

## The Delhi Value Added Tax Act, 2004

Act 3 of 2005

### Keyword(s):

Business, Capital Goods, Casual Trader, Dealer, Declared Goods, Input Tax, Input Tax Credit, Interest Due, Manufacture, Output Tax, Purchase, Reverse Tax, Sale Price, Tax Invoice, Taxable Turnover, Turnover, Value Added Tax, Vehicle, Vessel

Amendments appended: 5 of 2005, 10 of 2005, 1 of 2010, 5 of 2013

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## Delhi Value Added Act , 2004

(Delhi Act 3 of 2005)

As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 22nd December 2004 and received the assent of the President of India on 15th February 2005

The Act has come into force with effect from 1st April 2005 vide Notification No. F.101(318)/2005-Fin.(A/Cs)(i)/8581, dated 30th March 2005

As amended by Delhi Value Added Tax (Amendment) Act, 2005 (1 of 2005) which came into effect from 1st April 2005 vide Notification No. No . F.101(318)/2005-Fin.(A/Cs)(ii)/8592, dated 30th March 2005 and subsequent amendments

## Delhi Value Added Act , 2004

An Act

to consolidate and amend the law relating to levy of tax on sale of goods, tax on transfer of property involved in execution of works contracts, tax on transfer of right to use goods and tax on entry of motor vehicles by way of introducing a value added tax regime in the local areas of the National Capital Territory of Delhi.

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty-fifth Year of the Republic of India as follows:-

### Chapter I

#### Preliminary

##### 1. Short title, extent and commencement

- a. This Act may be called the Delhi Value Added Tax Act, 2004.
- b. It extends to the whole of the National Capital Territory of Delhi.
- c. It shall come into force on such date as the Government may, by notification in the official Gazette, appoint:

PROVIDED that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

##### 2. Definitions

###### 1. In this Act, unless the context otherwise requires, -

- a. accountant means
  - aa. a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (Act 38 of 1949);

- ab. a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered; or
  - ac. a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or]
  - ad. a person referred to in section 619 of the Companies Act, 1956 (1 of 1956);
  - b. adequate proof means such documents, testimony or other evidence as may be prescribed;
  - c. Appellate Tribunal means the Appellate Tribunal constituted under section 73 of this Act;
  - d. business includes -
    - da. the provision of any services, but excluding the services provided by an employee;]
    - db. any trade, commerce or manufacture;
    - dc. any adventure or concern in the nature of trade, commerce or manufacture;
    - dd. any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and
    - de. any occasional transaction in the nature of such service, trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;  
  
whether or not such service, 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 service, trade, commerce, manufacture, adventure or concern;
- Explanation.- For the purpose of this clause
- df. i. any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be business;
  - ii. purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which are credited to the business shall be deemed to be business;
- e. business premises means -
  - i. the address of a dealer, registered with the Commissioner; and
  - ii. any building or place used by a person for the conduct of his business, except for those parts of the building or place used principally as a residence;
- f. capital goods means plant, machinery and equipment used, directly or

indirectly, in the process of trade or manufacturing or for execution of works contract in Delhi;

- g. casual trader means a person who, whether as principal, agent or in any other capacity undertakes occasional transactions in the nature of business involving buying, selling, supply or distribution of goods or conducting any exhibition-cum-sale in Delhi whether for cash, deferred payment, commission, remuneration or other valuable consideration;
- h. Commissioner means the Commissioner of Value Added Tax appointed under sub-section (1) of section 66 of this Act;
- i. in the course of includes activities done for the purposes of, in connection with, or incidental to and activities done as part of the preparation for the activity and in the termination of, the activity;
- j. dealer means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business, buys or sells goods in Delhi directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes, -
  - ja. a factor, commission agent, broker, del credere agent or any other mercantile agent by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not ;
  - jb. a non-resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business;
  - jc. a club, association, society, trust, or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;
  - jd. an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
  - je. a casual trader ;
  - jf. any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation.- For the purposes of this clause, each of the following

persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

- a. Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);
- b. Departments of Union Government, State Governments and Union territory Administrations;
- c. Local authorities, Panchayats, Municipalities, Development Authorities, Cantonment Boards;
- d. Public Charitable Trusts;
- e. Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;
- f. Incorporated or unincorporated societies, clubs or other associations of persons;
- g. Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;
- hg. Delhi Transport Corporation;
- jh. Shipping and construction companies, air transport companies, airlines and advertising agencies.
- ji. Delhi means the National Capital Territory of Delhi;
- jj. fair market value means the value at which goods of like kind and quality are sold or would be sold in the same quantities between unrelated parties in the open market in Delhi;
- jk. goods means every kind of moveable property (other than newspapers, actionable claims, stocks, shares and securities) and includes -
  - a. livestock, all materials, commodities, grass or things attached to or forming part of the earth which are agreed to be severed before sale or under a contract of sale; and
  - b. property in goods (whether as goods or in some other form) involved in the execution of a works contract, lease or hire-purchase or those to be used in the fitting out, improvement or repair of movable property;
- k. goods vehicle means a motor vehicle, vessel, boat, animal and any other form of conveyance used for carrying goods;
- l. Government means the Lieutenant Governor of the National Capital

