

THE NAGALAND PURCHASE TAX ACT, 1993
(THE NAGALAND ACT NO. 5 OF 1993)

*Received the assent of the Governor of Nagaland on 28-8-93 and published
in the Nagaland Gazette extraordinary dated
10th sept, 1993.*

An

Act.

To provide for the levy of tax on the purchase of certain commodities in Nagaland.
Whereas circumstances exist which render it necessary and expedient to impose a tax on purchase point of certain commodities in Nagaland in lieu of the last point tax under Nagaland Sales Tax Act, 1967.

It is hereby enacted in the forty fourth year of the Republic of India as follows

Short title, extent and commencement

1. (1) This Act may be called the Nagaland purchase Tax Act, 1993.
- (2) it extends to the whole of Nagaland.
- (3) It shall come into force on such date as the State Government may by notification in the official, gazette appoint.

Definitions:-

2. In this Act, unless the context otherwise requires
 - (1) “appointed date” means the date appointed for the commencement of the provisions of this Act under sub-section (3) of section 1
 - (2) “business” includes
 - (i) any trade, commerce or manufacture or any adventure of concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure if carried on with the motive to make gain or profit and whether or not any gain or profit accrues therefrom, and
 - (ii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.
 - (3) “Commissioner” means a person appointed to be the Commissioner of Taxes under sub-section (1) of section 3
 - (4) “company” means a company as defined under section 3 of the Companies Act, 1956 (1 of 1956)
 - (5) “dealer” means any person who for commission remuneration, or otherwise carries on business of buying taxable goods in the State and includes —
 - (i) Government and local authority,
 - (ii) a co-operative society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members.
 - (iii) a factor, a broker a commission agent del credere agent, an auctioneer or any other mercantile agent whatever names called and whether of the same description as herein before mentioned or no who carries on the business of purchasing goods who has, in the custom of business authority to purchase goods for and on behalf of or belonging to principal whether residing within or outside the State, and includes a person delivering goods on hire purchase or any system of payment by installment.

Explanation: Notwithstanding anything contained elsewhere in this Act or in any other Law for the time being in force, every person holding a formal document or instrument in powering such a specified person to act for and in the name of local Naga authorized by or under ‘Power of Attorney’ or any other authorization, document by whatever name called, executed or signed carries on business as aforesaid in the State shall be considered to be a dealer along with the local Naga shall he jointly and severally subject to the provisions of this Act.

- (6) “declared goods” means goods declared under section 14 of the Central Sales Tax Act, (74 of 1956) to be of special importance in inter state trade of commerce and the sale of which is taxable under this Act.
- (7) “director” means in relation to a company has the meaning assigned to it in the Companies Act, 1956 (1 of 1956).
- (8) “firm, partner and partnership” has the meanings respectively as assigned to them in the Indian Partnership Act, 1932 (9 of 1932).
- (9) “manufacture” with all its grammatical variations and cognate expressions means producing making extracting, altering, ornamenting, planting, finishing or otherwise processing, trading or adapting any goods “but does not includes such manufacture, or manufacturing process as may be prescribed.

Explanation: for the purpose of this clause the cutting, sawing, shaping, sizing or hewing of timbers, shall be deemed to be manufacture.

- (10) “month” means the month according to the English calendar
- (11) “official gazette” means the official gazette of the government, of the State.
- (12) “prescribed” means prescribed by rules made under this Act.
- (13) “person means” any individual or association or body of individuals and includes a department of any government or Hindu- Undivided or Joint Family, a firm and a company whether incorporated or not.
- (14) “purchase price” means the amount paid or payable by a dealer for any purchase of taxable goods including any sum charged for
 - (i) anything done by the seller with or in respect of the goods at the time of or before delivery thereof,
 - (ii) containers or other material for the packing of such goods.
- (15) “quarter” means a period of 3 months ending on 31st March, 30th June, 30th September or 31st December in any year.
- (16) “registered dealer” means a dealer registered under the provision of this Act,
- (17) “rules” means the rules framed under this Act,
- (18) “State” means the State of Nagaland;
- (19) “section” means section of this Act;
- (20) “schedule” means the schedule to this Act
- (21) “tax” means a purchase tax, turnover tax or additional tax as the case may be payable under this Act
- (22) “taxable goods” means goods specified in the Schedule:
- (23) turnover of purchase means the aggregate of the amounts or purchase of taxable goods made by him during any return period after deducting the amount of purchase price, if any, refunded to the sealer in respect of any taxable goods and their containers purchased from the seller and returned to him within a period of three months from the date of delivery of goods:
- (24) “year means the financial year.

Taxing authorities

3. (1) The State Government may, for carrying out he purposes of this Act appoint,

- a person to be the Commissioner of Taxes together with such other persons to assist him as it considers necessary
- (2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred and perform such duties as may be required under this Act.
 - (3) All persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Act 45 of 1860)
 - (4) Any proceedings under this Act before any authority referred to in sub-section I shall be considered to be a judicial proceeding within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal code, 1860 (Act 45 of 1860).
 - (5) Additional Commissioner:
 - (a) State Government may appoint Additional Commissioners of Taxes who shall have jurisdiction over the whole of the State or where the State Government so specifies over any local area thereof.
 - (b) An Additional Commissioner shall, save as otherwise directed by State Government, have and exercise within his jurisdiction all the powers and perform all the duties conferred on the Commissioner under this Act.
 - (c) The Commissioner may transfer to or withdraw to himself from an Additional Commissioner of Taxes any case or matter or may transfer any such case or matter from an Additional Commissioner of Taxes to deal with the same to another Additional Commissioner of Taxes.
 - (d) An Additional Commissioner of Taxes shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act 45 of 1860).

Levy of tax

4. (1) Subject to the other provisions of this Act, every dealer liable to pay tax earlier under the Nagaland Sales Tax Act, 1967, shall with effect from the appointed day for the purpose of this section, be liable to pay tax on his turnover of purchases at such rate as may be specified in the schedule.

Provided that the State Government may by notification in the Official Gazette add, or amend any entry in the schedule and notify different rates when so requires; and thereupon the said schedule shall be deemed to be amended accordingly.

Provided further that the rate of tax on any class or classes of goods shall not exceed fifty per-centum.

- (2) For the purpose of this section "Taxable turnover" means the gross value of taxable goods purchased during the year as reduced by
 - (i) The turnover during such year of goods which is shown to the satisfaction of the assessing officer to have been subjected to tax in the State
 - (ii) Such other amounts as may be prescribed
 - (iii) From the resultant balance the amount arrived at by applying the following formula-

$$\frac{\text{Rate of tax} \times \text{Resultant balance after deduction as mentioned above}}{100 + \text{Rate of Tax}}$$

Explanation:

Where the taxable turnover of a dealer is taxable at different rates the aforesaid formula shall be applied separately in respect of each such part of the turnover.

- (3) Incidence-the tax under sub-section (1) shall be levied at the point of last purchase of the taxable goods in the State by a dealer

Provided that when the tax has been levied under this Act in respect of the purchase within the state of any declared goods and such goods are sold in the course of inter-state trade or commerce the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be prescribed;

Provided further that where any dealer claims that any purchase of taxable goods by him is not the last purchase of the goods in the State the burden of proof of the same shall be on the dealer.

