct account showing the value of the goods sold and bought by him, and in case the accounts maintained in the ordinary course do not show the same in an intelligible form, he shall maintain true and correct account in such form, as may be prescribed in this behalf.

- (2) A manufacturer liable to pay tax under this Act shall, in addition to the accounts referred to in other sub-sections, maintain stock books in respect of goods used or consumed in manufacture as well as the products obtained at every stage of production.
- Provided** that in the case of any class of manufacturers, the aggregate of whose turnover, in an assessment year does not exceed twenty five lakh rupees, the Commissioner, or in any other case the State Government, may relax the requirements of this sub-section subject to such conditions and restrictions as may be deemed fit to be specified.
- (3) The accounts, documents and the stock books required to be maintained under this section shall be preserved by the dealer for such period as may be prescribed.
- (4) Every registered dealer who consigns or delivers any goods or class of goods specified in the rules made thereunder or such other goods or class of goods, as the State Government may, by notification in the Gazette, specify in this behalf, of such quantity, measure or value as may be notified, to a dealer whether by reason of sale or otherwise, shall issue to the purchaser or consignee person of goods, a transport-memo in prescribed manner and in prescribed form obtained from the assessing authority having jurisdiction over the area in which principal place of business of such dealer is situated.
- [See Rule 40]
- (5) Except as provided in sub-section (4) every dealer liable to pay tax while consigning or delivering any taxable goods to another dealer whether as a result of sale or otherwise, shall issue to the purchaser or consignee of goods, a legible challan or transfer invoice in the prescribed manner containing such particulars, as may be prescribed.
- [See Rule 41]
- (6) Where any goods are transported by road, original copy of transport memo referred to in sub-section (4), challan or transfer invoice referred to in sub-section (5), as the case may be, completed in all respects shall accompany the goods during journey of goods.
- (7) Person transporting the goods for delivery to the consignee shall fill in the particulars in the relevant columns provided on transport memo, challan or transfer invoice, as the case may be, and shall deliver such transport memo, challan or transfer invoice to the consignee dealer along with goods.
- (8) Every dealer who receives any form of declaration or certificate prescribed under this Act or rules made thereunder, from its assessing authority or from any other person, shall use them in the prescribed manner and shall keep an account, in the prescribed manner, of all such used and unused forms of declaration or certificates including forms of declaration or certificates received from other persons.

- (9) No dealer shall transfer to any person and no person shall receive from any person any certificate or any form of declaration prescribed under the rules made under this Act except as provided under this Act or the rules made thereunder.
- (10) Where a dealer disposes of taxable goods in more than one of the following ways:
- (i) makes sale of goods inside the State; or
  - (ii) consigns goods to other dealers for sale inside the State; or
  - (iii) makes sale of goods in the course of inter-state trade or commerce; or
  - (iv) makes sale of goods in the course of the export of the goods out of or in the course of the import of the goods into, the territory of India; or
  - (v) consigns goods out side the State otherwise than as a result of sale, shall, as far as possible, keep separate account of purchase, sale, receipt and dispatch of goods for each such purpose.
- (11) A dealer who claims input tax credit under section 13 shall maintain a register in respect of tax period-wise computations of amount of input tax credit.
- (12) A dealer who maintains a computerized system of accounts or documents in a computer, shall also maintain day-to-day print out of all such books, accounts and documents.
- (13) Every dealer liable to pay tax shall prepare an inventory of all goods held in stock, as mentioned hereunder, along with their purchase value, on following dates:
- (a) goods held in opening stock on the date on which the dealer becomes liable to pay tax;
  - (b) goods held in closing stock on the last date of each assessment year;
  - (c) goods held in closing stock on the date of discontinuance of business;

[See Rule 16]

<sup>42</sup>[(d) in the case of a dealer who has opted for payment of composition money under section 6,

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<sup>42</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the clause (d) of sub-section (13) of Section 21 was as follows:

(d) in case of a dealer who has opted for payment of tax or lump sum under section 6, goods held in opening stock on the date from which provisions of section 6 cease to apply:

- (i) goods held in opening stock on the date on which provisions of section 6 has become applicable and;
- (ii) goods held in opening stock on the date on which provisions of section 6 ceases to apply;]

Provided that a manufacturer shall also prepare a list of goods used or consumed in manufacture, processing or packing of any manufactured or semi-manufactured goods held in stock on the aforesaid dates along with their purchase value.

[See Rule 18, 20(1)]

- (14) Where in any tax invoice, issued by the registered selling dealer to the registered purchasing dealer, in respect of sale of any goods, amount shown as tax exceeds the amount of tax payable on such sale under this Act, such selling dealer, within 30 days from the date of issue of tax invoice, shall provide such purchasing dealer with a credit note of excess amount realized as tax and the purchasing dealer shall provide to the selling dealer with a debit note of such amount containing such requisite particulars as may be prescribed.
- (15) Where in respect of sale of any goods, amount of tax payable under this Act exceeds amount shown as tax in the tax invoice issued by the registered selling dealer to the registered purchasing dealer, such selling dealer, within 30 days from the date of issue of tax invoice, shall provide to such purchasing dealer with a debit note of differential amount of tax and the purchasing dealer shall provide to the registered selling dealer a credit note containing such requisite particulars as may be prescribed.
- (16) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchasing dealer and debit note shall be issued by the purchasing dealer to the selling dealer containing such requisite particulars as may be prescribed.

<sup>43</sup>[\*\*\*]

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<sup>43</sup>. Omitted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before Omission the proviso of sub-section (16) of Section 21 was as follows:

Provided that where any goods sold in any assessment year are returned or rejected in the succeeding assessment year within six months from the date of sale, the amount of sale price of goods returned or rejected and amount of tax relating to such goods which have been shown to have been realized by selling dealer from purchasing dealer and shown in the debit note or credit note, as the case may be, shall be adjusted with the turnover of sales or the turnover of purchases, as the case may be, in the assessment year in which goods are returned or rejected.

- (17) If in respect of any particular assessment year, gross turnover of purchase or sale or both, as the case may be, of any dealer exceeds rupees one crore, then such dealer shall get his accounts verified and audited by a specified authority within six months from end of that assessment year and obtain within that period a report of such audit in the prescribed form duly signed and verified by such specified authority alongwith such particulars as may be prescribed. A true copy of such report shall be furnished by such dealer to the assessing authority within such period as may be prescribed.

**Explanation:** For the purposes of this section, expression “specified authority” means-

- (i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1940 and includes persons by virtue of provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies;
- (ii) a Cost Accountant within the meaning of the Cost and Works Accountant Act, 1959;

<sup>44</sup>[\*\*\*]

- (18) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish copy of such report within the prescribed time, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, impose on him in addition to tax payable, a sum by way of penalty not exceeding ten thousand rupees, as he may determine.

<sup>44</sup>. Omitted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before Omission the clause (iii) of Explanation of sub-section (17) of Section 21 was as follows:

(iii) any other authority specified by the State Government.

**22. Tax invoice, sale invoice and purchase invoice to be issued by a dealer.**

(1) In respect of all taxable goods, except non-vat goods, in the circumstances mentioned below, every registered dealer except a dealer who opts for payment of <sup>45</sup>[composition money] under section 6, where such dealer is liable for payment of tax on sale of any such goods, shall, while making sale of the goods, issue to the purchaser, <sup>46</sup>[tax invoice containing such particulars as may be prescribed including name and complete address and Taxpayer's Identification Number, if any, of the person purchasing the goods,] and shall charge separately on such tax invoice the amount of tax payable by him, where such goods are sold to -

- (i) a registered dealer; or
- (ii) an official or personnel of any foreign diplomatic mission or consulate in India; or
- (iii) the United Nations or any other similar International body, entitled to privileges under any convention to which India is a party or under any other law for the time being in force; or
- (iv) any consulate or diplomatic agent of any mission, the United Nations or other body referred to in clause (ii) or clause (iii); or
- (v) any developer or co-developer of a Special Economic Zone, for use or consumption in the authorized operations:

<sup>47</sup>[\*\*\*]

[See Rules 44(1), 44(9), 44(10), 44(11), 44(12), 44(13), 44(14), 44(15)]

- (2) The dealer selling the goods referred to in sub-section (1) shall prepare tax invoice referred to in sub-section (1) in three copies marked original, duplicate and office copy. The dealer shall deliver copies marked original and duplicate to the person purchasing the goods. Copy of tax invoice marked as duplicate shall accompany the goods during transportation of such goods.

<sup>45</sup> . Substituted for the words "tax or a lump sum" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

<sup>46</sup> . Substituted for the words "a tax invoice in the prescribed form and manner containing such particulars as may be prescribed" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

<sup>47</sup> . Omitted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before omission the provisos were as follows:

Provided that the State Government may prescribe different forms of tax invoice for different class of dealers or for different goods or class of goods:

Provided further that where the State Government does not prescribe the format of tax invoice, the selling dealer shall, in the cases referred to as aforesaid, issue tax invoice in the manner prescribed and containing such particulars, including name and complete address and Taxpayer's Identification Number, if any, of the person purchasing the goods, as may be prescribed.

<sup>48</sup>[(3) All dealers except as provided in sub-section (1), shall issue sale invoice to the purchaser in such manner and containing such particulars as may be prescribed.

**Explanation-** in this sub-section sale invoice means any invoice in the nature of bill, invoice, cash/credit memo containing such particulars as may be prescribed.]

[See Rules 22(3), 44(2), 44(9), 44(10), 44(11), 44(12), 44(13), 44(14), 44(15)]

- (4) Subject to provisions of sub-section (1) and sub-section (3), every taxable dealer shall, in respect of sale of all goods, where—
- (i) sale value of single sale exceeds the amount prescribed in this behalf; or
  - (ii) purchaser of goods demands <sup>49</sup>[sale invoice]; or
  - (iii) any other law prescribes for issue of a <sup>50</sup>[sale invoice] in respect of sale of any goods; or
  - (iv) selling dealer as a practice issues a <sup>50</sup>[sale invoice] in respect of sales made by him, issue to the purchaser a <sup>49</sup>[sale invoice] in the prescribed manner containing such particulars as may be prescribed.

[See Rules 44(4), 44(5), 44(6), 44(11), 44(12), 44(13), 44(14), 44(15)]

<sup>51</sup>[(5) Every dealer referred to in sub-section (1) shall charge amount of tax payable separately on every tax invoice. However, the dealer referred in sub-section (3) may charge tax separately.

<sup>48</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (3) of Section 22 was as follows:

(3) Every registered dealer, who is liable for payment of tax on sale of any-

(a) non-vat goods and who realises tax from the purchaser, shall, while making sale of such goods, issue to the purchaser, a sale invoice in the prescribed manner containing such particulars as may be prescribed, and shall charge separately on such sale invoice the amount of tax; or

(b) taxable goods except non-vat goods and makes sale of such goods to a dealer other than a registered dealer, shall, while making sale of such goods to such dealer, issue a sale invoice after mentioning name, complete address of purchasing dealer and such other particulars as may be prescribed.

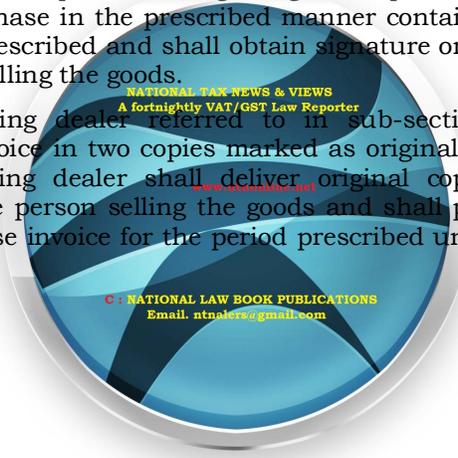
<sup>49</sup> . Substituted for the words “a cash memo or bill” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

<sup>50</sup> . Substituted for the words “a bill or cash memo” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.2.2009 (U.P. Act No. 11 of 2009).

- (6) *Office copy of tax invoice, sale invoice as the case may be, prepared by the selling dealer and copies of tax invoice, sale invoice, as the case may be, received by the purchasing dealer shall be preserved by them for the period provided under sub-section (3) of section 21.]*
- (7) Every dealer, while making purchase of any goods from a registered dealer, shall give his name, address and Taxpayers' Identification Number, if any, to the selling dealer.
- (8) The dealer, making sale of goods to any purchaser referred to in sub-section (1), shall not issue tax invoice to such purchaser unless the purchaser has furnished his name, complete address and Taxpayer's Identification Number.

[See Rules 44(7), 44(8), 44(9), 44(10), 44(11), 44(12), 44(13), 44(14), 44(15)]

- (9) Where a dealer liable to pay tax makes purchase of any taxable goods from a person other than a registered dealer and if the person selling such goods does not issue cash memo or bill, the purchasing dealer shall issue to the person selling the goods a purchase invoice in respect of such purchase in the prescribed manner containing such particulars as may be prescribed and shall obtain signature or thumb impression of the person selling the goods.
- (10) The purchasing dealer referred to in sub-section (9) shall prepare purchase invoice in two copies marked as original copy and office copy. The purchasing dealer shall deliver original copy of such purchase invoice to the person selling the goods and shall preserve office copy of such purchase invoice for the period prescribed under sub-section (3) of section 21.



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<sup>51</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (5) & (6) of Section 22 was as follows:

(5) Every dealer referred to in sub-section (1) or clause (a) of sub-section (3) shall charge amount of tax separately on every tax invoice or sale invoice, as the case may be.

(6) Office copy of tax invoice, sale invoice, cash memo or bill, as the case may be, prepared by the selling dealer and copies of tax invoice, sale invoice, cash memo or bill, as the case may be, received by the purchasing dealer shall be preserved by them for the period prescribed under sub-section (3) of section 21.

**23. Realisation of tax on sale or purchase of goods.** <sup>52</sup>[(1) (a) No person who is not a dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person any amount by way of tax on sale or purchase of goods or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour and no dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person, other than a person to whom goods are sold by him, any amount by way of tax on sale or purchase of goods, or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour;

(b) Where tax is payable on sale or purchase of goods on any turnover by a dealer including a commission agent or any person mentioned in clause (h) of section 2 registered under this Act, such dealer may recover an amount, equivalent to the amount of tax on sale or purchase of goods payable, from the person to whom any such goods is sold by him, whether on his own account or on behalf of his principal.]

(2) Where –

- (i) the amount of tax charged in tax invoice or sale invoice, as the case may be, exceeds the amount of tax payable; or
- (ii) the amount of tax payable in respect of a sale exceeds the amount of tax charged in a tax invoice, as the case may be, or
- (iii) a tax invoice or sale invoice has been issued by the selling dealer to the purchasing dealer in respect of any goods but such goods or any part of such goods is returned or rejected by such purchasing dealer, debit note and credit note, of the amount of tax involved in each case, shall be issued in accordance with provisions of sub-sections (14), (15) and (16) of section 21.

(3) Except as provided in section 34, no person shall deduct any amount as tax from the amount payable to the person selling the goods.

<sup>53</sup>[(4) No dealer shall include the amount of tax already paid on the purchase of goods in the sale price of such goods resold or goods manufactured by using such goods.]

<sup>52</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (1) of Section 23 was as follows:

(1) Except as provided in section 22, no person shall, in respect of a sale or purchase of any goods, realise any amount either in the name of tax or by giving it a different name or colour.

<sup>53</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**CHAPTER – IV****Assessments, Payment, Recovery and Collection of Tax**

**24. Submission of tax returns.** (1) Every taxable dealer including a dealer from whom any amount of tax has been deducted at source under section 34, shall, for such tax period and within such time, as may be prescribed, submit tax return of his self assessed turnover and tax, in such form and verified in such manner as may be prescribed, but the assessing authority may in its discretion and for reasons to be recorded, extend the date for submission of the return by any dealer or class of dealers:

**Provided** that every taxable dealer, including a dealer who claims input tax credit, shall also submit along with tax return a list of-

- (i) purchases of goods made from registered dealer in respect of which the dealer has received tax invoices;
  - (ii) sales of goods made to registered dealers in respect of which the dealer has issued tax invoices; and
  - (iii) sale made to dealers to whom sale invoices have been issued in the names of such dealers, containing such particulars as may be prescribed:
- (2) Before submitting the tax return under sub-section (1), the dealer shall, in the manner prescribed, deposit the net amount of tax payable shown in such tax return along with amount, if any, realized in excess of amount of tax due under this Act from purchasers of goods during the tax period.
- (3) Every person or dealer to whom provisions of section 34 apply, shall, in respect of dealers from whom any amount of tax has been deducted, submit such statement within such time as may be prescribed.
- (4) Where as a consequence of the date for the submission of return being extended under sub-section (1) on the application of the dealer, the deposit of tax under sub-section (2) is deferred, there shall be payable simple interest at the rate of one and quarter percent per *mensem* on such deposit for the period commencing on the last date prescribed for submission of the tax return and ending with the date of deposit of such amount.

- (5) **If any dealer discovers any omission or other error in any tax return submitted by him, he may, at any time before the expiry of the time prescribed for submitting the next tax return,** submit a revised tax return. If the revised tax return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable under sub-section (4) as if the time for submitting the original tax return had been extended on the application of the dealer to the date of submission of the revised tax return. If, the revised tax return shows lesser amount of tax to be due than was shown in the original tax return the dealer may adjust the excess amount towards the tax due for the subsequent tax periods.
- (6) If goods sold by a dealer are returned to him by the purchaser within six months of the date of sale, and assessment of the selling dealer for the year to which such sale relates is as yet to be made, the selling dealer, and where goods purchased by a dealer are returned to the seller within six months of the date of purchase, and assessment of the purchasing dealer for the year to which such purchase relates is as yet to be made, the purchasing dealer, may, within thirty days of the expiry of the month in which such goods are returned, submit for that purpose only a revised return for the tax period in which such sale or purchase, as the case may be, was made.
- (7) Every taxable dealer, including a dealer who has carried on business during part of an assessment year, shall, for such assessment year or for part of such assessment year, as the case may be, submit annual tax return of turnover and tax within such time and in such form and manner, as may be prescribed.
- 54[\*]
- (8) Every person to whom provisions of section 34 apply, shall, for each assessment year, in respect of a dealer from whom amount of tax has been deducted, submit such details, in such form and manner and within such time as may be prescribed.

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<sup>54</sup> . Omitted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before omission proviso of sub-section (7) of Section 24 was as under:-

Provided that on the application of the dealer, in an appropriate case, the assessing authority may extend the period for submitting annual tax return but such extended period shall not exceed ninety days beyond the time prescribed for submitting such tax return.

- (9) Every person transporting any goods by any public service motor vehicle or by any vessel and every forwarding agent shall submit to the assessing authority of the area from which the goods are dispatched such <sup>55</sup>[*information and documents*], as may be prescribed of all goods transported or forwarded by him. The assessing authority concerned shall have the power to call for and examine the books of account or other documents in the possession of such transporter or agent with a view to verifying the correctness of the [information and documents] submitted and the transporter and agent shall be bound to furnish the books of account or other documents when so called for.

[See Rules 45, 73]

**25. Assessment of tax for a tax period.** (1) Where in respect of any tax period of an assessment year-

- (i) any dealer has not submitted tax return within the time prescribed or within the time extended by the assessing authority, or if tax return has been submitted without payment of tax shown payable in such return; or
- (ii) preliminary examination of tax return, by the assessing authority, reveals that computations shown in the tax return are wrong or amount of input tax credit allowable shown is incorrect; or
- (iii) on the basis of material available on records with the assessing authority, it appears to the assessing authority that the turnover of sales or purchases or both, disclosed by the dealer is not worthy of credence; the assessing authority may, after making such inquiry as it may deem fit and after affording a reasonable opportunity of being heard to the dealer, determine
  - (i) to the best of its judgment the turnover, amount of tax payable and amount of input tax credit admissible, where the dealer has not submitted tax return or if the tax return has been submitted, the assessing authority is of the opinion that turnover disclosed by the dealer in such return is not worthy of credence; or
  - (ii) the amount of tax payable and amount of input tax credit admissible, in any other case, by passing a provisional order of assessment for such tax period.

<sup>55</sup> . Substituted for the word "returns" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

- (2) No provisional order of assessment, under sub-section (1), for any tax period of an assessment year, shall be made after the dealer has submitted annual return of turnover and tax, and where such annual return has not been submitted by the dealer, after expiration of the time prescribed or extended by the assessing authority, for submission of annual return.
- (3) Amount of tax, assessed under sub-section (1) in excess of the amount of tax deposited by the dealer, shall be paid by the dealer in the prescribed manner and within a period of thirty days from the date of service of the order of assessment and prescribed notice of demand on him.

[See Rules 46, 71, 72, 73]

**26. Assessment of tax for an assessment year.** Subject to provisions of this Act, in respect of every taxable dealer, for each assessment year, there shall be an assessment of tax payable by him and amount of input tax credit admissible to him:

**Provided** that where the dealer has carried on business during a part of the assessment year, such assessment shall be for such part of the assessment year:

*<sup>56</sup>[Provided further that in case of person who being a dealer other than a registered dealer brings any taxable goods from outside the State, the assessing authority may make separate assessments for each receipt of such goods by the dealer;*

*The assessing authority may make separate assessments for each such authorization for transit of goods or receipt of goods by the dealer, as the case may be.]*

[See Rules 46, 71, 72, 73]

**<sup>57</sup>[26-A. Special provision relating to casual traders.** (1) Notwithstanding anything to the contrary contained in any other provision of this Act, a casual trader shall-

(a) *inform the assessing authority at least three days before beginning of his business in Uttar Pradesh, such particulars of his business in Uttar Pradesh, such particulars of his business such form and in such manner as may be prescribed;*

<sup>56</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution second proviso of Section 26 was as under:-

Provided further that in case of person who –

(i) has obtained authorization for transit of goods through the State and there is presumption that such goods have been sold within the State; and

(ii) being a dealer other than a registered dealer brings any taxable goods from outside the State, the assessing authority may make separate assessments for each such authorisation for transit of goods or receipt of goods by the dealer, as the case may be.

<sup>57</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

- (b) deposit security in cash or in the form of bank draft, of such amount as may be fixed by the assessing authority which shall not exceed estimated liability to pay tax for such period for which the casual trader is conducting the business in Uttar Pradesh;
- (c) pay tax daily on sales made during the previous day;
- (d) furnish to the assessing authority next day after the conclusion of his business in Uttar Pradesh, a return in the prescribed form and manner; and
- (e) not issue any tax invoice.
- (2) The assessing authority shall, after verification of information furnished to him under clause (a) and receiving the security under clause (b) of sub-section (1), shall register the casual trader.
- (3) After registration of casual trader, the assessing authority shall issue the required forms to him for use as the declaration or certificate referred to in section 50 and 51 of this Act for bringing goods for sale in Uttar Pradesh and the casual trader shall maintain complete account of the used forms and surrender the unused forms along with the return referred to in clause (d) of sub-section (1).
- (4) The assessing authority, after verifying the return furnished by the casual trader under clause (d) of sub-section (1), the forms referred as in sub-section (3) and the accounts maintained by him including the sale invoices issued, assess him to tax within one week and shall serve upon him a notice of assessment and demand and after adjusting any tax and any other dues payable under this Act, refund the balance amount of security to him in case security is deposited.<sup>58</sup>
- (5) The casual trader shall pay immediately the amount mentioned in the notice of assessment and demand.
- (6) On being satisfied that the amount due has been paid the assessing authority shall release the security or balance security, as the case may be.
- (7) Notwithstanding anything to the contrary contained in any other provision of this Act, the taxable quantum referred to in section 3 in respect of a casual trader shall be nil.

