

THE MADHYA PRADESH VAT ACT, 2002
(No.20 of 2002)

Incorporating amendments made by-

MP Vat (Amendment) Act, 2003
 (No.11 of 2003),

MP Vat (Amendment) Act, 2006
 (No.12 of 2006) and

MP Vat (Second Amendment) Act, 2006
 (No.22 of 2006)

MP Vat (Amendment) Act, 2007
 (No.8 of 2007)

MP Vat (Second Amendment) Act, 2007
 (No. 26 of 2007)

&

Notifications

[THE MADHYA PRADESH VAT ACT, 2002 (No 20 of 2002 - received the assent of the President on the 12th November , 2002; assent first published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 28th November. 2002.]

Amended by -

¹ *MP Vat (Amendment) Act, 2003 (No.11 of 2003)-received the assent of the Governor on the 21st April, 2003; assent first published in the "Madhya Pradesh Gazette(Extra Ordinary)" dated the 26th April, 2003.

² *MP Vat (Amendment) Act, 2006 (No.12 of 2006) - received the assent of the Governor on the 31st March , 2006; assent first published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 31st March , 2006.

³ MP Vat (Amendment) Ordinance, 2006 (No.5 of 2006)- published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 2nd June, 2006-

⁴*MP Vat (Second Amendment) Act, 2006 (No.22 of 2006) - received the assent of the Governor on the 4th August, 2006; assent first published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 8th August, 2006

* The Act and the amendment Acts have come in to force with effect from 1st April, 2006 (Notification No. (9)* dated 14 March, 2006 and (17)* dated 31 March, 2006)

** (i) The amendment Act has been made effective from 1st April, 2006, subject to the condition that the provisions of section 2(ii)(b), section 19(i) (b) relating to "Bulk drugs" and section 19(ii) relating to "Drugs and Medicines" of this amending Act shall come into force from such date as the State Government may, by notification, appoint; and the remaining provisions of this amending Act shall be deemed to have come into force from 1.4.2006 subject to the condition that if the rate of tax prevailing before the date of publication of this Act in the Gazette was higher and the amount of tax collected at such higher rate from 1st April 2006 to the date of publication of this Act in the Gazette,-

- (a) has been deposited in the treasury, such amount shall not be refunded; and/ or
 (b) has not been deposited in the treasury, such amount shall have to be deposited in the treasury.

(ii) the provision of section section 19(i) (b) relating to "Bulk drugs" has been made effective from 8.8.2006 - Noti. No. (22)* dated 26.4.2007.

- 5 Notification No.(79) dated 5.12.2006- amendment of Schedule II-part III-entry No.3.
- 6 MP Vat (Amendment) Act, 2007 (No.8 of 2007) - received the assent of the Governor on the 31st March, 2007; assent first published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 1st April, 2007. [The amendment Act has come in to force with effect from 1st April, 2007 -Notification No. (11)* dated 1st April, 2007]
- 7 Notification No.(12) dated 1.04.2007 -insertion of new entry No.14-A-Bidi in Schedule II-part II.
- 8 Notification No.(23) dated 8.05.2007 - insertion of new entry No.50-Bidi in Schedule I & omission of entry No.14-A-Bidi of Schedule II-part II.
- 9 Notification No.(27) dated 5.07.2007 - Amendment of Schedule I & Schedule II .
- 10 MP Vat (Second Amendment) Act, 2007 (No. 26 of 2007) - received the assent of the Governor on the 10th December, 2007; assent first published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 11th December, 2007. [The amendment Act has come in to force with effect from 24th December, 2007 -Notification No. (35)* dated 19th December, 2007]
11. Notification No.(11) dated 29.03.2008 - Amendment of Schedule I & Schedule II .
12. MP Vat (Amendment) Ordinance, 2008 (No.1 of 2008)- published in the "Madhya Pradesh Gazette (Extra Ordinary)" dated the 12th May, 2008
13. Notification No.(17) dated 19.05.2008 - Amendment of Schedule II
14. Notification No.(22) dated 18.06.2008 - Amendment of Schedule II - read with Noti. No. (24)* dated 25.06.2008

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MADHYA PRADESH ACT
No 20 of 2002.

THE MADHYA PRADESH VAT ACT, 2002

An Act to levy tax on sale and purchase of goods in the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Fifty third year of the Republic of India as follows: -

CHAPTER - I PRELIMINARY

1. Short Title, Extent and Commencement –

- (1) This Act may be called The Madhya Pradesh Vat Act, 2002.
- (2) It extends to the whole of Madhya Pradesh .
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

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

- (a) "Appellate Board" means the Appellate Board constituted under section 4;
- ²(b)"Appellate Authority " means an Authority appointed under section 3 A.²
- (c) "Assistant Commissioner" means an Assistant Commissioner of Commercial Tax appointed under Section 3 and includes an Additional Assistant Commissioner of Commercial Tax;
- (d) "Business " includes, -

(i) any trade, commerce, 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 gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern and irrespective of the volume, frequency, continuity or regularity of such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction of sale or purchase of goods in connection with or incidental or ancillary to the trade, commerce, manufacture, adventure or concern referred to in clause (i), that is to say –

- (a) goods whether or not they are in their original form or in the form of second hand goods, unserviceable goods, obsolete or discarded goods, mere scrap or waste material; and
- (b) goods which are obtained as waste products or by-products in the course of manufacture or processing of other goods or mining or generation of or distribution of electrical energy or any other form or power;

- 3/4 (e)** "Canteen stores" means the goods included in part IV of Schedule II, but excluding such goods as the State Government may by notification specify; **3/4**
- (f)** " Commercial Tax Office " means an office of any Officer appointed under section 3 of this Act.
- (g)** "Commercial Tax Officer" means a Commercial Tax Officer appointed under Section 3 and includes an Additional Commercial Tax Officer;
- (h)** "Commissioner" means the Commissioner of Commercial Tax appointed under Section 3;
- (i)** "Dealer" means any person, who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes -
- (i) a local authority, a company, an undivided Hindu family or any society (including a co-operative society), club, firm or association which carries on such business;
 - (ii) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to its members;
 - (iii) a commission agent, broker, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal;
 - (iv) any person who transfers the right to use any goods including leasing thereof for any purpose, (whether or not for a specified period) in the course of business to any other person;

Explanation I - Every person who acts as an agent of a non- resident dealer, that is as an agent on behalf of a dealer residing outside the State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as -

- (i) a mercantile agent as defined in the Sale of Goods Act, 1930 (III of 1930); or
- (ii) an agent for handling goods or documents of title relating to goods; or
- (iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch of a firm or company situated outside the State,

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

Explanation II - The Central or a State Government or any of their departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purpose of this Act.

Explanation III - Any non-trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which whether or not in the course of business buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment, commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purposes of this Act:

- (j)** The expression "declared goods" shall have the meaning assigned to it in the Central Sales Tax Act, 1956 (No.74 of 1956);

- (k) "Deputy Commissioner" means a Deputy Commissioner of Commercial Tax appointed under Section 3 and includes an Additional Deputy Commissioner of Commercial Tax ;
- (l) "Document" means title deeds, writings or inscriptions and includes "electronic record" and "electronic form" as defined in the Information Technology Act, 2000 (No.21 of 2000) and the like that furnishes evidence;
- (m) "Goods" means all kinds of movable property including computer software but excluding actionable claims, newspapers, stocks, shares, securities or Government stamps and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of movable or immovable property, and also includes all growing crops, grass, trees, plants and things attached to, or forming part of the land which are agreed to be severed before the sale or under the contract of sale;
- (n) "Import" means the bringing or causing to be brought of goods in to the State of Madhya Pradesh from any place outside the State;
- (o) ²" input tax" means an amount paid or payable by way of tax under section 9 by a registered dealer in respect of the purchase of any goods specified in Schedule II , to a selling registered dealer and who is liable to pay tax under the said section on the sale of such goods; ²
- (p) "Manufacture" includes any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformations into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be *notified*;
- (q) "Place of business" means any place where a dealer purchases or sells any goods or stores goods or keeps documents or accounts of his purchases or sales or both and also includes -
- (i) the place of business of an agent where a dealer carries on business through an agent;
 - (ii) any place or building whether any business is carried on therein or not, in which the person carrying on the business, keeps any of his books of accounts, documents, stocks or other things, relating to his business;
 - (iii) any vehicle or vessel or any other carrier wherein goods are stored or used for transporting goods;
- (r) "prescribed" means prescribed by rules made under this Act;
- (s) "Purchase price" shall comprise of -
- (i) the amount payable by a dealer as valuable consideration for the purchase of goods ' simplicitor ';

Provided that where goods are purchased together with the packing material or container, then notwithstanding anything contained in this Act, the purchase price of such goods shall be inclusive of the price or cost or value of such packing material or container, whether such price or cost or value is paid separately or not as if such packing material or container were the goods purchased;

- (ii) transport costs, if any;
- (iii) trade commission, if any, by whatever name called;
- (iv) forwarding and handling charges, if any;
- (v) insurance charges, if any;
- (vi) local taxes, if any;
- (vii) excise duty, if any, leviable under the Central Excise Act, 1944 (No.1 of 1944);
- (viii) cost of packing, if any; and
- (ix) any other charges or costs other than those specified above, if incurred or paid in respect of goods so purchased;

Explanation -For the purpose of this clause “transport cost” includes such expenses as are incurred by the dealer on transportation of goods after taking delivery from the seller;

(t) “Registered dealer” means a dealer registered under this Act;

(u) “Sale” with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for 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 works contract;
- (iii) a delivery of goods on hire purchase or any system of payment by instalments ;
- (iv) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (v) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;
- (vi) a transfer of the right to use any goods including leasing thereof for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,

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

Explanation - (a) Notwithstanding anything contained in the Sale of Goods Act, 1930 (III of 1930), where a sale or purchase of goods takes place in pursuance of a contract of sale, such sale or purchase shall be deemed for the purposes of this Act to have taken place in the State of Madhya Pradesh irrespective of the place where the contract of sale or purchase might have been made, if the goods are within the State -

- (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
- (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation; and

(b) Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places;

²(c) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place,
 (i) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or
 (ii) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal. ²

(v) "Sale price" means the amount or any other consideration payable to a dealer as valuable consideration for the sale of any goods less any sum allowed as ³discount according to ordinary trade practice but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately charged.

Explanation - (i) Where goods are sold on hire purchase or any system of payment by installments, the sale price of such goods shall be exclusive of insurance charges, interest and hire charges and such other charges as may be prescribed.
 (ii) Where goods are sold by way of transfer of right to use such goods, the sale price thereof shall be the amount of valuable consideration received or receivable by the transferor for such transfer ;
 (iii) ^{3/4} 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;
⁴ (iv) The amount of valuable consideration paid or payable to a dealer for sale of drugs and medicines specified in entry 10 of part III of Schedule II shall be the maximum retail price printed on the package containing the drugs and medicines, for the purposes of levy of tax under section 9; ⁴

(w) " Tax "means the tax payable under this Act.

(x) ²"Taxable turnover" in relation to a dealer for any period means that part of dealer's turnover which remains, after deducting therefrom :-

- (1)The sale price of goods declared tax free under Section 16;
- (2) The sale price of goods which are in the nature of tax paid goods in the hands of such dealer;
- (3) The amount collected by way of tax under Section 9 or the amount arrived at by applying the following formula :

$$\frac{\text{rate of tax X aggregate of sale prices}}{100 + \text{rate of tax}}$$

Provided that no deductions on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation – Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of such part of the turnover liable to a different rate of tax under section 9 ; ²

(y) ² "Tax paid goods" in relation to goods specified in part III of schedule II on which tax is payable under section 9 means any such goods which have been purchased by a dealer from a registered dealer inside the State of Madhya Pradesh within the meaning of section 4 of the central Sales Tax Act, 1956 (No. 74 of 1956).²

(z) 'Turnover' in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within six months from the date of such sale:

Provided that -

(i) in the case of sale by bonafide agriculturist as defined in clause (e) of sub-section (1) of Section 2 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), of ghee produced by himself; or

(ii) in case of sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting, the amount of consideration relating to such sales, shall be excluded from his turnover;

(a-1) " VAT" (Value Added Tax) means tax on sale or purchase of goods payable under this Act.

(b-1) 'Year' means the twelve months ending on the 31st day of March.

CHAPTER - II Taxing Authorities

3 : Taxing Authorities and other Officers

(1) There may be appointed a person to be the Commissioner of Commercial Tax and the following category of officers to assist him, namely :

- (a) Additional Commissioner of Commercial Tax
- (b) ²Omitted²
- (c) Deputy Commissioner or Additional Deputy Commissioner of Commercial Tax;
- (d) Assistant Commissioner or Additional Assistant Commissioner of Commercial Tax;
- (e) Commercial Tax Officer or Additional Commercial Tax Officer;
- (f) Assistant Commercial Tax Officer; and
- (g) Inspector of Commercial Tax .

(2) The Commissioner of Commercial Tax and the Additional Commissioner of Commercial Tax shall be *appointed* by the State Government and the other officers referred to in sub-section (1) shall be appointed by the State Government or such other authority as it may direct.

(3) The Commissioner of Commercial Tax and the Additional Commissioner of Commercial Tax shall exercise all the powers and perform all the duties conferred or imposed on the Commissioner by or under this Act throughout the State and for this purpose any reference to the Commissioner in this Act, shall be construed as a reference to the Additional Commissioner of Commercial Tax.

(4) Other officers referred to in sub-section (2) ^{3/4} (and Appellate Authority) ^{3/4} shall, within such areas as the appointing authority may, by general or special *order* specify, exercise

such powers as may be conferred and perform such duties as may be imposed by or under this Act.

²3A. Appellate Authority

The State Government may, by order, ^{*}appoint any officer not below Deputy Commissioner of Commercial Tax as Appellate Authority. ²

4 Appellate Board -

(1) The State Government shall, by ^{*}notification with effect from a date specified therein, constitute Appellate Board to exercise the powers and perform the functions conferred on the Appellate Board by or under this Act.

(2) Till the date specified in the notification under sub-section (1), the ²Appellate Board constituted under the Madhya Pradesh Vanijyik Kar Adhinyam, 1994 (No. 5 of 1995) ² shall act as Appellate Board for the purpose of this Act and on the date aforementioned all proceedings pending before the ²Appellate Board constituted under the Madhya Pradesh Vanijyik Kar Adhinyam, 1994 (No. 5 of 1995) ², Madhya Pradesh, acting as Appellate Board shall stand transferred to the Appellate Board constituted under sub-section (1).

(3) The Appellate Board shall consist of a Chairman and ²such number of members as the State Government may decide² who have vast knowledge of administration or taxation matter.

(4) The Appellate Board shall, for the purpose of discharging its functions, have all the powers which are vested in the commercial tax authorities referred to in section 3, and any proceedings before the Appellate Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code 1860 (No. 45 of 1860) and for the purpose of section 196 of the Indian Penal Code, 1860. the Appellate Board shall also be deemed to be the civil court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure 1973 (No. 2 of 1974).

(5) ²The tenure of the Chairman and members shall be five years, but shall not be beyond the age of 65 years in case of Chairman and 62 years in case of members, and the salary and other conditions of service of the Chairman and members shall be such as may be prescribed : ²

Provided that the Chairmen and the members shall hold office during the pleasure of the State Government.

(6) Subject to the previous approval of the State Government, the Appellate Board may, from time to time make regulation consistent with the provisions of this Act to regulate the procedure in all matters arising out of the exercise of its powers or the discharge of its functions under the Act.

CHAPTER - III Incidence of tax

5 : Incidence of tax.

(1) Every dealer whose turnover during a period of twelve months immediately preceding the commencement of this Act exceeds the prescribed limits, which shall not exceed rupees five lacs, shall from such commencement be liable to pay tax under this Act in respect of sales or supplies of goods effected by him in Madhya Pradesh. Different limits may be prescribed for different category of dealers.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act in respect of sales or supplies of goods effected by him in Madhya Pradesh with effect from the date on which his turnover in a year first exceeds the limit prescribed under the said sub-section but for the purpose of assessment of the tax for that year, only so much of his turnover as is in excess of such limit, shall be taken into consideration.

6 : Determination of liability to pay tax

(1) The Commissioner shall, in the prescribed manner, institute proceedings for the purpose of determining the liability of a dealer to pay tax under this Act. Such liability shall be

determined by an order and such determination shall be made within a period of twelve months from the date of institution of such proceedings.

(2) Notwithstanding anything contained in sub-section (2) of Section 5, liability of a dealer to pay tax under this Act shall not be determined from a date earlier than five years prior to -

- (i) the date of institution of proceedings under sub-section (1); or
- (ii) the date of validity of the registration certificate, whichever is earlier.

7 : Joint and several liability of certain class of dealers.

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

(b) If the contractor proves in the prescribed manner to the satisfaction of the Commissioner that the tax has been paid by the sub-contractor on the turnover of the goods supplied in the course of execution of the works contract, the contractor shall not be liable to pay tax again on the turnover of such goods.

⁶ (c) If the sub-contractor proves in the prescribed manner to the satisfaction of the Commissioner that the contractor has opted for composition under section 11-A in respect of the works contract being executed by the sub-contractor, the sub-contractor shall not be liable to pay tax on the turnover of the goods supplied in the execution of the works contract. ⁶

(2) ²Omitted²

(3) Where any dealer or person with a view to evade payment of tax or in order to claim any input tax 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, guarantor, relative or sister concern or any other capacity, such person and the dealer in whose name the registration certificate was obtained shall jointly and severally be liable for the payment of tax assessed, reassessed, interest payable and penalty imposed under the Act and such tax, interest and penalty shall be recovered from all or any of such persons as if such person or persons are dealer under the Act.

8 : Liability of a dealer registered under Central Act No. 74 of 1956 to pay tax

(1) A dealer registered under the Central Sales Tax Act, 1956 (No.74 of 1956) who is not liable to pay tax under Section 5 shall nevertheless be liable to pay tax at the rate specified in section 9 on his sales of any goods in respect of the purchases of which he has furnished a declaration under sub-section (4) of Section 8 of the said Act or on the sales of any goods in the manufacture of which such goods have been used,

(2) Every dealer to whom sub-section (1) applies shall for the purposes of Section 18, 20, 24 and 39 be deemed to be a registered dealer.

CHAPTER - IV Levy of tax

9 : Levy of tax

⁶ (1) ²There shall be levied on goods specified in Schedule II, a tax at the rate mentioned in the corresponding entry in column (3) thereof and such tax shall be levied on the taxable turnover of a dealer liable to pay tax under this Act. ²

⁶ (2) Notwithstanding anything contained in this Act, no tax shall be levied on goods specified in Schedule II, if the goods are sold by any one of the public sector oil companies, that is Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and Indo-Burma Petroleum Company Limited, to any one of the said oil companies. ⁶

10 : Levy of Purchase tax

²(1) Every dealer who in the course of his business purchases any goods specified in Schedule II from any person other than a registered dealer or from a registered dealer who has opted for composition of tax under section 11, shall be liable to pay tax on the purchase price of such goods if after their purchase, -

- (a) the goods other than those specified in part III of the said Schedule, are not sold within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India but are sold or disposed of otherwise; or
- ^{3/4} (b) the goods other than those specified in part III of the said Schedule, are consumed or used,-
 - (i) in the manufacture or processing of goods declared tax free under section 16 and the manufactured or processed goods are disposed of otherwise than by way of sale in the course of export out of the territory of India; or
 - (ii) as plant, machinery, equipment and parts thereof in generation, transmission or distribution of electrical energy ; or ^{3/4}
- (c) the goods other than those specified in part III of the said Schedule, after consumption or use in the manufacture or processing or mining of any goods specified in Schedule II, the manufactured or processed or mined goods are disposed off otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India ; or
- (d) the goods specified in part III of the said Schedule, are not sold within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India but are sold or disposed of otherwise; or
- (e) the goods specified in part III of the said Schedule, are consumed or used in the manufacture or processing or mining of goods ;

and such tax shall be levied, -

- (i) in respect of goods referred to in clauses (a), (b) and (c), at the rate of 4 percent or the rate specified in column (3) of Schedule II, whichever is lower; and
- (ii) in respect of goods referred to in clauses (d) and (e), at the rate specified in column (3) of Schedule II.