Territory of Delhi appointed by the President under article 239 and designated as such under article 239AA of the Constitution;

- m. import of goods into Delhi means taking, receiving, bringing, carrying, transporting, or causing to bring or receive goods into Delhi from any place outside Delhi;

Explanation.- In the case of goods arriving in Delhi from a foreign country through Customs, the import of the goods in Delhi occurs at the place where the goods are cleared by Customs for home consumption;

- n. importer means -
- na. a person who brings his own goods into Delhi; or
  - nb. a person on whose behalf another person brings goods into Delhi; or
  - nc. in the case of a sale occurring in the circumstances referred to in sub-section 2 of section 6 of the Central Sales Tax Act, 1956 (74 of 1956), the person in Delhi to whom the goods are delivered;
- o. input tax in relation to the purchase of goods, means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under this Act;
- oa. manufacture with its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;
- p. net tax means the amount calculated for a tax period under section 11 of this Act;
- q. non-creditable goods means the goods listed in the Seventh Schedule;
- r. non-resident means a person who has no fixed place of business or residence in Delhi;
- s. notified means notified by the Commissioner in the official Gazette;
- t. official Gazette means the Delhi Gazette;
- u. prescribed means prescribed by rules made under this Act;
- v. registered dealer means a dealer registered under this Act;
- va. a person is related to another person (referred to in this definition as a dealer) if the person -
    - i. is a relative of the dealer;
    - ii. is a partnership of which the dealer is a partner;
    - iii. is a company in which the dealer (either alone or in conjunction with another person who is, or persons who are, related to the dealer under another sub-clause of this clause) directly or indirectly holds forty per cent or more of outstanding voting

- stock or shares;
- iv. is a person who (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) directly or indirectly owns forty per cent or more of outstanding voting stock or shares of the dealer;
  - v. is a company in which forty per cent or more of outstanding voting stock is held directly or indirectly by a person (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) who also holds forty per cent or more of the outstanding voting stock or shares of the dealer; or
  - vi. is controlled by the dealer, a person whom the dealer controls, or is a person who is controlled by the same person who controls the dealer;
- vb. relative means a relative as defined in clause 41 of section 2 of the Companies Act, 1956 (1 of 1956);
- vc. sale with its grammatical variations and cognate expression means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable consideration (not including a grant or subvention payment made by one government agency or department, whether of the central government or of any state government, to another) and includes-
- i. a transfer of goods on hire purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;
  - ii. supply of goods by a society (including a co-operative society), club, firm, or any association to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration, whether or not in the course of business;
  - iii. transfer of property in goods by an auctioneer referred to in sub-clause (vii) of clause (j) of this section, or sale of goods in the course of any other activity in the nature of banking, insurance who in the course of their main activity also sell goods repossessed or re-claimed;
  - iv. transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
  - v. transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
  - vi. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

- vii. 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;
- viii. every disposal of goods referred to in sub-clause (ix) of clause (j) of this section and the words sell, buy and purchase wherever appearing with all their grammatical variations and cognate expressions, shall be construed accordingly;
- vd. sale price means the amount paid or payable as valuable consideration for any sale, including-
  - a. the amount of tax, if any, for which the dealer is liable under section 3 of this Act;
  - b. in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;
  - c. in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;
  - d. any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;
  - e. amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and
  - f. amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;
  - g. in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract;

less -

- a. any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;
- b. the cost of freight or delivery or the cost of installation in

cases where such cost is separately charged;

and the words purchase price with all their grammatical variations and cognate expressions, shall be construed accordingly;

[7][Provided that an amount equal to the increase in the prices of petrol and diesel (including the duties and levies charged thereon by the Central Government) taking effect from the 6th June, 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of the promulgation of this Ordinance till such date as the Government may, by notification in the official Gazette, direct:

Provided further that the first proviso shall not take effect till the benefit is passed on to the consumers.]