**Explanation:-**In this section casual trader means a person who, whether as principal, agent or in any other capacity undertakes occasional transactions in the nature of business involving buying, selling, supply or distribution of goods or conducting any exhibition-cum-sale in Uttar Pradesh whether for cash, deferred payment, commission, remuneration or other valuable consideration.]

<sup>58</sup>. Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**27. Self assessment.** (1) Subject to provisions of section 28, every dealer, who has submitted annual return of turnover and tax, in the prescribed form and manner, shall be deemed to have been assessed to an amount of tax admittedly payable on the turnover of purchase or sale or both, as the case may be, disclosed in such return, and to an amount of input tax credit shown admissible in the return.

(2) For all purposes under this Act and rules made thereunder –

- (a) annual return of turnover and tax, referred to in sub-section (7) of section 24, submitted by a dealer, shall be deemed to be an assessment order and facts disclosed or figures mentioned in such return shall be deemed part of such assessment order; and
- (b) last date of the assessment year succeeding the assessment year in which the date prescribed for submission of such annual return falls, shall be deemed to be the date of such assessment order.

[See Rule 73]

**28. Assessment of tax after examination of records.** (1) In following types of cases or dealers, the assessing authority, after detailed examination of books, accounts and documents kept by the dealer in relation to his business and other relevant records, if any, and after making such inquiry as it may deem fit, subject to provision of sub-section (9), shall pass an assessment order for an assessment year in the manner provided in this section: –

- (a) in cases of such dealers as are specified or selected for tax audit by the Commissioner or any other officer, not below the rank of a Joint Commissioner, authorized by the Commissioner in this behalf; in such manner and within such time as may be prescribed.
- (b) in case of a dealer falling in any of the categories below,
  - (i) dealer who has not submitted annual return of turnover and tax within the time prescribed or extended; or
  - (ii) dealer by whom tax return for one or more tax periods of the assessment year have not been submitted; or
  - (iii) dealer in whose case assessing authority has passed provisional assessment order under section 25 in respect of one or more tax periods to the best of its judgment; or
  - (iv) dealer in whose case, on the basis of material available on records, if the assessing authority is satisfied that the turnover of sales or purchases or both, as the case may be, and amount of tax shown payable as disclosed by the dealer in annual return of turnover and tax are not worthy of credence or tax shown payable in the return has not been deposited by the dealer, or the amount of input tax credit claimed is wrong or the amount of tax payable shown is incorrect; or

- (v) dealer who has prevented or obstructed an officer empowered to make audit, survey, inspection, search or seizure under the provisions of this Act; or
- <sup>59[\*]</sup>
- (2) Where after examination of books, accounts, documents and other records referred to in sub-section (1), -
- (i) the assessing authority is satisfied about correctness of turnover of sale or purchase or both, as the case may be, disclosed by the dealer, it may assess the amount of tax payable by the dealer on such turnover and determine the amount of input tax credit admissible to the dealer or amount of reverse input tax credit payable by the dealer; and
- (ii) where assessing authority is of the opinion that turnover of sale or purchase or both, as the case may be, disclosed by the dealer is not worthy of credence, it may determine to the best of its judgment the turnover of sale or purchase or both, as the case may be, and assess the tax payable on such turnover and determine admissible amount of input tax credit and reverse input tax credit payable by the dealer.
- (3) Before making an assessment under section (2), dealer shall-
- (i) be required to furnish annual return of turnover and tax referred to in sub-section (7) of section 24, if he has not already submitted such return;
- (ii) be given reasonable opportunity of being heard; and
- (iii) be served with a notice to show cause, where determination of turnover, input tax credit, reverse input tax credit, or assessment of tax, all or any one of them, as the case may be, are to be made to the best of the judgment of the assessing authority.
- (4) The show-cause notice referred to in sub-section (3) shall contain all such reasons on which the assessing authority has formed its opinion about incorrectness of the turnover of sale or purchase or both, as the case may be, amount of tax, amount of input tax credit or amount of reverse input tax credit:

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<sup>59</sup>. Omitted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before omission sub-clause (vi) of clause (b) of sub-section (1) of Section 28 was as under:-

(vi) person against whom there is presumption that goods, for which authorization for transit of goods through the State was obtained, have been sold within the State.

- (5) Order of assessment shall be in writing and copy of assessment order alongwith prescribed notice of demand of the balance amount of tax, if any, to be deposited by the dealer, shall be served on the dealer.
- (6) Dealer shall deposit amount of tax assessed in excess of amount of tax deposited by him for the assessment year, within a period of thirty days after the date of service of the assessment order and notice of demand.
- (7) Where the amount of tax deposited by the dealer is found in excess of tax assessed, the same shall be refunded to the dealer according to the provisions of this Act.
- (8) Assessing authority shall not be precluded from making assessment order under this section on the ground of passing of any provisional assessment order in respect of any tax period under section 25 and such provisional assessment order, if any, shall stand merged in the assessment order passed under this section.
- <sup>60</sup>[(9) *Notwithstanding anything to the contrary in any other provision of this Act, where an unregistered dealer brings any taxable goods from outside the State more than once during an assessment year, separate assessment relating to goods brought on each occasion may be made for the same assessment year.*]
- (10) All provisions of this Act shall apply to each assessment order passed under sub-section (9) as they apply to an order passed under sub-section (2).
- (11) Dealers under sub-section (9) shall not be required to furnish annual return of turnover and tax and in cases of such dealers assessment under sub-section (9) may be made even before the expiry of the assessment year.
- (12) Provisions of sub-sections (5), (6) and (7) shall, mutatis mutandis, apply to every assessment order passed under any provisions of this Act.

[See Rules 46, 71, 72, 73]

<sup>60</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution sub-section (9) of Section 28 was as under:-

(9) Notwithstanding anything to the contrary in any other provision of this Act, in following categories of cases, such number of assessments as mentioned against them, may be made for the same assessment year:

- (i) cases relating to issue of authorization for transit of goods through the State, separate assessment relating to each such authorization;
- (ii) where an unregistered dealer brings any taxable goods from outside the State more than once during an assessment year, separate assessment relating to goods brought on each occasion.

### Short Comments

#### Section 28: "Assessment of tax after examination of Records."

The Circular issued by the Government has no binding force on Authorities acting in quasi-judicial capacity. They are bound by law and not by any administrative instructions, opinions, clarifications or circulars.

*Bangal Iron Corporation vs. C.T.O. 1993 NTN (Vol. 2) 31*

Best Judgment assessment passed on the basis of penalty order. Penalty order set aside by High Court. The best judgment assessment order cannot be sustained after penalty order is set aside.

*Jagannath Prasad Kailash Chandra vs. C.T.T. 2002 NTN (Vol. 20) 397*

It is well settled principle of law that even after rejection of books of accounts disclosed turnover if found reasonable can be accepted.

*C.S.T. vs. Premier Engineering Co. 2004 NTN (Vol. 24) 283*

Before passing best judgment assessment, the authority must inform the reasons.

*New Vishwakarma Engineering Works vs. C.T.T. 1997 NTN (Vol. 10) 351*

The Authorities rightly determined turnover on the basis of permits issued to the dealer. The burden of proof is upon the assessee to establish the verities of permits issued. If the dealer fails to discharge burden of proof, the best judgment assessment cannot be faulted.

*Ram Chandra vs. C.T.T. 2003 NTN (Vol. 22) 25*

If figures disclosed in returns are verifiable from the account books and no defect is found in the book the Authority is not empowered to reject the account version and frame best judgment assessment.

*Mam Raj Singh vs. C.T.T. 1997 NTN (Vol. 10) 176*

On survey less stock found than that recorded in stock register. Explanation of the assessee rejected. Rejection of accounts and framing of best judgment assessment is quite just.

*Metro Tyres (P) Ltd. vs. C.S.T. 1996 NTN (Vol. 8) 121*

In case of entries in third parties accounts, the onus is upon the department. The right of cross-examination of the dealer cannot be denied.

*Rajesh Agros vs. C.T.T. 2002 NTN (Vol. 21) 641*

Double assessment is not permissible.

*Indian Telephone Industries vs. C.T.T. 2004 NTN (Vol. 24) 235*

It is well settled principle of law that even after rejection of books of accounts the disclosed turnover if found reasonable can be accepted.

*C.S.T. vs. Premier Engineering Co. 2004 NTN (Vol. 24) 283*

Excess cash found in survey cannot be a reason for enhancement of turnover .

*Brij Nath Prasad Ashok Kumar vs. C.S.T. 2001 NTN (Vol. 18) 303*

First Appellate Authority gave cogent reasons for rejection of accounts and estimation of turnover. Tribunal disturbed the estimation without discussing explanation of dealer. Estimation of turnover by Tribunal not justified.

*Khare Cycle Store vs. C.S.T. 1999 NTN (Vol. 15) 798*

Enhancement in turnover cannot be made without any material about the import of goods against Form 31 reported lost.

*Pyare Lal Rajendra Kumar vs. C.S.T. 2003 NTN (Vol. 23) 593*

Taxable turnover cannot be assessed on the basis of information, which dealer denies the transaction by filing affidavit and certificate.

*C.S.T. vs. Rungta and Brothers 2003 NTN (Vol. 22) 143*

In absence of any specific material on record, the estimation of turnover by the Tribunal is arbitrary and without any basis.

*Shree Nath Sanjay Kumar vs. C.S.T. 2003 NTN (Vol. 23) 678*

For estimation of turnover the previous history become relevant since no suppression or concealment has been found.

*Atma Steels Pvt. Ltd. vs. C.S.T. 2001 NTN (Vol. 18) 326*

Turnover cannot be enhanced on the mere ground that in previous year taxable turnover was more.

*C.S.T. vs. Virendra Kumar Rajesh Kumar 2000 NTN (Vol. 16) 88*

Minor variation in stock rightly ignored by the Tribunal.

*C.S.T. vs. Lala Sukh Deo Ram Rolling Mill 1993 NTN (Vol. 3) 206*

The taxing authority has no power to decide how a dealer or an assessee should conduct himself in his business. It is for the tax payer to manage his business affairs or to conduct his business according to his wisdom or otherwise.

*C.S.T. vs. Saurashtra Chemicals 1996 NTN (Vol. 8) 1*

A statement cannot be used against the dealer without giving him an opportunity of cross examination.

*Ganesh Trading Company vs. C.T.T. 2002 NTN (Vol. 20) 128*

Assessment based on report of flying squad and alleged bank transactions is not sustainable, if dealer is not allowed copy of report and opportunity to cross examine.

*Keveyam and Company vs. G.S. Baghal 2000 NTN (Vol. 17) 536*

Even if the assessee disclaims his right enacted in a statutory provision for his benefit, the authorities are duty bound to follow the statutory provisions of law. The opportunity contemplated under the law, which is required to be provided to the assessee, must be reasonable opportunity and not an idle formality.

*New Vishwakarma Engg. Works vs. C.T.T. 1997 NTN (Vol. 10) 351*

Provisions of Evidence Act do not apply to proceedings for assessment of sales tax, but that does not mean that general principles of appreciation of evidence also do not apply.

*Baba Enterprises vs. C.S.T. 1993 NTN (Vol. 2) 49*

Rejection of accounts was not justified only on the ground that duplicate copies of bills were not in the same hand writing, when there is no difference in price, quantity and contents of bills. The account books of the dealer should not be lightly rejected unless and until from the account books, the correct turnover cannot be correctly determined.

*Saraswati Dal and Oil Mills vs. C.S.T. 2003 NTN (Vol. 23) 705*

The account books cannot be rejected in case difference in the returned turnover and turnover as shown in account books in properly explained.

*Ajay Oil Mills vs. C.S.T. 1994 NTN (Vol. 4) 24*

Entries in the books of accounts of a third person cannot be used against an assessee unless they are satisfactory proved by cogent evidence.

*Trilok Chand Brij Bhushan Lal vs. C.S.T. 1996 NTN (Vol. 8) 12*

Unless the opportunity of cross-examination is provided entries in books of third party cannot be relied against the dealer.

*Rana & Co. vs. C.S.T. 2004 NTN (Vol. 24) 389*

Negligible difference in turnover accepted by Appellate Authority. Adverse inference in remand proceedings for lack of explanation not justified.

*Pradeep Kumar and Company, Arhali vs. C.T.T. 1999 NTN (Vol. 15) 558*

Survey of previous concern cannot be used to reject the books of accounts of successor firm.

*Shree Shiv Candle Works vs. C.T.T. 2002 NTN (Vol. 20) 189*

Electricity consumed but no production declared – Rejection of account on the basis of electric consumption is justified.

*C.S.T. vs. Dayaram Rakesh Kumar 1993 NTN (Vol. 2) 19*

Certain incriminating material found during survey. Dealer fails to explain the matter. Rejection of accounts was justified. Estimation of turnover was quite correct.

*Mewa Lal Dwarika Prasad vs. C.S.T. 1995 NTN (Vol. 7) 351*

Assessment can be made only after providing copies of seized books of account to the dealer.

*Atma Steel Pvt. Ltd. vs. C.S.T. 2001 NTN (Vol. 18) 7*

Natural Justice – If a person likely to suffer civil consequences is entitled to the report, which is being relied upon to take a decision against him – In the instant case, there does not appear any logical reason to hold the report of the DC SIB to be confidential and accordingly for not supplying the same, if it is proposed by the department to rely upon that report.

*Vehalana Steels vs. State of U.P. and others 2008 NTN (Vol. 36) (All.) 52*

**29. Assessment of tax of turnover escaped from assessment.** (1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer to tax according to law :

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

**Explanation I:-** Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

**Explanation II:-** For the purpose of this section and of section 31, "assessing authority" means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

**Explanation III:-** Notwithstanding the issuance of notice under this sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of assessment or re-assessment made under this section in pursuance of such notice.

- (2) Assessment order for any tax period of an assessment year may be made within the time prescribed under section 25.
- (3) Except as otherwise provided in this section or elsewhere in this Act, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made even after the expiration of three years from the end of such assessment year.
- (4) Where the notice under sub-section (1) for any assessment year has been served within a period of three years after expiry of the assessment year to which assessment or re-assessment relates, the assessment or re-assessment may be made within a period of three years and six months after the expiry of such assessment year.
- (5) Where appellate authority, revising authority, Tribunal, High Court, Commissioner or the State Government has -
  - (a) set aside an order of assessment or re-assessment and has remanded the case to the assessing authority; or
  - (b) for want of reasonable opportunity of being heard, set-aside or has directed the assessing authority to set aside an *ex parte* order of assessment or re-assessment; or
  - (c) quashed any order of assessment or re-assessment for want of jurisdiction or for want of notice,

the assessing authority may make order of assessment or re-assessment before expiry of the assessment year succeeding the assessment year in which such order or direction is received by the assessing authority by due process:

**Provided** that where any assessment or re-assessment order is quashed by any authority or Court, for want of notice or for want of jurisdiction, the order of assessment or re-assessment may be made, within the time mentioned above in this sub-section, by the competent assessing authority after serving notice on the dealer.

- (6) Where an order of assessment or re-assessment has been set aside by the assessing authority himself under section 32, a fresh order of assessment or re-assessment may be made before expiry of the assessment year in which such order of assessment or re-assessment has been set aside:

**Provided** that if an order of assessment or re-assessment made *ex parte* is set aside on or after first day of October in any assessment year, fresh order of assessment or re-assessment may be made on or before thirtieth day of September of the assessment year succeeding the assessment year in which such *ex parte* order of assessment or re-assessment was set aside.

**Provided further** that where second or subsequent time any order of assessment or reassessment is made *ex parte* and where such second or subsequent *ex parte* order of assessment or re-assessment is to be set aside and a fresh order of assessment or re-assessment may be made within the time aforementioned when the first *ex parte* order is set aside.

- (7) Where the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the Assessing Authority in that behalf, such assessment or re-assessment may be made within a period of eight years after expiry of assessment year to which such assessment or re-assessment relates notwithstanding such change of opinion:

**Provided** that it shall not be necessary for the Commissioner to hear the dealer before authorising the Assessing Authority.

- (8) Where the proceedings for assessment or re-assessment for any assessment year remain stayed under the order of any court or authority, the period commencing on the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in computing the limitation as aforesaid, the last date for passing an assessment or re-assessment falls on any date before first day of October in any assessment year, assessment or re-assessment may be made before the expiry of such assessment year and in a case in which such date falls after thirtieth day of September of any assessment year, order of assessment or re-assessment may be made before the expiry of the assessment year subsequent to assessment year in which such date falls.

- (9) Where in the assessment or re-assessment of a dealer for any assessment year, any assessing authority, -
- (a) has included any turnover and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of-
    - (i) such dealer for any other assessment year, or
    - (ii) such dealer under the Central Sales Tax Act, 1956, or
    - (iii) any other dealer, whether under this Act, or under the Central Sales Tax Act, 1956,
  - (b) has not included any turnover on the ground that it relates to assessment under the Central Sales Tax Act, 1956 and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of that dealer under this Act, whether for such assessment year or any other assessment year,  
then nothing contained in this section limiting the time shall apply to assessment or re-assessment of such dealer or such other dealer, relating to such assessment year or such other assessment year, as the case may be.
- (10) Where the assessing authority has reason to believe that any person with a view to evade payment of tax or in order to claim any input tax credit or rebate which he otherwise is not eligible for or was carrying on business in the name of, or in association with any other person either directly or indirectly, whether as an agent, employee, manager, partner or power of attorney holder or guarantor, relative or sister concern or in any other capacity, such person and the person in whose name the registration certificate is taken, shall be liable severally and jointly for payment of tax, interest or penalty which shall be assessed, levied and recovered from all or any such person as if such person or persons are dealers under this Act. However, before taking any action, the person concerned shall be given an opportunity of being heard.

- (11) Where the State Government is of the opinion that due to any extraordinary circumstances prevalent in any assessment year in the State or any part of it, it will be difficult to complete assessment or re-assessment in any case or class of cases in respect of which limitation for passing assessment or re-assessment expires in such assessment year, for the purpose of making assessment or re-assessment in such a case or class of cases, it may, by notification in the Gazette, extend the time limit up to one year beyond the time limit prescribed under this section.
- (12) Where in an agreement between seller and purchaser it is agreed upon that sale price of goods due to price escalation shall be settled on a later date and in the circumstances such date falls in any assessment year subsequent to the assessment year in which such goods were sold, amount receivable due to price settlement, for all purposes under this Act, shall be deemed part of the turnover of the assessment year in which sale was made and where limitation for assessment of tax on such turnover, as prescribed in section 28, has expired, such part of turnover may be assessed before the expiry of the assessment year succeeding the assessment year in which such settlement is made, but the tax on such turnover of sale shall be charged at the rate prevalent at the time of sale.

NATIONAL TAX NEWS & VIEWS  
[Section 29: VAT Law Reporter]

#### Short Comments

#### Section 29: "Assessment of tax of turnover escaped from assessment."

When the original order is found valid, re-assessment of the same turnover cannot co-exist.

*Goodyear Ltd. vs. State of Haryana 2001 NTN (Vol. 19) 537*

The subsequently amended provision will not effect the limitation, which had already expired for the purpose of limitation.

*H.M.T. Ltd. vs. State of U.P. 1996 NTN (Vol. 8) 59*

Notice issued for re-assessment under the State Act cannot be used to sustain assessment under the Central Act.

*Krishan Chand Agrawal vs. C.T.T. 2003 NTN (Vol. 22) 454*

In proceedings for re-assessment, the burden lies on the revenue to prove its case by bringing specific material on record.

*C.S.T. vs. Satish Brothers 2003 NTN (Vol. 23) 920*

Information for reason to believe must be on the order sheet as well as in the notice.

*Jain Sugar Works vs. C.T.T. 2000 NTN (Vol. 16) 73*

Question of validity of notice for re-assessment can be raised at any stage whether in assessment or in appeal.

*Vaibhav Brick Field vs. C.T.T. 1999 NTN (Vol. 14) 313*

**30. Rounding off of turnover and tax.** (1) The amount of turnover, determined in the prescribed manner shall if such amount is not in the multiple of ten, be rounded off to the nearest multiple of ten rupees, that is to say, a part of ten rupees which is less than five rupees shall be ignored and any other part shall be counted as ten rupees. The amount so rounded off shall be deemed to be the turnover of the assessee for the purpose of assessment of tax under this Act.

(2) The amount of tax, fee, interest, penalty or any other sum payable or the amount of refund due under the provisions of this Act shall, where such amount contains part of a rupee, be rounded off to the nearest rupees, that is to say, a part of a rupee which is less than fifty paise shall be ignored and any other part shall be counted as one rupee.

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

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

**Provided further** that any order which has the effect of enhancing the assessment, penalty, fees or other dues, shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice of demand in the prescribed form and all the provisions of this Act shall apply as if such notice had been served in the first instance.

[See Rules 72, 73]

Short Comments

#### Section 31: "Rectification of mistakes "

The mistake to be rectified under this section ought to be mistake 'apparent on the face of record'. Fresh material cannot be considered for rectification. The mistake could be either of fact or of law.

The difference between the suo motu rectification and that up on an application that, while in the former the order has to be passed within three years from the date of order sought to be rectified, while in the latter the order could be passed beyond three years if the application is within this period.

*CST vs. Sukhlal Ice and Cold Storage [2008] 16 VST 581(All.)(DB)*

The mistake must be obvious and patent mistake and not something which can be established by a long drawn process of reasoning. It cannot be done in case of a debatable issue.

*T.S. Balram, ITO vs. M/s Volkart Brothers [1971] 82 ITR 50;*

Non adjudication of a Ground taken and raised before the Tribunal is a mistake apparent on the face of record.

*M/s Diamond Cement V/s CTT [2007] 7 VST 421(All.)*

Error of judgment cannot be rectified.

*C.S.T. vs. Ashoka Silicate Factory 2003 NTN (Vol.22) 1*

Rate of tax applicable on a commodity cannot be decided in rectification proceedings.

*C.T.T. vs. Anandeshwar Industries 2003 NTN (Vol. 22) 222*

Ex-parte assessment order passed by Tribunal can be rectified. However when there is proper service of the notice, no rectification can be made.

*Ram Sewak Coal Depot vs. C.T.T. 2003 NTN (Vol. 22) 341*

If the issue involves debate, investigation of fact and argument it is outside the purview of Section 22 of the Act and it can not be said to be mistake apparent on the face of record.

*Rajeev Brick Field, Gwalior Road, Agra vs. C.T.T. U.P. 2007 NTN (Vol. 34) 273*

Rectification can not be made in the order by considering fresh arguments.

*C.T.T. vs. Gaya Prasad Anil Kumar 2007 NTN (Vol. 33) 272*

Mistake in rate of tax can be rectified under Section 22 of the U.P. Trade Tax Act, 1948.

*Satish Industries, Ghaziabad vs. C.T.T. 2006 NTN (Vol. 30) 301*

Subsequent judgment of Court can be the basis of rectification.

*C.T.T. vs. Kaushal Kumar Vinod Kumar, Bijnor 2006 NTN (Vol. 30) 12*

**32. Power to set aside *ex parte* order of assessment or penalty.** (1) In any case in which an order of assessment or re-assessment or rejection of application for registration or order of penalty is passed *ex parte*, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and re-open the case, and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing:

**Provided** that no such application for setting aside an *ex parte* assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax to be due under this Act on the turnover of sales or purchases, or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater.

(2) Where an assessment order under sub-section (1) of section 25 is passed, *ex parte*, the dealer may apply to the Assessing Authority within thirty days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the tax return and deposited the tax due according to the tax return within thirty days from the last day prescribed for filing such tax return, it may modify or set aside such order and also the demand notice, if any, issued thereunder.