Explanation - The rate specified in Schedule II shall be the rate at which tax would have been levied on the sales of such goods within the State of Madhya Pradesh on the date of such purchase. ²

- (2) No tax under this section shall be levied in respect of any year on -
 - (a) a dealer whose turnover in a year does not exceed the limit prescribed under sub-section (1) of section 5,
 - (b) any other dealer who has no turnover, if his aggregate of purchase prices of all the goods does not exceed such amount as may be prescribed.
- (3) Every dealer who has no turnover and is liable to pay tax under sub-section (1) shall, for the purpose of Sections 18,20,21, 24,25 and 39, be deemed to be a registered dealer

11. Composition of tax

² (1) A registered dealer purchasing goods specified in Schedule II from another such dealer within the State after payment to him of tax under section 9 and/or purchasing

goods specified in Schedule I, and whose turnover in a year does not ordinarily exceed such limit as may be prescribed but does not exceed fifty lacs, may opt, in the prescribed form within one month of the commencement of such year, for payment, in lieu of tax payable by him under section 9, a lumpsum at such rate not exceeding four percent in such manner and subject to such restrictions and conditions as may be prescribed .²

^{3/4} Provided that in case of a dealer who is a manufacturer, the condition of purchases from a registered dealer shall be limited to the goods specified in part-III and IV of Schedule II.

Provided further that the option for composition pertaining to the year 2006-07 can be given up-to 30th June, 2006; ^{3/4}

⁴ Provided also that a dealer who has obtained registration certificate during a year, may give option for composition for the part period of the year and the option for composition can be given within 30 days from the date of registration. ⁴

(2) If a registered dealer during the year for which an option has been given by him, contravenes any of the restrictions and conditions prescribed under sub-section (1), the option given by him shall stand revoked.

^{3/4} (3) A registered dealer who opts for composition of tax under sub-section (1) shall not be eligible to any input tax rebate in respect of the goods sold during the year in relation to which such option is exercised by the dealer and the input tax rebate already claimed and adjusted towards the tax payable, shall be paid alongwith the first quarter of the year. ^{3/4}

^{3/4} 11A. Composition of tax by certain registered dealers

(1)(a) The Commissioner may, subject to such restrictions and conditions as may be prescribed, permit any registered dealer, who carries on wholly or partly the business of supplying goods in the course of execution of works contract entered into by him, to pay in lieu of tax payable by him under this Act a lumpsum at such rate as may be prescribed and determined in the prescribed manner, by way of composition, and this option for composition will have to be submitted within 30 days of commencement of execution of the works contract or contract.

(b) The provisions of Sections 18, 20, 20 A, 39 and 40 shall not apply to a registered dealer to whom permission to pay a lumpsum by way of composition is granted under clause (a) in relation to the period for and the goods in respect of which such composition of tax has been made and who complies with the restrictions and conditions prescribed under the said clause.

(2) For the purpose of determination of the lumpsum by way of composition under clause (a) of sub-section (1), the State Government may prescribe different rates for different kinds of contracts.

(3) A registered dealer who opts for composition of tax under sub-section (1) shall not be eligible to any input tax rebate in relation to the period for and the goods in respect of which such option is exercised by the dealer. ^{3/4}

⁶ 11-B : Payment of lump sum in lieu of tax

(1) Notwithstanding anything contained in this Act, the State Government may direct payment of tax in lump sump in respect of such class of goods by such class of dealers on such terms and conditions as may be notified in the official Gazette.

(2) The tax in lump sump specified in sub-section (1) shall not exceed the amount of maximum tax liability provided in sub-section (1) of section 9. ⁶

12 : Dealer not to pass incidence of tax to agriculturists and horticulturists under certain circumstances

No dealer shall collect any amount, by way of tax, from a person who 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 or otherwise, when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting.

13 : Rate of tax on container or packing material

Notwithstanding anything contained in section 9 or Section 10 where any goods packed in any container or packing material are sold or purchased, the container or packing material in which such goods are so packed shall be deemed to have been sold or purchased along with such goods and the tax under section 9 or section 10 shall be levied on the sale or purchase of such container or packing material at the rate of tax, if any, applicable to the sale, or as the case may be, the purchase of the goods themselves :

Provided that no tax under section 9 or section 10 shall be levied where the container or packing material is sold or purchased along with the goods declared tax-free under Section 16.

²14 Rebate of Input tax

- (1) Subject to the provisions of sub-section (5) and such restrictions and conditions as may be prescribed, a rebate of input tax as provided in this section shall be claimed by or be allowed to a registered dealer in the circumstances specified below-
- (a) Where a registered dealer purchases any goods specified in Schedule II other than those specified in Part III of the said Schedule within the State of Madhya Pradesh from another such dealer after payment to him input tax for –
- (1) sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or
 - (2) consumption or use for/in the manufacture or processing or mining of goods specified in Schedule II for sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or
 - (3) use as packing materials in packing of goods specified in Schedule II; or
 - (4) use as plant, machinery, equipment and parts thereof in respect of goods specified in Schedule II; or
 - ^{3/4}(5) consumption or use for/in the manufacture or processing or packaging of goods declared tax free under section 16, for sale in the course of export out of the territory of India ; or
 - (5a) consumption or use for/in the manufacture or processing or packaging, other than mentioned in sub-clause (5) above, and in connection with sale, of goods declared tax free under section 16; or
 - (5b) as plant, machinery, equipment and parts thereof in consumption or use for/in generation, transmission or distribution of electrical energy; or ^{3/4}(5)
 - (6) disposal of,-
 - (i) such goods, or
 - (ii) goods specified in Schedule II, manufactured or processed or mined out of such goods otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India,

he shall claim or be allowed in such manner and within such period as may be prescribed, input tax rebate of the amount of such input tax –

- (i) in case of goods referred to in sub-clauses (1), (2), ^{3/4}(3), (4) and (5) ^{3/4}; and
 - (ii) in case of goods referred to in sub-clauses ^{3/4}(5a), (5b) ^{3/4} and (6), which is in excess of 4 percent of the purchase price, net of input tax, of such goods;
- (b) Where a dealer makes an application for grant of a registration certificate under clause (a) or clause (b) of sub-section (2) of section 17 on or after the commencement of the Act, he shall, in respect of goods specified in Schedule II other than those specified in part III of the said Schedule, purchased, on or after such commencement, by him within the State of Madhya Pradesh from another such dealer after payment to him input tax and held in stock by him on the date of validity of the registration certificate issued to him under clause (a) or clause (b) of sub-section (2) of section 17, claim or be allowed input tax rebate of the amount of such tax in accordance with the provisions of clause (a) above.
- ^{3/4}(c) Where a registered dealer who has opted for composition under section 11 for a year, does not opt for composition in subsequent year, he shall claim or be allowed input tax rebate in respect of the goods held in stock on the date of commencement of the subsequent year in accordance with the provisions of clause (a) above.
- (d) Notwithstanding anything contained in clause (a), where the goods purchased within the State of Madhya Pradesh by canteen stores department, registered under the Act, from a registered dealer after payment to him input tax, are sold as canteen stores by the canteen stores department to serving military personnel and ex-servicemen directly or through regimental or unit run canteens, the canteen stores department shall claim or be allowed in such manner and within such period as may be prescribed, input tax rebate of the amount of such input tax, which is in excess of 4 percent of the purchase price, net of input tax, of such goods .^{3/4}

(2) Notwithstanding any thing contained in this Act, where-

- (a) any official or personnel of –
 - (i) any foreign diplomatic mission or consulate in India; or
 - (ii) the United Nations Organisation or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force; or
- (b) any consular or diplomatic agent of any mission, the United Nations Organisation or other body referred to in sub-clause (i) or sub-clause (ii) of clause (a),

purchases any goods specified in Schedule II other than those specified in part III of the said Schedule within the State of Madhya Pradesh from a registered dealer after payment to him input tax for himself or for the purposes of such mission, United Nations Organisation or other body, he shall be entitled to claim or be allowed, in such manner and within such period as may be prescribed, input tax rebate of the amount of such input tax and such rebate shall be granted by way of refund.

(3) The input tax rebate by a registered dealer under sub-section (1) shall be adjusted in such manner as may be prescribed towards the tax payable by him under this Act or under the Central Sales Tax Act, 1956 (No. 74 of 1956) and the balance, if any, shall be carried over for adjustment towards tax payable in the subsequent year :

Provided that the input tax rebate, which remains unadjusted even after two

- years from the close of the relevant financial year, shall be granted by way of refund.
- (4)** Notwithstanding any thing contained in sub-section (3), if any amount of input tax rebate in respect of the goods purchased by a registered dealer being,-
- (i) for sale in the course of export out of the territory of India; or
 - (ii) for consumption or use for/in the manufacture or processing or mining of goods for sale in the course of export out of the territory of India; or
 - ~~3/4~~ (iii) for use as plant, machinery, equipment and parts thereof; or
 - (iv) for sale as canteen stores; ~~3/4~~
 - ~~4~~ (v) for sale or supply to the Central Government or a State Government. ~~4~~
- is not adjustable towards any tax payable by him, such rebate shall be granted by way of refund.
- (5)**
- (a) (i) Where a registered dealer has claimed and adjusted input tax rebate towards the tax payable by him according to his return or returns, such dealer shall in the event of disposal of,-
 - (a) goods; or
 - (b) goods specified in Schedule II, manufactured or processed or mined out of the goods, otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India, be liable to pay the amount of input tax or the amount at the rate of 4 percent of the purchase price, net of input tax, of such goods, whichever is lower, towards the input tax rebate in respect of the aforesaid goods adjusted by him.
 - (ii) Where a registration certificate of a registered dealer who has claimed and adjusted input tax rebate towards the tax payable by him according to his return or returns, is cancelled under sub-section (10) of section 17, such dealer shall pay the amount claimed by way of input tax rebate in respect of the goods held in stock by him on the date the order of cancellation of the registration certificate takes effect.
 - (b) Where the amount of tax or the amount of input tax rebate which a registered dealer is liable to pay under clause (a) is not adjustable towards any input tax rebate to his credit, such dealer shall be liable to pay, on the amount so payable, interest at the rate of 1.5 percent per month for the period commencing from the date such amount has become due to the date of its payment.
- (6)** No input tax rebate under sub-section (1) shall be claimed or be allowed to a registered dealer,-
- (i) in respect of any goods specified in Schedule II purchased by him from another such dealer for sale but given away by him by way of free sample or gift or given to or received by him by way of replacement;
 - (ii) in respect of goods specified in Schedule II for use or consumption for manufacture or processing or mining of goods but the goods manufactured or processed or mined are given away by him by way of free sample or gift or given to or received by him by way of replacement;
 - (iii) in respect of goods purchased by him from another such dealer who opts for the composition of tax under the provisions of section ~~3/4~~11 and 11 A ~~3/4~~;
 - (iv) who opts for composition under section ~~3/4~~11 and 11 A ~~3/4~~;
 - (v) ~~3/4~~Omitted. ~~3/4~~
 - (vi) in respect of plant, machinery, equipment and parts thereof, as may be notified by the State Government.
- (7)**
- (a) The State Government, if it deems fit, may, by notification, specify any goods mentioned in part III of Schedule II for the purpose of claiming or allowing input tax rebate under this section, when such goods are purchased by a registered

dealer from another such dealer within the State of Madhya Pradesh,-

- (i) after payment to him of tax under section 9, or
 - (ii) which are taxpaid goods at the hands of the selling registered dealer, for use or consumption of such goods for/in the manufacture or for/in mining of any goods for sale within the State of Madhya Pradesh or in the course of inter state trade or commerce or in the course of export out of the territory of India and thereupon the input tax rebate in respect of such goods shall be claimed or be allowed in such manner, to such extent, within such period and subject to such restrictions and conditions as may be specified in the notification.
- (b) The provisions of clause (b) of sub-section (1) and sub-sections (3) to (5) shall apply to input tax rebate that may be claimed or allowed in respect of goods referred in clause (a).²

15 : Burden of proof -

The burden of proving that any sale or purchase effected by a dealer is not liable to tax under Section 9 or Section 10 as the case may be, or that he is eligible for an input tax rebate under section 14 shall be on the dealer.

16 : Tax free goods -

No tax shall be payable on the sale or purchase of goods specified in Schedule-I, subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

16-A : Saving

- ^{3/4} (1) Notwithstanding the repeal of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995) or the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) repealed by Act No. 5 of 1995 (hereinafter referred to as the repealed Acts), the State Government

may, by notification, exempt -

- (i) (a) any class of dealers; or
- (b) any goods or class of goods in whole or in part, from the payment of tax under the repealed Acts; or
- (ii) any dealer or class of dealers from any provision of the repealed Acts or the provision of any rules made there under ,

for any period before the commencement of this Act and for that purpose it shall and shall always be deemed that the provisions of section 17 of the Act repealed by this Act or section 12 of the Act No. 2 of 1959 repealed by Act No. 5 of 1995 have revived for the purpose of such exemption.

- (2) Notwithstanding anything contained in any other provisions of the repealed Acts,-
- (a) a registered dealer who is an industrial unit eligible for grant of facility of deferred payment of tax under the scheme providing for grant of incentive to entrepreneur in respect of an industrial unit set up in the State as the State Government may make in this behalf, may make deferred payment of tax pertaining to such period before the commencement of this Act and subject to such restrictions and conditions, as may be specified in such scheme.
 - (b) the State Government may, by notification, amend any notification relating to the facility of deferred payment of tax by the industrial units, issued under Section 37 read with Section 80 of the Act repealed by this Act or Section 22-D read with Section 51 of the Act No. 2 of 1959 repealed by Act No. 5 of 1995, and for that purpose it shall and shall always be deemed that the provisions of Section 37 and Section 80 of the Act repealed by this Act or Section 22-D and Section 51 of the Act No. 2 of 1959 repealed by Act No. 5 of 1995 have revived for the purpose of such deferment or amendment. ^{3/4}

CHAPTER V – Registration of dealers

17 : Registration of dealers

(1) Every dealer whose turnover during the twelve months immediately preceding the commencement of this Act exceeds the limit prescribed under sub-section (1) of Section 5 shall get himself registered in the prescribed manner within thirty days of the commencement of this Act.

(2) (a) Every dealer other than a dealer to whom sub-section (1) applies shall get himself registered within the prescribed period from the date on which his turnover in a year first exceeds the limit prescribed under sub-section (1) of Section 5.

(b) Every dealer being a transferee of a business within the meaning of sub-section (1) of section 29 shall get himself registered within thirty days from the date of transfer of the business of which he is a transferee.

(c) A dealer who though not liable to pay tax under section 5 desires to obtain a registration certificate voluntarily may get himself registered under this Act;

(d) Any person intending to establish a business in the State for the manufacture of goods for sale of value exceeding one lac in a year and who is registered in the Industries Department of the State Government for establishing an industrial unit in the State or who is issued a licence wherever necessary or has sent a memorandum of information to the Central Government to establish a new industrial undertaking in the State under the provisions of the Industries (Development and Registration) Act, 1951 (No. 65 of 1951) may, notwithstanding that he is not liable for registration under clause (a), get himself registered under this Act.

(3) Every dealer required to get himself registered under sub-section (1) or clause (a) or clause (b) of sub-section (2), shall, or a dealer who desires to get himself registered under clause (c) of sub-section (2), or a person who desires to get himself registered under clause (d) of sub-section (2) may make an application to the Commissioner in such form and manner as may be prescribed, giving correct and complete particulars therein. Such application shall be accompanied by an affidavit in support of the particulars given in the application and also a satisfactory proof of payment of a registration fee of five hundred rupees in the prescribed manner.

[(4)(a) On the day the application for grant of a registration certificate as required by sub-section (1) or sub-section (2) is received, the said authority shall grant the applicant a registration certificate in the prescribed form.

(b) After issue of the registration certificate under clause (a), the Commissioner shall verify the particulars given in the application in such manner as may be prescribed..

(c) If the Commissioner on verification under clause (b), is satisfied that the particulars given by the applicant in his application are incorrect or that the applicant has misrepresented certain facts, he shall, after giving the applicant an opportunity of being heard and recording the reasons in writing, cancel the registration certificate issued to the applicant under clause (a) in accordance with the provisions of clauses (c) or clause (e) of sub-section (10) from the date of its issue, not later than thirty days of the date of receipt of the application.

--1.4.2006 to 24.12 .2007]

(4) ¹⁰ (a) On receipt of the application for grant of registration certificate,-

(i) the said authority shall, if it is satisfied that the application is in order, grant the applicant a certificate of registration in such form and manner as may be prescribed; and

(ii) if the said authority is not so satisfied, he shall reject the application, not later than thirty days from the date of receipt of the application.

(c) If the certificate of registration is not granted or the application is not rejected within the aforesaid period of thirty days, the applicant shall, on expiration of the said period, be entitled to a certificate of registration in accordance with his application and the said authority shall issue a certificate of registration accordingly.¹⁰

(5) The registration certificate granted under sub-section (4) shall take effect from -
 (a) in a case where a dealer required to get himself registered under clause (a) or clause (b) of sub-section (2) has applied for registration within the period prescribed under clause (a) or specified in clause (b) of the said sub-section, the date on which his turnover in a year first exceeds the limit prescribed under sub-section (1) of section 5 or the date of transfer of business, as the case may be :

(b) in a case where a dealer required to get himself registered under clause (a) or clause (b) of sub-section (2) has applied for registration after the expiry of the prescribed or specified period, as the case may be, the date on which he applies for registration;

(c) where a dealer has applied under clause (c) or a person has applied under clause (d) of sub-section (2), for registration the date of such application and notwithstanding the provisions of section 5, such dealer or person as the case may be, shall be liable to pay tax under this Act, during the period from the said date till his registration certificate remains in force

(6) Without prejudice to the provisions of sub-section (6) of Section 19 when a dealer has without reasonable cause, failed to get himself registered within the prescribed time as required by sub-section (1) or clause (a) or clause (b) of sub-section (2) the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the fee payable, a sum not exceeding rupees five hundred.

(7) Every dealer who at the commencement of this Act holds a registration certificate under the provisions of the Act repealed by this Act shall, on such commencement, be deemed for all purposes of this Act to be a dealer registered and holding a registration certificate under this Section.

(8) If any registered dealer or other dealer who is required to furnish returns under sub-section (1) of Section 18 -

(a) sells or otherwise disposes of his business or any part or place of his business or effects or comes to know of any other change in the ownership of the business, or

(b) discontinues his business or changes his place of business or opens a new place of business, or

(c) changes the name or nature of his business,

he or if he dies, his legal representative shall within the prescribed time, inform the prescribed authority accordingly.