Registration :

5. (1) No dealer shall carry on business as a dealer unless he has been registered and possess a certificate of registration;
- (2) Every dealer required by sub-section (1) to be registered shall apply for registration to the Commissioner in the prescribed form and obtain a certificate of registration.
- (3) On receipt of an application under sub-section (2) the Commissioner shall if he is satisfied that the application is in order register the applicant,
- (4) The Commissioner may, in addition to taking any other action under the provisions of this Act, compel any dealer who in his opinion, is liable to registration but has not made an application in this behalf, to apply for registration and register him. The Commissioner shall register a dealer who fails to apply for registration within a specified time:

Provided that no action under this sub-section shall be taken unless the Commissioner has given notice of one month to the dealer.

- (5) The Commissioner shall register any dealer who has been convicted under section 28 or has paid composition money under section 31 in respect of any contravention of sub-section (1) of this section.
- (6) Registration made under sub-section (5) shall take effect as if these had been made on the dealer's application under sub-section (2).

Certificate of Registration

6. (1) A dealer registered under section 5 shall be granted a certificate of registration in such form as may be prescribed

Provided that the Commissioner may for good and sufficient reason to be recorded in writing demand from a dealer who has been registered or a person who has applied for registration under section 5 (2) or a person who has been required to get himself registered under section 5 (4), reasonable security for proper payment of the tax.

Provided further that such dealer, firm or person shall be given an opportunity to present his or their case to the Commissioner before any amount is realized as security.

- (2) The Commissioner may, on petition or otherwise, cancel at any time any certificate of registration if he is satisfied that:
- (a) the business in respect of which the certificate was issued has been discontinued or transferred, or
- (b) the liability to pay tax in respect of such business has ceased under this Act

Returns

7. (1) Every registered dealer shall furnish such returns to taxable goods purchased by him in such form, for, such periods by such date and to such authority as may be prescribed.
- (2) In case of any other dealer, who in the opinion of the Commissioner, is liable to pay tax for any return period or part thereof, the Commissioner, may serve at any time within eight years of the expiry of the returns period as notice in the prescribed form upon him requiring him to furnish a return of taxable goods purchased and such dealer shall thereupon furnish the return within the period and to the authority mention in the notice:

Provided that in computing the period of eight years specified in this sub-section , the period during which the Commissioner is restrained by an order of the State Government or any Court form serving the notice under this section be excluded.

- (3) If any dealer discovers any omission or other error in any return furnished by him .he may furnish revised return at any time before assessment is made on the original return:

Provided that no return submitted under this section shall be valid unless it is accompanied by a treasury receipt showing payment of the tax due as provided in sub-section (2) or sub-section (3) as the case may be of section 20.

Assessment:

8. (1) If the Commissioner is satisfied that a return furnished by a dealer under section 7 in respect of any quarter is correct and complete , he shall , by an order in writing , assess the dealer and determine the tax payable by him on the basis of such return.
- (2) If the Commissioner is not satisfied that a return furnished under section 7 is correct and complete , he shall serve on the dealer, a notice, requiring him on the date and hour and place specified which therein either to attend in [person or to produce any evidence on which he may rely in support of his return.
- (3) On the day specified in the notice, under sub-section (2) of as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce and such other evidence as the Commissioner may require shall, by an order in writing, assess the dealer and determine the tax payable by him on the basis of such assessment.
- (4) If a dealer fails to make a return as required by sub-section (1) or sub-section (2) of section 7, as the case may be, or having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section, the Commissioner shall by an order in writing, assess to the best of his judgment the dealer and determine the tax payable by him on the basis of assessment.

Provided that before making the assessment, the Commissioner may allow the dealer such further time as he thinks fit to make the return or to comply with the return of the notice issued under sub-section (2) of this section.

Cancellation of Assessment

9. Where a dealer in the case of an assessment completed under sub-section (4) of section 8, satisfies the Commissioner within one month from the date of issue of a notice of demand as hereinafter provided that he was prevented by sufficient cause from making the return required by section 7 or that he did not receive the notice issued under sub- section (2) of section 7, or sub-section (2) of section 8 of

that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of the notice, the Commissioner may cancel the assessment and make a fresh assessment in accordance with the provisions of section 8.

Assessment in case of evasion and escape :

10. (1) If an information comes to his knowledge and if the Commissioner is satisfied that any taxable goods chargeable to tax had escaped assessment in any return period or have been under assessed, he may at any time within eight years of the expiry of the return period, serve a notice on the dealer liable to pay tax in respect of such goods a notice, requiring him to furnish within such period as may be mentioned in the notice, a return of taxable goods purchased and may proceed to assess or reassess the dealer under provisions of this Act.

Provided that the tax shall be charged at the rate at which it would ordinarily have been charged, had there been no escape or under assessment.

Provided further that in computing the period of eight years specified in this sub-section, the period during which the Commissioner is restrained by an order of the Government or any Court from serving the notice under this sub-section shall be excluded.

- (2) The Commissioner may authorize any person appointed under section 3 to assist him in investigating any case or points in any case at any stage and to make a report thereon to the Commissioner or any prescribed authority in respect of all or any of the assessment made in relation to the case in order to prevent the evasion of tax, After considering the report of the investigating officer, the Commissioner may proceed to take action under sub-section (1) besides initiating any other action under this Act, against the dealer concerned.

Rectification of assessment

11. (1) The authority which made an assessment or passed an order on appeal or revision in respect of any, at his own motion, rectify any mistake apparent from the record of the case and shall within the like period, rectify any such mistake as has been brought to its notice by a dealer,

Provided that no such rectification shall be made having the effect of enhancing the assessment unless the authority concerned has given notice to the dealer of its intention to do so and has allowed him a reasonable opportunity of being heard.

- (2) When such rectification has the effect of ~ the assessment, a refund shall be due to the dealer
(3) Where any such rectification has the effect the enhancing the assessment, a notice of demand such be issued for the sum payable.

Penalty for non-submission of return and evasion of taxes :

12. (1) if the Commissioner, in the course of any proceeding under this Act, is satisfied that any dealer,
(a) has, without reasonable cause, failed to furnish the return which he was required to furnish under section 7 or 10 or has, without reasonable cause, failed to furnish it within the specified time or,
(b) has without reasonable cause, failed to comply with a notice under sub-section (2) of section 8, or
(c) has, concealed the particulars of taxable goods purchased or deliberately

- furnished inaccurate particulars of such purchase;
- (d) has evaded in any way the liability to pay tax, he shall direct that such dealer shall pay by way of penalty in addition to the tax payable by him, a sum not exceeding one and half of that amount,
- (2) No order under sub-section (1) shall be made unless the dealer has been heard or has been given a reasonable opportunity of being heard.
- (3) Prohibition to collect excess tax.
- (a) No person shall collect from any other person any sum by way of or on account of tax under this Act in respect of any goods or which no tax is payable under this Act.
- (b) No person, who is not a registered dealer under this Act, and liable to pay tax thereunder in respect of any goods shall collect from any other person any sum by way of or on account of tax under this Act and no registered dealer shall collect any amount by way of or on account of tax in excess of the amount payable by him under this Act.
- (4) Forfeiture of excess tax etc:
if any person
- (i) not being a registered dealer is liable to pay tax under this Act, collects any sum by way of or on account of tax or (being a registered dealer collected any sum by way of or on account of tax in excess of the tax payable by him, or
- (ii) otherwise collects tax in contravention of the provision of sub-section (3)
- (a) any sum so collected by that person by way of or on account of tax shall be forfeited to the State Government and when any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.
- (b) Where the Commissioner has reason to believe that any person has willfully contravened the provisions of sub-section(3) the Commissioner may impose upon such person a penalty of an amount not exceeding two thousand rupees or double the sum collected by such person by way or on account of tax in contravention of the provisions of subsection (3), whichever is less.