- (3) In any case in which any assessment or re-assessment has been made *ex parte* and –
- (a) appeal under section 55 against such order has been dismissed as barred by time;
  - (b) in appeal before the Tribunal under section 57, order, passed by the Appellate Authority under section 55, has been confirmed; and
  - (c) Commissioner or Additional Commissioner designated by the Commissioner, after giving reasonable opportunity of being heard to the dealer, is satisfied that-
    - (i) dealer, at any stage during the period of assessment or re-assessment proceeding, had no notice of initiation of such proceedings :
    - (ii) as a result of *ex parte* assessment or re-assessment, without proper basis amount of tax has been levied :
    - (iii) undue hardship will be caused to the dealer if such assessed tax is realized from him; and
    - (iv) if, after giving reasonable opportunity of being heard to the dealer, tax is re-assessed, demand under the earlier order of assessment or re-assessment may stand reduced to a larger extent,
- he may direct the assessing authority to set aside such *ex parte* order of assessment or re-assessment and to make assessment or re-assessment after affording reasonable opportunity to the dealer, if the dealer presents an application before the Commissioner within a period of sixty days from the date on which dealer receives the order passed by the Tribunal under Section 57.

[See Rules 72, 73]

Short Comments

### Section 32: "Power to set aside ex-parte order of assessment or penalty"

Where a party appeal against an order under Section 30 (Section 32 of UP VAT Act) and the Appellate Authority allows the appeal, the effect is that assessment stands re-opened immediately. No further re-opening order by Assessing Authority is required.

*SAB Chemists vs. C.S.T. 1995 UPTC 571*

Illness of partner looking after the taxation works is sufficient ground for non-appearance on the date of hearing.

*Heera Udyog vs. C.S.T. 2001 NTN (Vol. 18) 338*

**33. Payment and recovery of tax.** (1) Any amount of tax or fee or penalty or any other amount, which a dealer or other person is liable to pay under this Act, shall be deposited by the dealer or such other person in the prescribed manner.

- (2) Subject to provisions of Section 42, the tax admittedly payable, shall be deposited within the time prescribed, failing which simple interest at the rate of one and quarter percent per *mensem* shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount and nothing contained in section 24 shall prevent or have the effect of postponing liability to pay such interest:
- Explanation:** For the purposes of this sub-section, the tax admittedly payable for a tax period or an assessment year, as the case may be, shall be computed in accordance with provisions of section 15.
- (3) Subject to other provisions of this Act, the amount of tax assessed under this Act in excess of amount of tax already deposited, the amount of interest payable thereon, any amount imposed by way of penalty and any other amount determined payable under this Act shall be deposited in the manner specified, within thirty days of the service of the order-
- of assessment and notice of demand in case of tax assessed and interest payable;
  - imposing penalty or determining any other amount payable, as the case may be.
- (4) If the tax {other than the tax admittedly payable to which sub-section (2) applies} assessed, re-assessed or enhanced by any authority or Court remains unpaid after expiration of the period specified in the notice of assessment and demand, simple interest at the rate of one percent per *mensem* on the unpaid amount calculated from the date of such expiration shall become payable:
- (5) The amount of interest payable under this section shall be without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, and shall be added to the amount of tax and be also deemed for all purposes to be part of the tax.
- (6) Where realisation of any tax remained stayed by any order of any Court or authority and such order of stay is subsequently vacated, the interest shall be payable also for any period during which such order remained in operation.
- (7) Notwithstanding anything contained in any other law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing a copy of which shall be forwarded to the dealer at his last address known to the assessing authority, require -
- any person from whom any amount is due or may become due to the dealer; or
  - any person who holds or may subsequently hold money for or on account of the dealer;
- to pay to the assessing authority-

- (i) forthwith upon the money becoming due or being held; or
- (ii) at or within the time specified in the notice not being before the money becomes due or is held,

so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax and other dues under this Act, or the whole of the money when it is equal to or less than that amount:

**Provided** that the assessing authority may at any time or from time to time revoke or amend such notice.

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

- (8) Any person making any payment in compliance with notice under sub-section (7) shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent the amount referred to in the receipt.
- (9) Any person discharging the dealer after receipt of the notice referred to in sub-section (7) shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the amount mentioned in such notice, whichever is less.
- (10) Where a person, to whom a notice under sub-section (7) is sent, proves to the satisfaction of the assessing authority that sum demanded or any part thereof is not due to the dealer or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, as the case may be, to the assessing authority.
- (11) Any tax or other dues payable to the State Government under this Act, any amount of money which a person is required to pay to the assessing authority under sub-section (7) or for which he is personally liable to the assessing authority under sub section (9) shall, notwithstanding anything contained in any other law for the time being in force and subject to any special or general order of the State Government, be recoverable as arrears of Land Revenue, or in the prescribed manner by the assessing authority or any other officer authorised by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery -
  - (a) have all the powers which a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree;

- (b) have the power to require the assessing authority or such authorised officer, having jurisdiction in any other area to make such recovery if the defaulter is or has property within the area of such other assessing authority or officer, and thereupon such other assessing authority or officer shall proceed to make recovery in prescribed manner;

[See Rule 5(7)]

- (12) In respect of any sum recoverable under this Act as arrears of land revenue, the assessing authority may forward to the Collector a certificate under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability of its amount and of the person who is liable and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

**Provided** that without prejudice to the powers conferred by this section the Collector shall, for the purpose of recovering the amount specified in the certificate, have also all the powers which-

- (a) a Collector has under the Revenue Recovery Act 1890; and  
 (b) a Civil Court has under the Code of Civil Procedure, 1908, for the purpose of recovery of an amount in suits under a decree.

**Explanation:** - The expression Collector includes an Additional Collector or any other officer authorised to exercise the powers of a Collector under the law relating to land revenue for the time being in force in the State.

- (13) Notwithstanding anything contained in sub-section (2) and sub-section (3) and notwithstanding any decree or order of any Court, Tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act, is served upon a dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues then-
- (a) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice only in respect of the amount by which such tax or other dues are enhanced, and any proceeding in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal;
- (b) where as result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced –
- (i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realized;

- (ii) if any recovery proceedings are pending before any officer or authority other than the assessing authority, the assessing authority shall intimate such reduction to such officer or authority;
- (iii) any proceeding initiated on the basis of the notice or notices served upon the dealer before the disposal of such appeal, revision or other proceedings, including any recovery proceeding, may be continued in relation to the amount so reduced from the stage at which it stood immediately before such disposal.
- (c) No fresh notice shall be necessary in any case where amount of the tax or other dues is not enhanced (with reference to the amount assessed by the assessing authority) as a result of such appeal, revision or other proceedings.
- (14) Any amount paid or deposited by, or recovered from, or refundable to a dealer, shall first be adjusted towards the principal amount of tax, fee, penalty or other dues outstanding against him and the excess if any, shall then be adjusted towards the interest, if any, due from him.
- (15) Where any amount of tax assessed, interest payable or penalty imposed is recoverable from an owner of a vehicle and for realization of such amount of tax, interest or penalty, recovery certificate has been issued by the assessing authority, the officer or official competent to execute the recovery certificate may take assistance of police and other officer or official of the State Government in locating such vehicle or other vehicles of the same owner. If so required by the officer executing the recovery certificate, such other officer or official shall be empowered to detain such vehicle. Whenever any officer or official detains any such vehicle, he shall give the cause of detention in writing to the person-in-charge of the vehicle at the time of detention and immediately inform the officer executing the recovery certificate. Officer executing the recovery certificate shall proceed in accordance with law to realise such amount of tax or penalty:
- Provided** that if the owner or person-in-charge of the vehicle proves to the satisfaction of such officer or official that amount shown recoverable has already been paid, the vehicle shall be set free:
- Provided further** that if at the time of detention of vehicle, if some goods are loaded on it and owner of such goods is a person other than the owner of the vehicle, the owner or the person-in-charge of the goods shall be allowed to remove such goods from such vehicle if he desires so.

(16) During the period of detention of vehicle under sub-section (15), the person-in-charge of the vehicle at the time of detention shall take all necessary measures for safety of goods and vehicle and officer or official detaining the vehicle shall not be responsible for any loss or damage to goods or vehicle.

<sup>61</sup>[(17) *Notwithstanding anything to the contrary contained in any other provisions of this Act and the rules made thereunder, the State Government may grant moratorium from payment of admitted tax to a power project industrial unit, subject to such conditions as may be prescribed.*

**Explanation:-** For the purposes of this sub-section "admitted tax" shall include the tax liability of other dealers owned by such unit under sub-section (11) of section 3.

(18) *Where any goods has been seized by any competent authority for realization of tax or penalty leviable under this Act and such goods has been given in the custody of any person by such authority. If such person fails to return the goods to the authority in the same form and condition, an amount equal to the value of goods shall be recovered from such person as an arrear of land revenue.]*

**34. Tax deduction at source.** In addition to any other mode of recovery, payment or collection of tax under this Act, the State Government may, by notification in the Gazette, direct that, in a specified case and in the specified circumstances but subject to such conditions as may be specified, every specified person responsible for making payment to the selling dealer, for discharge of liability on account of valuable consideration payable on sale of goods in such cases as may be specified, shall, at the time of making such payment to the seller, either in cash or in any other manner, towards satisfaction of tax payable by the dealer on account of sale of any taxable goods, deduct an amount determined in the manner specified:

**Provided that** where in case of a works contract, the contractor has awarded a sub-contract and the notification provides for deduction of amount by the contractee from the payments made to contractor, the contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, shall, while making payment to the sub-contractor, deduct amount of tax referred to above.

**Provided further** that where in case of a works contract, the contractor has already made deduction from the payments made to his sub-contractor, the amount of such payments shall be deducted from the amount on which deduction is to be made by the contractee to the contractor.

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<sup>61</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

[See Rules 45(5), 49(2), 49(3)]

- (2) Upon issue of a notification under sub-section (1), where-
- (a) a dealer, who makes sale of any taxable goods and in whose case notification referred to in sub-section (1) applies, for any reason claims that he either is not liable to pay tax on such sale or is liable to pay as tax an amount lesser than amount of deduction computed in the manner provided; or
  - (b) the person responsible for making payments to the dealer selling the goods is unable to ascertain the turnover of any goods sold, the person responsible for making payment shall require the selling dealer to produce direction issued in this behalf by the assessing authority of the selling dealer and shall act according to such direction of the assessing authority.
- (3) Where purchasing dealer himself is liable to pay tax on turnover of purchase of any goods by virtue of any provision of this Act, he shall not deduct any amount in respect of turnover of such goods.
- (4) In the circumstances under sub-section (2), the dealer selling goods may, for issue of direction to the purchaser to deduct an amount lesser than the proposed amount of tax, apply to the assessing authority having jurisdiction over the principal place of his business or if he has no fixed place of business, to the assessing authority in whose jurisdiction he ordinarily resides.
- (5) The assessing authority referred to in sub-section (4), after examining the liability of payment of tax of the dealer in respect of sale of goods made and after giving reasonable opportunity of being heard to the dealer, shall by an order direct the purchaser of the goods accordingly.
- (6) The amount deducted under sub-section (1) shall be deposited into the Government Treasury by the person making such deduction before the expiry of the 20th day of the month following that in which deduction is made:

**Provided** that where the purchaser of goods referred to in sub-section (1) is a registered dealer, he shall deposit the amount of deduction in the manner and within the time in which amount of tax for the tax period in which purchase has been made, is payable and such dealer shall be entitled to claim input tax credit in accordance with provisions of section 13 in respect of such purchase.

[See Rule 45(7)]

- (7) The person making deductions under sub-section (1) shall, at the time of payment or discharge, furnish to the selling dealer a certificate of amount deducted in such form and manner and within such period as may be prescribed and shall submit such statement of all such purchases, payments and deductions made and certificates issued by him, in such manner and within such time, as may be prescribed.

[See Rules 45(6), 45(7), 49(1), 49(5), 49(7), 49(8), 49(9), 49(10), 49(12), 49(14)]

- (8) If any person referred to in sub-section (1) fails to make the deduction or after making deduction fails to deposit the amount so deducted as required by sub-section (6), the assessing authority may, after giving to such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section but not so deducted and, if deducted, not so deposited into the Government Treasury.
- (9) Without prejudice to the provisions of sub-section (8), if any such person, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of fifteen percent per annum on the amount not so deposited from the date on which such amount was deducted to the date on which such amount is actually deposited.
- (10) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (9) shall be recovered as arrears of land revenue from the person who has deducted and such amount shall be a charge upon all the assets of the person concerned.
- (11) Nothing contained in this section shall prevent the assessing authority from making an assessment on any tax payable by the dealer in accordance with other provisions of this Act and the dealer shall be liable to pay tax in accordance with other provisions of this Act.

**Provided** that any deduction made in accordance with the provisions of this section shall be treated as a payment of tax on behalf of the selling dealer, and credit shall be given to him for the amount so deducted on the production of the certificate, referred to in sub-section (9) in the tax return of the relevant period or the assessment made, as the case may be, and any amount found in excess of tax due shall be refunded to the selling dealer.

- (12) No deduction of any amount shall be made under this section if the person selling the goods is not a dealer, but the onus to prove that goods have been purchased from a person other than a dealer shall lie on the person responsible for making payment, failing which it shall be deemed that goods have been purchased from a dealer.

- (13) Where the person responsible for making deduction in respect of a sale under a works contract is unable to ascertain the amount of deduction and the contractor or the sub-contractor, as the case may be, does not produce direction referred to in sub-section (2) from its assessing authority, the person responsible for making deduction shall deduct an amount which shall be four percent of the gross amount of payment.

<sup>62</sup>[(14) No deduction under this section shall be made on the turnover of sale where such sale takes place -

- (i) in the course of inter-State trade or commerce; or
- (ii) outside the State; or
- (iii) in the course of the export out of, or import into, the territory of India;]

**Explanation:** - For the purposes of this section, assessing authority in relation to person responsible for making payments to the selling dealer means the officer having jurisdiction over the place where the principal place of business of such person inside the State is located and where such person has no such place, the place where the residence of such person inside the State is located.

**35. Allotment of tax deduction number to a person responsible for making tax deduction at source.** A person responsible for making tax deduction at source in accordance with provisions of section 34, if he is not a registered dealer, shall apply to the assessing authority for allotment of tax deduction number and the application shall be disposed of in such time and manner as may be prescribed.

- (2) Tax deduction number shall be referred to in all the documents pertaining to deposit of tax or to any return filed.
- (3) No person other than a registered dealer can make tax deduction under sub-section (1) of section 34 unless he has applied for such tax deduction number.
- (4) If any person referred to in sub-section (1) fails to apply for tax deduction number, the assessing authority may, after giving reasonable opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under section 34.

[See Rule 48]

<sup>62</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

**36. Recovery or refund of petty amounts to be ignored.** Notwithstanding anything contained in any other provisions of this Act, no tax, fee, interest or penalty under this Act shall be recovered and no refund shall be allowed if the amount involved for any assessment year is less than one hundred rupees.

**37. Recovery of tax in case of a company under liquidation.** (1) Every person who -

- (a) is the liquidator of a company which is being wound up, whether under orders of a Court or otherwise; or
- (b) has been appointed the receiver of any assets of a company {hereinafter referred to as the liquidator},

shall within thirty days after he has become such liquidator, inform the assessing authority of his appointment as such.

(2) The assessing authority shall after making such inquiry or calling for such information as it may deem fit, notify the liquidator within three months from the date on which he receives information of the appointment of the liquidator the amount which in the opinion of the assessing authority would be sufficient to provide for any tax which is then or likely thereafter to become, payable by the company.

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

**Provided** that nothing contained in this sub-section shall debar the liquidator from parting with any of the properties in compliance with any order of a Court or for the purpose of the payment of tax payable by the company under this Act or for making any payment over debts due to Government on the date of liquidation or for meeting such costs or expenses of the winding up of the company as are in the opinion of the assessing authority reasonable.

(4) If the liquidator fails to give the information in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

**Provided** that if under sub-section (2), the amount of any tax payable by the company is notified personal liability of the liquidator under this sub-section shall be to the extent of such amount.

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

- (6) The provision of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

**Explanation-** Company has the meanings assigned to it by clause (i) of sub-section (1) of section 3 of the Companies Act, 1956 (Act No. 1 of 1956).

**38. Liability of director of limited company in liquidation.** Notwithstanding anything contained in the Companies Act, 1956, when any limited company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the limited company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

**39. Power to grant installment.** (1) Subject to such conditions and restrictions, including the conditions regarding furnishing security to the satisfaction of the assessing authority, as may be deemed fit to be imposed-

- (a) the State Government may permit any dealer or other person, against whom any amount of tax, penalty or other dues is outstanding, either under this Act or under the erstwhile Act, to pay the amount in such number of monthly installments not exceeding twenty four; and
  - (b) the Commissioner may likewise permit any dealer or other person, against whom any amount of tax, penalty or other dues, payable either under this Act or under the erstwhile Act, aggregating not more than **five lakh rupees** is outstanding, to pay the amount in such number of monthly installments, not exceeding twelve.
- (2) Where such dealer or other person fails to furnish, within sixty days of the order referred to in sub-section (1), adequate security to the satisfaction of the assessing authority concerned for payment of the outstanding amount, or fails to comply with the conditions or restrictions imposed in such order, the amount due shall be recoverable at once.

#### Short Comments

##### Section 39: "Power to grant installment"

Power to grant installments are discretionary.

*Shiv Trading Co. vs. State of U.P. 2002 NTN (Vol. 21) 448*

**CHAPTER -V****Refund and Adjustment**

**40. Refund and adjustment.** (1) Subject to other provisions of this Act, the assessing authority shall in the manner prescribed, refund to the dealer an amount of tax, fee, or other dues paid in excess of the amount due from him under this Act.

**Provided** that amount found to be refundable shall first be adjusted towards tax or any other amount outstanding against the dealer under this Act or under The Central Sales Tax Act 1956 or under the erstwhile Act and only the balance if any shall be refunded.

**Provided further** that refund, of excess amount of input tax credit, shall, without prejudice to other conditions, be subject to conditions and restrictions of section 15.

[See Rule 50(10)]

(2) Where amount found refundable in accordance with the provisions under sub-section (1), is not refunded within thirty days from the date of order of refund passed by the assessing authority or where order giving rise to refund is passed by any other authority or court, from the date of receipt of such order by the assessing authority by due process, the dealer shall be entitled to simple interest on such amount at the rate of twelve percent per annum from the date of such order passed by the assessing authority or from the date of receipt of the order giving rise to refund passed by any other authority or Court, till the date refund is made.

**Provided** that where refund of excess amount of input tax credit due on the basis of returns filed by the dealer, is not allowed within the time prescribed under section 15, the dealer shall be entitled to simple interest on such amount at the rate of twelve percent per annum from the date on which refund becomes due and till the date refund is made.

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

(4) Where a dealer has requested the assessing authority for withholding any amount refundable to him for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956, the dealer shall not be entitled for interest.

- (5) Where any amount of tax has been deducted from any dealer under section 34 as tax payable by him for any assessment year, for the purpose of sub-section (3), amount deducted shall be deemed to be tax due under this Act and shall not be refunded to the dealer where the dealer -
- (a) has neither submitted returns of turnover and tax for all tax periods nor has submitted annual return for the assessment year in which sales are made; and
  - (b) has been assessed *ex parte* for the assessment year in which sales are made.
- (6) Where in respect of sale of any goods, any amount of tax has been realized by a registered dealer from -
- (a) any official or personnel of-
    - (i) any foreign diplomatic mission or consulate in India; or
    - (ii) the United Nations or any other similar International body, entitled to privileges under any convention to which India is a party or any other law for the time being in force; or
  - (b) any consular or diplomatic agent or any mission, the United Nations or any other body referred to in sub-clause (i) or sub-clause (ii) of clause (a),  
 and where such official, personnel, consulate or agent has purchased goods for himself or for the purpose of such mission, United Nations, or any other body, then if such official, personnel, agent, United Nations or body, after producing tax invoice referred to in sub-section (1) of section 22 or the tax invoice referred to in sub-section (3) of the said section, as may be applicable, in the prescribed manner, claims refund of the amount of tax realised from him, the Commissioner or the officer authorised by him in this behalf, shall refund such amount to such official, personnel, consulate or agent of such mission, United Nations or body, as the case may be.
- (7) Refund, under any provisions of this Act, may be given by refund voucher or cheque:
- Provided** that where a dealer submits e-tax return, refund of any amount found refundable to him may be allowed through e-cheque.
- <sup>63</sup>[(8) *The amount refundable under the erstwhile Act may be adjusted against the amount of tax or penalty or any other dues under this Act.*]

<sup>63</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**Explanation:** For the purposes of this Act, prescribed date shall be deemed to be the date of refund.

[See Rules 50, 73]

#### Short Comments

#### Section 40: "Refund and adjustment"

Government Authorities cannot issue any Cheque or demand draft or voucher to the dealer, which can be dishonored.

*Shiva Commodities vs. T.T.O. & Anr. 2002 UPTC 640*

Despite repeated reminders, refund was not granted. Ultimately on the interference of High Court refund was granted. Interest has to be paid on delayed payment and the amount of interest should be deducted from the salary of officer(s), who defaulted in making refund for six years.

*Pardeep Traders vs. State of Punjab & Ors. 2001 NTN (Vol. 18) 193*

Refund cannot be denied and tax of dealer cannot be adjusted towards demand against transporter. The practice of Trade Tax Department to withhold money cannot be tolerated.

*Computech International Ltd. vs. T.T.O. 2003 NTN (Vol. 22) 299*

**64[40A. Withholding of refund in certain cases.** (1) Notwithstanding anything to the contrary contained in any other provision of this Act or in any judgment, decree or order of any Court, Tribunal or other authority, where after giving reasonable opportunity of being heard to the dealer or the person concerned, the Commissioner is satisfied on the report of the assessing authority that,-

- (a) the dealer has submitted false return of the turnover or has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover or has prevented the assessing authority or any other competent authority from making inspection and examination of books, accounts or documents maintained or goods shown to be held in stock by such dealer or obstructed any competent authority in performing his functions under this Act; or
- (b) any purchase in respect of which input tax credit in any return has been claimed, is not verifiable; or
- (c) the dealer has obtained tax invoices without making actual purchase of goods; or
- (d) the dealer has failed to furnish any security demanded from him under any provision of this Act or the Central Sales Tax Act, 1956; or
- (e) the circumstances exist involving fraud,

<sup>64</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

and where the Commissioner is of the opinion that if refund is allowed, it may not be possible to realize any amount of tax or penalty likely to be levied, he may permit the assessing authority to pass an order for withholding, as a security, such amount of refund as would be sufficient to cover the amount of tax or penalty or both, as the case may be, likely to be levied, for a period as may be determined by the Commissioner.

- (2) Where the assessing authority finds that the circumstance mentioned in sub-section (1) exist and sufficient material is available on the record, it shall send a report to the Commissioner along with the material for seeking the permission to withhold the amount of refund.
- (3) The assessing authority shall complete the proceeding for assessment or penalty or both, pending before him within such period as may be determined by the Commissioner:

**Provided** that if the Commissioner is satisfied that the circumstances exist which would prevent the assessing authority to complete the assessment or penalty proceeding within the determined period, he may extend the period not exceeding 90 days.

- (4) After the completion of the proceeding withheld amount shall be adjusted against demand created due to assessment or penalty proceeding and the balance if any shall be paid with interest at the rate of twelve percent per annum from the date on which refund has become due, in the manner provided under this Act and the rules made thereunder.