Explanation.- A dealers sale price always includes the tax payable by it on making the sale, if any;

- h. Schedule means a Schedule appended to this Act;
- i. tax means tax payable under this Act;
- j. taxable quantum means the amount defined in sub-section (2) of section 18 of this Act;
- k. tax invoice means the document defined in section 50 of this Act;
- l. tax period means the period prescribed in the rules made under this Act;
- m. tax fraction means the fraction calculated in accordance with formula,

$$r / (r+100)$$

where r is the percentage rate of tax applicable to the sale under this Act;

- n. transporter means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, and includes any person whose business consists of or includes operating a railway, shipping company, air cargo terminal, inland container depot, container freight station, courier service or airline;
- o. turnover of purchases means the aggregate of the amounts of purchase price paid or payable by a person in any tax period, including any input tax;

- p. turnover means the aggregate of the amounts of sale price received or receivable by the person in any tax period, reduced by any tax for which the person is liable under section 3 of this Act;
  - q. value of goods means the fair market value of the goods at that time including insurance charges, excise duties, countervailing duties, tax paid or payable under the Central Sales Tax Act, 1956 (74 of 1956) in respect of the sale, transport charges, freight charges and all other charges incidental to the transaction of the goods;
  - r. works contract includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;
  - l. year means the financial year from the first day of April to the last day of March;
2. Unless otherwise specified in this Act-
- za. words importing the masculine gender shall include the feminine gender;
  - zb. words in singular shall include their plural and vice versa;
  - zc. expressions referring to writing shall include printing, typing, lithography, photography and other methods of representing or reproducing words in a visible form; and
  - zd. with reference to a person who is unable to sign his name, the words signature shall include his thumb impression or other mark duly attested to signify his signature.

## Chapter II

### Imposition of Tax

#### 3. Imposition of tax

1. Subject to other provisions of this Act, every dealer who is
  - a. registered under this Act; or
  - b. required to be registered under this Act;  
shall be liable to pay tax calculated in accordance with this Act, at the time and in the manner provided in this Act.
2. Every dealer shall be liable to pay tax at the rates specified in section 4 of this Act on every sale of goods effected by him
  - a. while he is a registered dealer under this Act; or
  - b. on and from the day on which he was required to be registered under this

Act.

3. The amount of tax payable under this Act by a dealer, is the dealers net tax for the tax period calculated under section 11 of this Act.

the net tax of a dealer shall be paid within twenty-eight days of the conclusion of the dealers tax period:

- PROVIDED that the Commissioner may, by an order, prescribe that irrespective of the tax period of a dealer or class of dealers, the net tax of a
4. dealer or a class of dealers shall be paid within 28 days of the conclusion of a period shorter than the tax period that may be specified in the order.

Explanation.- The obligation to pay the tax arises by virtue of this provision and is not dependent on furnishing a return, nor on the issue of a notice of assessment to the dealer.

5. Tax shall be paid in the manner specified in section 36 of this Act.

Every dealer who has become liable to pay tax under this Act on the sale of goods shall continue to be so liable unless his taxable turnover during the preceding twelve months (and such further period as may be prescribed) has remained below the taxable quantum and on the expiry of the twelve months or such further period his liability to pay tax shall cease:

6. PROVIDED that any dealer whose liability to pay tax under this Act ceases for any other reason may apply earlier for the cancellation of his registration, and on such cancellation, his liability to pay tax shall cease:

PROVIDED FURTHER that a dealer shall remain liable to pay tax until the date on which his registration is cancelled.

- Every dealer whose liability to pay tax under this Act has ceased or whose registration has been cancelled, shall, if his turnover calculated from the commencement of any year, including the year in which the registration has
7. been cancelled, again exceeds the taxable quantum on any day within such year be liable to pay such tax on and from the date on which his turnover again exceeds the taxable quantum, on all sales effected by him on and after that day.

- Where it is found that any person registered as a dealer ought not to have been so registered, then notwithstanding anything contained in this Act, such
8. person shall be liable to pay tax for the period during which he was registered.

- If any person who transports goods or holds goods in custody for delivery to or on behalf of any person, on being required by the Commissioner so to do,
9. fails

- a. to furnish any information in his possession in respect of the goods; or
  - b. fails to permit inspection thereof;
- then without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of

which he has failed to furnish information or permit inspection, are owned by him and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly.

10. If any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails
- a. to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or
  - b. to ensure that all the participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or
  - c. to permit inspection of the business premises or goods or account and records of the participants; or  
to permit inspection of the accounts and records of the organizer in respect of the exhibition-cum-sale;
  - d. then, without prejudice to any other action which may be taken against such participant, a presumption may be raised that the goods of the participant who fails to obtain registration under this Act or the goods in respect of which the participant has failed to furnish information or failed to permit inspection, are owned by the organizer and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly.