Provided that no penalty shall be imposed in respect of any such contravention which occurred on a date prior to the publication of this act in the official Gazette,

- (c) If the Commissioner in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to forfeiture of any sum under sub-section (a), or both forfeiture of any sum under sub-section (a) and penalty under sub-section (b) he shall serve on such a person a notice in the prescribed form requiring him on a date and at a place specified in notice to attend and show cause why forfeiture or both forfeiture and penalty of any sum as provided in sub-section (a) and sub-section (b) should not be imposed on him.
- (d) The Commissioner shall thereupon hold an enquiry and shall make such order as he consider necessary.
- (e) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.
- (5) Payment of sum forfeited etc :

- (a) The amount of penalty (if any) levied under sub-section (4) and the sum (if any) forfeited to the State Government under sub-section (4) shall be paid by the dealer or the person liable therefor in Government treasury by such date as may be specified in a notice issued by the Commissioner for this purpose being a date not earlier than thirty days from the date of service of the notice.

Provided that the Commissioner may, in respect of any particular dealer or person and for reasons to be recorded in writing extent the date of payment, or allow him to pay the penalty (if any) imposed under sub-section (4) or the sum forfeited by installments.

- (b) Any penalty imposed or sum forfeited under sub-section (4) which remains unpaid after the date specified in the notice for payment or after the extended date of payment and any installment not duly paid, shall be receivable as an arrear of land revenue.
- (c) Notwithstanding anything contained in this Act, or in any other law for the time being in force where any sum collected by a person by way of or an account or tax in contravention of sub-section (3) is forfeited to the State Government under Sub-section (4) or is recovered from him such payment or recovery shall discharge him, of the liability to refund the sum to the person from whom it was so collected.
- (d) A refund of any such sum or any part thereof may be claimed from the State Government by the person from whom it was realised by way of or on account of tax provided such tax was not passed on by him in any form or manner to some other person the claim for refund may be made by such other person only.
- (e) An application for such claim shall be made in writing in the prescribed form to the Commissioner within one year from the date of the order of forfeiture.
- (f) On receipt of an application under sub-section (e) the Commissioner shall hold such inquiry as he considers necessary and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered, and no drawback, set off, refund or remission in respect of that amount was granted he shall refund the sum of any part thereof, which is found due to the person concerned.

Assessment not to bar prosecution or penalties.

- 13. Any assessment made under this Act, shall be without prejudice to any prosecution or penalty instituted or imposed under the provisions of this Act.

Tax of deceased payable by representative:

- 14. (1) Where a dealer dies after assessment but before payment of the tax, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased, to the extent to which it is capable of meeting the charge, the tax assessed as payable by such dealer.
- (2) Where a dealer dies without having furnished the return required by section 7 or 10 or after having furnished the return but before assessment the Commissioner may proceed to make an assessment and determine the tax payable by the deceased and for this purpose he may require the executor, administrator or other legal representative, as the case may be, of the deceased to perform all or any of the obligations which he might under the

provision of this Act, have required the deceased to perform. The tax thus determined shall be payable by the executor, administrator or other legal representative of the deceased to the extent to which the estate of the deceased is capable of meeting the charge.

Tax when payable by transfer

15. When the business or stock of a registered dealer passes onto any person or persons, whether by sale inheritance, gift, possession or otherwise, the liability so Pay any tax payable in respect of any purchase of taxable goods and remaining unpaid as the time of such passing on shall be jointly and severally on the dealer and such person or persons shall, within 30 days of such passing on apply for registration under Section 5.

Assessment of dealers likely to transfer assets to a void tax:

16. (1) Notwithstanding anything contained in this Act, if it appears to the Commissioner during any current return Period that any dealer is likely to change, sell, transfer dispose of or otherwise part with any of the assets with a view or avoiding payment of any liability under the provisions of this Act, the purchases of taxable goods of such dealer for the period from the expiry of the previous return or return period to the date when the Commissioner commences proceedings under this section shall be chargeable to tax in that period.
- (2) For the purpose of making an assessment under sub-section (1) the Commissioner may serve a notice upon such dealer requiring him to furnish, within such period as may be specified in the notice, a return in the manner and form in which a return under section 7 is furnished.

Liability of agent of non-resident :

17. Where here the business in respect of which tax payable under this Act, is owned by a non-resident person the tax shall be levied upon and recoverable from the agent of such non-resident person in like manner and to the same extent as it would be leviable upon and recoverable from the owner if he were resident in the State and conducting the business therein and all the provisions of this Act shall apply accordingly.

Liability of discontinued firm or association:

18. Where the business carried on by a firm or an association of persons, other than a company as defined in the Indian Companies Act, 1956((Act. 1 of 1956) and in respect of which tax is payable under this Act. is discontinued or the association of persons is dissolved, the tax shall be levied upon and recovered from jointly and severally every person who. at the time of such discontinuance or dissolution. was a partner of such firm or member of such association. and all the provisions of this Act, shall apply accordingly

Notice of demand:

19. When any tax or penalty or other dues is or are payable in consequence of any order passed under or in pursuance of this Act, the Commissioner shall serve upon the person liable to pay such tax or penalty or other dues a notice of demand in the prescribed form specifying the sum so payable.

Tax when payable

20. (1) Tax payable under this Act, shall be paid in the manner hereinafter provided.
- (2) Before any registered dealer furnishes the return required by sub-section (1) of section 7, he shall in the prescribed manner, pay into a Government treasury the full amount of tax due from him under this Act on the basis of such return, and shall furnish along with the return a receipt from such treasury showing payment of such tax.
- (3) Where a revised return is submitted by a registered dealer under sub-section (3) of section 7 and if the revised return shows a greater amount of tax to be due than was payable on the basis of original return, the dealer shall pay the excess amount of tax in the manner provided in sub-section (2) and shall furnish along with the revised return a receipt in token of payment of such excess tax.
- (4) The amount of tax due under the provisions of the Act
 - (a) in excess of payment already made under sub-section (2) and (3), or
 - (b) Where no Payment has been made, shall be paid by the dealer by such date as may be specified in the notice of demand and where no such date is specified, it shall be paid within thirty days from the date of service of the notice.