**Explanation:** For the purposes of this section refund includes the refund of input tax credit.]

**65[41. Provisional refund - (1)** Notwithstanding anything contained in section 40, in the case of a dealer, whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority, upon receiving the return for a tax period and application for provisional refund along with the proof of export, pending audit and investigation to establish the correctness of the claim and consequent assessment, shall, allow provisional refund of the excess amount of input tax credit for such tax period on account of sale in the course of the export of the goods out of the territory of India, within thirty days from the date of receipt of such application:

**Provided** that if any amount of tax, fee or penalty or any other amount either under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act is due against such dealer the amount found refundable first shall be adjusted towards such amount of tax or fee or penalty, as the case may be, and excess, if any, shall be refunded to the dealer:

**Provided further** that, before granting refund, the assessing authority may require the dealer to furnish security of amount equivalent to amount of refund to its satisfaction where,-

- (a) the dealer has been involved in tax evasion under this Act or erstwhile Act or under the Central Sales Tax Act 1956; or
- (b) the dealer has obstructed the officers empowered under this Act in performing any of his functions or duties to him under this Act; or

<sup>65</sup> . Substituted vide Noti. No. 497(2) (NATIONAL TAX NEWS & VIEWS) dated 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution Section 41 was as follows:

**41. Provisional refund.** (1) Notwithstanding anything contained in section 40, in case of a dealer, whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority, upon receiving the return for a tax period and application for provisional refund, pending audit and investigation to establish the correctness of the claim and consequent assessment, shall, allow provisional refund of excess amount of input tax credit for such tax period on account of sale in the course of the export of the goods out of the territory of India, within thirty days from the last date prescribed for submission of return or from the date on which return is submitted, whichever is later:

Provided that if any amount of tax, fee or penalty or any other amount either under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act is due against such dealer, amount found refundable first shall be adjusted towards such amount of tax or fee or penalty, as the case may be, and excess, if any, shall be refunded to the dealer:

Provided further that, before granting refund, the assessing authority may require the dealer to furnish security of amount equivalent to amount of refund to its satisfaction.

(2) If, on assessment, the provisional refund granted under sub-section (1) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest at the rate of fifteen percent per annum and for the period commencing on the date of grant of provisional refund and ending on the date of payment of the amount, as tax due from the dealer.



- (c) *the conditions imposed by the State Government for deferment of the arrear has been complied with.]*

[See Rule 73]

**66/42. Treatment of industrial units availing exemption or reduction in the rate of tax under erstwhile Act.**

- (1) *No industrial unit,-*

- (a) *availing benefit of exemption from or reduction in the rate of tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales or purchase or both as the case may be, before the commencement of this Act; or*

- (b) *which is granted the benefit of exemption from or reduction in the rate of tax on the turnover of sale or purchase or both as the case may be, under the erstwhile Act or under the Central Sales Tax Act, 1956;*

*shall be permitted to avail the benefit of exemption from, or reduction in the rate of, tax on the turnover of sale or purchase or both as the case may be, on or after the commencement of this Act.*

- (2) *The industrial unit availing the benefit of tax deferment under the erstwhile Act or under the Central Sales Tax Act, 1956 before the commencement of this Act or a unit which is granted facility of tax deferment under the erstwhile Act or under the Central Sales Tax Act, 1956 shall continue to avail the facility of deferment for net tax payable under this Act and the Central Sales Tax Act, 1956, subject to such conditions and restrictions as may be prescribed.*

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<sup>66</sup> . Substituted vide Noti. No. 1724(2)/LXXIZ-V-1-1 (ka) 14/2008 dt. 29.08.08 w.e.f. 01.01.08 (U.P. Act No. 19 of 2008). Before substitution the Section 42 was as follows:

**42. Tax deferment.** (1) Notwithstanding anything contained in this Act any industrial unit availing tax exemption or reduction in the rate of tax on January 1, 2008 or an industrial unit which is granted the facility of exemption or reduction in the rate of tax under the erstwhile Act shall be treated as a unit availing tax deferment. A unit availing tax deferment under the erstwhile Act before January 1, 2008 or a unit, which is granted benefit of tax deferment under the erstwhile Act, shall continue to avail the said facility subject to such conditions as may be specified.

(2) The unit availing the tax deferment as specified in sub-section (1) or a unit availing deferment facility under the erstwhile Act shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of section 13.

(3) The period of eligibility, the method of debiting eligibility amount, the repayment and any other benefits for all units availing tax deferment shall be in such manner as may be prescribed.

- (3) <sup>67</sup>[(a) the industrial unit availing or granted benefit of exemption from, or reduction in the rate of tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales of manufactured goods or turnover of purchase of any raw material, processing material, consumable stores, fuel other than petrol and diesel, lubricant required for use in manufacture of goods or in the packing of goods manufactured by such industrial unit or both, and
- (i) whose facility of exemption or reduction in the rate of tax is base on the fixed capital investment as provided under the erstwhile Act or notification issued thereunder; or
  - (ii) an industrial unit purchased from the State Government or any corporation or undertaking owned or controlled by the State Government and to whom exemption or reduction in the rate of tax has been granted under the erstwhile Act may apply to the Commissioner for issue of the Certificate of Entitlement in the prescribed form and in prescribed manner.]
- (b) The Commissioner after examining the relevant records and report from the assessing authority and if he is satisfied that the information furnished is correct and complete, shall issue within 60 days from the date of receipt of the application in prescribed form and in prescribed manner containing such particulars as may be prescribed including period of validity of certificate and amount of entitlement if any.
- (c) If the Commissioner is satisfied that particulars furnished by an industrial unit in the application is wrong or incomplete or is not worthy of credence, he shall after giving the applicant the opportunity of being heard, reject the application and inform the applicant accordingly.
- (d) Subject to an appeal to the Tribunal under Section 57 the order passed by the Commissioner in this behalf, shall be final.

<sup>67</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution clause (a) of sub-section (3) of Section 42 was as follows:

(3)(a) The industrial unit availing benefit of exemption from, or reduction in the rate of, tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales of manufactured goods and

(i) whose facility of exemption or reduction in the rate of tax is based on the fixed capital investment as provided under the erstwhile Act or notification issued there under; or

(ii) an industrial unit purchased from the State Government or any corporation or undertaking owned or controlled by the State Government and to whom exemption or reduction in the rate of tax has been granted under the erstwhile Act.

may apply to the Commissioner for issue of the Certificate of Entitlement in the prescribed form and in prescribed manner.

- (4) <sup>68</sup>[The industrial unit availing or granted benefit of exemption from], or reduction in the rate of, tax on the turnover of sales before the date of commencement of this Act or an industrial unit which is granted the facility of exemption from, or reduction in the rate of, tax on or after such commencement, on the turnover of sales under the erstwhile Act or the Central Sales Tax Act, 1956, shall be entitled for exemption by way of refund of net tax paid along with the return of tax period in prescribed manner and on fulfilling the conditions that,-
- (a) the unit shall hold valid registration certificate issued under this Act or under the Central Sales Tax Act, 1956,
  - (b) the unit shall have a valid Certificate of Entitlement issued by the Commissioner,
  - (c) the amount of refund shall not be more than an amount equal to net tax paid for relevant tax period,
  - (d) the net tax payable has been deposited along with return of tax period in prescribed manner,
  - (e) the refund shall be subject to the provisions of Section 40 except that the amount shall not be adjusted against the admitted tax liability,
  - (f) the facility of refund shall be available when the amount or the period mentioned in the Certificate of Entitlement, \* whichever is earlier,
  - (g) the tax payable on the turnover of sales of goods mentioned in the Certificate of Entitlement and which is manufactured in the industrial unit shall be deducted from the total amount mentioned or described in the Certificate of Entitlement,
  - (h) the industrial unit has not used the facility of exemption from or reduction in the rate of tax in any manner.

**Explanation:** The expression 'net amount of tax payable' means-

- (i) the differential amount of tax payable under this Act on the sale of taxable goods other than non-vat goods, manufactured in the unit and input tax credit available to the extent or proportionate to taxable goods other than non-vat goods sold, in case of an industrial unit availing facility of exemption from tax under the erstwhile Act and the Central Sales Tax Act, 1956.

<sup>68</sup> . Substituted for the words "the industrial unit availing benefit of exemption from" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

(ii) the partial amount of net tax computed under Clause (i) above, in proportion to the rate of tax available for exemption to the rate of tax payable under the erstwhile Act, in case of an industrial unit availing benefit of reduction in the rate of tax.

<sup>69</sup>[(4A) The industrial unit availing or granted benefit of exemption from tax on the turnover of purchase before the date of commencement of this Act shall be entitled for exemption by way of refund of Earned Input Tax Credit computed on the basis of data declared in the documents submitted along with the return of tax period in prescribed manner and on fulfilling the following conditions that,-

- (a) the industrial unit shall hold valid Certificate of Entitlement issued by the Commissioner as provided under sub-section (3);
- (b) the amount of refund shall not be more than an amount equal to input tax credit earned during relevant tax period,
- (c) the refund shall be subject to the provisions of section 40 except that the amount shall not be adjusted against the admitted tax liability,
- (d) the facility of refund shall cease on the day when the amount or the period mentioned in the Certificate of Entitlement, whichever is earlier,
- (e) the facility of exemption from tax by way of refund shall be available only in respect of raw material, processing material, consumable stores, fuel other than petrol and diesel, lubricant, required for use in manufacture of goods or in the packing of manufactured goods mentioned or described in the Certificate of Entitlement,
- (f) the amount of exemption from tax by way of refund on the turnover of purchase of goods, shall be deducted from the total amount mentioned or described in the Certificate of Entitlement.
- (g) the industrial unit has not misused the facility of exemption from tax in any manner.

**Explanation:** "Earned Input Tax Credit" means the amount of admissible Input Tax Credit computed on the basis of data declared in the returns of tax period where industrial unit was availing benefit of exemption under the erstwhile Act.]

<sup>69</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

- (5) <sup>70</sup>[(a) *The amount found refundable shall be refunded within a period of 30 days from the last date of the month in which dealer files the return of relevant tax period. Where the return of tax period is not complete and dealer fulfils the requirement of return on a date later to the due date for filing of return of tax period, such date shall be deemed to be the date of filing of return of tax period.*]
- (b) The amount of refund shall be made in such manner as may be prescribed.
- (c) The industrial unit failing to deposit the net tax admittedly payable within prescribed time and in prescribed manner or deposits it after due date, the amount of interest leviable and penalty imposed if any, shall be adjusted and only the balance amount shall be refunded.
- (6) (a) The total amount of the refund shall be limited to the extent of the differential amount of the total eligible amount available for exemption or reduction in the rate of tax and the amount availed in exemption or reduction in the rate of tax before the commencement of this Act.
- (b) The total period of the refund shall not exceed difference of the total period available for exemption or reduction in the rate of tax and the period exhausted before the commencement of this Act.
- (7) If any amount is found refundable and is not refunded within the prescribed time, the industrial unit shall be entitled to simple interest at the rate of twelve percent per annum from the last date prescribed for refund. The amount of interest shall be refunded in such manner as may be prescribed.
- <sup>71</sup>[(8) *The industrial unit availing the benefit of tax deferment as provided under sub-section (2) or availing the facility of refund as provided under subsection (4), shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of section 13. The industrial unit availing the facility of refund on both sale and purchase, shall be eligible for claiming Input Tax Credit while computing net tax payable on the turnover of sale of goods described in the Certificate of Entitlement.*]

<sup>70</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the clause (a) of sub-section (5) of Section 42 was as follows:

(a) The amount found refundable shall be refunded within a period of 30 days from the last date of the month in which dealer files the return of relevant tax period along with the proof of deposit of net tax payable.

<sup>71</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009). Before substitution the sub-section (8) of Section 42 was as follows:

(8) The industrial unit availing the benefit of tax deferment as provided under sub-section (2) or availing the facility of refund as provided under sub-section (4), shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of Section 13.

- (9) Where the amount or the period for exemption or reduction in the rate of tax changes on account of any valid reason or otherwise, the Commissioner shall suo motu or on an application of the industrial unit, amend the certificate of entitlement accordingly.
- (10) The facility of refund shall be available under this Act and under the Central Sales Tax Act, 1956.
- (11) An industrial unit claiming the refund under this Section shall not be deemed to have been assessed based on the returns filed by it and any refund made shall be subject to assessment requiring production of accounts in support of the return filed.
- (12) The provisions of this section shall mutatis mutandis apply to those units which were established before 9th November, 2000 (the date of reorganization of Uttar Pradesh) and now situated within the territory of Uttarakhand subject to the following conditions:-
- the goods are manufactured in a unit established in the State of Uttarakhand having eligibility certificate (validity commencing prior to 9th November, 2000) issued under Section 4-A of the erstwhile Act for the manufacture of such goods.
  - such goods are sold for the first time within their manufacture within the period of facility of exemption or reduction in the rate of tax, after bringing them into the State by way of transfer other than sales, by manufacturer having his place of business in the State of Uttarakhand.
  - valid and genuine certificate issued by the Assessing Authority of the State of Uttarakhand is produced before the Assessing Authority of the State of Uttar Pradesh indicating therein that the amount has been reduced in the overall list of exemption or reduction in the rate of tax available to the manufacturer.
- (13) Facility of refund of tax under sub-section (12) shall be withdrawn, if the certificate referred to in Clause (c) of sub-section (12) is found false or fake and not issued by the relevant assessing authority of Uttarakhand.]
- <sup>72</sup>[(14) *On scrutiny of account or subsequent investigation it is found that data furnished along with return of the tax period is found wrong or not reliable or based on no genuine material on record, without prejudice to the provisions of section 54, the excess amount refunded shall be deposited within 30 days of notice received from the assessing authority along with interest at the rate of 15 percent per annum with effect from the date of refund to the date of deposit, failing which the excess amount refunded shall be recovered as an arrears of land revenue.]*

[See Rules 70, 73]

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<sup>72</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

**43. Procedure for disbursement of amount wrongly realised by dealers as tax.**

(1) Where any amount has been realised from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of provisions of sections 22 and 23, such dealer shall, subject to provisions of sub-section (14) of section 21, deposit the entire amount so realised in the manner and within the period prescribed under section 24.

(2) Any amount deposited by any dealer under sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person on whom such liability has been passed ultimately in respect of goods on the sale or purchase whereof such excess amount has been charged.

(3) Where any amount is deposited by any dealer under sub-section (1) such amount or any part thereof shall on a claim being made in that behalf be refunded in such manner as may be prescribed to the person on whom liability of such amount has been passed ultimately.

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

(4) Where any amount has been deposited by any dealer in accordance with provisions under sub-section (1), the dealer shall, subject to provisions of sub-section (14) of section 21, not be entitled to allow refund of such amount to the purchaser of goods.

**Explanation:** - The expression "Final order on appeal revision or reference" includes an order passed by the High Court or by the Supreme Court.

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[See Rules 50(12), 73]

## CHAPTER – VI

### Tax Audit, Inspection, Search and Seizure

**44. Tax Audit.** (1) For the purpose of examining the correctness of tax return or returns filed by a dealer or class of dealers and to verify admissibility of various claims including claim of input tax credit made by a dealer or class of dealers, tax audit shall be made of such number of dealers as may be prescribed.

- (2) Any officer, not below the rank of an assessing authority, appointed by the State Government or the Commissioner and posted in the audit wing of the department administering this Act or any other officer authorised by the Commissioner in this behalf may, undertake tax audit of the records, stock in trade and the related documents of the dealers, who are specified or selected in the manner prescribed under sub-section (1):

**Provided** that no audit shall be undertaken for any assessment year after expiry of a period of three years after the end of such assessment year:

**Provided further** that where the officer making audit in respect of any assessment year is satisfied that the dealer has wilfully suppressed any material fact leading to evasion of tax or has wrongly claimed any benefit, he may make audit for two consecutive assessment years prior to the assessment year in which audit is being conducted.

- (3) For the purpose of the tax audit, officer referred to in sub-section (1) may require the dealer to produce before him records and other documents in his office.

Provided that where it is convenient, the officer may take up tax audit in the office, business premises or warehouse of the dealer.

- (4) After completion of the tax audit, the officer making the audit shall send audit report prepared by him to the assessing authority of the dealer.

[See Rule 43]

**45. Power to order production of accounts, documents and power of entry, inspection, search and seizure.** (1). Any officer empowered by the State Government in this behalf (hereinafter in this section referred to as the authorized officer), may for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from the dealer as may be necessary.

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

[See Rules 5(2), 5(5), 5(6)]

- (2) The authorised officer may, at all reasonable times, enter and search any place of business or vehicle, vessel or other building or place where he has reason to believe that the dealer keeps or is for the time being keeping any book, register, document, account or goods relating to his business:

**Provided** that no residential accommodation (not being a place of business cum residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner in writing.

- (3) All books, documents, and accounts maintained by a dealer in the ordinary course of business, the goods in his possession and his place of business, vessel or vehicle shall be open to search and inspection at all reasonable times by the authorised officer.

- (4) If the authorised officer while examining any books, accounts or documents or conducting search or inspection has reason to believe that any dealer is trying to evade liability of payment of tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document, he may seize such account, register or document as may be necessary. The authorised officer shall forthwith grant a receipt for the same and shall return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of seizure after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or documents, affix his signature and seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or documents:

**Provided** that where a dealer has maintained any document on magnetic media or electronic media, the authorized officer, after preparing hard copies of the document and CD in duplicate and after putting his signature at various places on such hard copy and CD, return such media alongwith one copy of the hard copy and the CD:

**Provided** further that where intimation, for receiving seized account, register or document back, has been sent to the dealer or the person concerned and the dealer or such person, in spite of receipt of such intimation, does not appear on the date fixed for return of such documents and consequently, where seized account, register or document is returned to the dealer or the person concerned after expiry of the period of ninety days, it shall be deemed that such account, register or document has been returned within the period of ninety days.

- (5) Notwithstanding anything contained in sub-section (4), the officer seizing any account, register or other document under that sub-section may, for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the year for which they are relevant, as he deems necessary.
- (6) An authorised officer -
- (i) shall have the power to seal the place of business, vehicle, any box, almirah or other receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or other person in occupation or in-charge of such office, shop, godown, vessel, vehicle, box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so;
  - (ii) where the owner or other person in occupation or in charge of the office, shop, godown, vessel or vehicle or the box almirah or other receptacle found in the place of business, or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such office, shop, godown, vessel or vehicle or the box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.
- (7) No person shall tamper with any seal put under sub-section (6).
- (8) Any authorized officer while making search or inspection under this section may require any dealer or the other person to give any information likely to be of use in the proceedings or knowledge in respect of such books, documents, accounts or goods as are found at the time of search, inspection or seizure under this section.
- (9) The authorised officer who has made inspection, search or seizure of any books, accounts or documents or has investigated into the liability of tax of a dealer shall, on the basis of facts found and enquiry made, prepare a report in respect of such inspection, search, seizure or investigation and where the officer preparing the report is an officer different from the assessing authority, he shall forward a copy of such report to the assessing authority of the dealer.

- (10) Where the officer preparing the report referred to in sub-section (9), is of the opinion that liability of payment of tax by the dealer in addition to liability of payment of tax admitted by such dealer may exceed rupees one lakh, he shall, before forwarding copy of report referred to in sub-section (9), serve the dealer with a notice stating facts to show cause why adverse inference should not be drawn on the basis of such facts. The dealer on receipt of such notice shall submit his reply to such officer in two copies. Thereafter the officer shall forward to the assessing authority a copy of report, a copy of show cause notice issued and a copy of reply received from the dealer, if submitted by the dealer, along with its comments on the reply submitted by the dealer.

[See Rule 68]

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

**Explanation:** In calculating the period specified in sub-section (4) the period, during which proceedings under this Act remain stayed under the orders of any Court or authority, shall be excluded.

**46. Power of search, inspection and seizure in case of a person other than dealer.** Where a person carries on any activity ancillary or incidental to or in connection with business of a dealer, any officer authorized under sub-section (1) of section 45, for the purpose of investigation into tax liability of a dealer, subject to provision of sub-section (11) of section 45, may exercise powers under sub-section (1) to section 45 of the said section.

**Explanation:** For the purposes of this section, following persons shall be deemed to carry on activities ancillary or incidental to or in connection with the business of a dealer:

- (i) broker or canvassing agent who acts as mediator between purchaser and seller of goods; or
- (ii) transporter or any other carrier or a forwarding agent of goods; or
- (iii) person who fabricates or manufactures any goods for a dealer; or
- (iv) person who takes delivery of goods or who dispatches goods on behalf of a dealer; or
- (v) person who holds in custody any goods belonging to a dealer; or
- (vi) person who handles goods of a dealer in any other capacity.

[See Rules 55, 73]

**47. Power to seek information and to issue summons.** (1) Any officer, not being an officer below the rank of an assessing authority, may require any dealer or other person to furnish any information which may be, or is in his knowledge or possession.

- (2) An officer under this Act shall have the same powers as are vested in a court under the Civil Procedure Code 1908, when trying a suit in respect of following matters, namely -
- (a) Enforcing the attendance of any person and examining him on oath or affirmation;
  - (b) Compelling the production of documents; and
  - (c) Issuing commission for the examination of witness;
- and any proceeding before any of the officers aforesaid shall be judicial proceeding within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code.
- (3) Summons for the production of documents or the attendance of any person shall be issued in the prescribed form.

[See Rules 52, 73]

**48. Power to seize goods.** An officer authorised under sub-section (1) of section 45 shall have the powers to seize any goods -

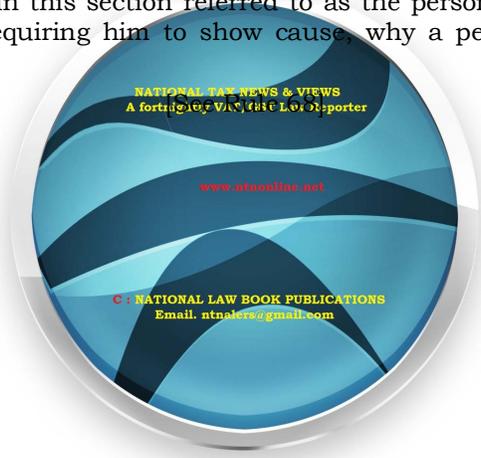
- (i) which are found in a dealer's place of business, vehicle, vessel or any other building or place; or
  - (ii) which, such officer has reason to believe to belong to the dealer and which are found in any place of business, vehicle, vessel or any other building or place, but not being limited for by the dealer in his accounts, registers or other documents maintained in the ordinary course of his business.
- <sup>73</sup>(iii) *which are found in any place of business, vehicle, vessel or any other building or place, and such goods are accompanied by any tax invoice or sale invoice or any other document pertaining to value of goods, as the case may be, containing value of goods under valued to the extent more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the said transaction had taken place, with intention to evade payment of tax]*

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

<sup>73</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

[See Rules 5(2), 5(5), 5(6), 55]

- <sup>74</sup>[(2) *Where any officer referred to in sub-section (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bonafide dealer or **the documents issued by a bonafide dealer with respect to the accompanying goods contains wrong particulars** or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the ordinary course of his business, he shall have power to seized such goods and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.]*
- (3) An officer seizing the goods under sub-section (1) shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso to sub-section (1), along with other documents relating to the seizure to the assessing authority concerned.
- (4) The said assessing authority shall serve on the dealer or, as the case may be, the person in-charge of the goods at the time of seizure (hereinafter in this section referred to as the person in-charge) a notice in writing requiring him to show cause why a penalty should not be imposed.