(9) (a) The Commissioner shall -

(i) on an application made by a registered dealer for amendment of his registration certificate in pursuance of the provisions of sub-section (8) or otherwise, amend the registration certificate of the dealer or reject the application within 30 days of the date of receipt of such application, after making such enquiry as he deems fit; and

(ii) on being satisfied that the registration certificate issued to a dealer requires amendment with regard to certain particulars specified therein, amend the registration certificate after giving the dealer an opportunity of being heard.

(b) When the registration certificate is amended under sub-clause (i) of clause (a) in pursuance of any of the events specified in sub-section (8), such amendment shall take effect from the date such event has taken place and in all other cases falling under the

said sub-clause the amendment shall take effect from the date of application. An amendment made under sub-clause (ii) of clause (a) shall take effect from the date of order for making such amendment.

- (10)** When -
- (a) a registered dealer discontinues or transfers his business; or
 - (b) the liability of a registered dealer to pay tax ceases; or
 - (c) a registered dealer has been granted a registration certificate by mistake; or
 - (d) a registered dealer is in arrears of tax or penalty or any other sum due under this Act or under the Act repealed by this Act; or
 - (e) the Commissioner for reasons to be recorded in writing, is of the opinion that the registration certificate should be cancelled for any other reason;

the Commissioner may either on his own motion or on the application of the dealer in this behalf cancel the registration certificate:

Provided that where the Commissioner proposes to cancel the registration certificate of a dealer under this sub-section, he shall give the dealer an opportunity of being heard.

(11) Any dealer whose registration certificate is cancelled under clause (d) or clause (e) of sub-section (10) shall, for the purpose of sub-section (6) of Section 19 be deemed to be a dealer, who has failed to apply for registration, but shall not be liable to pay any penalty under the said sub-section.

(12)² (a) The Commissioner may, for the proper realisation of tax, from time to time demand from a registered dealer reasonable security as may be prescribed to be furnished in the prescribed manner .²

(b) The Commissioner may, by order, forfeit the whole or any portion of the security furnished by a dealer,-

- (i) for collection of any amount of tax, interest or penalty payable by the dealer; or
- (ii) if the dealer is found to have misused any prescribed certificate or declaration or has failed to keep or retain them in the prescribed manner,

(c) No order shall be passed under sub-clause (b) above, without giving the dealer a reasonable opportunity of being heard.

CHAPTER - VI Returns, Assessment, Payment and Recovery of Tax

18 : Returns

- (1)** (a) (i) Every such dealer as may be required so to do by the Commissioner by notice served in the prescribed manner;
- (ii) every registered dealer; and
 - (iii) every dealer whose registration certificate has been cancelled under clause (d) or clause (e) of sub-section (10) of Section 17, shall furnish return in such form, in such manner, for such period, by such dates and to such authority as may be prescribed:

Provided that the Commissioner may, subject to such terms and conditions as may be prescribed, exempt any such dealer from furnishing such returns and statement or permit any such dealer to furnish the return for such different period, in such other form and to such other authority, as he may direct.

(b) Every dealer required to furnish returns, under clause (a), shall furnish a statement in such forms and manner for such period, by such date and to such authority as may be prescribed.

(c) ²omitted²

(2) If any dealer discovers any omission, error or wrong statement in any return furnished by him under clause (a) of sub-section (1) he may furnish a revised return in the prescribed manner and within the prescribed time.

(3) Every dealer required to file return under sub-section (1) shall pay the full amount of tax payable according to the return as required by sub-section (2) of Section 24 or the difference of the amount of tax payable according to the revised return as required by sub-section (3) of the said Section and the full amount of interest, if any, payable under clause (a) or clause (b) of sub-section (4) and shall furnish the proof of such payment along with the return or the revised return, as the case may be .

(4) (a) If a dealer required to furnish return under sub-section (1), -
 (i) fails to pay the amount of tax payable according to a return for any period in the manner prescribed under sub-section (2) of Section 24; or
 (ii) furnishes a revised return under sub-section (2) showing a higher amount of tax to be due than was shown by him in the original return; or
⁶ (iii) fails to furnish return; or
 (iv) has furnished return or returns and the tax paid along with the return or returns is less than the tax as per accounts, ⁶

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

(1) the tax payable by him according to the return: or
 (2) the difference of the amount of tax payable according to the revised return; or
⁶ (3) the tax payable for the period for which he has failed to furnish return; or
 (4) the amount of tax by which tax so paid along with the return or returns falls short of the tax as per accounts, ⁶

¹at such rate as may be prescribed which shall not exceed 1.5 percent per month¹ from the date the tax so payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Explanation - For the purpose of this clause,-

(1) Where the period of default covers a period less than a month the interest payable in respect of such period shall be computed proportionately.
 (2) 'month' shall mean thirty days.

(b) ⁶If a registered dealer having furnished a return under sub-section (1) or a revised return under sub-section (2) for any period and paid the tax payable according to such return or revised return after the time prescribed therefor or the tax paid along with the return or returns falls short of the tax as per accounts, fails to pay interest along with such return or revised return or payment of amount of tax by which tax so paid along with the return or returns falls short of the tax as per accounts, in accordance with the provisions of clause (a), the Commissioner shall levy the interest liable to be paid by

the dealer and after giving the dealer a reasonable opportunity of being heard, may direct him to pay in addition to the tax payable or paid and the interest payable by him, by way of penalty a sum equal to such rate as may be prescribed which shall not exceed 1.5 percent per month of the amount of interest, from the date such interest had become due to the date of its payment or to the date of order of assessment, whichever is earlier.⁶

- (c) If a dealer fails without sufficient cause to comply with the requirement of notice issued under sub-section (1), the Commissioner may after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to any tax payable or paid by him, by way of penalty a sum of one hundred rupees per day of default subject to a maximum of rupees five thousand.
- (d) Where,-
- (i) no tax is payable by a registered dealer committing a default under sub-clause (iii) of clause (a), or
 - (ii) a registered dealer having paid the tax payable according to a return in time fails to furnish the return in time;

the Commissioner may after giving such dealer a reasonable opportunity of being heard direct him to pay by way of penalty a sum of rupees fifty per day of default subject to a maximum of rupees one thousand.

(5)(a) If the Commissioner has reason to believe that the particulars given by a registered dealer in his return or returns furnished by him for any period under sub-section (1) or sub-section (2) are not correct he may, by giving the dealer an opportunity of being heard, verify the correctness of such particulars in the return or returns.

(b) If on such verification it is found that the particulars given in the return or returns are not correct in so far as they relate to the application of the correct rate of tax, the calculation of tax or interest payable or claim of any deduction and input tax rebate, he shall by issue of a notice in the prescribed form require such dealer to make the payment of the additional amount of tax and or interest payable by him within the period specified in such notice.

19 Tax Audit -

- (1) ²The Commissioner or an agency authorised by him shall , on previous intimation to the dealer , undertake tax audit, in such manner as may be prescribed, of the records , stocks in trade and the related documents of the dealer, who are selected by him in the manner as he may deem fit. ²
- (2) The tax audit shall be generally taken up in the office, business premises or warehouse of the dealer.
- (3) [For the purpose of tax audit under sub-section (1), the Commissioner ²or an agency² authorised by him shall examine the correctness of the return or returns filed and admissibility of various claims including input tax rebate .
--1.4.2006 to 24.12 .2007]
¹⁰Omitted ¹⁰
- ²(4) For the purpose of tax audit, the Commissioner or an agency authorised by him may enter the place of business, office or warehouse of the dealer and require him to produce books of account and documents relating to his business, and the dealer , shall produce the books of account and the documents relating to his business as required.
- (5) Tax audit shall be completed within a period of six calendar months from the date of institution of the proceedings and after completion of tax audit, a report shall be prepared and in case of tax audit by an agency authorised by the Commissioner, the report shall be submitted to the Commissioner, who shall send a copy of the report to the dealer.

[(6) After such audit, if the return or returns filed by the dealer are not found to be correct, the Commissioner shall by issue of a notice in prescribed form require such dealer to make the payment of the additional amount of tax and /or interest payable by him, at such rate as may be prescribed, within the period specified in such notice.

--1.4.2006 to 24.12 .2007]

- (6)** ¹⁰After such audit, if the return or returns filed by the dealer are not found to be correct or the dealer has not filed return or returns, the commissioner shall by issue of a notice in prescribed form require such dealer to make the payment of tax and / or interest payable by him, at such rate as may be prescribed, within the period specified in such notice. ¹⁰
- (7)** If the dealer does not comply with the requirements made in the notice, the Commissioner shall assess or re-assess him to tax and interest and / or to imposition of penalty, in accordance with the provisions of section 20. ²

20 : Assessment of tax

(1) The assessment of every registered dealer shall be made separately for every year :

Provided that,

(a) the Commissioner, may, subject to such conditions and restrictions as may be prescribed assess the tax due from any dealer for any part of a year,

(b) a registered dealer who claims a refund of input tax rebate under the provisions of sub-section (4) of section 14,-

- (i) in his return for any quarter of a year and makes an application for that purpose, along with such return or before the date on which the return for the subsequent quarter becomes due, or
- (ii) in his returns for a year and makes an application for that purpose before the date on which the return for the first quarter of the subsequent year becomes due,

the assessment of such dealer for that quarter or year, as the case may be shall be made in accordance with the provisions of sub-section (4) within a period of three months from the date of receipt of the application

(2) ²omitted²

(3) ²omitted²

- (4)** ² (a) The Commissioner shall serve on a registered dealer referred to in the proviso to sub-section (1) of this section or sub-section (3) of section 20A or a registered dealer who is not eligible for assessment under sub-section (1) of section 20A with a notice in the prescribed form appointing a place which may be the business premises or any other place and day and directing him,-
- (i) to appear in person or by an agent entitled to appear in accordance with the provisions of section 23 ; or
 - (ii) to produce evidence or have it produced in support of the returns; or
 - (iii) to produce or cause to be produced accounts, registers, cash memoranda or other documents relating to his business. ²
- (b) The Commissioner, after hearing the registered dealer or his agent and examining the evidence produced in compliance with the requirements of sub-clause (ii) or sub-clause (iii) of clause (a) and such further evidence as he may require, shall assess or re-assess him to tax.

(5) If a registered dealer referred to in clause (a) of sub-section (4),- -

(a) has not furnished returns and statement in respect of any period by the prescribed date; or

(b) has knowingly furnished incomplete or incorrect returns for any period; or

(c) having furnished such returns has failed to comply with any of the terms of a notice issued under clause (a) of sub-section (4); or

- (d) (i) has not maintained any accounts, or
 (ii) the accounts maintained by him are not in accordance with the provisions of sub-section (1) of Section 39, or
 (iii) has not regularly employed any method of accounting, or
 (iv) the method employed is such that in the opinion of the Commissioner assessment cannot properly be made on the basis thereof,

the Commissioner shall after issue of a notice in the prescribed form appointing a place which may be the business premises or at the place specified in the notice and in the prescribed manner, assess the dealer to the best of his judgment.

(6) (a) If upon any information which has come into his possession, the Commissioner is satisfied that any dealer, being liable to pay tax in respect of any period has failed to apply for registration, the Commissioner shall within one calendar year from the date of completion of the proceedings under sub-section (1) of Section 6 proceed, in such manner as may be prescribed, to assess such dealer and assess him to tax to the best of his judgement in respect of the whole of such period and shall impose upon him, by way of penalty, a sum two times of the amount of tax so assessed.

(b) In respect of periods, subsequent to the period referred to in clause (a), during which the dealer has failed to apply for registration, the amount of tax due from him referred to in the said clause shall be assessed separately for each year.

(7). (i) the assessment in respect of a registered dealer referred to in clause (a) of sub-Section (4) shall be made within a period of one calendar year from the end of the period for which the assessment is to be made,

(ii) the assessment in respect of a dealer referred to in clause (b) of sub-section (6) for any period shall be made within a period of one calendar year from the end of such period ; and

² (iii) in respect of a dealer, under clause (a) of sub-section (6) shall be made within a period of one calendar year from the commencement of proceedings under the said sub-section:²

Provided that -

(a) where a fresh assessment has to be made to give effect to any finding or direction contained in any order under Sections 46, 47 and 53 or to any order of the Civil Court, High Court or Supreme Court, such assessment shall be made within a period of one calendar year from the date of the order containing such finding or direction or the order of the Civil Court, High Court or Supreme Court, as the case may be;

² (b) nothing contained in this sub-section shall apply to proceedings initiated under Section 21 or any proceeding other than assessment or re-assessment of tax that may be instituted under any other provisions of this Act.²

(8) Notwithstanding anything contained in sub-section (7), where assessment or re-assessment proceedings in respect of any dealer relating to any period cannot be completed before the expiry of the period specified therefor in the said sub-section, the State Government, may by notification, for reasons to be recorded in writing, extend the period for the completion of such assessment proceedings in respect of such dealers by such further period as may be specified in such notification.

(9) (a) where, a registered dealer claims refund of tax or input tax rebate in his return for any quarter or return or returns for any year and makes an application for his assessment for that quarter or that year but his assessment is not completed within the time specified in the proviso to sub-section (1) the claim made in the return or returns for that quarter or year shall

stand accepted and such dealer shall be entitled to the refund of the amount of the tax or input tax rebate..

- (b) where the assessment for any year of a registered dealer,-
- (i) other than a registered dealer referred to in the proviso to sub-section (1), and
 - (ii) a registered dealer who has not furnished any return or returns for that year,
- is to be made under the provisions of sub-section (4) or sub-section (5) is not made within the time provided in sub-section (7) or within the time extended under sub-section (8), then,-
- (a) the returns furnished by the registered dealer in (i) above shall stand accepted and he shall be deemed to have been assessed for the purpose of the Act.
 - (b) the assessment of the registered dealer in (ii) above shall become time-barred.

²Section 20-A. Self assessment

- (1) Where a registered dealer other than the registered dealer referred to in the proviso to sub-section (1) of section 20 has furnished, -
- (a) all returns or revised returns for any period of a year in the prescribed manner and within prescribed time or before,
 - (i) 31st July of the subsequent year, in case of such dealer whose annual turnover does not exceed rupees forty lacs;
 - (ii) 31st October of the subsequent year, in other cases;
 - (b) has paid the tax payable according to such returns or revised returns as also interest payable, if any; and
 - (c) has furnished the statement under clause (b) of sub-section (1) of section 18 within the prescribed time,

the returns or the revised returns furnished by such dealer for that year, subject to compliance of requirements made in the notice issued under the provisions of sub-section (5) of section 18 and sub-section (6) of section 19, shall be accepted and his assessment shall be deemed to have been made for the purpose of sub-section (1) of section 20 :

Provided that the assessment under this sub-section of every such registered dealer who is required to furnish audit report under sub-section (2) of section 39 shall be deemed to have been made only after such dealer has furnished the audit report.

- (2) Notwithstanding anything contained in sub-section (1), the Commissioner shall select for reassessment a number of such dealers, as he deems fit, whose assessment for a year is deemed to have been made under sub-section (1) of section 20 in accordance with the provisions of sub-section (1) and such selection shall be made during the year immediately following the said year.
- (3) The Commissioner shall re-assess a registered dealer referred to in sub-section (2) in accordance with the provisions of section 20.²

21: Assessment/reassessment of tax in certain circumstances

- (1) Where an assessment or re-assessment of a dealer has been made under this Act or the Act repealed by this Act and for any reason any sale or purchase of goods liable to tax under this Act or the Act repealed by this Act during any period,--
- (a) has been under assessed or has escaped assessment, or
 - (b) has been assessed at a lower rate, or
 - (c) any wrong deduction has been made while making the assessment , or
 - (d) a rebate of input tax has incorrectly been allowed while making the assessment ,

- (e) is rendered erroneous and prejudicial to the interest of revenue consequent to or in the light of any judgment or order of any Court or Appellate Board, which has become final,

the Commissioner may, at any time ²within a period of five calendar years from the date of order of assessment or reassessment in cases falling under clauses (a) to (d) and within a period of three calendar years from the date of judgment or order of any court or Appellate Board in cases falling under clause (e) ², proceed in such manner as may be prescribed, by issue a notice in the prescribed form appointing a place which may be the business premises or at such place specified in the notice to assess or re-assess, as the case may be the tax payable by such dealer after making such enquiry as he considers necessary, and assess or re-assess to tax.

(2) The commissioner shall, where the omission leading to assessment or re-assessment made under sub-section (1) is attributable to the dealer, impose upon him a penalty not exceeding ²3.5 times² the amount of tax so assessed. or re-assessed but shall not be ²less than three times² the amount of tax assessed.

(3) The assessment or re-assessment under sub-section (1) shall be made within a period of one calendar year from the date of commencement of the proceedings under the said sub-section

² (4) Subject to such restrictions and conditions and in such manner as may be prescribed, a dealer, on whom a penalty has been imposed under sub-section (2), may opt to pay in lieu of penalty a lump sum amount, which shall be twice the amount of tax assessed or reassessed and once the dealer has exercised the option he shall not have any right to challenge the order of penalty in any forum. ²

22 : Exclusion of time in assessment proceedings

In computing the period of limitation prescribed for assessment or reassessment as the case may be, under Section 20 or Section 21, the time during which any assessment or reassessment proceedings remained stayed under the order of any civil or other competent court, or under the special or general order of the Commissioner issued under section 45, shall be excluded.

23 : Appearance before taxing authorities

(1) Any dealer who is entitled or required to attend or appear before any officer appointed under Section 3 in connection with any proceedings under this Act, otherwise than when required under Section 43 to attend personally for examination on oath or affirmation, may authorise in writing to attend or appear on his behalf, a person being a relative of or a person regularly employed by the dealer, or a legal practitioner or a chartered accountant or a tax practitioner.

(2) For the purpose of sub-section (1) any person who -

- (a) before coming into force of this Act, had been enrolled as a Sales Tax Practitioner/Tax Practitioner, or
- (b) holds a degree in law or commerce or the degree of Bachelor of Arts with economics as one of his subjects conferred by any Indian university incorporated by any law for the time being in force or by any other university as the State Government may, from time to time by notification, specify; or
- (c) does not possess any of the qualifications referred to in sub-clause (b) but has held a post, in the Commercial Tax Department, not below the rank of an Assistant Sales Tax Officer / Assistant Commercial Tax Officer for at least ten years and is granted a certificate by the Commissioner having regard to his record of service in the

department as being a fit and proper person to appear in any proceeding under this Act,
shall be entitled to appear as a Tax Practitioner.

(3) Every person referred to in clause (b) or clause (c) of sub-section (2) who is eligible to appear as a tax practitioner in any proceedings under this Act shall get himself enrolled on payment of such fee as may be prescribed.

(4) If the Commissioner is satisfied that the application for enrollment is in order, he shall issue to the applicant an enrollment certificate in the prescribed form. If the Commissioner, after making such enquiry as he deems fit, and after giving the applicant a reasonable opportunity of being heard is not so satisfied, he shall, for reasons to be recorded in writing, reject the application.

(5) Notwithstanding anything contained in sub-sections (1) and (2) no person who has held any post in the Commercial Tax Department not below the rank of a Commercial Tax Inspector shall be entitled to represent any dealer in any proceeding under this Act :-

- (i) if he has at any time, passed any order in such proceeding, while he was holding any post in the department;
- (ii) if the place of business of the dealer whom he desires to represent is in the district or circle within the territorial jurisdiction of which the head quarter of the office of the Commercial Tax department in which he had held such post was located, unless a period of two years has elapsed since he ceased to hold that post :

Provided that nothing in clause (ii) shall apply to such person if the representation is to be made before an officer holding a rank higher than the rank last held by such person.