Interest Payable by dealers:

21. (1) If any dealer does not pay into Government Treasury the full amount of tax payable by him under this Act, by the due date, simple interest at the rate of twelve per annum per annum from the first day of the month next following the said date shall be payable by him on the amount by which the tax paid, if any by the due date falls short of the tax payable. No interest under this sub-section shall be payable if the amount of tax paid by the due date is not less than ninety per annum of the tax payable.
- (2) If such tax is not paid within a period of sixty days from the due date, then in addition to interest payable under sub-section (1), the dealer shall be liable to pay simple interest at the rate of twenty four per centum per annum from the day commencing after the said period of sixty days on the amount by which the tax paid, of any, before the expiry of the said period falls short of the amount of tax payable.
- (3) Interest under this section shall be payable till the payable is paid in full.
- (4) Where any interest becomes payable under this section, the officer competent to assess the dealer under section 8 shall record and order to that effect specifying the amount of interest payable and the amount of which and the period for which the interest is payable . Notwithstanding any thing contained in this Act, an order under this sub-section can be issued at any time when interest under this section is found to be due.
- (5) Where an order is passed under sub-section (3) of section 23 in respect of any dues any interest relating to the same dues and accrued under this section upto the date of such order and any further interest accruing after such date shall be recovered in the course of proceeding initiated in accordance with the said sub-section (3) in respect of the said dues and for that purpose no order under sub-section (4) of this section or notice under section 19 shall be necessary in respect of such interest.

Explanation A. For the purpose of this section, "tax payable" means the amount of tax as finally assessed under this Act.

Explanation B. For the purpose of this section, tax payable shall be deemed to be due for payment as follows:

For any period –

- (a) from 1st April to 30th June...by 31st, July
- (b) from 1st July to 30th September...by 31st Oct.
- (c) from 1st October to 31st December ...by 31st Jan
- (d) from 1st January to 31st March ...by 30th April.

Other Dues When Payable:

22. Any dues, other than the amount of tax, payable under this Act shall be paid by the person concerned by such date as may be specified, in the notice of demand and if no such date is specified, it shall be paid within thirty days from the date of the service.

Mode of recovery:

23. (1) if the demand in respect of any dues under this Act is not paid on or before the date specified as aforesaid, the dealer shall be deemed to be in default.

Provided that the Commissioner, may in respect of any particular dealer and for reasons to be recorded in writing extend the date of payment of the dues or allow such dealer to pay the same by installments and in that case the dealer shall not be deemed in default.

- (2) Where a dealer is in default the Commissioner may in his discretion, direct, that in addition to the amount due a sum not exceeding that amount shall be recovered from the defaulter by way of penalty.
- (3) Where a dealer is in default, the Commissioner may order that the amount due shall be recoverable as an arrear of land revenue and may proceed to realize the amount due as such.

Bar of proceeding:

24. It is hereby declared that the provisions of section 9 and 10 of the Bengal Public Demand Recovery Act, 1913 shall not apply to any proceedings for recovery of any tax or penalty referred to in section 19 or of any interest referred to in sub-section (1) and (2) of section 21 or any other dues referred to in section 22

Special mode of recovery:-

25. 1 The assessing authority may at any time or from time to time by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any person from whom money is due or may become due to the dealer or any person who holds or may subsequently hold money for or on account of the dealer to pay to the assessing authority, either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or other dues under this Act or the whole of the money when it is equal to or less than the arrear of tax or such other dues.
2. The assessing authority 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 of the notice.
3. Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under authority of the

dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

4. Any person making any payment to the dealer after receipt of the notice referred to in this section shall be personally liable to the assessing authority to the extent of the payment made or to the extent to the liability of the dealer for the amount due under this Act, whichever is less.
5. Where any person to whom a notice under this section sent objects to it on the ground that the sum demanded or any part thereof is not due by him to the dealer or that he does not hold any money for or on account of the dealer then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof to the assessing authority.
6. Any amount which a person is required to pay to the assessing authority or for which he is personally liable to assessing authority under this section if it remains unpaid, shall be charged on the proper ties of the said person and may be recovered as if it were an arrear of land revenue.

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

Explanation :- (B) In this section, “assessing authority” means any authority competent to assess the dealer under Section-8.

Refunds

26. (1) The Commissioner shall, in the prescribed manner refund to a dealer any sum paid by such dealer in excess of the sum due from him under this Act, either by cash payment or at the option of the dealer by set off against the sum due from him in respect of any other period.
- (2) If a fund, not being a refund under the proviso to sub- section (3) of Section 4 is not made within ninety days of such refund being due, the State Government shall pay to such dealer simple interest at the rate of six per centum per annum on the amount refundable.
- (3) Refund under this Act shall be deemed to be due.
 - (a) In cases where the tax assessed has been reduced on appeal or revision, from the date of the order of the appellate or revisional authority comes to the knowledge of the assessing authority and
 - (b) In other cases, on the date an application for refund is made by the Party claiming the refund.

Remission:

27. The State Government, for good and sufficient reasons to be recorded in writing, may remit the whole or part of the amount of the tax or penalty payable in respect of any period by any registered dealer as may be prescribed.

Offences and penalties:

28. Any person who while being liable to pay tax under the provisions of this Act.
 - (1) fails to register himself as a dealer as required under section 5 or;
 - (2) fails, without reasonable cause, to submit in due time any return as required by or under the provisions of this Act or submits a false return, or
 - (3) fails, when required by or under the provisions of this Act, to keep account

- and records of purchases of taxable goods, or
- (4) Fails, when required by or under the provisions of this Act, to produce any accounts, evidence or documents or to furnish any information; or
 - (5) Knowingly produces incorrect accounts registers or documents or knowingly furnishes incorrect information; or
 - (6) Fraudulently or willfully evades the payment of any tax due under this Act, or conceals his liability to such tax; or
 - (7) fails to pay within the time allowed, any tax assessed or any penalty levied on him; or
 - (8) Fails or neglects to comply with any requirement made of him under the provisions of this Act; or
 - (9) Prevents or obstructs inspection or entry by any Officer acting under the provisions of this Act; or
 - (10) Prevents or obstructs any Officer in-charge of Check post or Barrier from making any entry or inspection of goods or intercepting detaining or searching any vehicles, boat or ship bearing taxable goods; or
 - (11) acts in contravention of any of the provisions of the Act; or rules made there under.

Shall on conviction before a Magistrate, and in addition to any tax or penalty or both that may be due from him be punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both and when the offence is a continuing one with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

False statement is declaration

29. Whoever makes a statement in a verification or declaration in connection with any proceedings under this Act which is false, and which he either knows or believes to be false, or does not believe to be true shall, on conviction before a Magistrate, be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees, or with both.

Cognizance of offence:

30. (1) No court shall take cognizance of any offence under this Act, or under the rules made there under 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.
- (2) Notwithstanding anything contained in the Codes of criminal Procedure, 1989 (Act V of 1989), all offenses punishable under this Act shall be cognizable.

Compounding of offenses:-

31. (1) Subject to such conditions as may be prescribed, the Commissioner may, either before or after institution of criminal proceedings under this Act, accept from the person who has committed or is reasonably suspected of having committed an offence under this Act or the rules made thereunder, by way of compounding of such offence.
- (a) Where the offence consists of the failure to pay, or the evasion of any tax recoverable under this Act, in addition to the tax so recoverable a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater; and

- (b) in any other case a sum of money not exceeding one thousand rupees in addition to the tax recoverable.
- (2) On payment of such sum as may be determined by the Commissioner under Sub-section (1), no further proceedings shall be taken against the person concerned in respect of the same offence.