<sup>74</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution sub-section (2) of Section 48 was as follows:

(2) Where any officer referred to in sub-section (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bonafide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the ordinary course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.

<sup>75</sup>[(5) *If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and after giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in sub-section (1) **or not traced to any bonafide dealer or not properly accounted for by any dealer or the documents issued by a bonafide dealer with respect to the accompanying goods contained wrong particulars** or the goods are undervalued to the extent of more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the said transaction had taken place, with intention to evade payment of tax, it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit.]*

[See Rule 73]

- (6) A copy of the order imposing penalty under sub-section (5) shall be served on the dealer or, as the case may be, the person in-charge.
- (7) The officer seizing the goods shall serve on the dealer or, as the case may be, the person in-charge an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty, like a writs be imposed, on deposit whereof in cash, the goods so seized may be released in favour of the dealer or, as the case may be, the person in-charge:

**Provided** that the Commissioner or such other officer, not below the rank of a Deputy Commissioner, as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or in such form other than cash or indemnity bond, as he may deem fit:

<sup>75</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution sub-section (5) of Section 48 was as follows:

(5) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and **\*[other documents referred to in sub-section (1) or the goods are undervalued to the extent of more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the said transaction had been taken place, with intention to evade payment of tax,]** it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit.

\*Substituted for the words "other documents referred to in sub-section (1)" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**Provided further** that in case of a person, who is not a registered dealer and against whom penalty order referred to in sub-section (7) has been passed, filing of return by such person and assessment of tax on him may not be necessary.

- (8) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (7) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the assessing authority shall cause the goods to be sold in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty imposed, and subject to the provisions of section 40, refund the balance, if any, to the dealer or, as the case may be, to the person in-charge.
- (9) Where the officer seizing the goods, before forwarding the list and other documents referred to in sub-section (3), or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in such manner. The sale proceeds of such goods shall be adjusted towards the expenses of tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person in-charge in accordance with the provisions of sub-section (8).
- [See Rule 53]
- (10) If the amount deposited under sub-section (7) is more than the amount of penalty imposed under sub-section (5), the excess amount so deposited shall be refunded to the dealer or, as the case may be, the person in-charge by the authority with whom it was so deposited, in accordance with the provisions of section 40.

[See Rule 53(2)(xii)]

#### Short Comments

##### Section 48: "Power to seize goods"

This section is an important tool in the hands of the department to check evasion of tax as it provides for the seizure of goods (and not vehicle carrying those goods). This power has to be exercised judicially and with caution. It has great impact on the fundamental right of a person to carry business as well as free movement of goods throughout the country.

The difference in the description of the goods, if at all, would have an effect in the assessment proceeding, and it could be considered at the time of assessment but shall not be a ground for seizure.

*Radha Ballabh Satish Chandra vs. CST [2007] 7 VST 555 (All.)*

Seizure of goods – Dispute regarding taxability of commodity – U.P. Value Added Tax Act, 2008 Section 50 – Question of taxability of the goods cannot be decided in the proceedings for seizure of the goods. This cannot be decided in ancillary or incidental proceedings such as under Section 48(7) of UPVAT Act.

*C.T.T. vs. Purwar Sales Corporation, Kanpur 2008 NTN (Vol. 38) (All.) 18*

*C.C.T. vs. S.K. Food Product, Pokharpur Lal Bangla 2008 NTN (Vol. 38) (All.) 53*

The offence of movement of goods without valid papers was a separate offence for which goods could be seized only if valid documents evidencing movement of goods were not produced – The Commissioner as such must record sufficient reasons to release the goods – Correspondingly he has a duty to record sufficient reasons to make orders demanding security to release the goods, subject to imposition of penalty – The Tribunal found that the movement of goods was supported by the valid documents – The explanation submitted by the consignee was a possible fact – The truck in which the goods has originated had developed some defect and thus goods had to be reloaded and laden in another vehicle at Gwalior – The second driver on which the consignee had no control had consumed liquor and did not stop at 'Sahayata Kendra' – The Tribunal found that there was nothing illegal in the movement of the goods and that the explanation was worth accepting – The Tribunal did not commit any error in finding that the documents were valid and that the explanation was bonafide.

*C.C.T. vs. Thomsan Press India Ltd. 2008 NTN (Vol. 38) (All.) 135*

#### **Incomplete Declaration Form**

Goods cannot be seized merely because some columns in Form 38 left blank, unless a case to evade payment of tax is made out.

*Alpana Packaging Pvt. & Works vs. C.C.T. 2009 NTN (Vol. 39) 58 (Tri.)*

*Meden Steels Pvt. Ltd. vs. C.C.T. 2009 NTN (Vol. 39) 23 (Tri.)*

*Bata India Ltd. vs. C.C.T. 2009 NTN (Vol. 39) 26 (Tri.)*

#### **Power to Seize**

Goods in transit from Mathura to Kanpur seized on the ground that on enquiry from purchaser the purchaser denied to have purchased the goods from the dealer – In reply to show cause notice the dealer submitted that he supplied the goods to Kanpur dealer on instruction of a Ghaziabad dealer – The fact that goods belongs to a bonafide dealer not in dispute – Seizure of goods not justified when goods are covered by all the requisite documents and are properly accounted for in accounts books.

*Sonu Trading Company vs. C.C.T., U.P. 2009 NTN (Vol. 39) 48 (Tri.)*

The goods cannot be seized on the ground of under valuation.

*S.S. Chemicals vs. C.C.T. 2009 NTN (Vol. 39) 53 (Tri.)*

The consignment cannot be seized on the ground that Form 38 was not filled up unless a case of attempt to evade payment of tax is made out.

*Aatma Industries vs. C.C.T. 2009 NTN (Vol. 39) 34 (Tri.)*

The mistake of consignor in making corrections by applying fluid to Form 38 cannot lead to the assumption of reuse of form and ground for seizure of goods.

*Paharpur 3P.A. Division of Paharpur Cooling Towers Ltd. vs. C.C.T. 2009 NTN (Vol. 39) 1 (Tri.)*

Detention/seizure of the goods from the transporter in some other earlier case does not warrants seizure in the present case also.

*K.P. Pan Products Pvt. Ltd. vs. C.C.T., U.P. 2009 NTN (Vol. 39) 12 (Tri.)*

## CHAPTER- VII

### Check-Post

<sup>76</sup>[49. Omitted]

**50. Import of goods into the State by road against declaration.** <sup>77</sup>[(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State any goods other than the goods named and described in Schedule-I in such quantity of measure or of such value, as may be notified by the State Government in this behalf, in connection with business, shall either obtain the prescribed form of declaration in such manner as may be prescribed from the Assessing Authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides or shall download from official web site of the department in such manner as may be prescribed:

*Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.]*

[See Rule 49(3)]

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<sup>76</sup>. Omitted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.2009 (U.P. Act No. 22 of 2009). Before omission Section 49 was as under:-

**49. Establishment of check-posts and barriers.** (1) The State Government, if it is of opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act in respect of -

- (i) sale of goods brought or received from outside the State;
- (ii) sale of goods processed or manufactured by using goods brought or received from outside the State; or
- (iii) sale or purchase of goods produced or manufactured within the State, may by notification in the Gazette, direct the establishment of checkposts or barriers at such places within the State, as may be specified in the notification.

(2) Check-posts or barriers established under the erstwhile Act shall, on January 1, 2008, be deemed to be check-posts and barriers established under this Act.

<sup>77</sup>. Substituted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.2009 (U.P. Act No. 22 of 2009). Before substitution sub-section (1) of Section 50 was as under:

(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State any goods other than the goods named and described in schedule-I in such quantity or measure or of such value, as may be notified by the State Government in this behalf, in connection with business, shall obtain the prescribed form of declaration, in the prescribed manner from the assessing authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

*Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.*

- (2) (a) where such goods are imported, brought or otherwise received into the State by registered dealer, he shall carry such declarations or documents as may be prescribed.
- (b) where the goods are imported, brought or otherwise received into the State by a person otherwise than in connection with business, he may likewise carry such certificates and documents as may be prescribed.
- <sup>78</sup>[(3) *The driver or other person in-charge of any vehicle carrying any goods referred to in the preceding sub-sections shall stop the vehicle when so required by an officer authorized under sub-section (1) of Section 45 or sub-section (1) of Section 48 and keep it stationary for so long as may be considered necessary by the officer authorised under sub-section (1) of Section 45 or sub-section (1) of Section 48, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-sections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.*]
- (4) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and if, for reason to be recorded, he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods
- (5) The provisions of sub-sections (3), (7), (8), (9) and (10) of section 48 shall *mutatis mutandis* apply to goods detained under sub-section (4), as they apply to goods seized under section 48.

<sup>78</sup> . Substituted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.2009 (U.P. Act No. 22 of 2009). Before substitution sub-section (3) of Section 50 was as under:

(3) The driver or other person in-charge of any vehicle carrying any goods referred to in the preceding sub-sections shall stop the vehicle at every such check-post or barrier or, when so required by an officer authorised under sub-section (1) of section 45 or sub-section (1) of section 48, at any other place, and keep it stationary for so long as may be considered necessary by the officer in-charge of the checkpoint or barrier or the officer authorised under sub-section (1) of section 45 or sub-section (1) of section 48, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-sections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.

### Short Comments

#### Section 50 "Import of goods into the State by road against declaration "

Mobile Squad Authorities seized the JCB Machines and demanded security for violation of provisions of VAT Act and Entry Tax Act – Appellant dealer has contended that the Machine in question was imported from Dharwad (Rajasthan) to Greater Noida in March, 2007 and in being used for the labour work - Whether the seizure can be made under Section 50 of U.P. Value Added Tax Act, 2008 for the alleged offences which were committed one year ago? - Held – No - Action under Section 50 can be taken during the illegal transport of the goods – Assessing Authority can take action under the relevant provisions for alleged import for tax evasion – Dealer directed to discharge his liability of payment of Entry Tax on the original Value of JCB Rs. 44.20 lakh for release of goods – Seizure orders set aside.

*Krishna Construction Company vs. C. C. T. 2008 NTN (Vol. 37) 15 (Tri.)*

Goods seized for carrying goods without declaration Form VAT 38 in violation of provisions provided in Section 50 – Transaction covered by all other relevant documents except VAT 38 – Show cause notice issued – In reply to show cause notice dealer presented duly filled VAT 38 and explained that VAT 38 could not be presented at the time of checking because inadvertently it left at the office of Transporter Company in Delhi – Authorities not found the reply worth credence and seized the goods following a verdict given by Supreme in Gulgaj's case holding that mens-rea is not necessary for seizure of goods – Whether the consignment can be seized because VAT 38 was not available with the consignment at the time of checking? – Held – No – The goods were according to invoice available with the consignment – Form 402 under Gujarat VAT Act was available – If some documents is left behind the dealer, he should be allowed opportunity to furnish the same – It can not be presumed that documents were prepared subsequently – Decision in 1999 NTN (Vol. 15) 710 followed.

*Bail Polo Motors (Pvt.) Ltd. vs. C.C.T., U.P. 2008 NTN (Vol. 37) 81 (Tribunal)*

Mens-rea is essential for seizure of goods.

*Bail Polo Motors (Pvt.) Ltd. vs. C.C.T., U.P. 2008 NTN (Vol. 37) 81 (Tribunal)*

Seizure of goods – For failure to produce Form 38 at the time of checking – U.P. VAT Act, 2008 Sections 48(7), 50(4) – Mens-rea is essential for seizure of goods.

*Dabur Pharma Ltd. Ghaziabad vs. C.C.T., U.P. 2008 NTN (Vol. 38) Tri. 83*

#### **51. Import of goods into the State by rail, air, post, river or rope way. (1)(a)**

Where any taxable goods are consigned by rail, air or post from a place outside the State for delivery to a dealer inside the State, the concerned authority shall not deliver the goods to the dealer or consignee unless he furnishes or causes to be furnished to such authority a declaration in prescribed form along with the other documents as may be prescribed.

- (b) where a taxable goods are consigned by river or rope way from a place outside the state for delivery to a dealer inside the state the receiving dealer shall not obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer, as may be authorized in this behalf by the Commissioner, prescribed declaration and documents.

- (c) After taking delivery, shall not carry goods away or cause the goods to be carried away from the railway station, airport, post office, steamer or terminal of rope way, as the case may be, unless a copy of the declaration and document as aforesaid is carried with goods:
- Provided** that where any courier service transports any goods by rail, river, air or post, such courier shall not obtain or cause to be obtained delivery thereof unless the dealer, importing goods, furnishes or causes to be furnished to such officer, as may be authorised in this behalf by the Commissioner, a declaration in the prescribed form referred to in clause (a) of sub-section (2) of section 50, in duplicate duly filled in and signed by him for endorsement by such officer. The courier service, after taking delivery of goods from rail, river, air or postal authority, shall carry such duplicate copy of form of declaration alongwith goods and shall deliver to the dealer alongwith goods.
- (2) Where any taxable goods are brought into the State by rail, river or air as personal luggage, the person bringing them shall carry with him the prescribed form of declaration duly filled in and signed by the importer, and the importer shall submit the same for endorsement by the officer authorised under sub-section (1) by the next working day.
- (3) Where any person intends to bring or receive into the State, from any place outside the State by rail, river, air or post any taxable goods otherwise than in connection with business and obtains the form of certificate prescribed under sub-section (2) of section 50, the provision of sub-section (1) and (2) shall *mutatis-mutandis* apply as if word "Certificate" is substituted for the word declaration used therein.
- (4) Where an officer authorised under sub-section (1) of section 45 or an officer referred to in sub-section (1) of section 48 or section 50 while making inspection or search finds any taxable goods, in respect of which declaration before the officer authorised under sub-section (1) has not been made or goods being carried as personal luggage are not accompanied by the form of declaration referred to in clause (a) of sub-section (1) and where after giving reasonable opportunity of being heard to the person in charge of the goods at the time of inspection of goods or the owner of the goods, as the case may be, such officer (officer making inspection or search) is satisfied that such taxable goods are being imported in an attempt to evade payment of tax under this Act, he may, after recording such reasons, detain the goods.
- (5) Provisions of sub-sections (3), (7), (8), (9) and (10) of section 48 shall *mutatis mutandis* apply to such detention of goods as they apply to goods seized under that section.

- (6) Notwithstanding anything contained in sections 50 and this section, the State Government may, in public interest and for sufficient reasons, relax the requirement of furnishing of declaration or certificate referred to in aforesaid sections to such extent as it may notify.

[See Rules 54, 59]

<sup>79</sup>**52. Provision for goods passing through the State.** *When a vehicle coming from any place outside the State and bound for any other place outside the State and carrying goods referred to in sub-section (1) of Section 52, passes through the State, the driver or other person in charge of such vehicle shall carry such documents as may be prescribed failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person in charge of the vehicle.]*

[See Rules 6(7), 58]

#### Short Comments

##### Section 52: "Provision for goods passing through the State"

No penalty if delivery of goods outside the State is proved.

*C.T.T. vs. Smt. Saroj Gupta 2001 NTN (Vol. 18) 259*

The presumption of sale under Section 28-B/Section 52 of UP VAT Act) is rebuttable. The evidence of delivery of goods outside the State cannot be ignored.

*Man Goods Transport Company vs. C.S.T. 2001 NTN (Vol. 12) 13*

The rebuttal of presumption of sale inside the State cannot be ignored on the ground of after thought.

*Rajkishore vs. C.T.T. 2003 NTN (Vol. 23) 667*

<sup>79</sup> . Substituted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.2009 (U.P. Act No. 22 of 2009). Before substitution sub-section (3) of Section 50 was as under:

**52. Issue of authorisation for transit of goods through the State.** When a vehicle coming from any place outside the state and bound for any other place outside the state, and carrying goods referred to in sub-section (1) of \*[Section 50], passes through the state, the driver or other person in charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer in charge of the first check post or barrier after his entry into the state and deliver it to the officer in charge of the last check post or barrier before his exit from the state, failing which it shall be presumed that the goods carried thereby have been sold within the state by the owner or person in charge of the vehicle;

Provided that the goods carried by such vehicle are, after their entry into the state, transported outside the state by any other vehicle or conveyance, the onus of proving that the goods have actually moved out of the state shall be on the owner or person in charge of the vehicle.

**Explanation** - For the purposes of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle.

\* Substituted for the word and figure "Section 51" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

Seizure and denial to issue transit pass under Section 28-B (Section 51 of UP VAT Act) not proper even when the dealer is not a bonafide dealer.

*C.T.T. vs. Jai Narayan Yadav 2002 NTN (Vol. 20) 20*

Goods cannot be seized before the expiry of time allowed in the transit pass. The presumption of sale can be drawn only after the expiry of period allowed in transit pass.

*Madhya Bharat Transport Carrier vs. C.T.T. 2003 NTN (Vol. 23) 1009*

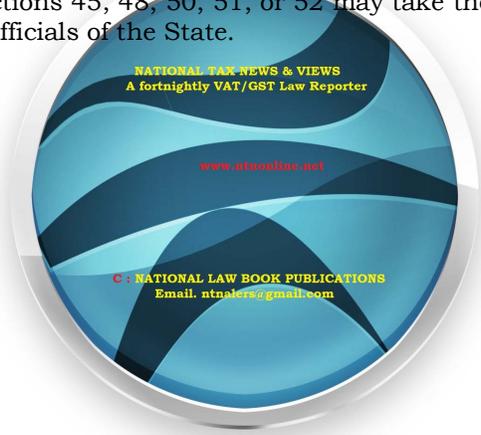
Unloading of goods in transit form one State to another is not illegal and seizure on this ground is not justified.

*Bihar Carrying Corporation vs. C.T.T. 1999 NTN (Vol. 15) 690*

A person claiming protection of the explanation to Section 28-B (Section 51 of UP VAT Act) is under duty to prove that the vehicles in question, though registered in his name, had not been given on hire to the transport company. Mere production of the name of the company or mere setting up of such defense does not absolve the owner in whose name the vehicle is registered from the liability under Section 28-B.

*Surendra Kumar vs. C.S.T. 1994 NTN (Vol. 4) H.C. 84*

**53. Power to seek assistance from police.** An officer exercising powers under the provisions of sections 45, 48, 50, 51, or 52 may take the assistance of police or other officers or officials of the State.



## CHAPTER -VIII

## Penalty

**54. Penalties in certain cases.** (1) The assessing authority, if he is satisfied that any dealer or other person, as the case may be, has committed the wrong described in column (2) of the table below, it may, after such inquiry, if any, as it may deem necessary and after giving dealer or person reasonable opportunity of being heard, direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum as provided in column (3) against the same serial no. of the said table:

Sl. No.	Wrong	Amount of Penalty
(1)	(2)	(3)
80/ 1.	<i>The dealer has without reasonable cause failed,- (a) to deposit the tax due for any tax period within the prescribed or extended time; (b) to submit the tax return for any tax period in the prescribed manner.</i>	20% of net tax payable Rupees two thousand]
2.	The dealer has concealed particular of his turnover or has deliberately given inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payment of tax which he is liable to pay under this Act.	Three times of amount of tax concealed or avoided
3.	(i) The dealer has maintained or produced false accounts, registers or documents ; (ii) Being dealer or any other person who is required to maintain any account or other document, does not maintain such book, account or document as prescribed;	Three times of amount of tax concealed or avoided

<sup>80</sup> . Substituted vide Noti. No. 1101(2)/79-V-1-10-1(ka)18/10 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution entry at Sl. No. 1 of table of sub-section (1) of Section 54 was as follows:

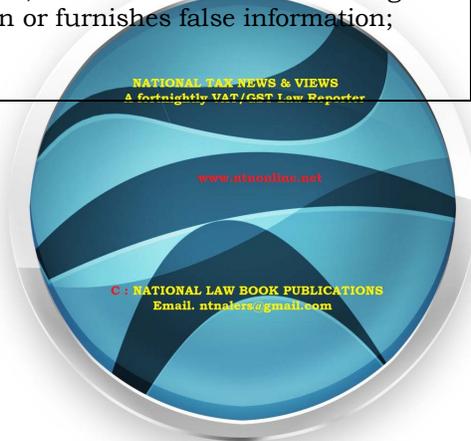
1.	The dealer has without reasonable cause failed to deposit the tax due for any tax period or failed to submit the tax return for any tax period in the prescribed manner; or within the time prescribed or extended;	20 % of tax payable
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4.	The dealer has without reasonable cause failed, to pay, within the time allowed, the tax assessed;	20% of tax assessed
<sup>81/</sup> 5.	Where the dealer has,- (i) failed to issue or has deliberately not issued a or sale invoice; or (ii) deliberately not obtained tax invoice inspite of being a registered dealer while purchasing the goods liable to tax under this Act from a registered dealer; or (iii) not issued purchase invoice; in accordance with the provisions of this Act.	40% of the value of goods]
6.	The dealer has failed to issue a challan, transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act;	40% of the value of goods
7.	Where the dealer,- (i) being liable for registration under this Act has failed to apply in the prescribed manner and within the specified time; or (ii) being liable for registration carries on or continues to carry on business- (a) after his application for registration has been rejected; or (b) after his registration certificate has been cancelled; or (c) without furnishing the security demanded for grant or continuation of registration;	Rupees one hundred per day during which business is carries

<sup>81</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the entry at Sl. No. 5 of table of sub-section (1) of Section 54 was as follows:

5.	The dealer has failed to issue a tax invoice or sale invoice in accordance with the provisions of this Act;	40% of the value of goods
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8.	On demand by the officer empowered under this Act, to inspect, examine and obtain copy, the dealer or other person, as the case may be, refuses or neglects - (i) to produce any book, document or account; or (ii) to operate his computer used in connection with business; or (iii) to allow copies or print outs etc.;	A sum of rupees five thousand and five times thereof if act is repeated
<sup>82</sup> 9.	<i>The dealer or other person, as the case may be, obstructs or prevents an officer empowered under Section 45 or Section 48 from performing any of his functions under this Act;</i>	<i>A sum of rupees five thousand in case of registered dealer and five times thereof in case of others.]</i>
10.	The dealer or other person, as the case may be, refuses or neglects to furnish any information, which is in his knowledge or possession or furnishes false information;	A sum of rupees five thousand in case of registered dealer and five times thereof in case of others.