(6) No person who has been dismissed from Government service shall be qualified to represent any dealer under sub-section (1).

(7) If any tax practitioner is found guilty of misconduct by the Commissioner in connection with any proceeding under this Act or the Central Sales Tax Act, 1956 (No.74 of 1956) or the Act repealed by this Act, the Commissioner may pass any order for awarding him punishment including disqualification from appearing as a tax practitioner in any proceeding under the aforesaid Acts, as he deems fit:

Provided that no such order shall be passed unless he is given a reasonable opportunity of being heard.

(8) Any tax practitioner whose application for enrollment is rejected under sub-section (4) or who is disqualified under sub-section (7) may within sixty days of the direction relating thereto, appeal to the Appellate board .

(9) If any Advocate or Chartered Accountant is found guilty of misconduct in connection with any proceeding under this Act or the Act repealed by this Act, the commissioner shall refer the matter to the authority empowered to take disciplinary action against the persons of these professions for taking appropriate action.

24 : Payment and recovery of tax, interest, penalty and other dues : -

(1) The tax payable for each year shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

- (2) Before any registered dealer furnishes any return as required by sub-section (1) of section 18, he shall pay in the prescribed manner and time, the full amount of tax payable according to such return and the amount of interest under sub-section (4) of section 18, if any payable by him.
- (3) If a revised return furnished by a registered dealer in accordance with the provisions of sub-section (2) of the said section shows a higher amount of tax to be due than was shown in the original return of returns, he shall pay the difference and the interest payable, if any, under sub-section (4) of section 18 in such manner and time as may be prescribed.
- (4) Notwithstanding anything contained in sub-section (2) or sub-section (3), where the registered dealer is the Central Government or a State Government or any of their departments, the Commissioner may, subject to such terms and conditions as may be prescribed, permit such dealer to pay the amount of tax by book adjustment.

⁴ (4A) Notwithstanding anything contained in any other provisions of this Act but subject to such conditions as may be prescribed, a registered dealer who is eligible to avail of the facility of deferment of payment of tax under the scheme formulated in accordance with the provisions of sub-clause (e) of clause (i) of section 72, is liable to pay tax under the provisions of sub-section (2) or sub-section (3) or sub-section (5) and where a loan liability equal to the amount of tax payable by the dealer as aforesaid for the period of eligibility to avail of the said facility has been created by any agency or agencies as the State Government may, by general or special ^{*}order, specify, then such tax shall be deemed to have been paid in accordance with the provisions of sub-section (2) or sub-section (3) or sub-section (5), as the case may be. ⁴

- (5) The amount of tax -
- (a) due where the returns were furnished without full payment of tax, or
- (b) assessed or re-assessed under sub-sections (4) and (5) of Section 20 less the sum, if any, already paid by the dealer or person in respect of the said year together with interest, if any, required to be paid and the penalty if any, directed to be paid under clause (c) of sub-section (4) of Section 18, or
- (c) (i) assessed under sub-section (6) of Section 20 or Section 21 together with the interest and/ or penalty, if any, directed to be paid thereunder, and
- (ii) the amount of penalty if any imposed or directed to be paid under any provisions of this Act not covered under ²clause (b) and sub-clause (i) of clause (c), ²

shall be paid by the dealer or person in the prescribed manner by such date as may be specified in a notice in the prescribed form to be issued by the Commissioner for this purpose and the date to be so specified shall ordinarily be not less than thirty days from the date of service of such notice.

(6) Where on an admission of a first appeal or a second appeal, the appellate authority stays the recovery of any amount of tax assessed or penalty imposed and on a decision in such appeal by it the amount of tax or penalty so stayed has been maintained in whole or in part by it, the dealer shall be liable to pay interest on such amount at the rate of ²1.5 per cent ² per month for the period from the date on which the recovery of such amount was stayed by the appellate authority to the date of its payment after the decision in appeal.

(7) If, for any reason, a dealer or person, is unable to pay the tax assessed, interest payable or levied or the penalty imposed on him under this Act or the tax payable by him in advance of assessment within the time specified therefor in the notice of demand, he may apply to the Commissioner in writing to grant him further time for payment of such amount or to permit him to pay such amount in installments. Subject to such conditions and restriction as may be prescribed, the Commissioner may grant further time to such dealer or person or allow him to pay such amount in installments on such conditions as he may deem fit to impose. Where any extension of time or permission to pay by installments is granted, the dealer or person

shall be liable to pay interest on such amount from the last date on which the amount was due to be paid in accordance with such notice of demand. The interest shall be paid at eighteen per cent per annum for the period commencing from such last date.

(8) Where a dealer or person does not pay the tax assessed or the interest levied or the penalty imposed on him or any other amount due from him under this Act within the time specified therefor in the notice of demand and the dealer or person, has not obtained any order under sub-section (7) or has failed to pay the amount in accordance with the order passed by the Commissioner under sub-section (7), the Commissioner shall, after giving the dealer or person a reasonable opportunity of being heard, direct that such dealer or person shall, in addition to the amount due, pay by way of penalty a sum equal to 2 per cent of such amount of tax, penalty or any other amount due, for every month, for the period for which payment has been delayed by him after the last date on which such amount was due to be paid.

(9) (a) Where the State Government after such enquiry as it may deem fit, is of the opinion that genuine hardship is being caused to a dealer or person due to any proceedings initiated for recovery of any amount outstanding against him, the State Government may, subject to such restrictions and conditions as may be prescribed, grant to the dealer or person additional time to pay such amount or may grant facility to pay such amount in installments and pending the completion of such enquiry, the State Government may stay the recovery of the dues. In respect of every such facility the dealer or person shall be liable to pay interest at the rate specified in sub-section (7);

Provided that no such facility shall be granted to the dealer or persons unless he has in the first instance applied in this behalf to the Commissioner under sub-section (7).

(b) If the dealer or person does not comply with any order passed by the State Government, the Commissioner shall impose on him penalty under sub-section (8).

(10) Where the Commissioner is of the opinion that interest payable by a dealer to whom any facility has been given under sub-section (7) or sub-section (9) has caused him hardship, the Commissioner may remit such portion of the interest payable on the dues or on the penalty imposed in accordance with the order of assessment or the order imposing penalty, as is in excess of the tax or the penalty paid or payable:

Provided that the Commissioner shall not remit the interest unless the dealer has paid in full the amount of tax and/or penalty required to be paid by him.

(11) (a) If any amount of tax, interest, penalty, or any other amount due under this Act or the Acts repealed by section 52 of Act No.2 of 1959 or the Act repealed by section 81 of Act No. 5 of 1995 or the Act repealed by this Act (hereinafter referred to as the repealed Act) remains unpaid on the expiry of the period prescribed for the payment thereof by or under this Act or the repealed Act or on the expiry of the period specified in any notice of demand or order issued or made under this Act or the repealed Act or the rules made thereunder, for the payment thereof, the dealer or person liable to pay such amount shall be deemed to be in default as to the whole of the amount then outstanding;

(b) When a dealer or person is in default or is deemed to be in default under clause (a), the amount outstanding shall be recoverable as an arrear of land revenue according to the provisions of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) and for the purpose of effecting the recovery of such amount -

- (i) the Commissioner of Commercial Tax shall have and exercise all the powers and perform all the duties of the Commissioner under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959);
- (ii) an Additional Commissioner of Commercial Tax shall have and exercise all the powers and perform all the duties of the Additional Commissioner under the said code;
- (iii) a Deputy Commissioner of Commercial Tax shall have and exercise all the powers and perform all the duties of the Collector under the said code;
- (iv) an Assistant Commissioner of Commercial Tax shall have and exercise all the powers and perform all the duties of the Assistant or a Deputy Collector under the said code;
- (v) a Commercial Tax Officer and Assistant Commercial Tax Officer shall have and exercise all the powers and perform all the duties of the Tahsildar under the said code.

(c) Every notice issued or order passed in exercise of the powers conferred by clause (b), shall for the purpose of Sections 46, 47, 53, 54 and 66 of this Act be deemed to be a notice issued or an order passed under this Act.

(d) Notwithstanding anything contained in the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), where 25 percent of the sale value is deposited by the purchaser for the purchase of property sold in auction in consequence of the recovery proceedings, the purchaser may apply to the Commissioner in writing to permit him to pay the balance amount in installments. The Commissioner may allow him to pay such amount in installments with interest thereon on such conditions as he may deem fit to impose.

(12) Where in pursuance of sub-section (11) any proceedings for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, have been commenced and the amount of tax, penalty, interest, or any other amount is subsequently modified, enhanced or reduced in consequence of any assessment made or order passed in appeal under section 46 or revision under Section 47 or rectification of mistake under Section 54, the Commissioner shall, in such manner and within such period as may be prescribed, inform accordingly the dealer or person and the authority by whom or under whose order the recovery is to be made and thereupon such proceedings may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, had been substituted for the tax, penalty, interest or any other amount which was to be recovered under sub-section (11).

10 (13) If any amount of tax, interest, penalty, or any other amount due under this Act or the Acts repealed by section 52 of Act No.2 of 1959 or the Act repealed by section 81 of Act No. 5 of 1995 or the Act repealed by this Act or the Central Sales Tax Act, 1956 (No.74 of 1956) is determined to be irrecoverable and pertains to a period prior to five years preceding the year in which the amount is to be write off, they may be write off in accordance with the procedure prescribed by the state Government for this purpose, and after such write off the amount shall be deemed to have been recovered and shall no longer remain outstanding against such dealer or person. ¹⁰

25 : Payment of tax in advance of assessment on failure to furnish returns

(1) Where any registered dealer fails to furnish any return for any period as required by sub-section (1) of Section 18 and fails to pay the tax payable for such period,

- (a) the Commissioner may, if the tax payable by such dealer in a year does not ordinarily exceed ten thousand rupees; and

(b) the Commissioner shall, if the tax payable by such dealer in a year exceeds rupees ten thousand,

require such dealer to pay such tax, in the manner laid down in the following sub-sections, in advance of an assessment which may be made under Section 20.

(2) The amount of tax payable in advance under sub-section (1) shall be computed by the Commissioner as under:-

(a) Where a registered dealer has been assessed to tax for any previous year or part thereof, the tax payable in advance shall be an amount which bears to the amount of tax assessed in respect of the latest previous year or part thereof the same proportion as the period for which the tax payable in advance bears to the period for which the latest assessment was made,

(b) Where a registered dealer has not been assessed to tax for any previous year or part thereof but has furnished the return as required by sub-section (1) of Section 18 for any period, the tax payable in advance shall be an amount which bears to the maximum amount of tax payable according to any such return the same proportion as the period for which the tax payable in advance bears to the period for which such maximum amount of tax was payable according to such return.

(c) Where a registered dealer has not been assessed to tax under this Act for any previous year and no returns have been furnished by him for such year or where a registered dealer has no previous year, the tax payable in advance shall be such amount as the Commissioner may determine to the best of his judgement.

(3) After the expiry of the date by which the return has become due, the Commissioner may issue a notice in the prescribed form to a registered dealer who has failed to furnish such return requiring him to pay in the prescribed manner and within the prescribed time the tax payable in advance computed in accordance with sub-section (2).

(4) If any registered dealer who is required under sub-section (3) to pay the tax in advance furnishes the return under sub-section (1) of Section 18 and pays the amount of tax in accordance with the provisions of sub-section (2) of Section 24 on or before the date specified in the notice issued under sub-section (3) or satisfies the Commissioner that the return had already been furnished by him by the date by which it was due, the said notice shall stand cancelled.

(5) The tax payable in advance or any part thereof left unpaid within the time specified in the notice issued under sub-section (3) shall be recoverable as an arrear of land revenue for which purpose the provisions of sub-sections ² (11) and (12) ² of Section 24 shall mutatis mutandis apply.

(6) The tax paid under this Section shall be adjusted towards the tax assessed or re-assessed under Section 20.

26 : Deduction and payment of tax in certain cases

(1) Any person responsible for making payment of any sum to any dealer as a consideration for the sale or supply of any goods in pursuance of a contract between such dealer and the Central Government or a State Government (hereinafter referred to in this Section as the purchaser), shall before crediting such sum to the account of the dealer or before payment thereof in cash or by issue of a cheque or draft or by any other mode, deduct an amount equal to the amount payable by the purchaser to the dealer by way of tax, ⁴ whether or not such amount as is shown by the dealer separately in his bill⁴, where the total amount of the

bill exceeds rupees five thousand and shall pay it to the State Government in such manner as may be prescribed.

^{3/4} (2) Notwithstanding anything contained in any other provision of this Act, any person letting out a works contract of value exceeding three lac rupees to a contractor involving sale of any goods in the course of execution thereof by the contractor shall before making the payment of any amount towards the value of such contract to him, deduct at the rate of two percent or the prescribed rate for lump sum, in respect of a contractor who has opted for composition under section 11A , an amount towards the tax payable by the contractor under this Act : ^{3/4}

[Provided that if the value of labour involved in the contract is more than fifty percent of the contract, the deduction towards the tax payable shall be made at the rate of one percent. ^{3/4} -- 1.4.2006 to 31.3.2007]

⁶ Provided that if the value of labour involved in the contract is more than fifty percent of the contract value and the contractor has not opted for composition under section 11-A, the deduction towards the tax payable shall be made at the rate of one percent.

Provided further that no deduction shall be made in respect of any sale or purchase taking place outside the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of import of goods into the territory of India.

Provided also that no deduction shall be made from any payment made to any sub-contractor by a contractor where the contractor has opted for composition under section 11-A. ⁶

(3) On deduction of the amount under sub-section (1), or sub-section (2) the person making such deduction shall issue to the dealer or the contractor, as the case may be, a certificate therefor ⁶ in the prescribed form which is obtained in the prescribed manner ⁶ and shall deposit such amount in to the Government Treasury in such manner and within such period as may be prescribed.

(4) Any person making the payment under sub-section (1) or sub-section (2) shall be deemed to have made the payment on the authority and on behalf of the dealer or the contractor and the receipt for such payment shall constitute a good and sufficient discharge of the liability of the purchaser to the dealer or the contractor to the extent of the amount specified in the receipt.

(5) Where any payment under sub-section (1) or sub-section (2) is made by a purchaser or the person letting out the contract, on behalf of the dealer or the contractor such payment shall constitute a good and sufficient discharge of the liability of the dealer or the contractor to pay tax in respect of such transaction and the amount so paid shall be adjusted by him in such manner as may be prescribed.

(6) Where a person contravenes the provisions of sub-section (1), sub-section (2), or sub-section (3) the Commissioner may impose upon such person by way of penalty an amount which shall be 2 percent per month of the amount required to be deducted under sub-section (1) or sub-section (2). subject to a maximum of 25 percent of such amount.

(7) Any sum which a person is required to deduct under sub-section (1) or sub-section (2) or the penalty imposed under sub-section (6) if it remains unpaid, be recoverable as an arrear of land revenue.

(8) Every person making a deduction under sub-section (1) or sub-section (2) shall furnish a statement in such form, to such authority, in such manner and within such time as may be prescribed.

Explanation – For the purpose of sub-section (2), "person" means –

- (i) Department of the Central or the State Government,
- (ii) Public Sector Undertaking,
- (iii) Municipality and Municipal Corporation,
- (iv) Authority constituted under any law for the time being in force,
- (v) Public Limited company.

¹⁰ 26-A. Deduction of tax at source in respect of certain goods

- (1) Notwithstanding anything contained in any other provision of this Act, every registered dealer (the purchaser) who purchases such goods as may be notified* by the State Government for sale or consumption from another registered dealer, shall deduct input tax from the amount payable by him to the selling registered dealer (the seller) for such purchase.
- (2) On deduction of the amount under sub-section (1), the purchaser shall issue a certificate of deduction of tax to the seller in such form and manner as may be prescribed.
- (3) The certificate of deduction of tax shall constitute a good and sufficient discharge of the liability of the seller to pay tax in respect of such transaction and the amount so deducted shall be adjusted by him in such manner as may be prescribed and this certificate shall not be used for discharge of the liability of any other transaction.
- (4) No input tax rebate shall be claimed or be allowed in respect of the goods notified under sub-section (1).
- (5) In the event of disposal of,-
 - (a) (i) goods purchased; or
 - (ii) the goods specified in Schedule II, manufactured out of the goods purchased, otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or
 - (b) the goods specified in Schedule I, manufactured out of the goods purchased, otherwise than by way of sale in the course of export out of the territory of India,

the purchaser shall deposit the amount at the rate of 4 percent of the purchase price, net of input tax, of the goods purchased.
- (6) The provisions of Sections 18, 20, 21, 24, 25 and 39 shall mutatis mutandis apply to the amount payable under sub-section (5).
- (7) The purchaser shall retain as refund the amount deducted under sub-section

(1) which is equal to the amount of input tax rebate notionally admissible under section 14 on such purchases.¹⁰

6 27. saving for person responsible for deduction of tax at source

Notwithstanding anything contained in Section 26 no deduction or deduction at a lower rate at source towards tax payable shall be made under the provisions of the said section from any consideration payable to a dealer or person, if such dealer or person furnishes to the person responsible for paying any amount in respect of the sale or supply or contract referred to in the said section, a certificate in writing in such form issued in such manner and by such authority as may be prescribed.⁶

28: Special mode of recovery

(1) Notwithstanding anything contained in Section 24 or any law or contract to the contrary, the Commissioner or any officer other than the officer appointed under clause (g) of sub-section (1) of section 3, may at any time or from time to time, by a notice in the prescribed form a copy of which shall be sent to the dealer or person, at his last address known to the officer issuing the notice, require, -

- (a) any person from whom any amount is due or may become due to a dealer or person who has failed to comply with a notice of demand for any amount due under this Act;
- (b) any person who holds or may subsequently hold any money for or on account of such dealer or person,

to pay to the Government under this sub-section, either forthwith or upon the money becoming due or being held, 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 equal to the amount due from the dealer or person in respect of the arrears of the tax, interest and penalty under this Act or the whole of the money when it is less than that amount.

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

(2) The Officer issuing a notice under sub-section (1) may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance thereof .

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer or person and the treasury receipt for such payment shall constitute a good and sufficient discharge of the liability of such a person to the dealer to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer or person after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer or person for tax or penalty or both, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the officer who issued the notice that the sum demanded or any part thereof was not due to the dealer or person or that he did not hold any money for or on account of the dealer or person, at the time the notice was served on him, then nothing contained in this Section shall be deemed to require such person to pay to the Government any such money or part thereof, as the case may be.

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

(7) The provisions of this Section shall be without prejudice to any action that may be taken for recovery of the arrears of tax, interest and penalty, if any, due from the dealer or person.

29 Payment of tax in case of transfer or discontinuance of business and liability of the company in case of ⁶amalgamation or de-merger⁶

(1) When the ownership of the business of a dealer liable to pay tax under this Act is entirely transferred, the transferor and the transferee shall jointly and severally be liable to pay the tax together with penalty, if any, or interest or penalty payable in respect of such business for any year or relatable to a part of any year and remaining unpaid at the time of the transfer and the transferee shall also be liable to pay the tax on the sales or purchases of goods effected by him with effect from the date of such transfer and shall within thirty days of the transfer apply for registration unless he already holds a registration certificate.