Disclosure of Information by a Public Servant.

- 32. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any evidence given or affidavit or deposition made in the course of any proceedings under Act, other than proceedings before a Criminal Court in any record of any proceedings under this Act, shall, save as provided in sub-section (3) be treated as Confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any public servant to produce before it any such statement, return, accounts, documents, or record or any part of them or to give evidence before it in respect thereof.
- (2) If, save as provided in sub-section (3), a public servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.
- (3) Nothing in this section shall apply to the disclosure.
 - (a) of any of the particulars referred to in subsection (1) for the purpose of a prosecution under the Indian Penal Code, 1860, or the Prevention of Corruption Act, 1947 in respect of any such statement, return, accounts, documents or evidence or for the purpose of prosecution under this Act, or
 - (b) of such fact, to an Officer of the Central Government as may be necessary for the purpose of enabling that Government to levy or realize any tax imposed by it or,
 - (c) of such facts, to any Officer of this or any other State Government as may be necessary for the purpose of enabling such Officer to levy or impose any tax imposed by that Government.

Appeal:

- 33. (1) Any dealer aggrieved by an order passed under this Act by any person appointed under section 3 to assist the Commissioner, but not being an order passed under this section, may, within thirty days from the date of service or such order, appeal to a prescribed authority against such order.

Provided that no appeal against an order of assessment or penalty shall be entertained by the said authority unless he is satisfied that the amount of tax assessed or Penalty levied, if not otherwise directed by him has been paid.

Provided further that the authority before whom the appeal is filed may admit it after the expiration of thirty days, if such authority is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

- (2) Every appeal under sub-section (1) shall be presented in the prescribed form and shall be verified in the prescribed manner.
- (3) The appellate authority shall fix a day and place for hearing of the appeal and may, from time to time, adjourn the hearing and make, or cause to be made,

such further enquiry as may be deemed necessary.

- (4) In disposing of an appeal under sub-section (1) the appellate authority may,
 - (a) confirm reduce, enhance or annul the assessment; or
 - (b) set aside the assessment and direct a fresh assessment after such enquiry may be ordered; or
 - (c) Confirm, reduce or annul the order of penalty.

Revision by Commissioner

34. (1) The Commissioner may call for and examine the record of any proceedings under this act, and if he considers that any order passed there in by any person appointed under section 3 to assist him is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the dealer an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such orders thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing fresh assessment.

- (2) In the case of any order not being an order to which Sub- section (1) applies, passed by any person appointed under section 3 to assist him, the Commissioner may of his own motion, and in the case of an order passed under section 33 also on petition by a dealer for revision, call for the record of any proceeding under this Act in which order has been passed and may make such enquiry or cause such enquiry to be made and subject to the provision of this Act, may pass such order thereon, not being a order prejudicial to the dealer as he thinks fit.

Provided that the Commissioner may dispense with the enquiry required to be made under this sub-section if he, for reasons to be recorded in writing, considers such enquiry to be unnecessary.

- (3) In the case of a petition for revision under Subsection (2) by a dealer, the petition must be made within ninety days from that date on which the order in question was communicated to him or the date, on which he otherwise comes to know of it, whichever is earlier:

Provided that the Commissioner before whom the petition is filed may admit it after the expiration of period of ninety days if he is satisfied that for reasons beyond the control of the petitioner or for any other sufficient cause, it could not be filed within time.

- (4) The Commissioner shall not revise an order under this section.
 - (a) Where the order is pending on appeal under section 35 or
 - (b) Where an appeal against the order lies under section 35 and dealer has not waived his right of such appeal, on petition by a dealer under Sub-section 2.

Appeal to State Government:

35. (1) Any dealer aggrieved by an order passed in appeal under section 33 or passed in revision under Sub-Section (1) of section 34, may appeal to the State Government within sixty days from the date on with such order is communicated to him.
- (2) The State Government may admit an appeal **after** the expiration of the sixty days referred to in sub-section (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not he filed within time,
- (3) And appeal to the State Government shall be in the prescribed manner and

- shall be accompanied by a fee of twenty five rupees.
- (4) The State Government may, after giving a denier an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate such orders to the appellant and to the Commissioner.

Computation of the period of Limitation

36. In computing the period of limitation prescribed for an appeal or revision, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Rounding off tax, penalty:

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

Power to take evidence on Oath etc. :-

38. The Commissioner shall for the purpose of this Act have the same powers as are vested in with the Deputy Commissioner under rule for the Administration of Justice and Police in the Naga Hill District 1937 when trying a suit, in respect of the following matters
- (1) enforcing the attendance of any person and examining him on oath or affirmation;
 - (2) Compelling the production of documents;
 - (3) Issuing commissions for the examination of witnesses, and any such proceeding before the Commissioner shall he deemed to be “judicial proceeding” within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code 1860 (Act 45 of 1860).

Bar of proceeding:

39. No suit shall be brought in any Civil Court to set aside or modify any assessment made or order passed under the provisions of this Act, and no prosecution suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

Inspection and production of accounts and other document :

40. (1) All books of accounts, registers, vouchers and documents relating to the stock of goods of or Purchases, sales and deliveries of goods by any dealer, and all goods kept in any place of business or Warehouse of any dealer, shall, at all reasonable times, be open to inspection by the Commissioner or by any person appointed to assist the Commissioner under sub- section (I) of section 3 and the Commissioner or such person may take or cause to be taken such copies or extracts of the said books of accounts, register, vouchers or documents and such inventory of the goods founds as appear to him necessary for the purpose of this Act.
- (2) The Commissioner or any person appointed to assent him under sub-section (1) of section 3 may subject to such conditions as may be prescribed require any dealer or person.

- (a) to appear and produce before him such books of accounts registers or documents, or
- (b) to furnish such information relating to the stocks of goods, or purchases, sales or deliveries of goods by the dealer or any other information relating to his business as may be considered necessary for the purpose of this Act.