<sup>82</sup>. Substituted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.2009 (U.P. Act No. 22 of 2009). Before substitution the entry at Sl. No. 9 of sub-section (1) of Section 54 was as follows:

9.	The dealer or other person, as the case may be, obstructs or prevents an officer empowered under section 45 or section 48 or an officer in-charge of a check-post or barrier from performing any of his functions under this Act;	A sum of rupees five thousand in case of registered dealer and five times thereof in case of others
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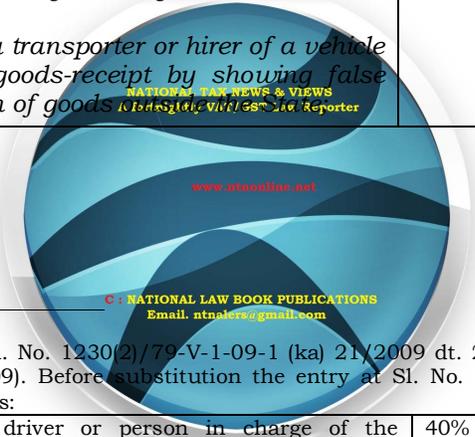
11.	<p>Where the dealer or other person, as the case may be,-</p> <p>(i) issues or furnishes a false or wrong certificate or form of declaration prescribed under this Act, by reason of which a tax on sale or purchase, ceases to be leviable, whether in full or in part; or</p> <p>(ii) issues a tax invoice or sale-invoice without actual sale of goods; or</p> <p>(iii) issues a transport memo, challan or transfer invoice without actual dispatch or delivery of goods; or</p> <p>(iv) receives a tax invoice or sale-invoice without actual purchase of goods; or</p> <p>(v) receives a transport memo, challan or transfer invoice without actual receipt of goods; or</p> <p>(vi) issues or furnishes a false tax invoice, sale invoice, certificate or declaration, by a reason of which a tax on sale or purchase ceases to be leviable under the provisions made thereunder</p>	50 % of <sup>83</sup> [value] of goods
12.	<p>Where a dealer or other person, as the case may be,-</p> <p>(i) makes use of a prescribed form of declaration or certificate which has not been obtained by him or by his principal or agent in accordance with the provisions under this Act ; or</p> <p>(ii) transfers a prescribed form of declaration or certificate to any other person except for lawful purposes; or</p> <p>(iii) possesses a prescribed form of declaration or certificate which has not been obtained by him in accordance with the provisions of this Act ;</p>	50 % of [value] of goods

<sup>83</sup> . Substituted for the words “disclosed value” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

13.	<p>Where the dealer or other person, as the case may be,-</p> <p>(i) closes or leaves place of business with an intention of avoiding inspection under this Act; or.</p> <p>(ii) being a driver or person in-charge of vehicle leaves the vehicle with an intention of avoiding inspection of goods and documents; or</p> <p>(iii) willfully does not stop the vehicle carrying taxable goods when so required by an officer empowered to inspect goods;</p>	<p>A sum of rupees five thousand in case of registered dealer and five times thereof in case of others</p>
14.	<p>Where the dealer or any other person, as the case may be, -</p> <p>(i) imports or attempts to import or abets the import of any goods, in contravention of the provisions under section 50 or section 51 with a view to evading payment of tax on sale of -</p> <p>(a) such goods; or</p> <p>(b) goods manufactured, processed or packed by using such goods; or</p> <p>(ii) transports, attempts to transport any taxable goods in contravention of any provisions of this Act;</p>	<p>40% of <sup>84</sup>[value] of goods</p>

<sup>84</sup> . Substituted for the words “disclosed value” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

85[15.	<p>Where the driver or person in charge of the vehicle, as the case may be,-</p> <p>(i) fails to carry documents referred to in Section 52 and also fails to prove that the goods carried in his vehicle are meant for delivery to dealers or persons outside the State; or</p> <p>(ii) While carrying such documents for transit of goods through the State undertakes responsibility of handing over such goods to a bonafide person inside the State for carrying them outside the State but fails to hand over such goods to such bonafide person; or</p> <p>(iii) being a person, who receives any goods from driver or person in charge of a vehicle for carrying them outside the State, does not carry such goods outside the State; or</p> <p>(iv) being a transporter or hirer of a vehicle prepares goods-receipt by showing false destination of goods</p>	40% of the value of goods]
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<sup>85</sup> . Substituted vide Noti. No. 1230(2)/79-V-1-09-1 (ka) 21/2009 dt. 27.08.09 w.e.f. 27.08.09 (U.P. Act No. 22 of 2009). Before substitution the entry at Sl. No. 15 of sub-section (1) of Section 54 was as follows:

15.	<p>Where the driver or person in charge of the vehicle, as the case may be,-</p> <p>(i) fails to obtain authorization for transit of goods through the State and also fails to prove that goods are meant for delivery to dealers or persons outside the State ; or</p> <p>(ii) while obtaining authorization for transit of goods through the State undertakes responsibility of handing over such goods to a bona-fide person inside the State for carrying them outside the State but fails to hand over such goods to such bona fide person; or</p> <p>(iii) being a person, who receives any goods from driver or person in-charge of a vehicle for carrying them outside the State, does not carry such goods outside the State; or</p> <p>(iv) being a transporter or hirer of a vehicle prepares goods-receipt by showing false destination of goods outside the State;</p>	40% of the value of goods
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16.	Where any dealer demands or charges or realises any amount as tax in contravention of the provisions of this Act;	3 times of the tax so realised
17.	Being driver or person in-charge of a vehicle fails to stop the vehicle with deliberate intent to avoid inspection of goods or search of such vehicle;	Rupees twenty-five thousands
18.	Where dealer or any other person, as the case may be, makes a false verification, declaration or attestation in any matter connected with this Act;	A sum of rupees twenty five thousand or three times of tax avoided thereby whichever is higher
19.	Where dealer or any other person, as the case may be, falsely or fraudulently claims an amount as input tax credit;	A sum equal to 5 times of amount of input tax credit
20.	Being transporter, carrier or other transport agent carries or transports goods without filling relevant columns on a transport memo, challan or transfer invoice;	Rupees five thousands
21.	Dealer or any other person, as the case may be, tampers with any seal put under sub-section (6) of section 45.	Rupees twenty five thousands
<sup>86</sup> /21-A.	<i>Where the dealer has included the amount of tax not less than the paid or payable, on the turnover of purchase of the goods in the sale price of goods sold or goods manufactured by using such goods.</i>	<i>Not less than the amount of tax but not more than three times of tax which has been included in the sale price of the goods</i>

<sup>86</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

21-B.	<i>Where the dealer or any other person, as the case may be, has issued or received any tax invoice or sale invoice or any other document pertaining to value of goods, as the case may be, containing value of goods undervalued to the extent more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the transaction has taken place, with intention to evade payment of tax.</i>	40% of the value of goods]
22.	Dealer or any other person who, otherwise acts in contravention of the provisions of this Act or rules made thereunder,	Rupees ten thousands

**Explanation** – For the purposes of this section -

- (i) the assessing authority includes an officer not below the rank of an officer appointed and posted by the Commissioner at a check-post or an officer empowered to exercise powers under sections 45, 46, 47, 48, 50, 51 and 52 of this Act;
- <sup>87</sup>(ii) *if the value of goods described or mentioned in tax invoice, sale invoice or any such other document is undervalued to the extent of more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the transaction has taken place, the estimated value prevalent at the relevant time in such local market area shall be deemed to be the value of such goods,*
- (iii) *if the value of goods is described or mentioned in tax invoice, sale invoice or any such other document the estimated value prevalent at the relevant time in the local market area where the transaction has taken place, shall be deemed to be the value of such goods.]*
- (2) A copy of the order passed under sub-section (1) shall be served on the dealer or person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person in such manner as may be prescribed within thirty days of such service, failing which it may be recovered in the manner provided under section 33.

<sup>87</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the clauses (ii) and (iii) of Explanation were as follows:

(ii) where amount of penalty is to be determined on the basis of turnover of goods, value of goods shown or determined whichever is higher, shall be deemed to be turnover of taxable goods and relating to taxable sale or purchase.

(iii) for the purposes of this section value of goods written on such documents and if value is not written then estimated market value prevalent at the relevant time in local market, shall be deemed to be the turnover of sales or purchases of taxable goods relating to taxable sale or purchase.

- (3) Where any penalty order passed by assessing authority either under this section or any other section, is quashed by any authority or court in exercise of powers vested in it on the ground that show cause notice issued to dealer or any other person is not in accordance with the provisions of this Act, the assessing authority may pass fresh order of penalty after issuing proper notice within one year from the date of receipt of such order.
- (4) where in case of a sick unit as referred to in section 71, any penalty order has been *passed ex parte* and appeal has not been filed against such order, if the State Government issues direction to the assessing authority to set aside such order and to pass fresh order of penalty, assessing authority shall pass such fresh order of penalty within a period of one year from the date on which it receives the order or direction by due process from the State Government.

[See Rules 71, 72, 73]

#### Short Comments

#### Section 54: "Penalties in certain cases"

##### Serial No. 1

Delay of few days due to late receipt of the order from the office is reasonable cause.

*Premier Vinyl Flooring Ltd. vs. C.S.T. 2004 NTN (Vol. 24) 490*

Penalty cannot be imposed when tax could not be deposited in time due to lack of funds.

*Krishna Arhat Kendra vs. C.S.T. 2003 NTN (Vol. 22) 208*

Draft dishonoured due lapse of agreement between the two bank – Reasonable cause exists – Penalty not justified.

*Indrol Lubricants & Specialties 2004 NTN (Vol. 25) 705*

##### Serial No. 2

Merely because the turnover of dealer was not accepted resulting in best judgment assessment, does not follow that there was concealment of turnover. Penalty cannot be imposed.

*Moti Lal Jawahar Lal vs. C.S.T. 2003 NTN (Vol. 23) 590*

Assessment order is not conclusive proof concealment. Penalty order based upon finding in an assessment order cannot be sustained.

*Northern India Chemical Works vs. C.S.T. 2003 NTN (Vol. 23) 972*

Once books of accounts have been accepted, the order of penalty for concealment of turnover cannot survive.

*Roshan Trading Co. vs. C.S.T. 2004 NTN (Vol. 24) 429*

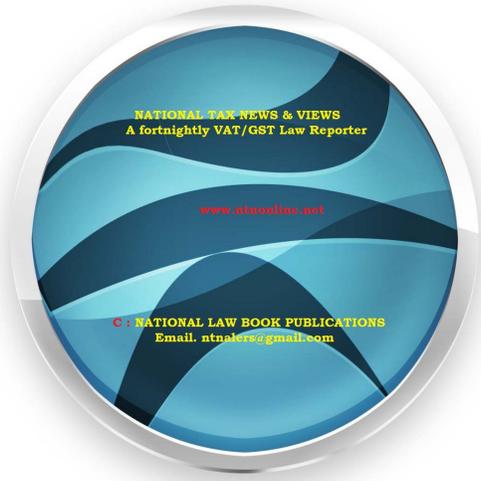
**Serial No. 14**

Penalty cannot be imposed on the basis of dispute regarding nature of transaction.

*Parry & Company Ltd. vs. C.S.T. 2003 NTN (Vol. 22) 539*

Penalty cannot be imposed for mere technical breach of law without recording a finding regarding intention to evade tax.

*U.P. State Sugar Corporation vs. C.T.T. 2003 NTN (Vol. 23) 917*



## CHAPTER IX

### Appeal, Review and Revision

**55. Appeal.** (1) Any dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in sub-section (7) of section 48 may, within thirty days from the date of service of the copy of the order, after serving a copy of appeal memo on the assessing authority or the Commissioner, appeal to such authority (hereinafter referred to as appellate authority), as may be prescribed:

**Provided** that where due to any reason, any appellant fails to serve a copy of appeal memo on the assessing authority before filing appeal, he may serve copy of such appeal memo within a time of one week from the date on which appeal has been filed or within such further time as the appellate authority may permit.

[See Rules 60, 61, 62, 63]

(2) Where an appeal has been filed against an order referred to in sub-section (1), the Commissioner may apply to the appellate authority to examine the legality and propriety of such order on such point as may be mentioned in the application. A copy of such application shall be served on the appellant and shall be decided along with the appeal filed by the appellant:

**Provided** that no application for examination of legality and propriety shall be entertained after the disposal of appeal.

**Provided further** that where the Commissioner has filed an application, the appellant shall not be entitled to withdraw appeal filed by him.

**Explanation-** For the purposes of this section Commissioner includes an officer authorised to file appeal on behalf of the Commissioner before the Tribunal under section 57.

- (3) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sale or purchase, or both, as the case may be, admitted by the appellant in the tax returns filed by him or at any stage in any proceedings under this Act, whichever is greater.
- (4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (5) The appellate authority may, after calling for and examining the relevant records and after giving a reasonable opportunity of being heard to the appellant and the Commissioner-
- (a) in the case of an order of assessment and penalty.-
    - (i) confirm or annul such order ; or

- (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise ; or
  - (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or
  - (iv) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report has been submitted or not decide the appeal in accordance with the provisions of the preceding sub-clauses; or
- (b) in the case of any other order-
- (i) confirm, cancel or vary such order; or
  - (ii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified:

**Provided** that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit, if the appellant applies for withdrawal of the same and no request for examination of legality or propriety of order under appeal has been made by the Commissioner.

- (6) The appellate authority, may, on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard stay, except the operation of order appealed against, the realisation of the disputed amount of tax, fee or penalty payable by the appellant till the disposal of the appeal.

**Provided** that –

- (i) where an order under appeal involves dispute about tax, fee or penalty, no stay order shall remain in force after thirty days from the date on which the same has been granted, if the appellant does not furnish security to the satisfaction of the assessing authority for payment of the amount, the realisation whereof has been stayed within the aforesaid period of thirty days;
  - (ii) no such application shall be entertained unless it is filed along with the memorandum of appeal under sub-section (1);
- (7) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

- (8) The appellate authority shall be under the superintendence and control of the Commissioner:
- Provided** that in the exercise of such superintendence and control, no order, instructions or directions shall be given by the Commissioner so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.
- (9) For the purposes of this section service of an order passed by appellate authority under this section and service of memo of appeal on the State Representative, as defined in the rules framed under this Act, shall be deemed to be service on the Commissioner.
- (10) All appeals arising out of the same cause of action in respect of an assessment year, as far as possible, shall be heard and decided together.

[See Rules 66, 73]

### Short Comments

#### Section 55: "Appeal"

Assistant Commissioner before whom an appeal is preferred from an assessment order cannot dispose it off without examining the various issues raised and pass a non-reasoned order.

*Shera Anil vs. STO (2008) 16 VST 181(SC).*

Appeal once registered cannot be subsequently rejected as non-maintainable. Appeal cannot be rejected even if there is subsequent change of law.

*Precise Laboratories vs. C.T.T. 1999 NTN (Vol. 15) 769*

The words "confirm, reduce, enhance or annul" includes the part of assessment, which is not subject to the matter of appeal. The appellate authorities powers are not confined to consider only those points about which the assessee has a grievance but he may consider those points also about which the assessee is satisfied.

*Saru Smelting Pvt. Ltd. vs. C.S.T. 1997 NTN (Vol. 10) 109*

The power of remand should be exercised moderately and preference should be given to decide the matter finally instead of keeping the matter pending.

*Indian Sugar & General Engineering Corpn. vs. C.S.T. 2004 NTN (Vol. 24) 211*

Additional evidence taken on record in appeal - Reasonable opportunity of challenge or rebuttal to Commissioner-a legal requirement.

*Verma Roadways Co. vs. C.T.T. 2006 NTN (Vol. 29) 377*

#### Condonation of Delay

Condonation of delay in filing appeal - Reason for late filing was sickness of one of the partners actively involved in carrying on the business – On account of illness of sole working partner the delay in filing the appeal appears to be sufficiently explained.

*Shiv Construction Company vs. C.T.T., U.P. Lucknow 2007 NTN (Vol. 34) 387*

Delay due to gross negligence and latches on the part of the assessee – Rejection of application for condonation of delay justified.

*Shree Chemicals vs. C.T.T. 2006 NTN (Vol. 31) 44*

Delay of seven years and 255 days - Evidence not led to substantiate claims - Applicant neither vigilant about his rights nor careful - Application for condonation of delay rightly rejected.

*Hindon Ispat Limited vs. C.T.T. U.P., Lucknow 2006 NTN (Vol. 31) 475*

It is established from the record itself that applicant was prosecuting its case under Section 30 and was under bonafide believe that case be re-opened - The illness after receipt of order under Section 30 has not disputed.

*B. K. Steel Furnitures vs C. T. T. 2004 NTN (Vol. 25) 1093 ; Nav Bharat Paper Products. vs. C.T.T. 2004 NTN (Vol. 25) 1119; Bharat Coal Depot vs. C.S.T. 2004 NTN (Vol. 25) 1228*

Delay caused on account of illness of clerk of counsel who could not handover the paper to counsel –Condoned..

*C.P. Enterprises vs. C.T.T. 2006 NTN (Vol. 29) 31*

Fault of Counsel – Delay Condoned.

*Neeraj International vs. Trade Tax Tribunal, Ghaziabad 2004 NTN (Vol. 25) 124; Shahroz Akhtar vs. C. S. T. 2003 NTN (Vol. 22) 322*

Medical certificate can not be rejected merely because it was issued by Child Specialist and whether continuation of business of proprietor can be ground for rejection of application.

*Radhey Shyam Shree Krishna vs. C. T. T. 2003 NTN (Vol. 23) 870*

Delay of 303 days - Ex parte Assessment Order stated to had been given to Advocate for necessary action - Advocate did not file appeal - On recovery proceedings enquiry revealed that appeal was not filed - Application for condonation of delay rejected by the First Appellate Authority and the Tribunal - Rejection of application for condonation of delay not maintainable.

*Indian Packaging vs. T.T.T., Ghaziabad and Ors. 2006 NTN (Vol. 30) 359*

Appellate Authority cannot adjudicate an issue which has already become final.

*C.T.T. vs. Ashok Metal Industries, Moradabad 2007 NTN (Vol. 32) 5*

Rejection of application for re-call on the basis of previous adjournments proper and not valid.

*Indian Steel works vs. C. T. T. 2003 NTN (Vol. 22) 141*

First Appellate Authority can made rectification in its order resulting in enhancement of tax beyond assessment made by Assessing Authority - The power of first Appellate Authority are co-extensive with Assessing Authority - After decision of first appeal, the assessment order merged with appellate order - Rectification can be made in the order.

*C. S. T. vs. R.S. Steel Works, Barielly 2003 NTN (Vol. 23) 824*

Remand of the case to examine the material already available on records not justified - The power of remand should be exercised sparingly and preference should be given to decide matter finally instead of keeping the matter pending for long time.

*Indian Sugar & General Engineering Corp. vs. C.S.T. 2004 NTN (Vol. 24) 211*

Powers of First Appellate Authority is not confined to the points raised in the grounds of appeal - The First Appellate Authority can go beyond entire assessment - Entire assessment order is before the First Appellate Authority.

*Agrawal Brick-kiln vs. C. S. T. 2004 NTN (Vol. 25) 895*

Appeal to First Appellate Authority - Against a letter of A. C. (Legal) - Maintainability of appeal - Nothing has been adjudicated by him - No appeal lies.

*U. P. Sahkari Katai Mills Ltd. vs. C.T.T. 2007 NTN (Vol. 33) 428*

**56. Revision by the Commissioner.** (1) The Commissioner or such other officer not below the rank of Joint Commissioner, as may be authorised in this behalf by <sup>88</sup>[the Commissioner], may call for and examine the record relating to any order, passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed-

- (a) to revise an order, which is or has been the subject-matter of an appeal under section 55, or an order passed by the appellate authority under that section.
- (b) before the expiration of sixty days from the date of the order in question;
- (c) after the expiration of ~~two~~ <sup>one</sup> year from the date of the order in question.

**Explanation-** Where the appeal against any order is withdrawn or is dismissed for non-payment of fee payable under section 72 or for non-compliance of sub-section (3) of section 55, the order shall not be deemed to have been the subject-matter of an appeal under section 55;

(4) No dealer or any other person, aggrieved by an order against which appeal lies under section 55, shall be entitled to present an application for review of such order under this section.

[See Rules 72, 73]

<sup>88</sup> . Substituted for the words "the State Government by notification" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

**57. Tribunal.** (1) There shall be <sup>89</sup>[a Tribunal to be known as Commercial Taxes Tribunal] consisting of such members including a President as the State Government may, from time to time, deem it necessary to appoint from amongst-

- (a) the persons who are qualified to be the judge of the High Court;
- (b) the persons belonging to the Uttar Pradesh Trade Tax Services or the Uttar Pradesh Commercial Tax Services who hold or have held a post not below the rank of Joint Commissioner:

Provided that-

- (i) where the Tribunal consists of one or more persons who is or are member or members of the U.P. Higher Judicial Service, then he or senior most amongst them shall be appointed as the President.

[See Rules 4(2), 4(4), 4(10)]

- (ii) no person shall be appointed from amongst the advocate unless-

- (A) he has paid Income Tax on his income from his legal profession in each of ten consecutive years preceding such appointment;
- (B) he has attained the age of fifty years on the date of appointment.
- (C) such Members from amongst Advocates shall be appointed for a term of three years from the date of appointment or till he attains the age of 60 years which ever is earlier.

- (2) The State Government may prescribe such other qualification or conditions for the appointment of the President and the other members of the Tribunal as it may deem fit.
- (3) The provisions of rule 56 of the U.P. Fundamental Rules shall continue to apply to every member of the Tribunal including the President whether appointed under the erstwhile Act or under this Act on or after the date of the commencement of this Act, as they apply to any other Government servant.

[See Rules 64, 65]

- (4) Any person aggrieved by <sup>90</sup>[an order passed under section 42, section 55], section 56, a decision under section 59 or a direction under the proviso of sub-section (7) of section 48 may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal.

<sup>89</sup> . Substituted for the words "a Tribunal" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

<sup>90</sup> . Substituted for the words and figure "an order passed under Section 55" vide Noti. No. 1724(2)/LXXIX-V-1-1 (ka) 14/2008 dt. 29.08.08 w.e.f. 16.07.08 (U.P. Act No. 19 of 2008).

**Provided** that where order passed by appellate authority under section 55 is an order in respect of demand of any security, not being security demanded for release of goods seized under any provisions of this Act, appeal under this section may be filed only after furnishing security, fixed by the appellate authority under section 55.

**Provided further** that where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly.

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

[See Rules 61, 62, 63]

- (5) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.
- (6) Section 5 of the Limitation Act, 1963 shall apply to appeals or other applications under this section.
- (7) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.
- (8) The Tribunal may, if it has not already dismissed the appeal under sub-section (7), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (5):
  - (a) confirm, cancel or vary such order, or
  - (b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified, or
  - (c) order such amount of tax, fee or penalty or other money as may have been realized in excess of the due amount to be refunded according to the provisions of this Act.
- (9) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceeding for re-assessment under the order appealed against till the disposal of the appeal:

**Provided** that-

- (i) where appellate authority under section 55 has set aside an order of assessment or penalty and has remanded the case to the assessing authority, for decision afresh, and the appellant under this section is a person other than the Commissioner or the State Government, for the purpose of this section, disputed amount of tax or penalty shall be deemed to be the same which had been before appellate authority under section 55; and
- (ii) subject to the provision under sub clause (i) where order appealed against does not involve any dispute about quantum of tax, fee or penalty, on the application of the appellant the Tribunal may stay the operation of such order till the disposal of appeal subject to such conditions including a condition of furnishing of a security in cash within the time allowed;

**Provided further that-**

- (a) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in addition to the amount required to be deposited under sub-section (3) of section 55.
  - (b) the Tribunal may, if satisfied by adequate reasons to be recorded in writing, waive or relax the requirement of clause (a) regarding payment of the one-third of such disputed amount.
- (10) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty or such stay order of the Tribunal shall not remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the assessing authority concerned for the payment of the outstanding amount.
- (11) The members of the Tribunal shall sit in such benches of one, two or more members, as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (12) and the rules framed under this Act, be allotted to them, by order or in accordance with the directions of the President of Tribunal.
- (12) (a) An appeal against the order of appellate authority under section 55 shall be heard and disposed of-

<sup>91</sup>[(i) by a bench of two members, where in such Order, not being an Order passed on the application of the appellant for stay, the amount of tax, fee or penalty in dispute exceeds two lakh rupees or such amount not exceeding three lakh rupees as may be determined by the State Government from time to time.]

(ii) by a single member bench, in any other case.