(2) When a dealer is a firm or association of persons or a joint Hindu Family and such firm, association or family has discontinued business -

- (a) the tax payable under this Act by such firm, association or family for the period upto the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place; and
- (b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or family shall notwithstanding such discontinuance, be liable severally and jointly for the payment of the tax payable by such firm, association or family, whether such assessment is made prior to or after such discontinuance and, subject as aforesaid the provisions of this Act shall apply as if every such person or partner were himself a dealer :

Provided that when it is found that a change has occurred in the constitution of the firm or association or that such firm or association has transferred its business and the tax payable by a partner or member as aforesaid cannot be recovered from him, it may be recovered from the firm or association as reconstituted or from the transferee:

Explanation - The dissolution or reconstitution of a firm or association of persons or partition of Joint Hindu family shall be deemed to be discontinuance of business within the meaning of this sub-section.

(3) The provisions of this Section shall mutatis mutandis apply to any arrears of tax payable under the Act repealed by Section 81 of Act No. 5 of 1995 or the Act repealed by this Act and due for any year or relatable to a part of any year prior to such transfer of business, discontinuance or dissolution of the partnership or the partition of undivided Hindu family, as the case may be.

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

(5) Notwithstanding anything contained in the order specified in sub-section (4), for all of the purposes of this Act, the said two or more companies will be treated as distinct companies and will be treated as such for the periods upto the date of the said order and the

registration certificates of the said companies will be cancelled, where necessary, with effect from the date of the said order.

6 (5A) (a) When any company is de-merged by the order of a court or of the Central Government and the order is to take effect from a date earlier to the date of the order, then for all of the purposes of this Act, it shall be presumed that the two or more companies brought into existence by the operation of the said order have not sold or purchased any goods to or from each other during the period commencing on the date from which the order is to take effect and ending on the date of the order, and will be assessed to tax accordingly.

(b) Notwithstanding anything contained in the order specified in clause (a), for all of the purposes of this Act, the said two or more companies will be treated as single company for the periods upto the date of the said order and the registration certificate of the de-merged company will be cancelled, where necessary, with effect from the date of the said order and the said two or more companies shall be granted registration certificates, where necessary, from the date of the said order.

(5B) Notwithstanding anything contained in section 14, when the ownership of the business of a registered dealer is entirely transferred or when two or more companies are amalgamated or a company is de-merged, by the order of a court or of the Central Government, then the transferee, the amalgamated company or the de-merged companies shall be entitled to take credit of the input tax rebate, which remains unadjusted on the date of said transfer or the order of amalgamation or de-merger, as the case may be. **6**

(6) Words and expressions used in sub-sections **6** (4), (5), (5A) and (5B) **6** but not defined, shall have the same meanings as assigned to them in the Companies Act, 1956 (No. 1 of 1956).

30 : Liability of firms

Notwithstanding any contract to the contrary, where any firm is liable to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment;

Provided that where any such partner retires from the firm, he shall also be liable to pay the tax, interest and the penalty, if any remaining unpaid at the time of his retirement and any tax due upto the date of retirement though un-assessed on that date.

31 : Transfers to defraud revenue void

Where during the pendency of any proceeding under this Act or under the Act repealed by section 81 of Act No. 5 of 1995 or the Act repealed by this Act or under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) any dealer creates a charge on or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of such proceeding under this Act or under the Act repealed by section 81 of Act No. 5 of 1995 or the Act repealed by this Act or in pursuance of such proceeding under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) :

32 : Assessment/re-assessment of legal representatives and assessment in special cases.

(1) Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be a 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 in respect of any tax assessed/re-assessed or any penalty imposed or any interest payable by the deceased dealer or any tax, or penalty or interest, which would have been payable by him under this Act, if he had not died, the executor, administrator or other legal representative shall be liable to the extent of the assets of the deceased in his hands.

(2) 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 shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in the like manner and to the same extent as it would be leviable on, and recoverable from, any such minor 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 rules made thereunder shall apply accordingly.

33 : Tax to be first charge

¹⁰ **(1)** Notwithstanding anything to the contrary, contained in any law for the time being in force and subject to the provisions of section 530 of the Companies Act, 1956 (No.1 of 1956), any amount of tax and/ or penalty or interest, if any, payable by a dealer or other person under this Act shall be first charge on the property of the dealer or such person.

¹⁰ **(2)** Notwithstanding anything contained in this Act, where a dealer or person is in default or is deemed to be in default under clause (a) of sub-section (11) of section 24 and whose property is being sold by a bank or financial institution for recovery of its loan, the Commissioner may forgo the right of first charge as mentioned in sub-section (1) against the property sold on the following conditions:-

(a) if the arrears of tax, penalty, interest or part thereof or any other amounts is up to 25 percent of the total auction value, the arrears shall be paid in full by the bank or financial institution ;

(b) if the arrears of tax, penalty, interest or part thereof or any other amount is more than 25 percent of the total auction value, the 25 percent of the total auction value and the amount in the same proportion of the remaining auction value as the remaining arrears bear to the total dues of the bank or financial institution, shall be paid by the bank or financial institution. ¹⁰

²34 : Omitted²

35 : Collection of tax by dealers

(1) No person other than,-

- (i) a registered dealer, or
- (ii) a person who is deemed to be a registered dealer under sub-section (9), or
- (iii) a person required to deduct any amount by way of tax under the provisions of the Act,

shall collect any amount by way of tax under this Act. No collection of tax shall be made by the person specified in (i) to (iii) above except in accordance with the provisions of this Act and the rules made there under.

(2) Any amount collected by any person in contravention of the provisions of sub-section (1) or any amount collected by any person by way of tax or in any other manner not payable under any provisions of this Act and not returned by him to the person from whom it was collected shall be liable to forfeiture to the State Government.

(3) If the Commissioner, in the course of any proceedings under this Act or otherwise, has reason to believe that any amount is liable for forfeiture under sub-section (2), he shall serve, on the person who has collected such amount, a notice in the prescribed form requiring him to show cause why the said amount should not be forfeited to the State Government and on receipt of the reply, if any, thereto, the Commissioner shall make enquiry and shall make such order including an order of forfeiture as he thinks fit, after giving such person a reasonable opportunity of being heard.

(4) Where an order of forfeiture under sub-section (3) has been made, the person making the unauthorised collection shall forthwith pay the amount so forfeited to the State Government, if it has not already been paid and on his failure to do so, such amount shall be recoverable from him as if it were a tax due from him.

(5) Where an order for forfeiture is passed, the Commissioner shall publish or cause to be published in the prescribed manner a notice therefor for information of the persons from whom the amount so forfeited had been collected giving such details as may be prescribed.

(6) On the publication of the notice under sub-section (5) a refund of such amount or part thereof may be claimed from the State Government within one year from the date of publication of the said notice by the person from whom it was unauthorisedly realised by way of tax and for this purpose the person claiming the refund shall make an application in the prescribed form.

(7) On receipt of an application under sub-section (6) the Commissioner shall hold such enquiry as he deems fit and if he is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid to the State Government and no refund or remission in respect of that amount was granted, the Commissioner shall refund such amount or any part thereof to the person concerned.

(8) Notwithstanding anything contained in this Act or in any other law for the time being in force where any amount collected by any person is forfeited to the State Government under this Section, such forfeiture shall, if the amount forfeited has been paid to the State Government, discharge him of the liability to refund the amount to the person from whom it was so collected.

(9) A dealer specified in sub-section (11) of Section 17 shall be deemed to be a registered dealer for the purpose of sub-section.(1).

36 : Sales not liable to tax

(1) Notwithstanding anything contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act -

- (i) where such sale or purchase takes place outside the State of Madhya Pradesh ; or
- (ii) where such sale or purchase takes place in the course of inter-State trade or commerce; or

- 3/4 (iii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of the territories of India, or
- (iv) where such sale is made to a unit located in a Special Economic Zone notified by the Central Government under the provisions of the Special Economic Zones Act, 2005 (Central Act No. 28 of 2005), 3/4

- (2)** For the purpose of this Section, whether a sale or purchase takes place, -
- (i) outside the State of Madhya Pradesh; or
 - (ii) in the course of inter-State trade or commerce; or
 - (iii) in the course of the import of goods into the territory of India or the export of goods out of such territory,

shall be determined in accordance with the principles specified in Section 3, 4 and 5 of the Central Sales Tax Act, 1956 (No.74 of 1956).

CHAPTER VII - Refund

37 : Refund

(1) If the Commissioner is satisfied that the tax or penalty or both or interest paid by or on behalf of a dealer for any year exceeds the amount of the tax to which he has been assessed or the penalty imposed or the interest payable under this Act for that year or that a registered dealer ² or person ² other than a registered dealer is entitled to the refund of rebate under of section 14, he shall, in the prescribed manner, refund any amount found to have been paid in excess in cash or by adjustment of such excess towards the amount of tax due in respect of any other year from him.

3/4 **(1A)** Notwithstanding anything contained in sub-section (1), if the refund is due to input tax rebate pertaining to sales of canteen stores, the refund shall be adjusted towards any other tax liability of the canteen stores department and on an application by the canteen stores department, the balance of refund may be adjusted towards the tax liability of any other registered dealer. 3/4

(2) If the Commissioner is satisfied that due to an error committed by the dealer while crediting any amount payable under this Act or the Act repealed by this Act or the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (No.52 of 1976) or the Central Sales Tax Act, 1956 (No.74 of 1956), into Government treasury the amount so paid cannot be accounted for the purpose for which it is credited, he shall subject to the provisions of sub-section (4) refund that amount in the manner prescribed either in cash or by adjustment towards the amount of tax due in respect of any other year from him.

(3) If the appellate authority or the Commissioner is satisfied to the like effect it shall cause refund to be made of any amount found to have been wrongly paid or paid in excess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3) the authority empowered to grant refund shall apply the refundable amount in respect of any year towards the recovery of any tax, penalty, interest or part thereof due under this Act or under the Act repealed by this Act or under the Central Sales Tax Act, 1956 (No.74 of 1956) or under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (No.52 of 1976) and shall then refund the balance remaining, if any.

(5) Where a refund of any amount under sub-section (1) or sub-section (3) is not made or is not applied for the purposes mentioned in sub-section (4) within sixty days from the date of passing of the order for refund, the dealer shall be entitled and be paid interest at the rate of one per cent per month on the amount of refund for the period commencing from the date of

expiry of the said period of sixty days and ending with the day on which the refund is made to him under sub-section (1) or sub-section (3) or is applied for the purposes mentioned in sub-section (4), as the case may be.

Explanation - (i) Under this sub-section where the period for which interest is payable covers a period less than a month, the interest payable in respect of such period shall be computed proportionately.

(ii) For the purpose of this sub-section "month" shall mean thirty days.

38 : Power to withhold refund in certain cases

Where an order giving rise to a refund is passed and the Commissioner is satisfied that the grant of the refund is likely to be prejudicial to the interest of revenue and action under sub-section (2) or sub-section (5) of Section 47 is required to be initiated or an application to the Appellate Board to enhance the tax levied or penalty imposed is required to be made or the said order is the subject matter of any proceeding under Section 53, the Commissioner may withhold the refund till such time as the aforesaid proceedings are finally decided :

Provided that the dealer shall be paid interest under sub-section (5) of Section 37 on the amount of refund ultimately determined to be due as a result of the aforesaid proceedings for the period commencing after the expiry of sixty days from the date of receipt of the order giving rise to the refund.

CHAPTER VIII - Accounts and Issue of Bills, Invoice or cash memoranda

39 : Accounts

(1) Every registered dealer and every dealer liable to pay tax under this Act shall maintain correct account of his purchases, sales and stocks showing value, of different kinds of goods subject to different rates of tax under this Act.

(2) ²Every dealer whose turnover in a year exceeds rupees forty lacs shall get his account audited by a Chartered Accountant and furnish the report of such audit in such manner and within such time as may be prescribed. ²

^{3/4}Provided that a dealer who is an industrial unit having annual turnover of upto ten crore rupees may get his accounts audited by a member of Institute of Cost and works Accountants of India. ^{3/4}

(3) If the Commissioner considers that the accounts maintained by any dealer or any class of dealers do not sufficiently enable him to verify the returns referred to in sub-section (1) of Section 18 or the assessment cannot be made on the basis thereof, he may by an order, require any dealer or by notification any class of dealers, to keep such accounts including records of manufacture, sales, purchases or transfers in such form and in such manner as he may, subject to rules made under this Act, direct.

(4) If the Commissioner considers that any class of dealers are not in a position to maintain accounts in accordance with the provisions of sub-section (1), he may, for reasons to be recorded in writing, exempt such class of dealers from the operation of the provisions of the said sub-section.

40 : Dealers to issue bills, invoices or cash memoranda

(1) Every registered dealer, for each sale made by him shall issue to the purchaser, a bill, invoice or a cash memorandum including machine generated bill, invoice or a cash memorandum signed and dated by such dealer containing prescribed particulars including the amount of tax collected. Every such dealer shall also maintain a counterfoil or duplicate of each bill, invoice or cash memorandum issued by him with signature, date and all other aforesaid particulars and shall preserve it for a period of not less than five years from such date or till the completion of assessment whichever is earlier;

Provided that a bill, invoice or cash memorandum may not be issued where sale of any goods of value not exceeding rupees one hundred is made to any person other than a registered dealer .

¹⁰ **(1A)** The bill, invoice or cash memorandum pertaining to the goods notified by the State Government, shall be authenticated in the prescribed manner. ¹⁰

(2) If a registered dealer contravenes the provisions of sub-section (1), the commissioner may, after giving such dealer an opportunity of being heard, direct him to pay by way of penalty a sum of rupees one hundred for each sale in respect of which such contravention has taken place subject to a maximum of rupees five thousand.

CHAPTER - IX Certain Powers of Commissioner and delegation by Commissioner of his powers.

²41 : Delegation of Commissioner's powers and duties

Subject to the provisions of this Act and to such restrictions and conditions as may be prescribed, the Commissioner may, by order, in writing , delegate any of his powers and duties under this Act except those under sub-section (2) of section 64 to any person appointed under section 3 to assist him :

Provided that powers under section 38 and 47 shall not be delegated to an officer below the rank of a Deputy Commissioner of Commercial Tax. ²

42 : Transfer of proceedings

(1) The Commissioner may transfer any proceeding or class of proceedings under any provision of this Act from himself to any person appointed under Section 3 to assist him and he may likewise transfer any such proceeding (including the proceeding already transferred under this sub-section) from one such person appointed under Section 3 to assist him to another such person or to himself. Intimation about the transfer of any such proceeding or proceedings shall be sent to the dealer.

(2) Where any proceeding or class of proceedings is transferred, the person to whom such proceeding of class of proceedings is transferred shall proceed to dispose it off, as if it had been initiated by the said person, irrespective of the local limits of his jurisdiction. Such transfer shall not render necessary the reissue of any notice already issued before the transfer and the person to whom the proceeding or class of proceedings is transferred may, continue it from the stage at which it was left by the person from whom it was transferred.

43 : Power of Commissioner and his assistants to take evidence on oath, etc.

(1) The Appellate Board, the Commissioner or any person other than the officer referred to in clause (g) of sub-section (1) of section 3 shall, for the purposes of this Act, have the powers of Court of Civil jurisdiction under the Code of Civil Procedure, 1908 (V of 1908),-

- (i) to summon and enforce the attendance of any person and examine him on oath or affirmation;
- (ii) to compel the production of documents or accounts and to impound or detain them;
- (iii) to issue commissions for the examination of witness; and
- (iv) to require or accept proof of facts by affidavits; and
- (v) Such further powers as may be prescribed.

(2) Every proceeding under this Act before the Appellate Board or the Commissioner or any person other than an Inspector, appointed to assist the Commissioner under sub-section (1)

of Section 3 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, 1860 (XLV of 1860)

44 : Power of Commissioner to call for information in certain cases

The Commissioner may, for the purposes of this Act -

- (a) require any firm or any undivided Hindu family to furnish a statement of the names and addresses of the partners of such firm, or of the names and addresses of the manager and members of such family, as the case may be;
- (b) require any person whom he has reason to believe to be a trustee, guardian, manager or agent to furnish a statement of the name and address of the person for whom he is a trustee, guardian, manager or agent;
- (c) require any person whom he has reason to believe to have purchased goods from outside or within the State of Madhya Pradesh to furnish a statement of the name and address of the person from whom he has purchased such goods and the description and price thereof and the manner in which they were delivered to him;
- (d) require any person in respect of whom he has reason to believe that he has dispatched goods to any place outside or within the State of Madhya Pradesh, to furnish a statement of the name and address of the person to whom he has dispatched such goods and of the description and price thereof.

45 : Power of Commissioner to stay proceedings

The Commissioner may by special or general order:-

- (a) pending examination of any question of law -
 - (i) before him, or
 - (ii) ²before the High Court on an appeal under sub-section (2) of Section 53, or²
- (b) for any other reason to be recorded in writing, stay any proceeding or proceedings under Section 20 in respect of any dealer or class of dealers.

CHAPTER X - Appeal, Revision and Rectification

²46 : Appeal

(1) Any dealer or person aggrieved by an order passed under this Act, by any officer specified in clause (c) to (f) of sub-section (1) of section 3 may, in the prescribed manner, appeal against such order to the Appellate Authority :

Provided that no appeal shall lie against an order determining the date on which liability of a dealer to pay tax arises or against a notice issued under this Act for assessment or reassessment except after an assessment or reassessment order is passed.

(2) Any dealer or person aggrieved by an order passed in appeal under sub-section (1) may, in the prescribed manner, appeal against such order to the Appellate Board.

(3) Where the Commissioner considers any order passed under sub-section (1) by any Appellate Authority other than Deputy Commissioner erroneous he may file an appeal against such order before the Appellate Board within two calendar years from the date of such order.

(4) Notwithstanding anything contained in the rules or the regulations framed under any law for the time being in force or under the provisions of section 4, any officer not below the rank of Deputy Commissioner duly authorised by the Commissioner in this behalf shall also have the right to be heard at the hearing of the appeal under sub-section (2) and (3).

(5) No first appeal against an order of assessment, with or without penalty or against an order imposing penalty shall be admitted by the Appellate Authority unless out of the total

balance due from the dealer, payment of tax and other amounts admitted by the dealer to be due from him along with,-

- (i) in case of an appeal against an ex-parte order, five percent, or
- (ii) in other cases, ten percent,

of the remaining amount over and above the admitted amount is paid by the dealer and the memorandum of appeal is accompanied by a satisfactory proof of payment of such amount and ⁶ on an application by the dealer for stay of the recovery of the balance of tax and / or penalty, the Appellate Authority may stay the recovery of the balance till the decision of appeal. ⁶

(6) No second appeal shall be admitted by the Appellate Board unless, out of the total balance due from the dealer after the order passed in first appeal, twenty percent of such balance is paid by the dealer and the memorandum of appeal is accompanied by a satisfactory proof of payment of such amount and ⁶ on an application by the dealer for stay of the recovery of the balance amount, the Appellate Board may stay the recovery of the balance amount till the decision of appeal. ⁶

[(7) Every appeal shall be filed within sixty days from the date of communication of the order against which the appeal is to be filed. -1.4.2006 to 31.3.2007]

(7) ⁶ Every first appeal shall be filed within thirty days and every second appeal shall be filed within sixty days from the date of communication of the order against which the appeal is to be filed. ⁶

(8) Subject to such procedure as may be prescribed and after such further inquiry as it may think fit,-

(a) the Appellate Authority shall dispose of every appeal within **[one calendar year - 1.4.2006 to 31.3.2007]** ⁶ twelve months ⁶ from the date of filing of such appeal and in disposing of such appeal, the Appellate Authority may , -

- (i) confirm, reduce, enhance or annul the assessment or reassessment of tax or interest or imposition of penalty or both but shall not remand the case; or
- (ii) pass such order as it may deem fit, in case of an appeal not covered by sub-clause (i);

(b) the Appellate Board shall make an endeavor to pronounce its order in writing within one calendar year from the date of filing of appeal and in disposing of such appeal, the Appellate Board may,-

- (i) confirm, reduce, enhance or annul the assessment or reassessment of tax or interest or imposition of penalty or both; or
- (ii) set aside the assessment or reassessment or the imposition of penalty or both and direct the officer whose order of assessment or imposition of penalty has been appealed against to make a fresh assessment or re-impose penalty, after making such enquiry as it may direct ; or

- (iii) pass such order as it may deem fit.