Power to search, seize and seal

41. (1) if the Commissioner or any person appointed to assist the Commissioner under sub-section (1) of section 3 authorized in this behalf, upon information received or otherwise, has reason to suspect that a dealer or person is attempting to evade payment of any tax under this Act or abating such evasion, he may, subject to such restrictions and conditions as may be prescribed and after recording his reason in writing for so doing -
- (a) enter and search any place of business, warehouse or any other place where he has reason to suspect that such dealer or person keeps or is for the time being keeping any accounts, registers, documents or records of his business or any stock of goods for sales or for use in the manufacture or packing of any goods for sale or any money or other valuable article relating to his business
 - (b) seize such accounts, registers, documents or vouchers as may be considered necessary for the purposes of determination of
 - (c) make an inventory of such goods, money or other valuable articles; or
 - (d) seal any room, warehouse, almirah, safe, box or container in which he has reason to suspect that the dealer keeps or is for the time being keeping any accounts, registers, voucher or documents of his business or any stock of goods for sale or for use in the manufacture of packing of any goods for sale or any money or other valuable articles relating to his business
- (2) Notwithstanding anything contained in sub-section (1) the Commissioner or the authorized Officer under sub-section (1) may either before entering and searching or in the course of search of any place of business for warehouse of any dealer or any other place as referred to in clause (a) of subsection (1), if he considers it necessary so to do break open such room warehouse, admirah, safe, box or container as is referred to in Clause (c) of Sub-section (1)
- (3) The Commissioner or the authorized officer under sub-section (1) may requisition the services of any Police Officer or any other Officer of the State Government or of both to assist him for all or any of the purposes specified in Sub-section (1) or Sub-section (2) and it shall be the duty of every such Officer to comply with such requisition
- (4) The Commissioner or the authorized officer under Sub-section (1) shall grant a receipt for any of the accounts registers, vouchers or documents seized by him under Sub-section (1) and retain them for such period as may be necessary for examination thereof or for prosecution or for any other purposes of this Act :-

Provided that:-

- (a) The Commissioner shall not retain any of the accounts, registers, documents or vouchers seized by him under sub-section (1) for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefore; and

- (b) the authorized officer under sub-section (1) or the assessing Officer shall not retain any of the account registers, documents or vouchers seized by him under Sub-section (1) for a period exceeding one year from the date of seizure unless he records his reasons for so doing in writing and obtain the sanction in writing of the Commissioner in that respect
- (5) Where any books of account, other documents, goods, money or other valuable articles or things are or is found in the possession of any person in the course of search, it may be presumed —
 - (i) that such books of account, other documents, goods, money or other valuable articles or thing relates or related to a business carried on by such person,
 - (ii) that the contents of such books of account and other documents are true, and
 - (iii) that the signature and every other part of such books of accounts or other documents which purport to be in the hand writing of any particular person or which may reasonably be assumed to have been signed by or to be in the handwriting of any particular person are in the handwriting of that person and, in the case of a document stamped and executed or attested by the person by whom it purports to have been so executed or attested.
- (6) Where any book of accounts other documents, goods, money or other valuable articles or things has or have been taken into custody by any Officer of authority under any other law for the time being in force and the Commissioner is of the opinion, that such books of accounts or other documents or the information relating to such goods, money or other valuable articles or things will be relevant for determining the liability to tax of any person, he may require such Officer or authority .
 - (i) to deliver to the assessing officer such books of account other documents forthwith or
 - (ii) to furnish to the assessing officer certified copies of the whole of or extracts of such books of account or documents or certified inventories of such goods, money or other valuable articles or things and thereupon such books of accounts or other documents or the information relating to such goods, money or other valuable articles or things shall he considered to have been obtained in the course of search of made by the Commissioner or the authorized Officer, as the case may be, and the provisions of this Act shall, so far as may be, apply accordingly.
- (7) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, so far as may, be to search and seizure under this section.
- (8) Restrictions on the movement of goods:

No, person shall transport or authorize the transport from any other place whether of a similar nature or otherwise notified in this behalf by the State Government any consignment of such goods as may be specified by the State Government from time to time by notification in the official Gazette exceeding such quantities and excepts in accordance with such conditions as may he specified in such notification with a view to ensuring that there is no evasion of any tax payable under this Act.
- (9) Maintenance of accounts and other documents:
 - (1) Every dealer liable to pay tax under this Act shall keep at his place of business a true account of the value and quantity of goods purchased or

dispatched by him or held in stock and, if the Commissioner considers that such account is not sufficiently clear and intelligible to enable him to make a proper determination of such dealer's liability to tax, he may require such dealer by notice in writing to keep such account (including the records of purchases, dispatches, sales and stocks) as may be specified therein.

- (2) The State Government may, by rules framed in this behalf direct any class of dealers generally to keep such accounts (including records of purchases sales and stock) in such manner and such form and subject to such conditions and restrictions as may be specified in such Rules.
 - (3) If a registered dealer
 - (a) sell goods to another registered dealer, or
 - (b) makes sales in the course of inter-State trade or commerce, or
 - (c) sells any goods in any one transaction exceeding in value such amount as may be prescribed in respect of any class or classes of goods or class or classes of dealers he shall, if the value of the goods sold in any one transaction exceeds the prescribed amount issue to the purchase a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent and showing there in his name and address and such other particulars as may be prescribed and he shall keep a duplicate or copy of such bill or cash memorandum signed and dated.
- (10) Preservation of Accounts, Documents, etc.
All books of accounts, documents referred to in sub-section (9) or other documents as may be prescribed by rules in relation to circumstances, conditions and restrictions subject to which a dealer shall have to furnish documentary evidence by way of a declaration in a prescribed form obtained in the prescribed manner or otherwise shall be preserved by the dealer for a period of not less than eight years from the end of the year to which they relate.

Power to inspect goods delivered to a carrier or bailee:

42. Where goods are delivered to a carrier or a bailee for transmission, the movement of goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee where before delivery is taken from him a carrier or bailee to whom goods are delivered for transmission, keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building or place. any officer empowered by the State Government in this behalf shall have power to enter into and search such office shop, godown vessel, or other place of business or building or place and to examine the goods and inspect all records relating to such good. The carrier or bailee or the person in charge of the goods and record shall give his facilities for such examination or inspection and shall, if so required reduce the bill of sale or delivery note or such other documents as may be prescribed regarding the goods and give his name and address of the carrier or the bailee and the consignee.

Erection of Check-post and Inspector of Goods while in transit.

43. (1) If the State Government considers that with a view to preventing or checking evasion of tax-under the Act in any place or places in the State, it is

necessary so to do, they may by notification, direct setting up of a Check-post or the erection of a barrier or both, at such place or places as may be notified.

- (2) At every Check-post or Barrier mentioned in Sub-Section (1) or at any other place when so required by any officer empowered by the State Government in this behalf, the driver or any other person in-charge of any goods vehicle shall stop the goods vehicle and keep it stationary as long as may be necessary, and allow the officer in-charge of the check-post or barrier or the officer empowered to examine the contents, in the goods vehicle and inspect all documents resting to the goods carried which are in the possession of such driver or other person in-charge for the purpose of ascertaining whether there has been any sale or purchase of the goods carried, and in case there was sale or purchase of the goods carried, whether such sale or purchase is liable to tax under this Act, and if so —
 - (a) Whether such tax has been paid: or
 - (b) Whether the sale or purchase of the goods carried has, for the purpose of the payment of tax under this Act, been properly accounted for in the documents referred to in sub-section (5)
- (3) If, on such examination and inspection, it appears,
 - (a)
 - (i) that the tax, if any, payable under this Act, in respect of the sale or purchase of the goods carried, has been paid, or
 - (ii) that the sale or purchase of the goods has, for the purpose of payment of tax under this Act, been properly accounted for in the documents referred to in sub-section (5) and declarations given was correct and complete to the satisfaction of the check gate Officer the said Officer shall release the goods vehicle with the goods carried, or
 - (b)
 - (i) that the tax if any, payable under this Act, in respect of the sale or purchase of the goods carried, has not been paid, or
 - (ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, has not been properly accounted for in the documents referred to in sub-section (5) or not correct and complete declaration is given in respect of goods carried and if the said officer is satisfied after making such enquiry as he deemed, to prevent the evasion of tax payable in respect of the sale or purchase of goods carried, it necessary to detain the goods, he shall detain the goods and direct the driver, or any other person in-charge of the goods vehicle, or the consignor or the consignee to pay such tax, or to furnish adequate security in such form and in such manner and to such authority as prescribed by the State Government in the rules.
- (4) if the tax is paid or the security is furnished then the goods so detained shall be released forthwith with a certificate of payment of tax.
- (5) The documents referred to in sub-section (2) and (3) are bills of sale, or delivery notes, or such other documents as may be prescribed.
- (6) The driver or any other person in-charge of goods vehicle shall wherever required give his name and address and the name address of the owner of the goods vehicle as well as those of the consignor and the consignee of the goods.
- (7) The driver of the goods vehicle shall on demand by the said Officer produce for inspection his driver's license and all necessary documents.
- (8)
 - (a) If the tax directed to be paid or the security directed to be furnished