<sup>92</sup>[(b) an appeal against a direction given under the proviso to sub-section (7) of section 48 shall be heard and disposed of by a bench of two members;

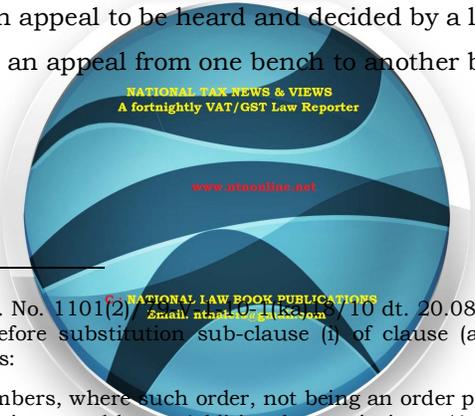
(c) an appeal against an order under section 56 shall be heard and disposed of by a bench of two members.]

(d) An appeal against <sup>93</sup>[an order passed under Section 42 or a decision given under section 59], shall be filed before the President and shall be heard and disposed of by a bench of three members.

(e) The President may, if he so thinks fit,-

(i) direct an appeal to be heard and decided by a larger bench;

(ii) transfer an appeal from one bench to another bench.



<sup>91</sup> . Substituted vide Noti. No. 1101(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 20.08.10 w.e.f. 20.08.10 (U.P. Act No. 19 of 2010). Before substitution sub-clause (i) of clause (a) of sub-section (12) of Section 57 was as follows:

(i) by a bench of two members, where such order, not being an order passed on the application of the appellant for stay, is passed by an Additional commissioner (Appeals) or the amount of tax, fee or penalty in dispute, exceeds two lakh rupees;

<sup>92</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the clauses (b) and (c) of sub-section (12) of Section 57 were as follows:

(b) An appeal against a direction given under the proviso to subsection (7) of section 48 shall be heard and disposed of by a -

(i) bench of two members where such direction under appeal has been given by the Commissioner, Special Commissioner or an Additional Commissioner;

(ii) by a single member bench in any other case;

(c) An appeal against an order under section 56 shall be heard and disposed of by a -

(i) bench of two members where amount of tax, fee or penalty in dispute exceeds rupees two lakh or where order under appeal has been passed by the Commissioner, Special Commissioner or an Additional Commissioner;

(ii) single member bench in any other case;

<sup>93</sup> . Substituted for the words and figure "a decision given under Section 59" vide Noti. No. 1724(2)/LXXIZ-V-1-1 (ka) 14/2008 dt. 29.08.08 w.e.f. 16.07.08 (U.P. Act No. 19 of 2008).

- (f) In a case before a bench consisting of two or more members any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench.

**Provided** that an appeal against an order passed on an application for stay, may be disposed of finally by a single member bench.

- (13) All appeals arising out of the same cause of action in respect of an assessment year shall, as far as possible, be heard and decided together:

**Provided** that where anyone or more of such appeals have been heard and decided earlier, if the bench hearing the remaining appeals considers that such decision may be a legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

- (a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;
- (b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.

- (14) The place of sitting and procedure of, and the manner of presenting appeals and other documents to the Tribunal shall, subject to the rules framed under this Act, the Tribunal may deem fit to adopt.

- (15) The decision, of case heard by a bench, shall be in accordance with opinion of the majority. Where the members are equally divided the President of the Tribunal may,-

- (a) if he was not a member of such Bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinion; or
- (b) form a larger bench.

[See Rules 66, 72, 73]

#### Short Comments

#### Section 57: "Tribunal"

##### ALL MATERIAL PLACED TO BE EXAMINED

Tribunal is required to examine all materials placed before it or on the record of Assessing Authority and has to record a finding that why particular evidence is preferable to other evidence regarding which it is of the view that the same is not reliable.

*C.T.T. vs. Shiv Shakti Rab Udyog 2000 NTN (Vol. 16) 253*

**APPEAL TO BE DECIDED JUDICIALLY NOT ARBITRARILY**

Appeal should be decided on settled judicial principles as laid down in the Statute. Tribunal can not act in arbitrary manner ignoring the issues in appeal. Tribunal cannot act as an arbitrator.

*Kakkar Coal vs. C.T.T. 2004 NTN (Vol. 24) 581*

**CROSS APPEAL DECIDED INDEPENDENTLY**

Assessee's appeal were heard and decided first. Department's appeal came for hearing after 3 and half years. Tribunal was not legally justified in recalling the orders passed in assessee's appeal.

*Kushan Int. Udyog vs. T.T.T. 1997 NTN (Vol. 10) 120*

**CROSS APPEALS TO BE DECIDED TOGETHER**

If two appeals by the assessee and the revenue are filed against the order of the first appellate authority in respect of the same assessment year, they should be decided together.

*C.S.T. vs. Jayanti Prasad & Sons 1994 NTN (Vol. 4) H.C. 116*

**DIFFERENCE OF OPINION – REFERRED TO THIRD MEMBER – OPINION THAT APPEAL LIABLE TO BE DISMISSED – PROPER CONSOLIDATED JUDICIAL ORDER TO BE PASSED**

Difference in opinion between members in second appeal. One member allowed the appeal while other dismissed the appeal. Matter referred to third member who held that the appeal is liable to be dismissed. A proper judicial order had to be passed in the instant case, in absence of which purported orders recorded by the three members remained merely expressions of opinions. Dealer's second appeal not legally disposed of by Tribunal, and opinions recorded by the three members do not amount to an order under Section 10(5).

*Shivam Gramodyog Sansthan vs. C.T.T. 1998 NTN (Vol. 12) 44*

**DIVISION BENCH – ORDER TO BE SIGNED BY THE TWO MEMBER BENCH SIMULTANEOUSLY**

The order signed by two members on two different dates cannot be considered as a judgment of the division bench.

*Sonali Trading Co. vs. S.T.T. 2002 NTN (Vol. 21) 502*

**EX-PARTE APPEAL – SERVICE OF NOTICE TO BE RECORDED**

Before deciding the appeal ex-parte, the Tribunal should record the finding on the order sheet that notice has been served on the appellant.

*Pari Devi Dinesh Kumar vs. C.T.T. 2000 NTN (Vol. 17) 582*

**ISSUE NOT ARISING OUT OF FIRST APPEAL ORDER**

Tribunal has no jurisdiction to enter a dispute that does not arise from the order of the first appellate authority.

*G.D. Steel and Gases vs. C.T.T. 1999 NTN (Vol. 14) 1 ;*

*Computer Ware Sales Ltd. vs. C.T.T. 2004 NTN (Vol. 24) 345*

**POINTS CANVASSED TO BE CONSIDERED**

Tribunal is under statutory obligation to consider the points canvassed. Being the last fact-finding authority, it has to consider the reply of the show cause notice.

*Rana Jewellers (Gold) vs. C.T.T. 2002 NTN (Vol. 21) 483*

**RE-CALL**

The genuiness of the medical certificate cannot be challenged unless the doctor is summoned. In re-calling liberal and justice oriented view should be adopted.

*Goel Bricks Field vs. C.S.T. 2004 NTN (Vol. 24) 405*

**REMAND**

The remand order should be made when there is acute urgency and very strong reasons for making the order.

*Walson Paints vs. C.S.T. 2004 NTN (Vol. 24) 333*

Tribunal cannot reverse the order of the first appellate authority without adverting to the findings of the first appellate authority.

*Bhartiya Kala Enterprises vs. C.T.T. 2003 NTN (Vol. 22) 459;*

*C.S.T. vs. Parag Ice and Oil Mills 2004 NTN (Vol. 25) 674*

Judicial authority is required to consider prima facie merits of the case and financial position while deciding stay and waiver applications.

*Khalil Usmani vs. T.T.T. 2002 NTN (Vol. 21) 635*

The power to grant a stay also includes power to recall the stay order in appropriate cases.

A fortnightly VAT/GST Law Reporter

*Anant Ram Prem Prakash vs. State of U.P. 2003 NTN (Vol. 23) 697*

Tribunal can not act suo motu. As such the Tribunal cannot decide on issue which is not the subject matter of appeal.

*Deys Medical Stores Ltd 2004 NTN (Vol. 24) 374*

Tribunal has no jurisdiction to go beyond the orders of first appellate authority and consider any new ground, which was not subject matter of appeal under Section 9.

*United Wheels Pvt. Ltd. vs. C.T.T. 2003 NTN (Vol. 23) 587*

Tribunal has no jurisdiction to order release of truck and goods if police seizes them in pursuance of F.I.R.

*C.C.T. vs. West Bengal Taxation Tribunal 2001 NTN (Vol. 18) 34*

There is specific provisions for admission of additional evidence - It is quite disturbing that Division Bench, which also consists of one member of Higher Judicial Services, accepted the evidence by throwing all procedure to windows and against principle of natural justice - Opportunity for rebuttal is must - Order set aside.

*CTT vs. Industrial Chemicals, Ghaziabad 2003 NTN (Vol. 23) 719*

Appeal to be decided after calling for and examination of record – Service of notice under Section 21 and jurisdiction of Assessing Authority challenged in appeal – Once record called for but not produced by State Representative – Case remanded by the Tribunal – Not justified.

*Woodco, Hajari Lal Banglo, Allahabad vs. C.T.T. 2006 NTN (Vol. 31) 202*

Tribunal accepted all the pleas of the applicant in respect of the objections raised by the Assessing Authority for the rejection of claim of exemption on the purchases made for and on behalf of Ex-U.P. Principal, still remanded the case to the Assessing Authority with the direction to make enquiry from Ex-U.P. Principal and the transporter – Second innings provided to the revenue – Remand not justified.

*Kamal Corporation, Bindki vs. C.T.T. 2006 NTN (Vol. 31) 226*

Appeal decided without considering material on record – Appeal order not sustainable.

*Pandey Brick Field vs. C.T.T. U.P., Lucknow 2006 NTN (Vol. 31) 417*

Reasons for rejection of account books given in the assessment order - Tribunal accepting explanation of assessee without considering the reasons given by the assessing authority - Order of the Tribunal not justified.

*C.T.T. vs. Sanjay Oil & Floor Mill, Aligarh 2006 NTN (Vol. 30) 14*

Appeal by the Commissioner before the Tribunal - Tribunal fixing higher turnover than the turnover fixed by the First Appellate Authority without assigning reasons there for - Tribunal's order not sustainable.

*Neelam Paper Stores 2006 NTN (Vol. 30) 124*

One of the grounds mentioned in the memo of appeal undecided - The order of the Tribunal in respect of the said subject not sustainable.

*C.S.T. vs. Kalyan Paper Mills and Oil Mills 2006 NTN (Vol. 30) 258*

Cross Appeal to be clubbed together for hearing - If per chance both the two appeals are not clubbed, heard and decided together, opportunity must be afforded to the other party for hearing - Appeal not to be dismissed on the ground that the assessee's appeal has been earlier dismissed - It would amount to take away statutory right of appeal.

*C.S.T. vs. Himalya S.P. Co. & Ram Das, Pratap B.F. 2007 NTN (Vol. 34) 313*

Tribunal was not justified in dismissing the appeal where the appellant had not put its signature on the verification part of the appeal memo - That no signature was made on the verification is curable. On the opportunity being given to the appellant, such defect can be cured.

*Nawab Brick Fields vs. C.T.T. 2006 NTN (Vol. 29) 293*

It was incumbent upon the Tribunal before reversing the order of the First Appellate Authority to consider and record the necessary findings on this aspect of the matter. The failure by the Tribunal to consider the above aspect, which is vital in the case, vitiates the order.

*C.T.T. vs. Rashtriya Audyogik Sansthan 2005 NTN (Vol. 28) 326*

In matter of re-calling application liberal and pragmatic view should be taken. Tribunal directed to hear and decide the appeal after giving proper opportunity of hearing.

*Shree Mahalaxmiji Trading Company vs. State of U.P. 2006 NTN (Vol. 29) 39*

The issue not arising from the orders of authorities below cannot be entertained by Tribunal - Remand order not justified - Decision in 1999 NTN (Vol. 14) 1 (G. D. Steel and Gases Pvt. Ltd vs. C. S. T.) followed.

*Computer Ware Sales Ltd., vs. C. T. T. 2004 NTN (Vol. 24) 345;*

*United Wheels Private Ltd. vs. CST 2003 NTN (Vol. 23) 587;*

*Fedders Layad Corporation Ltd. vs. C.T.T. 2005 NTN (Vol. 27) 295*

Tribunal can not set aside the order of the lower authorities without setting aside the findings recorded by the lower authorities.

*Asian Paints Ltd., Agra vs. C.T.T., U. P. 2007 NTN (Vol. 32) 1; Madhur Jalpan Grih, Bada Dev., Varanasi vs. C.T.T. 2007 NTN (Vol. 32) 55*

**58. Revision by High Court in special cases.** (1) Any person aggrieved by an order made under sub-section (7) or sub-section (8) of section 57, other than an order under sub-section (4) of that section summarily disposing of the appeal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

- (2) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.
- (3) Where an application under this section is pending, the High Court may, on an application in this behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised:

**Provided** that no order for stay or recovery of such disputed amount shall remain in force for more than ninety days unless the applicant furnishes adequate security to the satisfaction of the assessing authority concerned.

- (4) The High Court shall, after hearing the parties to revision, decide the question, of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send the case to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

- (5) All applications for revision of orders passed under section 57 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

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

- (6) The provisions of section 5 of the Limitation Act, 1963, shall *mutatis mutandis*, apply to every application, for revision under this section.

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

[See Rules 66, 72, 73]

### Short Comments

#### Section 58: "Revision by High Court in special cases"

High Court can interfere in the finding of fact of Tribunal, if such finding is not based on any evidences.

*Chopra Textiles Pvt. Ltd. vs. C.T.T. 1999 NTN (Vol. 15) 795*

Revision can be dismissed because of improper drafting. Question of law should be properly drafted.

*C.T.T. vs. Malik General Store 2001 NTN (Vol. 18) 334*

Common appeal order for two assessment years. Revision against one assessment year already dismissed. Revision against the second year can be heard on merits.

*Harcham Singh & Co. vs. C.S.T. 1987 STD 182 H.C.*

**59. Determination of disputed question by the Commissioner.** (1) If any question arises, otherwise than in a proceedings pending before a Court or before an authority under this Act, whether, for the purposes of this Act-

- (a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer; or
- (b) any particular thing consisting of goods amounts to or results in the manufacture of goods within the meaning of that term; or
- (c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or
- (d) any particular dealer is required to obtain registration; or
- (e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof, the person or the dealer concerned may, after depositing the fee specified in section 72, submit an application to the commissioner, along with such documents as may be prescribed.

[See Rule 67]

- (2) The Commissioner shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising:

**Provided** that, before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such inquiries as he considers necessary for the decision of the question.

- (3) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing authority, appellate authority, revising authority or the Tribunal.

- (4) No question which arises from an order already passed, in the case of applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.
- <sup>94</sup>[(5) *Except as provided in sub-section (3), a decision given by the Commissioner under this section shall, subject to the provisions of sections 57 and 58, be final and shall be binding on all the assessing authorities and appellate authorities.*]
- (6) A copy of the decision given under this section shall be sent to the applicant and to the assessing authority concerned.

[See Rules 72, 73]

#### Short Comments

##### Section 59: "Determination of disputed question by the Commissioner"

Similar to that of Section 35 of U.P. Trade Tax Act, 1948.

Order of Commissioner deciding a question is quasi judicial order.

*C.S.T. vs. M/s Super Cotton Bowl Refilling Works 1989 UPTC 489 (SC) C.T.T. vs. M/s Indo Lub Refineries, Gorakhpur 2004 NTN (Vol. 24) 41 (All.)*

**60. Orders against which no appeal or revision shall lie.** No appeal and no application for revision shall lie against—

- (a) an order or notice initiating an inquiry for assessment or reassessment;
- (b) any order or action under section 45, <sup>95</sup>[sub-section (1) or sub-section (2)] of section 48, sub-section (4) of section 50 or an order of seizure of goods; and
- (c) any direction issued by the Commissioner in exercise of powers as may be prescribed.

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

[See Rule 73]

<sup>94</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (5) of Section 59 was as follows:

(5) Except as provided in sub-section (3), a decision given by the Commissioner under this Section shall, subject to the provisions of sections 59 and 60 be final and binding on the applicant, the Assessing Authority and the Appellate Authority.

<sup>95</sup> . Substituted for the words and figures "sub-sections (1), (2) or (7)" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

### Short Comments

#### Section 61: "Additional Evidence in appeal"

This section is in pari-materia with section 12-B of the erstwhile UPTT Act.

This section does not contain any absolute prohibition in respect of additional evidence before the appellate authority or the revising authority. These are rules of procedure and they do not create any legal right, liability or obligation, the appellate authority should have admitted the additional evidence.

*Narain Das vs. CST 1980 UPTC 1028.*

An opportunity has to be given to the assessing authority for replying to the additional evidence.

*CTT vs. M/s Jai Shiv Shankar Brick field 2006 NTN(31) 415*

The First Appellate Authority and the Tribunal should have granted an opportunity to the assessee to produce additional evidence at the appellate stage u/s 12-B of the Act.

*Micro Abrasive (India) Ltd. vs. C.T.T. 1995 NTN (Vol. 6) 232*

Where an opportunity of rebuttal was not granted to the Department the case could not be remanded for the purpose.

*Shree Chandra Rakesh Kumar vs. S.T.O. 1997 NTN (Vol. 11) 503*

Evidence adduced in appeal before the Tribunal not produced before Assessing Authority – Opportunity not given to Department to verify the evidence from record – Order of Tribunal allowing benefit of evidence not justified.

*C.T.T. vs. Machal Singh 2006 NTN (Vol. 31) 177*

Additional evidence taken on record by the Appellate Authority – Reasonable opportunity for challenge or rebuttal to the Commissioner – A legal requirement.

*C.T.T. vs. Ram Asrey Ram Adhar 2006 NTN (Vol. 29) 194*

*Verma Roadways Co. vs. C.T.T. 2006 NTN (Vol. 29) 377*

Under the Statute the department has not been given any right to adduce the additional evidence and only the assessee has but a limited right to adduce additional evidence as given under Section 12-B.

*Shri Karma Gramodyog Vikas Samiti vs. State of U.P. 2008 NTN (Vol. 36) (All.) 65*

## CHAPTER- X

### Settlement Commission

**62. Constitution of the Settlement Commission.** (1) There shall be a Settlement Commission consisting of a Chairman and such number of other members as may be determined by the State Government.

**Provided** that the Commission shall comprise at least one member from each category mentioned in clauses (i) and (ii) of subsection (4).

- (2) The Commission shall be located at the State headquarter but the Commission for discharge of its functions, may, at its option, hold its camp at any public place anywhere inside the State.
- (3) A person shall not be qualified for appointment as Chairman, unless he -
- (i) has been a judge of a High Court, or
  - (ii) has, for at least one year, held the post of the President of Tribunal under this Act or the erstwhile Act;
- (4) A person shall not be qualified for appointment as member unless he,
- (i) has held the post of Member Tribunal or Additional Commissioner under this Act or under the erstwhile Act; or
  - (ii) he is or has been a member of U.P. Higher Judicial Service.
- (5) The chairman and every other Member shall be appointed by the State Government but the member belonging to Higher Judicial Service shall be appointed after consultation with the Chief Justice of the High Court for which proposal will be initiated by the State Government:

**Provided** that the Chairman or member shall not assume the office unless he has resigned or retired from, as the case may be, the Judgeship of the High Court, or the Uttar Pradesh Higher Judicial Service or any other service in which he was serving.

- (6) The Chairman and member shall hold office as such for a term of three years from the date he enters upon his office:

**Provided** that no Chairman or other member shall hold office as such after he has attained.

- (a) in the case of Chairman the age of sixty five years, and
  - (b) in the case of any other Member the age of sixty two years.
- (7) The Chairman or any other member may by notice in writing under his hand addressed to the Governor resign his office.

- (8) The Chairman or any other member shall not be removed from his office except by an order made by the Governor on the ground of proved misbehavior or incapacity after (an inquiry made by the Chief Justice or such Judge of the High Court as may be nominated by the Chief Justice,) in the prescribed manner, in which such Chairman or other member as the case may be, has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges.
- (9) On ceasing to hold office, the Chairman or other member shall not appear, act or plead before any authority under this Act.
- (10) The salaries and allowances payable to the Chairman and other member and the other conditions of their service shall be such as may be determined by the State Government from time to time.
- (11) Where the Chairman is unable to discharge his functions owing to absence, illness or any other cause, or where any vacancy occurs in the office of the Chairman by reason of his death, resignation or otherwise, the President of Tribunal shall discharge the function of the Chairman until the Chairman resumes his duties or as the case may be, a Chairman appointed in accordance with the provisions of this Act assumes charge of his office.

[See Rules 4(2), 4(3), 4(10)]

**63. Staff of the Settlement Commission.** (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the Settlement Commission (hereinafter referred to as the Commission) in the discharge of its functions and provide the Commission with such officers and other employees.

- (2) The officers and other employees of the Commission shall discharge their function under the general superintendence of the Chairman.
- (3) The salaries and allowances and conditions of service of the officers and other employees of the Commission shall be such as may be <sup>96</sup>[determined by the State Government].

**64. Reference of case to the Settlement Commission.** (1) Any dealer or other person who has been served with a notice—

- (i) under sub-section (10) of section 45 and who is suspected to have evaded payment of tax exceeding one lakh rupees or such larger amount of tax as the State Government may by notification in the Gazette specify; or

<sup>96</sup> . Substituted for the word “prescribed” vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

- (ii) for imposition of penalty either under sub-section (4) of section 48 or under entries at serial Nos. 2 and 14 of the table under sub-section (1) of section 54 and where the maximum amount of penalty that can be imposed is likely to exceed one lakh rupees, may file a petition before the Commission for settlement of amount of tax that may be assessed or amount of penalty that may be imposed or both, as the case may be, within thirty days from the date of receipt of such notice after giving intimation to the authority who has issued such notice.

**Provided** that the Commission may, in appropriate cases, accept the application after expiry of period of thirty days but before expiry of period of ninety days where the assessing authority has not passed order of assessment or penalty, as the case may be, in pursuance of such notice.

[See Rule 68(3)]

- <sup>97</sup>[(2) *The petition shall be submitted in such form and in such manner as may be prescribed along with satisfactory proof of deposit of fee of five thousand rupees and full disclosure of his turnover which has not been furnished to the assessing authority with additional amount of tax payable on such turnover and such other particulars to the Settlement Commission to have the case settled:*

**Provided** that no petition shall be accepted unless the amount of tax on the turnover of sale or purchase disclosed in the petition has been paid and proof therefor has been enclosed.]

[See Rule 73]

**65. Procedure to be adopted by the commission.** (1) The Chairman may from time to time constitute bench of two members for the disposal of the settlement cases received under section 64.

- (2) A bench of two members shall include each category of members mentioned in clauses (i) and (ii) of sub-section (4) of section 62.

**Provided** that Chairman may nominate himself as one of the members of the bench.

- (3) The petition referred to in section 64 shall be placed before the bench to which it has been marked by the Chairman and where the bench, after giving reasonable opportunity of being heard to the petitioner and the representative officer of the Commissioner, is of the opinion that *prima facie* case for settlement is made out, it shall, subject to provision under sub-section (4), –

<sup>97</sup> . Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009). Before substitution the sub-section (2) of Section 64 was as follows:

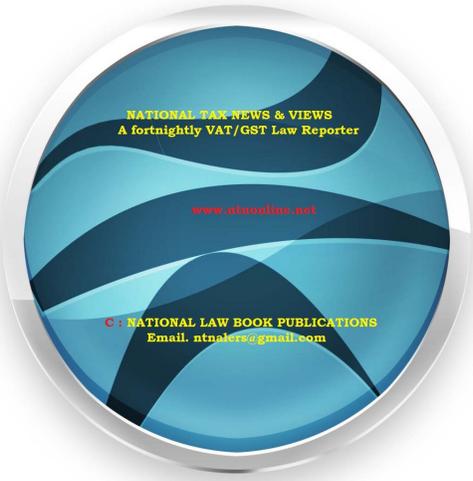
(2) The petition, in the prescribed form and manner along with such other documents as may be prescribed, shall be addressed to the Chairman of the Commission and shall be submitted in the office of the Commission along with satisfactory proof of deposit of fee of five thousand rupees.