⁶ **(8 A)** The appeals pending before the Appellate Authority on the date of commencement of the Madhya Pradesh Vat (Amendment) Act, 2007 shall be disposed of by the Appellate Authority within the period specified in the provisions in force before the date of such commencement or the period of one calendar year following such commencement, whichever is earlier. ⁶

(9) Notwithstanding anything contained in clause (a) of sub-section (8), where an appeal can not be disposed of within **[one calendar year -1.4.2006 to 31.3.2007]** ⁶ twelve months ⁶ by the Appellate Authority, the State Government may, by notification, for reasons to be recorded in writing, extend the period for the disposal of such appeals by such further period as may be specified in such notification.

(10) In the case of an order passed by the Appellate Authority , such order, subject to the provisions of sub-section (2) and (3) of this section or sub-section (1) of section 47, as the case may be, shall be final and in the case of an order passed by the Appellate Board, such order, subject to the provisions of section 53, shall be final. ²

47 : Power of revision by Commissioner

(1) The Commissioner on his own motion may call for the record of the proceeding in which any order was passed by any officer specified in clauses ²(c)² to (f) of sub-section (1) of section 3 and on receipt of the record may make such enquiry or cause such enquiry to be made, as he considers necessary and subject to the provisions of this Act , after giving the dealer an opportunity of being heard, may, pass such order thereon, not being an order prejudicial to the dealer or person, as he thinks fit within six months from the date of initiation of proceedings :

Provided that the Commissioner shall not revise any order under this sub-section,-

- (i) where an appeal against the order is pending before the Appellate ²Authority² or the Appellate Board or where, if such appeal lies, the time within which it may be filed has not expired; or
- (ii) Where such order relates to determining the liability of a dealer to pay tax or against a notice issued under this Act for assessment or reassessment except after an assessment or reassessment order is passed.
- (iii) ²omitted²

Explanation - An order by the Commissioner, declining interference shall not be deemed to be an order prejudicial to the dealer or person.

(2) The Commissioner may on his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person ²appointed under clauses (c) to (f) of Section 3² to assist him including any officer to whom he has delegated his powers of revision under sub-section (1) in pursuance of the provisions of section 41, is erroneous in so far as it is prejudicial to the interest of the revenue, and he may, after giving the dealer or person a reasonable opportunity of being heard, and after making or causing to be made such enquiry as he deems necessary, pass within within six months from the date of initiation of proceeding such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment:

Provided that,-

(a) no proceeding shall be initiated under sub-section (1) and this sub section after the expiry of three calendar years from the date of the order sought to be revised :

(b) no order shall be revised by the Commissioner under this sub-section where an appeal against such order is pending before the Appellate Deputy Commissioner or the Appellate Board or such appeal has been decided by the Appellate Board on merits.

(3) Any dealer or person objecting to an order passed by the Commissioner under sub-section (2) may appeal to the Appellate Board within sixty days of the date on which the order is communicated to him.

(4) ²The provisions of sub-sections (4), (6) and (8) of section 46 shall, mutatis mutandis apply to appeals filed under sub-section (3). ²

(5) Where the Commissioner considers that any order passed under sub-section (1) by his predecessor or any Additional Commissioner of Commercial Tax is erroneous in so far as it is prejudicial to the interests of revenue, he may file an appeal against such order before the Appellate Board within two years from the date of such order. The provisions of Section 46 shall mutatis mutandis apply to the appeals filed under this sub-section.

48 Additional evidence in appeal or revision

A dealer shall not be entitled to produce additional evidence whether oral or documentary in appeal before the appellate ²Authority² or the Appellate Board or in revision before the Commissioner except where the evidence sought to be adduced is 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 or for the production of which adequate time was not given by 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 Commissioner

²49 : Court fee stamps on memorandum of appeal and application for revision

A memorandum of appeal filed under section 46 or sub-section (3) or sub-section (5) of section 47 shall bear court fee stamps of such value as may be prescribed.²

50 : Application of Sections 4 and 12 of the Limitation Act, 1963

In computing the period laid down under Sections 46, 47 and 53 the provisions of Sections 4 and 12 of the Limitation Act, 1963 (No.36 of 1963), so far as may be, shall apply.

51 : Extension of period of limitation in certain cases

The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963), so far as may be, shall apply to appeals and applications for revision under this Act.

52 : Power of Commissioner or Appellate ²Authority² or Appellate Board to impose penalty in certain circumstances

(1) If the Commissioner or the Appellate ²Authority² or the Appellate Board, in the course of any proceedings under this Act is satisfied that a dealer has concealed his turnover or the aggregate amount of purchase prices in respect of any goods or has furnished false particulars of his sales or purchases, as the case may be, in his return or returns for any year or part thereof or has furnished a false return or returns for such period, the Commissioner or the Appellate ²Authority² or the Appellate Board as the case may be, may initiate proceeding separately for imposition of penalty under this Section.

(2) The proceeding under sub-section (1) shall be initiated by the Commissioner or the Appellate ²Authority² or the Appellate Board, as the case may be, by issue of a notice in the prescribed form for giving the dealer an opportunity of being heard. On hearing the dealer, the Commissioner or the Appellate ²Authority² or the Appellate Board as the case may be, shall pass an order not later than one calendar year from the date of initiation of such proceeding, directing the dealer that he shall in addition to the tax payable by him, pay by way of penalty a sum which ²shall not be less than² three times but shall not exceed 3.5 times of the amount of tax evaded.

(3) If the total tax shown as payable according to the return or returns and paid by a dealer for any period or part thereof is less than eighty per cent of the total tax assessed/re-assessed under Section 20 such dealer shall be deemed to have concealed his turnover or aggregate of his purchase prices or to have furnished false particulars of his sales or purchases in his return or returns or to have furnished a false return or returns for the purpose of sub-section (1) unless he proves to the satisfaction of the Commissioner or the Appellate Authority or the Appellate Board, as the case may be, that the concealment of the said turnover or the aggregate of purchase prices or furnishing of particulars of sales or purchases or furnishing of the false return or returns was not due to any fraud or gross negligence on his part.

² (4) Subject to such restrictions and conditions and in such manner as may be prescribed, a dealer, on whom a penalty has been imposed under sub-section (2) may opt to pay in lieu of penalty a lump sump amount, which shall be twice the amount of tax evaded, and once the

dealer has exercised the option he shall not have any right to challenge the order of penalty in any forum.²

53 - Appeal to High Court

(1) An appeal shall lie to the High Court from every order passed by the Appellate Board, in appeal under² sub-sections (2) and (3)² of section 46 if the High Court is satisfied that the case involves a substantial question of law.

[(2) The Commissioner or a dealer aggrieved by any order referred to in sub-section (1) passed by the Appellate Board: -

- (i) under the repealed Act, on or after of the date of commencement of this Act; or
- (ii) under this Act on or after such date,

may file an appeal to the High Court and such appeal under this section shall be filed within ninety days from the date of the communication to the dealer or the Commissioner of the order appealed against, in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.-**1.4.2006 to 31.3.2007]**

(2) ⁶ The Commissioner or a dealer aggrieved by any order referred to in sub-section (1) passed by the Appellate Board, may file an appeal to the High Court and such appeal shall be filed within ninety days from the date of the communication to the dealer or the Commissioner of the order appealed against, in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. ⁶

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate the question.

(4) The appeal shall be heard only on the question so formulated and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question;

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal or any other question of law not formulated by it, if it is satisfied that the case involves such question.

(5) Where an appeal is filed under sub-section (2) by a dealer, such appeal shall not be admitted by the High Court unless fifty percent of the balance due from the dealer after the order passed by the Appellate Board is paid by him.

(6) (a) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such costs as it deems fit.

(b) The High Court may determine any issue which:-

- (i) has not been determined by the Appellate Board, or
- (ii) has been wrongly determined by the Appellate Board, by reason of a decision on such question of law as is referred to in sub-section (1),

(c) On delivery of judgment by the High Court, effect shall be given to it by the Officer empowered to assess or re-assess the dealer under section 20, on the basis of a certified copy of the judgment.

(7) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to High Court shall, as far as may be, apply in the case of appeals under this section.

54 : Rectification of mistakes

(1) The Commissioner may –

(i) on his own motion at any time within one calendar year from the date of any order passed by him; or

(ii) on an application made by a dealer within one calendar year from the date of receipt of such application,

rectify, in such manner as may be prescribed, such order for correcting any clerical or arithmetical mistake or any error arising therein from any omission :

Provided that, -

- (i) the Commissioner shall not entertain any application by the dealer unless it is made within one year from the date of the order sought to be rectified :
- (ii) no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund unless the Commissioner has given notice in the prescribed form to the dealer of his intention so to do and has allowed the dealer a reasonable opportunity of being heard.

(2) Where on an application made by a dealer for the rectification of any order, the order is not rectified within the period specified in sub-section (1), the applicant shall be entitled to have the order rectified in accordance with his application and accordingly the Commissioner shall rectify the order, and where in proceedings initiated suo motu the order is not passed within the time specified in sub-section (1), the proceedings shall stand abated :

Provided that nothing herein shall preclude the Commissioner from exercising powers under any other provisions of this Act.

(3) (a) The provisions of sub-section (1) and sub-section (2) shall apply to the rectification of a mistake in any order passed by the Appellate Board or passed by the Appellate ²Authority² as they apply to the rectification of a mistake by the Commissioner.

(b) The Appellate Board may rectify any order passed by it -

(i) on its own motion at any time within one calendar year from the date of passing of such order; and

(ii) on an application made by the dealer or the Commissioner, at any time within one calendar year from the date of receipt of such application.

(4) Where any such rectification has the effect of reducing the amount of tax, the Commissioner shall in the prescribed manner refund any amount due to the dealer.

(5) Where any such rectification has the effect of enhancing the amount of the tax or reducing the amount of the refund, the Commissioner shall recover the amount due from the dealer in the manner provided in Section 24.

CHAPTER - XI Detection and prevention of tax evasion

55 : Detection and checking evasion of tax by dealers liable to pay tax and power of commissioner to investigate in to tax evasion by a dealer

(1) If upon any information which has come into the knowledge of Commissioner and he has reason to believe that any dealer has evaded payment of tax or is indulging in evasion of tax under this Act or under the Act repealed by this Act, for reasons to be recorded in writing, he may direct any of the officers referred to in clauses (c) to (g) of sub-section (1) of section 3 to proceed to investigate into the tax evasion by such dealer.

(2) ²Omitted²

(3) ²In pursuance of the provisions of sub-section (1) ², the commissioner shall, subject to such conditions as may be prescribed:-

- (a) require the dealer to produce before him any accounts, registers or documents relevant to his business or to furnish such other information as he may deem fit for scrutiny, or

- (b) inspect the place of business of such dealer and for this purpose all accounts, registers and documents relating to the business of such dealer and all the goods kept in such place of business shall be open to inspection by the commissioner.

(4) If on scrutiny of the records produced by the dealer or on inspection of his place of business under sub-section (3), the Commissioner is satisfied that the dealer has evaded payment of tax payable by him for any year, he may for reasons to be recorded in writing, seize such accounts, registers or documents relating to the business of such dealer as he considers necessary, and grant a receipt therefor to the dealer and shall detain them only for so long as may be necessary, for examination thereof or for assessment of tax or for prosecution.

² Provided that if the Commissioner can not examine the documents relating to the business of such dealer on the spot, he may, for reasons to be recorded in writing, seal such documents in a box or bag or container or packet and seize the box or bag or container or packet and after the seizure, the Commissioner shall serve upon the dealer, a notice in the prescribed form, and on the date fixed, he shall open the seal of the seized box or bag or container or packet in the presence of the dealer or an agent of the dealer entitled to appear in accordance with the provisions of section 23 and in the presence of at least two other persons examine the documents kept in the box or bag or container or packet and after examination of the documents, the Commissioner may seize such documents as he considers necessary and grant a receipt thereof to the dealer. ²

- ² (5) For the purpose of clause (b) of sub-section (3), the Commissioner may -
- (a) enter and search any place of business of such dealer or any other place whether such place be the place of his business or not, where the Commissioner has reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business or stock of goods relating to his business and the Commissioner may, for exercising the powers under this clause, seal or break open the lock of any door, box, locker, safe, almirah or any other receptacle in order to continue the inspection subsequently or where the keys thereof are not produced on demand or are not available;
 - (b) also search any person who leaves or is about to enter or is already in the place referred to in clause (a), if the Commissioner has reason to suspect that such person has secreted about his person, books of account or other documents relating to the business of such dealer; and
 - (c) if considered necessary, get the search proceedings video graphed or recorded in suitable electronic medium for use as evidence. ²

(6) (a) If in the course of scrutiny of accounts, registers or documents produced by the dealer or in the course of inspection of the place of business of such dealer, the Commissioner has reason to believe that the dealer has stored or kept goods liable to tax, without accounting for them in books, registers or accounts maintained by him in the course of his business, with a view to their surreptitious sale in order to evade payment of tax, in any building, place or vehicle under the ownership or control of the dealer in either case whether exclusively or in association with some other person or in any building, place or vehicle in each case belonging to some other person with express or implied permission of such other person, the Commissioner may enter any such building, place or vehicle and inspect and verify if the goods have been accounted for and in the event of his reasonable belief that the dealer has not accounted for such goods with the intention of evading tax, the Commissioner may seize all such goods and take all necessary steps for their removal, proper custody and preservation :

Provided that a list of all goods seized under this clause shall be prepared by the Commissioner in presence of at least two respectable persons and a copy thereof shall, on demand, be furnished to the dealer or, as the case may be, to the person from the whose possession or custody they were seized.

(b) The Commissioner shall as soon as possible, after seizure of the goods under clause (a), serve upon the dealer, a notice in the prescribed form to show cause within a period of thirty days of service of such notice as to why a penalty equal to ²3.5 times² the amount of tax payable and calculable on the price which such goods would have fetched on their assumed sale in Madhya Pradesh, on the date of seizure, be not imposed on him for the dealers default in not making entries in respect of such goods in his books of account or register or other documents, as the case may be, maintained by him in the course of his business.

(c) If the Commissioner, after taking into consideration the explanation of the dealer and after giving him an opportunity of being heard, is satisfied that the entries relating to the said goods were not made in the books of accounts, registers or other documents of the dealer without any proper justification, the Commissioner shall pass an order imposing a penalty not less than three times but not exceeding ²3.5 times² of the amount of tax referred to in clause (b).

(d) The Commissioner may, at any time after the service of the notice under clause (b) and before passing an order imposing penalty under clause (c), release the goods seized if the dealer or the person from whom the goods were seized furnishes security in the form of cash security or bank guarantee to the satisfaction of the Commissioner, in each case for such reasonable amount as the Commissioner may specify by order in writing with due regard to the amount of penalty proposed. On payment by the dealer of the penalty imposed upon him under clause (c), if the security furnished is in the form of bank guarantee, the bank guarantee shall be released and if such security has been furnished in the form of cash security, it shall be adjusted towards the penalty so imposed and the balance, if any, shall be refunded to the dealer.

(e) Where no security is furnished under clause (d), the dealer shall pay the amount of penalty, within thirty days of the service of the order imposing penalty on him and on payment of such amount goods seized shall be released forthwith.

²(ea) Subject to such restrictions and conditions and in such manner as may be prescribed, a dealer, on whom a penalty has been imposed under clause (c), may opt to pay in lieu of penalty a lump sum amount, which shall be twice the amount of tax referred to in clause (b) and once the dealer has exercised the option he shall not have any right to challenge the order of penalty in any forum. ²

(f) If the dealer fails to pay within the period specified in clause (e) the penalty imposed under clause (c), the Commissioner shall, subject to other provisions of this Section, dispose of the goods by way of sale in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty imposed and the expenses incurred on account of and incidental to the custody, protection, preservation and sale of such goods and shall refund the balance, if any, to the dealer or person entitled.

(g) The penalty imposed under clause (c) shall be without prejudice to any other action under any other provision of this Act.

(h) Where any objection is made to the seizure of the goods seized under clause (a) on the ground that such goods do not belong to the dealer or are not otherwise liable to seizure, the Commissioner shall proceed to decide the objection:

Provided that no such objection shall be entertained -

- (i) where, before the objection is made, the goods seized had already been sold, or
- (ii) where the Commissioner considers that the objection was designedly or unnecessarily made.

(i) All questions including question relating to right, title or interest in the goods seized arising between the parties to such proceeding or their representatives and relevant to the adjudication of the claim or objection, shall be determined by the Commissioner dealing with the claim or objection.

(j) Upon the determination of the question referred to in clause (i), the Commissioner shall, in accordance with such determination:-

- (i) allow the claim or objection and release the seized goods either wholly or to such extent as he thinks fit, or
- (ii) disallow the claim or objection, or
- (iii) pass such order as, in the circumstances of the case, he deems fit.

(k) where any claim or objection has been adjudicated upon under clause (j) or where the Commissioner refuses to entertain a claim or objection under the proviso to clause (h), any such order made shall be deemed to be an order relating to assessment of tax against a dealer under Section 20 and shall be subject to the same condition as to appeal, revision or any other remedy under this Act.

(7) Where the Commissioner, apprehends any resistance to entry, search or seizure of goods he may for reasons to be recorded in writing requisition the services of any police officer of the State Government, having jurisdiction over the local area in which such entry, search or seizure is to be made, to assist him for all or any of the purposes specified in sub-section (3) or clause (a) of sub-section (5) or clause (a) of sub-section (6) and it shall be the duty of such police officer to comply with such requirement.

(8) The Commissioner while making entry, search and seizure under this Section shall, unless otherwise expressly provided by or under this Act exercise the same power and follow the same procedure as are exercised by and are required to be followed by a Police Officer in relation to entry, search and seizure under the provisions of the Code of Criminal Procedure, 1973 (No.2 of 1974)

10 55-A. Special provision for assessment of cases relating to detection and prevention of tax evasion.

Notwithstanding anything contained in any other provisions of this Act,-

(a) Where a requisition is made under clause (a) of sub-section (3) of section 55 or an inspection is conducted under clause (b) of the said sub-section against a dealer, the dealer, subject to such restrictions and conditions and in such manner as may be prescribed, may opt to pay in lieu of tax, interest and penalty payable under the Act, a lump sum amount equal to twice the amount of evasion of tax agreed to by the dealer relating to the block period on the basis of evidence found as a result of requisition or inspection, of books of account or other documents and such other materials or information as is available with the commissioner and relatable to such evidence, at the time of requisition or inspection.