under sub-section (3) Is not paid or furnished , or

- (b) If it appears to the Officer that the driver or the person in-charge of the goods vehicle is not giving the correct name address of the owner of the goods vehicle or of consignor or of consignee or the goods and if the officer is satisfied after making such enquiry as he deems fit to prevent the evasion of tax payable in respect of the or purchase of the goods carried , it is necessary to detain the goods he shall detain the goods either in the Check post or near by as long as required and shall ascertain the correct name and address of the owner of the goods vehicle or the consignor or the consignee of the goods.

Provided that no such goods shall be detained by the Officer of the Check Gate for more than forty eight hours except with the permission of the next higher authority.

- (c) The said Officer may, in his discretion, permit the driver or other person in-charge of the goods vehicle to take the goods detained under sub-section (8) subject to an undertaking given by the owner of the goods or his representative duly authorize on this behalf.
- (i) that the goods shall be kept in the Office, godown or other place within the state belonging to the owner of the goods vehicle and in the custody of such owner, and
- (ii) that the goods shall not be delivered to the consignor, consignee or any other person without the orders of the said officer, and for this purpose the driver or any other person in- charge of the goods vehicle shall furnish any authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.
- (9) in case the goods are likely to speedy and natural decay and in case of other goods where no claim is made within the prescribed period, the said Officer shall, subject to such condition as may be prescribed, sell such goods in open auction and remit the sale proceeds thereof in a Government Treasury,

Provided that before affecting the sale the said Officer shall obtain the permission of the next high or authority in writing.

- (10) Any person entitled to such proceeds shall, on application to the prescribed authority and with sufficient proof be paid the sale proceeds mentioned in sub-section (10) after deducting the expenses of the sale and other incidental charges and the amount of sales tax due under this Act in respect of the sale or purchase of the goods in question.

Explanation. For the purpose of this section and section 44 “goods vehicle” includes a motor vehicle vessel, an load carried by a person, animal and any other form of conveyance.

Explanation ‘II’ for the purpose of this section the expression “said Officer” shall mean the Officer in-charge of the Check post or Barrier or the Officer empowered under sub-section (2).

Maintenance, etc., of records by goods vehicle.

44. The owner or other person in charge of goods vehicle shall carry with him
- (i) Bill of sale or delivery note or such other documents as may be prescribed, and
- Log Book or as the case may be goods vehicle record or trip sheet relating to the goods under transport containing such particulars as may be prescribed and shall submit to such Officer as may be prescribed the document aforesaid or copies thereof within such time as may be prescribed.

Furnishing Information Regarding Change in the business if any dealer liable to pay tax :-

45. (a) sells or otherwise disposes of his business or an:
part of his business or effects or comes to know of any other changes in the ownership of the business
or
- (b) transfers his business by way of lease, or
- (c) discontinues his business or changes his place of business or the location of his warehouse or open a new place of business or warehouse or,
- (d) change the name or nature of his business or effects any change in the case to classes of good in which he carries on his business and which in the case of a registered dealer is or are specified in his Certificate of registration, or
- (e) succeeds to any business by bequeath, inheritance otherwise, or
- (f) being a company, firm carrying in business with registration under company laws makes any change in its constitution or the constitution of its Boards, of Directors, he or it shall, within the prescribed time and in the prescribed manner, inform such authority as may be specified in the rules, his legal representative shall in like manner inform the said authority.

Information Regarding Officers Responsible for the Affairs of Business.

46. Every registered dealer shall in the prescribed manner and within the prescribed time, send to such authority as may be specified in the rules, a declaration in the prescribed manner and form stating the names of the principal officer manager and of all officers of other designating who are responsible for ensuring compliance with the provisions of this Act for and or behalf of such dealer.

Transfer of Business:

47. (1) where the business of a dealer registered under the Act, transfers his businesses by sale, gift request. inheritance or otherwise or is transferred by way of case and the transferee or the lessee carries or is such business, either in its old name or in some other name, the transferee or the lessee shall for all purposes of this Act, (except for liabilities under this Act already discharged, by such dealer) he deemed to be and to have always been registered (in the case of lease for so long as the lease subsists) as if the certificate of registration of such dealer and initially be granted to the transferee or the lease and the transferee or the lessee shall be entitled to apply within 30 days for the amendment of the certificate of registration accordingly.
- (2) Where the business of a dealer not registered under this Act is transferred but any of the mode registered to in sub-section (1) the transferee or lessee as the case may be whether he is a registered dealer or not, shall be liable to pay any tax interest, penalty or other sum payable by the transferor which remains unpaid as the date of such transfer (except liabilities under this Act already discharged by the transferor) and the provisions of this Act may, as possible apply accordingly.
- (3) In a case to which the provisions of sub-section (1) section (2) apply, the transferor shall also jointly and severally, be liable to pay tax interest, penalty or other sum if any, payable for the period upto the date of such transfer whether such tax interest, penalty or other sum has been assessed before or after such transfer.

Legal Representative of Deceased Person.

48. (1) When a dealer or person dies, his legal representative shall be liable to pay any tax interest, penalty or other sum which the deceased would have been liable to pay if he had not died, in like manner and to the same extent as the deceased and all the provisions of this Act shall, so far as shall apply as if such legal representative were a dealer or person liable to pay tax under this Act
- (2) For the purpose of sub-section (1)
- (a) any proceeding initiated against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased; and
- (b) any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representatives
- (3) Every legal representative shall be personally liable for any tax, interest, penalty or other sum payable by him in his capacity as legal representative if while his liability for tax remains undercharged he creates a charge on or disposes of or parts with any assets of the estate of the deceased which are in or may come into his possession but such liability shall be limited so the value of the assets so charged, disposed of, or parted.
- (4) The liability of a legal representative under this section shall be limited to the extent to which the estate is capable of meeting the liability.

Explanation:-

In this section, legal representative has the meaning assigned to it in clause (11) of section 23 of the Code of Civil Procedure, 1908 (Act 5 of 1908) and includes an executor, administrator or other person administering the estate of a deceased person.