- (i) order for registration of the case; and
  - (ii) stay the proceedings before the assessing authority in the case.
- (4) Where after giving reasonable opportunity of being heard as provided under sub-section (3), if the Commission is of the opinion that a case for settlement is not made out, it shall reject the petition.
- Provided** that where petition presented is incomplete, the Commission shall not reject the petition if the petitioner removes defects within the time allowed by the Commission.
- (5) Where a case for settlement has been registered, the Commission shall order to call for the report in the matter from the authority who has issued notice on the basis of which settlement case has been registered and such officer shall submit its report within thirty days of receipt of the direction from the Commission or within such extended time as the Commission may allow.
- (6) Upon receiving the report referred to in sub-section (5) the Commission after giving reasonable opportunity of hearing to both parties and examining the records shall, by an order in writing, determine the amount of tax or penalty or both, as the case may be, which in its opinion the petitioner is in the facts and circumstances of the case, liable to pay as settlement amount.
- (7) For the purpose of sub-section (6) the Commission may call for any records from the petitioner and the Commissioner relating to the case or such other records which may be helpful in the case.
- (8) In a case of difference of opinion between the two members, the Chairman shall constitute a bench of three members including the members who have heard the case previously. Such bench after following the procedure under sub-section (6) and sub-section (7) shall, with majority of opinion, pass the order referred to in sub-section (6).
- (9) Copies of order passed by the Commission under sub-section (6) or sub-section (8), as the case may be, shall be sent by the Commission to the officer who has issued the notice to the petitioner, the petitioner through his assessing authority, the assessing authority of the petitioner and the Commissioner and where the order passed by the Commission relates to payment of amount of tax, the assessing authority shall serve the notice of demand for the amount which is to be paid by the petitioner.
- (10) The Commission may grant facility of payment of the amount mentioned in the settlement order along with amount of interest payable, in monthly installments not exceeding twenty four subject to such conditions including condition of furnishing security to the satisfaction of the assessing authority, as it may deem fit.

- (11) Where the petitioner does not deposit the amount or any part of it mentioned in the settlement order, the same shall become recoverable as arrears of land revenue after expiry of a period of thirty days from the date of service of the order on him and the assessing authority shall recover such amount as if such amount is amount of tax assessed or penalty imposed under any other provisions of this Act.
- (12) Provisions relating to payment of interest in respect of amount of tax shall apply to the amount mentioned in the settlement order in the manner the same are applicable in the case of tax levied under any other provisions of this Act.
- (13) For all purposes under this Act, amount determined under this section shall be treated to be tax levied or amount of penalty imposed, as the case may be, and date of order made by the Commission shall be treated to be the date of order of assessment or penalty as the case may be.
- (14) Where petition of the dealer or other person has been rejected by the Commission, the assessing authority shall proceed to assess the tax or to impose the penalty in case of such dealer or other person in accordance with other provisions of this Act.
- (15) Notwithstanding anything contrary to the provisions of section 28 of this Act, where in any case a petition under this section has been rejected by the Commission, the assessment or re-assessment, as the case may be, may be made by the assessing authority before the expiry of the assessment year succeeding the assessment year in which order passed by the Commission has been received by the assessing authority by due process.
- (16) Where a case of settlement under this section is pending before the Commission, nothing shall preclude the assessing authority from making an assessment or re-assessment pertaining to the assessment years to which settlement case is pending but the assessing authority shall make its order by ignoring the material under the show cause notice before the Commission.
- (17) Where any settlement case relating to evasion of tax is pending for consideration before the Commission, if any additional notice in respect of tax evasion by the same authority or any fresh notice by any other authority is issued on any ground not mentioned in the earlier notice, the petitioner or the Commissioner may request the Commission to consider the material set out in such other notice provided the Commission has not made the settlement order.
- (18) The Chairman, during pendency of a case, may -
- (i) transfer any case from one bench to the other; or
  - (ii) re-constitute the bench.

- <sup>98</sup>[(18-A)Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may order to furnish the security required to be sufficient to cover the revenue loss within the stipulated time in the manner determined by Commission.
- (18-B) Any proceeding before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860)]
- (19) The Commission shall not entertain a petition regarding a matter which has been subject-matter of any petition filed earlier by the dealer or other person.
- (20) No appeal, revision or review shall lie against any proceedings or any order made under this section.

[See Rules 68, 69, 72, 73]



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<sup>98</sup> . Inserted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

## CHAPTER- XI

### Miscellaneous

**66. Objections relating to jurisdiction.** (1) No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal, unless such objection was taken before the assessing authority at the earliest possible opportunity and unless, in the opinion of the appellate or revising authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby.

(2) Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the assessing authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him shall not be refundable to him, in consequence of the assessment being so set aside or quashed.

[See Rule 73]

#### Short Comments

##### Section 66: "Objections relating to Jurisdiction"

Where the assessee represented his case before the assessing authority as well as before the First Appellate Authority but did not challenge the jurisdiction of assessing authority, Tribunal was not justified in entertaining the issue of jurisdiction and in quashing the assessment order on the basis of jurisdiction of the assessing authority.

*C. T. T. vs. Daya Prakash Hari Kishan, Meerut 2006 NTN (Vol. 30) 7*

The objection as to jurisdiction other than territorial or pecuniary could be taken for the first time before the Appellate Authorities or in revision as it goes to the root of the matter.

*B.K. Goyee vs. Commissioner of Income Tax, West Bengal; (1966) 62 ITR 109 (Cal.) (DB); Commissioner of Sales Tax vs. Ram Chand; (1978) 42 STC 432 (All.) (DB); Commissioner of Sales Tax vs. Rajeshwar Prasad Sudhir Kumar; 1985 UPTC 353 (All.)*

It seems that the aforesaid judgments have not been brought to the notice of Hon'ble Court in the case of Daya Prakash (supra).

**67. Indemnity.** No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything, which is in good faith done or intended to be done under this Act or the rules made thereunder.

**68. Bar to certain proceedings.** No assessment made and no order passed under this Act or the rules made thereunder by any authority shall be called in question in any Court, and, save as is provided in this Act, no appeal or application for revision or review shall lie against any such assessment or order.

**69. Certain Information to be confidential.** (1) All particulars contained in any statement made, tax return furnished or accounts or documents produced under the provisions of this Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act or the rules made thereunder, or in any record of any proceedings relating to the recovery of a demand prepared for the purpose of this Act or the rules made thereunder, shall be treated as confidential.

- (2) Nothing in sub-section (1) shall apply to the disclosure of any such particulars-
- (a) for the purpose of any investigation of, or prosecution for any offence under this Act or under the Indian Penal Code, 1860, or under any other enactment for the time being in force; or
  - (b) to any person acting in the execution of this Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of this Act or the rules made thereunder; or
  - (c) occasioned by the lawful employment under this Act or the rules made thereunder of any process for the recovery of any demand; or
  - (d) to a Civil Court in any suit to which the Government or a party, which relates to any matter arising out of this Act or the rules made thereunder, or the rules made thereunder; or
  - (e) occasioned by the lawful exercise by a public servant of his powers under the Indian Stamps Act, 1899, to impound an insufficient stamped document; or
  - (f) to an officer of Central Government or the Government of any State, for the purpose of enabling such Government to levy or realise any tax imposed by it; or
  - (g) to an officer of the Central or the State Government for the purposes of making any inquiry against any Government servant; or
  - (h) for purposes of audit of public accounts.

**70. Allotment of commodity code.** (1) The State Government may, in respect of any entry of any Schedule of this Act, prepare lists of commodities which shall be deemed covered under the said entry of the said Schedule and may, on the basis of Harmonised System of Nomenclature, as adopted by the Government of India under the Central Excise Tariff Act, 1985, allot commodity code to commodities so listed.

- (2) The State Government may expand any entry of any Schedule of this Act by providing of commodities, prefixed by commodity code, listed under such entry of such Schedule under sub-section (1) of this section.

**71. Facility for sick Industrial units.** (1) Notwithstanding anything contained in sub-section (1) and sub-section (2) of section 33 and section 39, but subject to such conditions, as may be deemed fit to be imposed, the State Government may allow the deferment of payment of any existing or future dues payable by an industrial unit under the provisions of this Act or allow payment of such dues in such number of installments as may be specified, if such industrial unit is declared a sick unit in accordance with the guidelines specified in this behalf by an authorised body constituted by the Central Government or the State Government in connection with the rehabilitation of sick industrial units, and is approved for rehabilitation by an approved agency, appointed by the Central Government or the State Government.

(2) Notwithstanding anything contained in section 32, the State Government may set aside an order of assessment or penalty passed *ex parte* against a sick unit and direct fresh disposal of the case in accordance with the law for the time being in force.

**72. Fees in certain cases.** (1) Subject to other provisions of this Act, the fee payable on a memorandum of appeal or other applications under this Act filed or moved shall be as follows:

(a)	On a memorandum of appeal under Section 55.	Two percent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of one thousand rupees.
(b)	On a memorandum of appeal under Section 57.	Seven and a half per cent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and maximum of two thousand one hundred rupees.
(c)	On an application under Section- 59	One hundred rupees.
(d)	On any other application- (i) When addressed to the Commissioner or the Revising Authority or the Tribunal or the Settlement Commission (ii) When addressed to any other officer or authority.	Twenty rupees  Ten rupees

(2) The fee referred to in this section and in any other provision of this Act shall be payable in the manner prescribed, and proof of deposit of the same shall be attached to the memorandum or application, as the case may be:

**Provided** that where the amount of fee payable does not exceed one hundred rupees, the same may be paid in court fee stamps.

(3) No fee shall be payable in respect of:-

- (a) an application or a memorandum of appeal presented by the Commissioner or any other officer or authority appointed under this Act or the rules made thereunder.
- (b) an application in which only information is sought and in which no specific relief is prayed for ; and
- (c) an application under section 59, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable.

#### Short Comments

##### Section 72: "Fees in certain cases"

This Section prescribes for the Court fees payable under the Act.

Clarifying the position, in respect of the proceedings arising on or before 31.12.2007, the Court fees shall be payable at maximum Rs. 500. Such cases which are pending assessment, penalty, appeal, they shall be decided under the provisions of UPTT Act. Further, matters arising on or before 31.07.2007, the Court fee payable for first appeal shall be at maximum Rs. 500 as per Section 32 of UPTT Act. Circular No.- Vidhi-1(1)-A-3-280-2007-08/1893/Commercial Tax dated 11.02.2008.

**73. Transfer to defraud revenue void.** (1) Where, during the pendency of any proceedings under this Act, any person liable to pay any tax or other dues creates a charge on, or transfers any movable or immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings:

**Provided** that nothing in this section shall impair the rights of a transferee in good faith and for consideration.

- (2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, 1949 (Act X of 1949) or any other financial institution specified by the State Government by notification in this behalf.

#### Short Comments

##### Section 73 "Transfer to defraud revenue void"

The section intends to stop the malpractice of transferring the property to another, particularly to anyone of its family members, so as to defeat the recovery of any tax, fee, or other dues. This provision is similar to section 53 of Transfer of property Act, 1882 which deals with 'fraudulent transfer'.

##### Doctrine of piercing the corporate veil

Department cannot be restrained from recovery of trade tax dues where transaction of transfer was to avoid the recovery of trade tax dues. Doctrine of piercing the veil of corporate personality is applicable in case where there is attempt is to avoid tax dues.

*Reflex Industries vs. State of U.P. 2004 NTN (Vol. 25) 678*

One of the most important circumstance in which the veil has been lifted is the cases of fraud or improper conduct of the promoters - Where dummy companies were incorporated by a promoter and his family members to conceal profits and avoid tax liability, the separate entity of the company has been ignored by looking through the veil and identifying those individuals who have devised such method for their own benefits.

*Meekin Transmission Ltd. vs. State of U.P. & Ors. 2008 NTN (Vol. 36) (All.) 107*

#### Transfer of movable property

Transfer in good faith and consideration – Question of fact to be decided by collector or TTO.

*Anjan Ali and Another vs. S.T.O. 1997 NTN (Vol. 10) 170*

Transfer in good faith and consideration is question of fact to be decided by Collector or TTO. Objection filed should be entertained.

*Anbhua Exports vs. D.M. Gautam Budh Nagar 1999 NTN (Vol. 15) 749*

Heavy tax dues to be recovered from the husband of the petitioner who was a tenant of the land belonging to the previous owner – Subsequently, after the initiation of the recovery proceeding the land was purchased by the petitioner from the previous owner –The whole transaction was to avoid tax recovery and the element of fraud and collusion was present in the transaction – Doctrine of piercing the veil of corporate personality is applicable in the present case as the attempt is to avoid huge tax dues.

*Reflex Industries vs. State of U. P. 2004 NTN (Vol. 25) 678*

Mere fact that the company has failed to pay the Government dues or public revenue that by itself would not invite the doctrine of piercing the veil and is not sufficient to ignore the statutory corporate personality conferred upon a company and make its Directors or shareholders responsible personally .

*Meekin Transmission Ltd. vs. State of U.P. & Ors. 2008 NTN (Vol. 36) (All.) 107*

**74. Power to issue notifications.** Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue notification wherever required under the provision of this Act so as to make it effective from a date not earlier than six months from the date of issue of such notification:

**Provided** that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

#### Short Comments

##### Section 74: “Power to issue notifications”

It corresponds to section 25 of UPTT Act. it empowers the state government to issue notifications but cannot be retrospective for more than 6 months.

The notification increasing the liability of tax of a dealer shall not be retrospectively brought into force. The exemption granted under notification cannot be withdrawn with retrospective effect by the subsequent notification.

*State of U.P. vs. Deepak Fertilizers & Petrochemical Corpn Ltd. [2007] 7 VST 535 (SC)*

Though the power to issue notifications is inherent in the provisions of the Act but a specific provision in this regard has subjected the power of State Government to issue notifications, by Section 74. Notification increasing the liability of tax with retrospective effect is not valid.

*Ashok and Brothers vs. State of U.P. 1997 NTN (Vol. 10) 132*

**75. Information to be furnished regarding change of business.** If any dealer to whom the provisions of sections 17 and 18 apply:-

- (a) transfers his business or any part thereof by sale, lease, leave, license, hire or in any other manner whatsoever, or otherwise disposes of his business or any part thereof; or
- (b) acquires any business, whether by purchase or otherwise; or
- (c) effects or comes to know of any other change in the ownership or constitution of his business; or
- (d) discontinues his business or changes his place of business or warehouse or opens a new place of business or warehouse; or
- (e) changes the name, style or nature of his business or effects any change in the class or description of goods in which he carries on his business, as specified in his certificate of registration; or
- (f) enters into partnership or other arrangement in regard to his business; or
- (g) starts a new business or joins another business either singly or jointly with other persons; or
- (h) in the case of a company incorporated under a statute effects any change in the constitution of Board of Directors; or
- (i) effects any change in the particulars furnished in application for grant of registration certificate under section 17, he shall within thirty days of the occurring of any of the events aforesaid, inform the registering authority in the form and manner, as may be prescribed.

[See Rules 33, 72, 73]

#### Short Comments

##### Section 75: "Information to be furnished regarding change of business"

It is similar to Section 8-BB of erstwhile UPTT Act. Though, as earlier, this provision does not provide for any adjudication or passing of an order by the assessing authority but is rather informative in nature.

**76. Power to collect statistics.** (1) The Commissioner may, by issuing a circular or by publication in the news paper, direct that statistics be collected relating to any matter under this Act.

- (2) Any officer authorised to collect statistics may, call upon all dealers or class of dealers or a particular dealer to furnish such information, returns or statements as may be required relating to any matter in respect of which statistics are to be collected.
- (3) Dealer shall be liable to furnish such information within the time allowed.

[See Rules 72, 73]

#### Short Comments

#### Section 76: "Power to collect statistics"

This is a new provision which casts an obligation on dealers to furnish information, return or statement. But such obligation shall be subject to the rights of the dealer under this Act as well as the Constitution of India.

**77. Tax to be first charge on property.** Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount payable by a dealer or any other person under this Act on account of tax, fee, penalty or interest, shall be the first charge on the property of the dealer or such person.

**78. Board of State Taxes.** (1) The State Government may, by notification, establish with effect from such date as may be specified in the notification, a Board to be known as the Uttar Pradesh State Tax Board to perform the functions conferred on it, by or under this Act or the rules made there under, consisting of the following members:-

(a)	The Principal Secretary, Government of Uttar Pradesh in Commercial Tax Department	Chairperson ex. Officio
(b)	Commissioner Commercial Tax, Uttar Pradesh	Member ex. Officio
(c)	Additional Commissioner (vidhi) Commercial Tax, Uttar Pradesh	Member ex. Officio
(d)	Additional Director [Training], Commercial Tax, Uttar Pradesh	Member ex. Officio
(e)	Joint Commissioner (sodh) Commercial Taxes Headquarters Lucknow	Member Secretary
(f)	Additional Legal Remembrancer nominated by the Principal Secretary and Legal Remembrancer to the State Government	Member
(g)	An officer of the Finance Department not below the rank of special secretary to be nominated by the Principal Secretary to the Government of Uttar Pradesh in the Finance Department	Member
(h)	A person who has been a Professor of Economics of a University, nominated by the State Government	Member

<sup>99</sup>. Substituted vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 28.02.09 (U.P. Act No. 11 of 2009).

(i)	<i>A person who has been the Member of the Tribunal or the Additional Commissioner, Commercial Taxes, nominated by the State Government</i>	<i>Member</i>
(j)	<i>Two persons from amongst office bearers of the recognized Trade Association nominated by the State Government</i>	<i>Members</i>

- (2) *The Board shall be the apex advisory body regarding system of tax collections, changes in the rate of tax, rules and procedures, promulgation of schemes, notifications, orders and such other matters as the State Government may from time to time assigned to it.*
- (3) *The members referred to in clause (h) to (j) of sub-section-(1) shall be entitled to get such facility or benefit and remuneration as may be determined from time to time by the State Government.]*

**79. Power to make rules.** (1) The State Government may make rules to carry out the purposes of this Act.

- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for-
- (a) all matters expressly required or allowed by this Act to be prescribed;
  - (b) the registration of persons engaged in the sales or purchase of goods and the imposing of condition in respect of the sale for the purpose of enforcing the provisions of this Act;
  - (c) the determination of the turnover for the purpose of assessment of tax under this Act;
  - (d) compelling the submission of tax returns and the production of documents and enforcing the attendance of a person and examining them on oath or affirmation;
  - (e) the appointment, duties and powers of the officers appointed for the purpose of enforcing the provisions of this Act;
  - (f) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;
  - (g) refunds of amounts deposited under sub-section(1) of Section 40 or 41, the procedure for such refunds and the period within which they may be made;
  - (h) the custody of the goods seized under this Act; and
  - (i) the matters which are to be or may be prescribed;
- (3) The power to make rules conferred by this section shall be subject to condition of the rules being made after previous publication for a period of not less than four weeks:

**Provided** that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, it may make any rule without such previous publication.

- (4) All rules made under this section shall be published in the Gazette and upon such publication shall have effect immediately as if enacted in this Act.

**80. Power to remove difficulties.** (1) If any difficulty arises in giving effect to the provisions of this Act, or by reason of anything contained in this Act to any other enactment for the time being in force, the State Government may, as occasion requires, by notified order direct that this Act shall have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary and expedient.

**Provided** that no order under this sub-section shall be made after the expiration of the period of two years from the date of commencement of this Act.

- (2) Provisions made by any order under sub-section (1) shall have the effect as if effected in this Act and such order may be made so as to be retrospective to any date not earlier than the date of the commencement of this Act.
- (3) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of the State Legislature and the provisions of sub-section (1) of section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

**81. Repeal and saving.** (1) The Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) (hereinafter in this Act referred to as the repealed enactment) is hereby repealed.

- (2) Notwithstanding such repeal, -
- (a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any action taken under the repealed enactment, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made granted, done or taken under the corresponding provisions of this Act.

- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected and <sup>100</sup>[*manufacturing units*] enjoying facility of moratorium for payment of tax under section 8 (2-A) of the said Act shall be entitled to claim moratorium for payment of tax in accordance with provisions of section 42.
- (3) Any officer, authorised by the Commissioner under the repealed enactment, to exercise powers under section 10-B and sub-section (6) of section 13-A thereof, shall be deemed to have been authorised by the Commissioner to exercise such powers under section 56 and sub-section (7) of section 48 respectively.
- (4) Any order made or direction issued by the State Government or by the Commissioner under the repealed Act, for carrying out purposes thereof, to the extent the same are not inconsistent with the provisions of this Act, shall be deemed to have been issued under the provisions of this Act.
- (5) Any security or additional security, furnished under the provisions of the repealed Act, shall be deemed valid for the purposes under this Act only upon furnishing an undertaking from the surety to this effect in the prescribed form and manner within thirty days from the date of the commencement of this Act.
- Provided** that, in appropriate cases, the assessing authority may extend the time for furnishing undertaking from sureties.
- [See Rule 37(3)]
- (6) The mention of particular matters in this section shall not be held to prejudice or affect general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 to the effect of repeals.

#### Short Comments

#### Section 81: "Repeal and saving"

The UPTT Act, 1948 has now been repealed on and from 27.02.2008 by virtue of section 81(1) of this Act.

As per Section 81(2)(a), any notification which has not been withdrawn and not inconsistent with this Act, shall continue to remain in operation.

The terms not defined in this Section shall have meaning assigned to them under the UP General Clauses Act, 1904.

Section 81(3) saves the Government Orders and Circulars issued by the State Government and Commissioner, respectively. They shall continue, unless superseded or withdrawn.

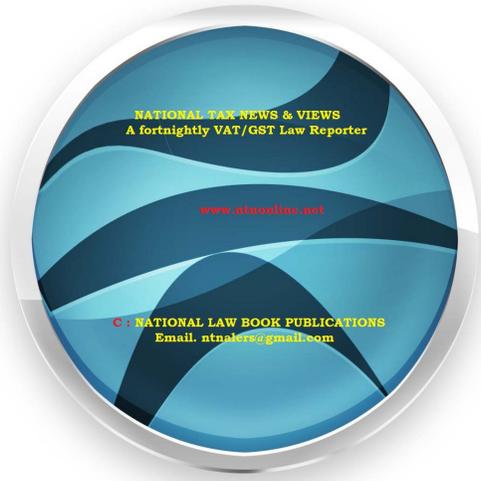
Sub-section 6 of this Section takes within its fold Section 6 of the UP General Clauses Act, 1904. Hence, certain matters not dealt with in this section but given in Section 6, shall also apply.

<sup>100</sup> . Substituted for the words "manufacturing units enjoying benefits of exemption from payment of tax under section 4-A of the repealed Act or units" vide Noti. No. 497(2)/LXXIX-V-1-09-1 (ka) 7/2009 dt. 28.02.09 w.e.f. 1.1.2008 (U.P. Act No. 11 of 2009).

**82. Repeal and saving.** (1) The Uttar Pradesh Value Added Tax Ordinance, 2007 (U. P. Ordinance No. 37 of 2007) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under this Act as if the provisions of this Act were in force at all material times.

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