(b) Once the dealer has exercised the option under clause (a), he shall not have any right to challenge the evasion of tax agreed to by the dealer in any forum.

(c) The commissioner shall proceed to assess the amount of tax evaded by the dealer during a block period in accordance with the provisions of this Act and the amount in respect of which option to pay lump sum has been exercised under clause (a) shall be

excluded from the amount of evasion of tax assessed under this clause.

(d) The total evasion of tax relating to the block period shall be assessed irrespective of the year or years to which such tax relates and irrespective of the fact whether regular assessment for any one or more of the relevant years is pending or not.

(e) The assessment under this section shall be in addition to the regular assessment in respect of each year included in the block period.

(f) The total evasion of tax relating to the block period shall not include the tax assessed in any regular assessment or the tax paid along with the returns filed by the dealer, as tax of such block period.

(g) The tax assessed under this section shall not be included in any regular assessment of any year included in the block period.

(h) Where the dealer proves to the satisfaction of the commissioner that any part of the tax referred to under this section relates to a year for which the year has not ended or the date of filing returns has not expired, and the transactions relating to such tax are recorded on or before the date of requisition or inspection, in the books of account or other documents maintained in the normal course relating to such years, the said tax shall not be included in the block period.

(i) The provisions of section 20 shall mutatis mutandis apply to the assessment made under this section.

Explanation.—For the purpose of this section the expression "block period" shall mean the period comprising of six years preceding the year in which the requisition was made or the inspection was conducted and shall include the period up to the date of requisition or inspection. ¹⁰

56 - Survey -

- (1) With a view to identify dealers who are liable to pay tax under the Act, but have remained unregistered, the Commissioner, shall from time to time, cause a survey of unregistered dealers to be taken.
- (2) For the purpose of the survey, the Commissioner may, by general or special notice require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.
- (3) For the purpose of survey, the Commissioner may call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies which he is of the opinion will be relevant and useful for the purposes of the survey. He may from time to time cause the results of the survey to be published in any manner that he thinks fit so, however, as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.
- (4) The Commissioner may, for the purposes of the survey enter any place where a dealer is carrying business, but is unregistered or has not applied for grant of the certificate of registration, whether such place will be principal place of business or not of such business and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the business,--
 - (i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,

- (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable particulars or things which may be found therein, and
- (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Act.

Explanation - For the purpose of this section, a place where the person is engaged in business will also include any other place in which the person engaged in business or the said employee or other person attending or helping in business states that any of the books of accounts or other documents or any part of the cash, stock or other valuable articles or things relating to business are kept.

- (5) The Commissioner shall enter the place where the person is carrying on business only during the hours at which such place is open for business and in case of the said place or any other place, only after sunrise and before sunset. The Commissioner may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash, stock or other valuable articles or things checked or verified by him and record the statement of any person which may be useful for, or relevant to, any proceedings under this Act.
- (6) The Commissioner, in exercise of the powers under this section, shall on no account, remove or cause to be removed from the place, where he has entered any books of accounts, other documents or any cash, stock or other valuable articles and things.

²57 : Establishment of check-post and inspection of goods while in movement.

- (1) The State Government or the Commissioner may, with a view to prevent or check evasion of tax under this Act, set up or erect in such manner as may be prescribed, check posts or barriers at such places in the State, excluding railway premises, as may be notified in the official gazette and an officer, not below the rank of Assistant Commercial Tax Officer shall be in-charge of the check post (hereinafter referred to as the check post officer) and he shall be assisted by other category of officials:

Provided that the Commissioner shall not set up a check post or erect a barrier for a period exceeding six months at a time.

- (2) The driver or the person in-charge of a vehicle or carrier or of goods in movement (hereinafter referred to as the transporter) shall –
 - (a) carry with him an invoice, bill or challan or any other document and prescribed declaration forms issued by the consignor or consignee of the goods in movement and challan, bilties or any other document issued by the transporter ;
 - (b) stop the vehicle or carrier at every check-post or bring and stop the vehicle or carrier at the nearest check-post, while entering and leaving the limits of the State, set up under sub-section (1);
 - (c) furnish all the documents including prescribed declaration forms relating to the goods before the check post officer;
 - (d) give all the information relating to the goods ; and
 - (e) allow the inspection of the goods by the check post officer or any other person authorised by the check post officer :

Provided that the documents including prescribed declaration forms shall be required to be carried and / or furnished only in respect of the

goods as may be *notified* by the State Government.

- (3)** The form of declaration specified in sub-section (2) shall be obtained by a registered dealer in the prescribed manner.
- (4)** The documents required to be furnished under sub-section (2), may be furnished by means of such electronic devices, and may be accompanied by such processing fee, as may be prescribed.
- (5)** Where any goods are in movement within the territory of the State of Madhya Pradesh, any officer, not below the rank of an Assistant Commercial Tax Officer, as may be authorised by the Commissioner, may for the purposes of this Act, stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place or inspect such goods and the documents relating to the goods which are in the possession or control of a transporting agency or person or other such bailee and the provisions of sub-section (2) shall mutatis mutandis apply.
- (6)** Where any goods in movement are not supported by documents as referred to in sub-section (2), or documents produced appear false or forged, the check post officer or the officer empowered under sub-section (5), for reasons to be recorded in writing may-
 - (a) direct the transporter not to part with the goods in any manner including re-transporting or rebooking, till a verification is done or an enquiry is made, which shall not take more than seven days;
 - (b) detain or seize the goods or the vehicle or carrier along with the goods and shall give a receipt of the goods or the vehicle or carrier along with the goods, if seized, to the person from whose possession or control they are seized;
 - (c) release the goods or the vehicle or carrier along with the goods seized in clause (b) in favour of the transporter, during the pendency of the proceeding if adequate security in the form of cash security or irrevocable bank guarantee of the amount equal to the penalty leviable under sub-section (8) or (10) is furnished.
- (7)** The officer empowered under sub-section (5), who stops the vehicle or carrier, may direct the transporter to take the vehicle or carrier along with the goods and the documents to the nearest check post or any Commercial Tax Office to be named by him and stop it and keep it stationary there till such time as may be required for action in accordance with the provisions of this section, and the officer shall reach such check post or such Commercial Tax Office at the earliest and immediately on reaching there initiate action for seizure of goods or the vehicle or carrier along with the goods and impose penalty in accordance with the provisions of this section.
- (8)** The check post officer or the officer empowered under sub-section (5), after having given the transporter a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall,-
 - (i) release the goods or the vehicle or carrier along with the goods in favour of the transporter, if he is satisfied that no violation of the provisions of sub-section (2) has taken place; or
 - (ii) impose, if he is not satisfied, on him for possession or movement of goods, whether seized or not, in violation of the provisions of sub-section (2) or for

submission of false or forged documents or declaration, a penalty equal to maximum [3.5 times- 1.4.2006 to 31.3.2007] ⁶ ten times ⁶ of the amount of tax which would have been payable if the goods were sold within the State on the date of inspection :

Provided that the amount of penalty shall not be less than [3 times- 1.4.2006 to 31.3.2007] ⁶ eight times ⁶ of the amount of tax.

- (9) Where a transporter, in possession or control of goods, is found to be in collusion with a dealer involved in avoidance or evasion of tax, the check post officer or the officer empowered under sub-section (5) shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with the prior approval in writing of the Deputy Commissioner having jurisdiction, may confiscate such vehicle or carrier.
- (10) Notwithstanding anything contained in this section, where the transporter abstains from bringing or stopping the vehicle or carrier at the check-post as provided under clause (b) of sub-section (2), the check post officer or the officer empowered under sub-section (5) may detain such vehicle or carrier and, after affording an opportunity of being heard to the transporter, may impose, in addition to a penalty which may be imposed under sub-section (8), a penalty equal to maximum twice the amount of tax which would have been payable if the goods were sold within the State on the date of detention.
- (11) The check post officer or the officer empowered under sub-section (5) may release the goods in favour of the transporter, if seized and not already released under clause (c) of sub-section (6), on payment of the penalty imposed under sub-section (8) or (10).
- (12) If the amount of penalty specified in the order passed under sub-section (8) or (10) is not paid within fifteen days of the service of the order, the check post officer or the officer empowered under sub-section (5) shall, notwithstanding anything to the contrary provided in this Act or in any law for the time being in force, cause the goods to be sold in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty and refund the balance, if any, to the transporter and if the sale proceeds of the goods are not sufficient to cover the amount of penalty or the goods can not be sold despite the efforts made for the same, the said officer shall cause the vehicle or carrier to be sold in the aforesaid manner and apply the sale proceeds thereof towards the balance of penalty and refund the balance of such sale proceeds, if any, to the transporter.
- (13) Where the officer seizing the goods, at any time during the pendency of the proceeding under sub-section (8) or (10), is of the opinion that the goods are subject to speedy and natural decay or when the expenses of keeping them in custody are likely to exceed their value, he may cause them to be sold in such manner as may be prescribed without waiting for the completion of the proceedings relating to the imposition of penalty and keep the sale proceeds thereof in deposit till the completion of said proceedings and the amount so kept in deposit shall be applied towards such penalty, if any, as may be imposed and the balance, if any, shall be refunded to the transporter according to the provisions of sub-section (12).
- (14) The transporter may authorise, in such manner as may be prescribed, the consignor or consignee of the goods or the vehicle or carrier along with the goods seized under this section, to appear before the check post officer or the officer empowered under sub-section (5) in the proceedings under sub-section (8) or (10)

and such consignor or consignee shall be deemed to be the transporter for all purposes mentioned in the aforesaid sub-sections and the provisions of section 31 shall apply to proceedings under this section as if the transporter is a dealer.

- (15) If a transporter fails to give information as required from him under clause (d) of sub-section (2) about the consignor, consignee or the goods within such time as may be specified or transports the goods with forged documents, besides imposing the penalty under sub-section (8), it shall be presumed that the goods so transported have been sold in the State of Madhya Pradesh by him and he shall be deemed to be a dealer for those goods under this Act.
- (16) The provisions of this Act shall, for the purpose of levy, collection and assessment of tax, payment and recovery of tax and interest, appeal and revision, apply to the transporter deemed to be a dealer under sub-section (15).
- (17) Subject to such restrictions and conditions and in such manner as may be prescribed, a transporter, on whom a penalty has been imposed under sub-section (8), may opt to pay in lieu of penalty a lump sum amount, which shall be [twice-1.4.2006 to 31.3.2007] [⁶ five times - 1.4.2007 to 11.5.2008⁶] ~~three times~~¹¹ the amount of tax referred to in sub-section (8) and once the transporter has exercised the option he shall not have any right to challenge the order of penalty in any forum .

Explanation.- For the purposes of this section –

- (i) "vehicle or carrier" means any means of transportation to carry goods from one place to another place; and
- (ii) "goods in movement" means, -
- (a) the goods which are in the possession or control of a transporting agency or person or other such bailee;
 - (b) the goods which are being carried in a vehicle or carrier belonging to the owner of such goods; and
 - (c) the goods which are being carried by a person. ²

58. Transit of goods by road through the State and issue of transit pass

(1) When a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver or other person in-charge of such vehicle (hereinafter referred to as transporter) shall obtain in the prescribed form and manner, a transit pass from the check post officer of the first check post after his entry in to the state and deliver it to the check post officer of the last check post before his exit from the State, failing which it shall be presumed that the goods carried in such vehicle have been sold within the State by the transporter.

(2) The check post officer at the entry point who issues the transit pass shall intimate the information contained in the transit pass issued by him to the check post officer of the check post or barrier near the point from which the transporter declares that the goods shall be taken out of the State, If within a week of receipt of the transit pass the vehicle or the goods covered by the transit pass do not report at the exit point the check post officer of the check post or barrier at the exit point shall bring immediately this fact to the notice of the check post officer of the check post or barrier at the entry point. The later officer shall then initiate action

to recover the penalty which could have been levied under the provisions of section 57 from the transporter.

(3) The provisions of section 57 shall mutatis mutandis apply in relation to any goods or any vehicle along with the goods covered by the transit pass.

59. Power to check goods at the point of loading and unloading: -

²Omitted²

60. Power to check goods in transit -

²Omitted²

61 - Regulation of delivery and carrying goods away from Railway premises -

(1) Any dealer who seeks to import by rail in to the State from any place outside the State any goods specified in schedule- II or to whom such goods are sought to be sent as aforesaid, shall furnish or cause to be furnished in such office as may be notified* by the Commissioner, a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement of such office. On endorsement of the two copies of the declaration one copy thereof shall be retained by the said office and after taking delivery, the dealer shall carry the goods away from the railway premises along with a copy of the declaration duly endorsed by the office referred to above.

(2) The provision of section 57 shall mutatis mutandis apply in relation to any vehicle carrying goods referred to in sub-section (1) and to any declaration relating thereto.

62. Control on clearing, forwarding or booking agent and any person transporting goods and furnishing of information by such agent or person.

(1) Every clearing, forwarding or booking agent or broker or a person transporting goods who in the course of his business handles documents of title to goods or transports goods or takes delivery of goods for or on behalf of a dealer and having his place of business in the state of Madhya Pradesh shall, furnish information about his place of business to such authority, within such time, in such form as may be prescribed.

(2) Every such agent or person shall maintain true and complete accounts, registers and documents in respect of the goods handled by him and the documents of title relating thereto and shall furnish true and complete particulars and information relating to the transaction of goods of any dealer to any officer appointed under section 3, not below the rank of an Assistant Commercial Tax Officer as and when required by him and shall produce the said accounts, registers and documents before such officer as and when required by him.

(3) Any agent or person referred to in sub-section (1) who contravenes the provisions of the said sub-section or sub-section (2), the Commissioner may, after giving such agent or person an opportunity of being heard, direct him to pay by way of penalty: -

(i) one thousand rupees if the contravention is of the provisions of sub-section (1) on each occasion of inspection by any officer referred to in sub-section (2); and

(ii) not less than three times but not exceeding five times of the amount of tax payable in respect of the goods involved in the transactions of a dealer which appears to have been evaded by such dealer, if the contravention pertains to the provisions of sub-section (2).

Explanation: - For the purpose of this section,-

(i) "Clearing, forwarding, booking agent or broker" shall include a person who renders his services for clearing, forwarding or booking of or taking delivery of consignment of goods

at railway premises, air cargo, complex. Containers depot, booking agency, goods transport company office or any place of loading or unloading of goods or contrives, makes and concludes, bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise.

(ii) "Person transporting goods" shall, besides the owner, include manager, agent, driver, employee of the owner, a person in-charge of a place of loading or unloading of goods or in charge of a goods carrier carrying such goods for dispatch to other places or gives delivery of any consignment of such goods to the consignee.

63. Power to call for information from banking companies and non-banking financial companies or insurance companies.

²The Commissioner or any other person appointed under section 3 to assist him, not below the rank of an Assistant Commercial Tax Officer may, for carrying out the purposes of this Act , require any banking or non-banking financial companies or insurance companies or any officer thereof to furnish any information or statement useful for or relevant to any proceeding under this Act. ²

CHAPTER - XII Offences and Penalties

64: Offences and penalties

(1) Whoever -

- (a) collects any amount by way of tax in contravention of the provisions of Section 12 or sub-section (1) of section 35; or
- (b) claims input tax rebate in contravention of the provisions of sub-section (1) of section 14 ; or
- (c) (i) fails to get himself registered as required by sub-section (1) or sub-section (2) of Section 17; or
(ii) neglects to furnish any information as required by sub-section (8) of Section 17; or
- (d) fails, without sufficient cause, to submit any return as required by sub-section (1) of Section 18 or submits a false return or furnishes a false statement; or
- (e) without reasonable cause fails to pay the tax due within the time allowed; or
- (f) fails to keep accounts or records of sales or purchases in accordance with any requirement made of him under Section 39; or
- (g) fails or neglects to issue Act, invoice or cash memorandum or to keep or preserve the counter foil of the Act, invoice or cash memorandum as required under Section 40; or
- (h) knowingly produces incorrect accounts, registers or documents or knowingly furnishes incorrect information; or
- (i) refuses or fails to comply with any requirement made of him under Section 44 or Section 55; or
- (j)(i) fails to file a declaration under sections 57;
- (ii) prevents or obstructs the interception or search of any vehicle or obstructs inspection of any goods under section 57; or
- (iii) prevents or obstructs the interception or search of any vehicle or obstructs inspection of any goods under sections 59 or 60,
- (iv) fails to file a declaration under section 61
- (v) fails to furnish information or produce accounts, registers and documents under section 62;or
- (vi) fails to furnish information or statements as required by section 63;
- (k) makes a false statement in a verification or declaration prescribed under this Act which he either knows or believes to be false or does not believe to be true,

shall in case of default and subject to the provisions of section 67, be punishable with -

- (i) (a) imprisonment which may extend to six months and a fine which may extend to two thousand rupees or equal to the amount of tax remained to be paid by the dealer whichever is higher, in respect of offence under clause (b) or (e); and
 (b) imprisonment which may extend to six months and a fine which may extend to two thousand rupees in respect of offence under clause (d), (h) or (k); and
- (ii) imprisonment which may extend to three months or a fine which may extend to one thousand rupees or both in respect of offences not covered by clause (i), and where the offence in respect of which a fine has been imposed, is a continuing offence a further fine which may extend to rupees fifty for every day the offence continues.

Explanation - For the purpose of liability to punishment under this sub-section the expression dealer or person shall mean,-

- (a) the partners in relation to a partnership concern;
- (b) the president and secretary of the managing body in relation to co-operative society;
- (c) the proprietor in relation to a proprietorship concern;
- (d) the karta or manager in relation to Hindu Undivided Family; and
- (e) the Secretary, manager and directors in relation to a company incorporated under the Companies Act, 1956 (No. 1 of 1956);

(2) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a magistrate of the first class shall try any such offence.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974), all offences punishable under this Act shall be cognisable and bailable.

(4) Subject to such conditions as may be prescribed, the Commissioner may authorise any person appointed under Section 3 to assist him to investigate all offences punishable under this Act.

(5) Every person authorised under sub-section (4) shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1973 (No. 2 of 1974) upon an officer-in-charge of a police station for the investigation of a cognisable offence.

CHAPTER - XIII Miscellaneous

65 : Production of tax clearance certificate

Any department or office of the Central Government or other State Governments or any public sector undertaking of such Governments situated in Madhya Pradesh or the State Government or any local authority or any public undertaking shall, before entering into a contract with any dealer for the sale or supply of any goods by him exceeding rupees three lacs in value require such dealer to produce a tax clearance certificate in such form, to be issued by such authority, in such manner, for such period and within such time as may be prescribed.

66: Bar to certain proceedings

Save as provided in Section 53, no order passed or proceeding initiated under this Act or the rules made thereunder be called into question in any Civil Court and save as provided in Sections 46 and 47 no appeal or application for revision shall lie against any such assessment or order.

67 : Bar of prosecution in certain cases

No prosecution for contravention of any provision of this Act or of the rules made thereunder shall be instituted in respect of the same facts on which a penalty has been imposed under this Act or the said rules, as the case may be, if the penalty has been paid within a period of six months from the date of service of the order imposing the penalty.

68 : Protection of persons acting in good faith and limitation of suit and prosecution

(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the State Government for any act done or purporting to be done under this Act or the rules made thereunder without the previous sanction of the State Government.