Assessment after partition of Hindu Undivided Family Disruption or Dissolution of a firm or an Association of Person:

49. Where a dealer is a Hindu undivided family, firm or association of persons, and such family, firm or association is partitioned or dissolved, as the case may be-
- (a) the tax, interest, penalty or any other sum payable under this Act by such family, firm or association of persons for the period up to the date of such death, partition, disruption or dissolution shall be assessed or imposed as if no partition, disruption or dissolution had taken place, and all the provisions of this Act shall apply accordingly, and
- (b) every person who was at the time of such partition, disruption or dissolution a member or partner of Hindu undivided family, association or person or firm and the legal representatives of any such person who is deceased shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment of the tax, interest, penalty or other sum payable under this Act by such family, firm or association or persons for the period up to the date of such tax or the levy of such interest, penalty or other sum is made prior to or after such death, partition, disruption or dissolution.

Company in Liquidation

50. (1) Subject to the provisions of any other law for the time being in force, every person:
- (a) Who is the liquidator of any company which is being wound up whether under the orders of Court or otherwise, or

- (b) who has been appointed the receiver of any assets of a company hereinafter referred to as the liquidator, shall within thirty days after he has become such liquidator give notice of his appointment as such to the Commissioner.
- (2) The Commissioner shall, after making such inquiries or calling for such information as he may deemed fit notify to the liquidator within three months from the date on which he received notice of the appointment of the liquidator the amount which, in the opinion of the Commissioner, would be sufficient to provide for any tax which is due or is likely thereafter to become due and payable by the company.
- (3) The liquidator:
 - (a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until notified by the Commissioner under sub-section (2), and
 - (b) on being so notified, shall set aside an amount equal to the amount notified and, until he has set aside such amount, shall not part with any of the assets of the company or the properties in his hands.

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for there purpose of payment to secure creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation on for meeting reasonable costs ands expenses of the winding up of the company.

- (4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or part with any of the assets of the company of the properties in his hands in contravention of the provisions of that sub-section he shall he personally liable for the payment of the tax which the company would be liable to pay.

Service of notice:-

- 51. (1) Any notice which is issued under the provisions of the Act or the rules or which is required to be issued for carrying out the purposes of the Act may be served on a dealer or a person by any of the following methods namely-
 - (i) personally upon the address, if present.
 - (ii) by messenger, and
 - (iii) by registered post

Provided that the authority issuing the notice is satisfied that an attempt has been made to serve a notice by any of the above mentioned methods and the dealers, is avoiding service or that for any other reason the notice cannot be serve by any of the above methods the said authority may, after recording his reasons for so doing, care such notice to he served by affixing a copy in some conspicuous place in his office and also upon some conspicuous part of he last notified place of business of the dealer or person, and a notice so served shall he deemed to have been duly served.

- (2) When a notice is sent by registered port, it shall be deemed to have been received by the address at the expiry of period normally taken by a registered letter in transit unless contrary is proved.
- (3) Where a Hindu undivided family has been partitioned, any notice under this Act in respect of the business of the Hindu undivided family shall be served on the person who was the last manager of the Hindu undivided family or, if such person is dead, then on any adult member who was a member of the

- Hindu undivided family immediately before the partition.
- (4) Where a firm or other association of persons is dissolved, notices under this Act in respect of the business of the firm or association may be served on any person who was a partner of the firm or member of the association, as the case may be immediately before its dissolution.

Appearance by authorized representative;

52. (1) A dealer or person who is entitled or required to appear before an authority in connection with any proceeding under this Act otherwise than when required under section 38 to attend personally for examination on oath or affirmation, may attend by an authorized representative.
- (2) For the purpose of this section “authorized representative “ means a person authorized in writing by such dealer or person to appear on his behalf, being:-
- (a) a relative or a person regularly employed by him; or
 - (b) a legal practitioner, who is entitled to practice in any civil court in India; or
 - (c) an Accountant; or
 - (d) a person who has acquired such educational qualification as may be prescribed and has been registered by the Commissioner as a tax practitioner in the prescribed manner.

Explanation

In this connection “accountant” means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Act 38 of 1949) or Cost and works Accountants Act, 1959 and includes a person who by virtue of the provisions of sub-section (2) of section 126 of the Companies Act,

Entitled to be appointed to act, as auditor of companies registered in the State

- (3) No person –
- (a) Who has been dismissed or removed from Government service; or
 - (b) Who has been convicted for an offence connected with any proceeding under this Act, or under any earlier law or under the Income Tax Act, 1961; or
 - (c) who being a tax practitioner registered under clause (d) of sub-section (1) is found by the Commissioner, after an enquiry conducted in the prescribed manner, guilty of misconduct in connection with any proceeding under this Act, or under an earlier law; or
 - (d) who has become an insolvent shall he qualified under sub-section (1) to represent a dealer or a person for a period of five years from the date, of dismissal, removal, conviction or order adjudging a person guilty of misconduct or an insolvent as the case may be.
- (4) No order of disqualification shall be made by the commissioner in respect of a person under clause (c) of sub-section (2) unless he is given a reasonable opportunity of being heard.

Return etc. not to be invalid on certain grounds:

53. No, return, statement, assessment, notice summons or other proceedings furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any other provision of this Act, shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or commission in such returns, assessment, notice summons or other proceeding is substance and effect in conformity with or according to the intent and purpose of

this Act.

Delegation of Commissioner's Power:

54. Subject to such restrictions and conditions as may be prescribed, the Commissioner may by notification in the official gazette delegate any of his powers under this Act, except section 30 to a person appointed under section 3 to assist him.

Power to Make Rules:

55. (1) The State Government may make rules for carrying out the purpose of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,
- (i) all matters expressly required or allowed by this Act, to be prescribed,
 - (ii) such other matters which, in the opinion of the State Government, required to be regulated by rules, for the prevention of evasion of tax or for regulating the efficient, levy and collection of any tax interest, penalty or other sum payable under this Act.

Laying of Rules Before State Legislature:

56. (1) The State Government shall cause every rule made under section 55 to be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session for a total period of seven days which may comprise in one or more sessions, and if before the expiry of the session in which it is so laid or the session immediately following the Nagaland Legislative Assembly agrees in making any modification in the rule or the Nagaland Legislative Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule power to remove difficulties:
- (i) If any difficulty arises in giving effect to the provisions of this Act, the State Government may by notification published in the Official Gazette, as occasion may require, make such order, not inconsistent with the provisions of this Act, as may be considered necessary, or expedient for the purpose of removing that difficulty;
- (2) Any order made under sub-section (1) shall be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session for a total period of seven days which may comprise in one or more sessions, and if before the expiry of the session in which it is so laid or the session immediately following the Nagaland Legislative Assembly agrees in making any modification of the order or the Nagaland Legislative Assembly agrees that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

SCHEDULE

Sl. No.	Description of goods	Rate of tax
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[See section 2 (20) and 4(1)]

1.	Timber (converted or unconverted excluding firewood)	25 percent
2.	Sand, stones, thatch, canes	20 percent
3.	Agar, Dalchini and cloves	6 percent
4.	Bamboo	6 percent
5.	Raw hides and skins	6 percent
6.	Bones of animals, birds, reptiles and fishes	6 percent