(2) No officer or servant of the State Government shall be liable in respect of any such act, in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties imposed on him or the discharge of functions entrusted to him by or under this Act.

(3) No suit shall be instituted against the State Government and no prosecution or suit shall be instituted against any servant of the State Government in respect of anything done or intended to be done under this Act unless the suit or prosecution has been instituted within three months from the date of the act complained of :

Provided that in computing the period of limitation under this sub-section the time taken for obtaining sanction under sub-section (1) shall be excluded.

69 : Disclosure of information by public servant

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the provisions of this Act or in evidence recorded under this Act other than evidence given before a Criminal Court shall, save as provided in sub-section (3), be kept confidential, and notwithstanding anything contained in the Evidence Act, 1872 (1 of 1872) no Court shall, save as aforesaid, be entitled to require any servant of the State Government to produce before it, any such statement, return, account, document or recorded evidence or any part thereof or to give evidence before it in respect thereof.

(2) If, save as provided in sub-section (3), any servant of the State Government discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

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

- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition for the purpose of any investigation or prosecution under this Act or under the Act repealed by this Act or under the Indian Penal Code 1860 (XLV of 1860) or under any other enactment for the time being in force; or
- (b) of any such particulars to any person entrusted with the administration of this Act for the purposes of carrying out the object of this Act; or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act or any process for the service of any notice or the recovery of any demand; or
- (d) of any such particulars to a civil court in any suit to which the Government is a party and which relates to any matter arising out of any proceeding under this Act, under Act No.2 of 1959 or the Act repealed by this Act ; or
- (e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act or the Act repealed by this Act ; or
- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Commercial Tax Department to any person or persons appointed as the Commissioner under the Public Servant (Inquiries) Act, 1850 (XXX of 1850), or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or
- (g) of such facts to an officer of the Central or a State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

- (h) of any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899 (II of 1899) to impound an insufficiently stamped document; or
- (i) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act or the Act repealed by this Act against an advocate, tax practitioner, or chartered accountant, to the authority empowered to take disciplinary action against members practicing the profession of an advocate, tax practitioner or chartered accountant, as the case may be; or
- (j) of any such particulars to the Director of Economics and Statistics as may be necessary, for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealers; or
- (k) of such information as may be required by any officer of department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant or by a court in connection with any prosecution of the public servant arising out of any such investigation.

70. Determination of disputed questions

(1) The Commissioner, -

- (i) either on his own motion on any question in respect of the rate of tax on any goods may, at any time, or
- (ii) if any question is raised by a dealer in respect of the rate of tax on any goods shall, within six months from the date of receipt of the application made by the dealer for this purpose in the prescribed manner and on payment of such fee as may be prescribed,

make an order determining the rate of tax on such goods in accordance with such procedure as may be prescribed.

(2) The Commissioner, if the circumstances so warrant, shall have the power to review any order passed under this section and pass such order as he deems necessary:

Provided that, -

- (i) no review of an earlier order passed on application of a dealer shall be made unless a reasonable opportunity of being heard is given to the dealer who is likely to be adversely affected by the review, and
 - (ii) the Commissioner shall not reduce the rate of tax in review.
- (3)** Any order passed by the Commissioner under sub-section (1) and (2) shall have a prospective effect and shall be binding on the authorities referred to in Section 3 in all proceedings under this Act except appeals.

CHAPTER XIV - Power to make Rules, Repeal and Saving, Transitory provisions and Power to remove difficulties

⁴70 A. Power of State Government to amend Schedule I and II.

(1) The State Government may, by notification, amend Schedule I and Schedule II and thereupon the said Schedules shall stand amended accordingly :

Provided that no notification by which the rate of tax is enhanced, shall be issued without giving in the Gazette such previous notice as the State Government may consider reasonable of its intention to issue such notification.

(2) Every notification issued under this section shall, as soon as may be after it is issued, be laid on the table of the Legislative Assembly and the provisions of section 24-A of

the Madhya Pradesh General Clauses Act, 1957 (No. 3 of 1958) shall apply thereto as they apply to a rule.⁴

71 : Power to make rules

(1) The State Government may, after previous publication and by notification in the official Gazette, make rules or any amendments thereto for carrying out the purposes of this Act.

Provided that if the State Government considers it necessary to bring the rules or any amendments thereto into force at once, it may make such rules or amendments thereto, without previous publication in the official gazette.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules prescribing -

(a) all matters which under any provision of this Act are expressly required to be or may be prescribed under this Act :

(b) ²Omitted²

(c) matters relating to salary and other conditions of Chairman and Members under sub-section (5) of section 4;

(d) the limit under sub-section (1) of section 5 and clause (b) of sub-section (2) of section 10:

(e) the manner in which proceedings shall be instituted under sub-section (1) of Section 6;

⁶ (ea) the manner in which the payment of tax by the sub-contractor under clause (b) and by the sub-contractor that the contractor has opted for composition, under clause (c) of sub-section (1) of section 7 shall be proved; ⁶

(f) the rate for the purpose of determination of the lumpsum to be paid, the manner in which the lumpsum may be determined and the time within which and manner in which the payment of such lumpsum may be made under sub-section (1) of section 11.

^{3/4} (fa) the restrictions and conditions subject to which permission may be granted to a registered dealer to pay a lump sum in lieu of tax by way of composition, the rate and the manner of determining such sum under Section 11A. ^{3/4}

(g) the manner and period in which input tax rebate shall be claimed by or be allowed to a registered dealer ²or a person other than a registered dealer² under Section 14.

(h) (i) the manner in which a dealer shall get himself registered under sub-section (1) and the period within which a dealer shall get himself registered under clause (a) of sub-section (2) of section 17, the form and manner in which the application for grant of a registration certificate shall be made under sub-section (3) of section 17;

(ii) the form of a registration certificate under sub-section (4) of Section 17 and the manner of granting a registration certificate and verification of the particulars given in the application for grant of a registration certificate under the said section;

(iii) the time within which and the authority to whom information regarding the changes of business shall be furnished under sub-section (8) of section 17 ;

(iv) the amount for which the security may be demanded and the manner of payment of such security under sub-section (12) of section 17.

(i) (1) the manner of service of notice and the authority to whom, the period for which, the form in which, the manner in which and the dates by which returns shall be furnished under sub-section (1) of Section 18;

(2) the manner in which and the time within which revised return shall be furnished under sub-section (2) of Section 18;

(3) the form and manner in which, the period for which and the date by which the statement shall be furnished under clause (b) of sub-section (1) of section 18;

(4) the form of notice under clause (b) of sub-section (5) of section 18

² (i a) (1) the manner in which tax audit is to be undertaken under sub-section (1) of section 19;

(2) the form of notice under sub-section (6) of section 19; ²

- (j) (i) the conditions and restrictions subject to which assessment may be made for part of a year;
 - (ii) the form of notice and manner in which tax shall be assessed/re-assessed under sub-sections (4),(5), and (6) of Section 20, and re-assessed under section 21 :
¹⁰ (iii) the restrictions and conditions subject to which and the manner in which option to pay lump sum amount in lieu of penalty under section 21, 52, 55 and 57 or in lieu of tax, interest and penalty under section 55-A shall be exercised; ¹⁰
 - (k) (i) the fee on payment of which a tax practitioner or a person entitled to appear as a tax practitioner shall get himself enrolled under sub-section (3) of Section 23;
 - (ii) the form of enrollment certificate under sub-section (4) of Section 23;
 - (l) (i) the manner in which, the time within which and the intervals at which the tax shall be paid under sub-section (1) of Section 24;
 - (ii) the manner in which the amount of tax due shall be paid to Government under sub-section (2) of section 24 and the terms and conditions subject to which permission for payment by book adjustment may be granted under sub-section (4) of Section 24;
 - (iii) the form of notice to be issued under sub-section (5) of section 24;
 - (iv) the restrictions and conditions subject to which further time may be granted by the Commissioner under sub-section (7) of Section 24;
 - (v) the manner in which and the period within which the Commissioner shall inform the dealer or person and the authority regarding recovery of arrears of tax under sub-section (11) of Section 24;
 - (vi) ²omitted²
 - (vii) the form of notice and the manner in which and time within which the tax payable in advance shall be paid under sub-section (3) of section 25;
 - (viii) the manner in which any amount deducted by the purchaser or the person letting out the contract shall be paid and adjusted under sub-section (4) and (5) of Section 26, ⁶ the form of certificate to be issued under sub-section (3) of section 26 and the manner in which it is to be obtained, ⁶ and the form and manner in which the authority to whom and the period within which statement shall be furnished under sub-section (8) of the said section ;
- ¹⁰
- (viii-a) the form of certificate to be issued under sub-section (2) of section 26-A and the manner in which it is to be obtained and the manner in which any amount deducted by the purchaser shall be adjusted under sub-section (3) of Section 26-A; ¹⁰
- (ix) the form and manner in which and the authority by whom the certificate shall be issued under section 27;
 - (x) the form of notice to be given under sub-section (1) of section 28 :
 - (m) (i) the form of notice to be given under sub-section (3) of Section 35;
 - (ii) the form of the notice and the manner of publication of the notice under sub-section (5) of section 35;
 - (iii) the form of application in which refund may be claimed under sub-section (6) of Section 35;
 - (n) the manner in which, the refund shall be made under sub-section (1) of Section 37;
 - (o) the date by which the accounts shall be got audited and the form and manner in which and the time within which report of audit shall be furnished under section 39;
 - (p) ¹⁰ (i) the particulars which shall be given in the Act, invoice, cash memorandum, issued under section 40;
 - ¹⁰ (ii) the manner in which authentication shall be done under sub-section (1A) of section 40; ¹⁰

- (q) the restrictions and conditions subject to which the Commissioner may delegate under section 41 his powers and duties under this Act ;
- (r) ²the prescription of further powers of authorities under clause (v) of sub-section (1) of section 43; ²
- (s) (i) the manner in which appeal may be filed under Section 46 and sub-sections ² (3) and (5) ² of section 47;
- (ii) ²the procedure to be followed by the Appellate ²Authority² or the Appellate Board in disposing of appeals under sub-section ² (8) ² of Section 46; ²
- (iii) the form of notice under sub-section ² (2) ² of section 47;
- (iv) the procedure for and other matters including fees incidental to the disposal of appeals, applications for revision or rectification of mistake under Section 46, 47 or 54 and other miscellaneous applications or petitions for relief under this Act;
- (t) the value of the Court fee stamps which an appeal or application for revision shall bear, under section 49;
- (u) the form of notice to be issued under sub-section (2) of section 52;
- (v) the form of notice to be given under clause (ii) of the proviso to sub-section (1) of section 54;
- (w) (i) the conditions subject to which the Commissioner may require the production of accounts, register or documents or to furnish any other information under sub-section (3) of Section 55;
- ²(ia) the form of notice under proviso to sub-section (4) of Section 55; ²
- (ii) the form of notice to be served under clause(b) of sub-section (6) of section 55;
- (iii) the manner in which goods shall be disposed off under clause (f) of sub-section (6) of Section 55;
- (iv)(a) the manner in which check posts be set up or barriers be erected, the manner in which and the fee on payment of which the declaration shall be obtained, the form and manner in which a declaration and other documents to be delivered or filed, the manner in which goods shall be seized or released, the form of notice to be served, the manner in which penalty shall be deposited, the manner in which the goods seized shall be sold, the period for which the declaration and other documents shall be preserved by the consignee under section 57,
- (b) the restrictions subject to which any vehicle may be intercepted under section 57;
- (c) (i) the form and manner in which transit pass shall be obtained under section 58 ;
- (ii) the form and the manner, in which, the date by which and authority to whom the particulars of goods transported shall be furnished under section 61;
- (d) the authority to whom, the time within which and the form in which information shall be furnished under section 62,.
- (x) the conditions subject to which the Commissioner may authorise the persons appointed under Section 3 to assist him to investigate under sub-section (4) of Section 64 all offences under this Act;
- (y) the form and the manner in which, the authority by whom, the time within which and the period for which tax clearance certificate shall be issued under Section 65;
- (z) the form and manner in which application shall be made to the authority and the procedure according to which the authority shall pass an order under section 70;
- (a-1) (i) the manner and period in which input tax rebate shall be claimed or be allowed under section 73;
- (ii) the form and manner in which and the period within which the particulars of the stock of goods shall be furnished under sub-section (1) of section 73.
- (b-1) (i) how and within what time applications, information and notice shall be made, furnished or served under this Act;
- (ii) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act; and
- (iii) general regulation of the procedure to be followed and the form to be adopted in the proceedings under this Act.

(3) The power to make rules under this Section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act to the rules or any one of them.

(4) In making any rule the State Government may direct that -

- (a) a breach thereof shall be punishable with fine not exceeding five hundred rupees, and if the offence is a continuing one, with a fine not exceeding twenty five rupees for every day the offence continues; and
- (b) in respect of contravention of any rule, the Commissioner may impose a penalty not exceeding five hundred rupees :

Provided that no such penalty shall be imposed without giving the person concerned a reasonable opportunity of being heard.

(5) All rules made under this Section shall, as soon as may be after they are made, be laid on the table of Legislative Assembly.

72 : Repeal and savings

The Madhya Pradesh Vanijyik Kar Adhiniyam 1994 (No.5 of 1995) shall stand repealed on the date of coming into force of this Act :

Provided that -

(i) such repeal shall not -

- (a) affect the previous operation of the Act so repealed or Act No. 2 of 1959 repealed by Act No.5 of 1995 (hereinafter referred to as a repealed Act) or anything duly done or suffered, thereunder; or

- ⁴ (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, except the right or privilege accrued under that Act for availing of the facility of industrial concession by way of exemption from or deferment of payment of tax by registered dealers who had established new industrial units in the State of Madhya Pradesh or undertaken expansion, modernisation or diversification in such industrial unit or exemption from payment of tax by registered dealers who had established hotel under the new Tourism Policy,1995 or the Heritage Tourism Policy of the Government of Madhya Pradesh; or⁴

- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act; or

- (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability; and

- (e) ²Notwithstanding anything contained in sub-clause (b) and subject to such restrictions and conditions as may be specified, the State Government may, in respect of registered dealers,-

- (i) who were eligible to avail of the facility of exemption from or deferment of payment of tax immediately before the commencement of this Act; and

- (ii) who would have continued to be so eligible had this Act not come into force,

formulate a *scheme* to allow them such facility as it may think fit for the balance un-expired period or cumulative quantum of tax, whichever is earlier; ²

any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed and the said Act had not been repealed.

(ii) Unless it is otherwise expressly provided, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation or certificate) in the exercise of any power conferred by or under the repealed Act shall, subject to the provisions of sub-clause (b) of clause (i), in so far as it is not inconsistent with the provisions of this Act, continue to be in force and be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of this Act as if this Act were in force on the date on which such thing was done or action was taken unless and until it is superseded by

or under this Act and all arrears of tax and other amount due at the commencement of this Act may be recovered as if they had accrued under this Act.

(iii) Any assessment, appeal, revision or other proceedings arising under the repealed Act and the rules made there under and or pending before an officer or authority duly empowered to make assessment or hear and decide such appeal, revision or other proceeding immediately preceding the commencement of this Act shall, on the date of such commencement stand transferred to the officer or authority competent to make assessment or to hear and decide appeal or revision or other proceedings under this Act and thereupon such assessment, shall be made or such appeal or revision or other proceeding shall be heard and decided within the period, if any, specified therefor, by such officer or authority in accordance with the provisions of the repealed Act or the rules made thereunder as if they were the officer or authority duly empowered for the purpose under the repealed Act.

(iv) (a) any application by a dealer or the Commissioner to the ²Appellate Board² for making a reference to the High Court under sub-section (1) of section 70 of the repealed Act; or

(b) any such application made under sub-section (2) of section 70 of the repealed Act; or

(c) any reference made to the High Court under sub-section (1) or sub-section (2) of section 70 of the repealed Act,

⁴is pending on or arising after ⁴ the date of commencement of this Act shall be disposed of by the ²Appellate Board² or the High Court, as the case may be, in accordance with the provisions of section 70 of the repealed Act as if this Act had not been passed and the said Act had not been repealed.

(v) Notwithstanding anything contained in clause (i), any appeal, revision or other proceedings arising under the repealed Act but preferred or initiated after the commencement of this Act, shall be heard and decided by the authority competent to entertain any appeal, revision or any other proceedings in accordance with the provisions of this Act.

²73 Tansitory provisions

- (1) Where a registered dealer holds the stock of any goods specified in Schedule II on the date of commencement of this Act, he shall furnish the particulars thereof in such form, within such period, in such manner and to such authority as may be prescribed.
- (2) Where any goods specified in Schedule II of this Act other than those specified in part III of the said Schedule purchased on or after 1st April, 2005 and held in stock by a registered dealer on the date of commencement of this Act are tax paid goods within the meaning of the Act repealed by this Act, and are for sale by him on or after the said date within the State of Madhya Pradesh or in the course of inter-state trade or commerce, he shall claim or be allowed in respect of such goods, in such manner and within such period as may be prescribed, an input tax rebate,-
 - (i) at the rate as the State Government may, by ^{*}notification, specify, if such goods are for sale within the State; and
 - (ii) at the rate specified in sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (No. 74 of 1956) or the rate as the State Government may, by notification, specify, whichever is lower, if such goods are for sale in the course of inter-state trade or commerce.
- (3) (a) Where any goods specified in Schedule II of this Act held in stock by a registered dealer, on the date of commencement of this Act, are goods

manufactured out of tax paid goods other than those specified in part III of the said Schedule consumed or used as raw material or used as packing material or used as explosives in mining and are for sale in the State of Madhya Pradesh or in the course of inter-state trade or commerce on or after the said date, such dealer shall claim or be allowed in such manner and within such period as may be prescribed, an input tax rebate in respect of such tax paid goods, at the rate as the State Government may, by notification, specify.

- (b) Where any goods specified in Schedule II other than those specified in part III of the said Schedule purchased by a registered dealer on or after 1st April, 2005 and held in stock on the date of commencement of this Act are tax paid goods for consumption or use as raw material for/in the manufacture or processing or mining of or for use as packing material in packing of or for use as explosives in mining of, any goods specified in Schedule II for sale by him in the State of Madhya Pradesh or in the course of inter-state trade or commerce, such dealer shall claim or be allowed, in such manner and within such period as may be prescribed, an input tax rebate at the rate as the State Government may, by notification, specify.
- (4) The sale of goods specified in part III of Schedule II of this Act which are in the nature of tax paid goods, on or after the said date shall not be liable to tax under this Act.
- (5) The provisions of sub-section (5) of section 14 shall mutatis mutandis apply to input tax rebate that may be claimed or allowed under sub-sections (2) and (3).
- (6) No input tax rebate under this section shall be claimed or be allowed to a registered dealer who opts for composition under section 11.
- (7) Input tax rebate under this section shall be allowed only after determination by Commissioner in such manner and within such time as may be prescribed.

Explanation.— For the purpose of this section the expressions "raw material" and "tax paid goods" shall have the meaning assigned to them in clauses (r) and (x), respectively, of section 2 of the Act repealed by this Act.²

74. Powers to remove difficulties :

If any doubt or difficulty arises in giving effect to any of the provisions of this Act in consequence of the transition to the said provisions from the corresponding provisions of the Act repealed by Section 72, the State Government may within two years from the date of commencement of this Act by order notified in the official Gazette of the State make such provision not inconsistent with this Act as appear to be necessary or expedient for removing the doubt or difficulty.