11. Rates of tax

1. The rates of tax payable on the taxable turnover of a dealer shall be-
  - a. in respect of goods specified in the Second Schedule, at the rate of one paise in the rupee;
  - b. in respect of goods specified in the Third Schedule, at the rate of four paise in the rupee;
  - c. in respect of goods specified in the Fourth Schedule, at the rate of twenty paise in the rupee; [12][\*\*\*]
  - d. in respect of the goods involved in the execution of the works contract, at the rate of twelve and a half paise in the rupee; and
  - e. PROVIDED that tax shall be paid at the rate of four paise in the rupee of the turnover of the dealer pertaining to declared goods, as defined from time to time in the Central Sales Tax Act, 1956 (74 of 1956), involved in the execution of works contract if such goods are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor:

PROVIDED FURTHER that in respect of the works contracts which are in the nature of printing works, the rate of tax shall be four paise in the rupee.

- f. in the case of any other goods, at the rate of twelve and a half paise in the rupee:

PROVIDED that the rate of tax on packing materials or containers shall be the same as the rate at which the goods sold are chargeable to tax.

The Government may, if it deems necessary, reduce the rates of tax as  
2. specified in sub-section (1), by a notification to that effect in the official Gazette.

#### 5. Taxable turnover

1. For the purposes of this Act, taxable turnover means that part of dealers turnover arising during the tax period which remains after deducting therefrom -
  - a. the turnover of sales not subject to tax under section 7 of this Act; and
  - b. the turnover of sales of goods declared exempt under section 6 of this Act.
2. In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed:

PROVIDED that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.

#### 6. Sale exempt from tax

- a. The sale of goods listed in the First Schedule shall be exempt from tax subject to the conditions and exceptions set out therein.
- b. The dealers or class of dealers specified in the Fifth Schedule shall be exempt from payment of tax on all sales of goods effected by them subject to such conditions as may be prescribed.
- c. Where a dealer sells capital goods which he has used since the time of purchase exclusively for purposes other than making non-taxed sale of goods, and has not claimed a tax credit in respect of such capital goods under section 9, the sale of such capital goods shall be exempt from tax.

#### 7. Certain sales not liable to tax

Nothing contained in this Act or the rules made thereunder shall be deemed to

impose or authorise the imposition of tax on any sale of goods when such sale takes place -

- a. in the course of inter-state trade or commerce; or
- b. outside Delhi; or
- c. in the course of import of the goods into or export of the goods out of, the territory of India.

Explanation. - Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale takes place in the manner indicated in clause (a), clause (b) or clause (c) of this section.

- d. in accordance with the notification issued by the Central Government in exercise of its powers under section 3 of the Foreign Aircraft (Exemption from Taxes and Duties on Fuel) Act, 2002 (36 of 2002), no tax shall be levied on sales of the fuel and lubricants which are filled into receptacles forming part of any aircraft registered in a country other than India, if-
  - i. the said country is a party to the Convention on International and Civil Aviation, 1944; and
  - ii. the said country has entered into an Air Services agreement with India; and
  - iii. the aircraft is operating on a scheduled or non-scheduled service to or from India.

## 8. Adjustments to tax

1. Subject to such conditions as may be prescribed, this section shall apply where, in relation to the sale of goods by any dealer
  - a. that sale has been cancelled;
  - b. the nature of that sale has been fundamentally varied or altered;
  - c. the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason;
  - d. the goods or part of the goods sold have been returned to the dealer within six months of the date of sale; or
  - e. the whole or part of the price owed by the buyer for the purchase of the goods has been written-off by the dealer as a bad debt; and the dealer has
    - a. provided a tax invoice in relation to that sale and the amount shown therein as tax charged on that sale is not the tax properly chargeable on that sale; or
    - b. furnished a return in relation to a tax period in respect of which tax on that sale is attributable, and has accounted for an amount of tax on that sale that is not the amount properly chargeable on that sale.
2. Where a dealer has accounted for an incorrect amount of tax as contemplated in sub-section (1), that dealer shall make an adjustment in

calculating the tax payable by that dealer in the return for the tax period during which it has become apparent that the tax is incorrect, and if

- a. the tax payable in relation to that sale exceeds the tax actually accounted for by the dealer, the amount of that excess shall be deemed to arise in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period; or
  - b. the tax actually accounted for exceeds the tax payable in relation to the sale, the amount of that deficiency shall be subtracted from the tax payable by the dealer in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period.
3. Where a dealer sells goods that have been used in part for making -
- a. sales that are subject to tax under this Act or sales that are not liable to tax under section 7; and
  - b. partly for other purposes,

the amount of tax on the sale of the goods shall be the greater of -

(i)  $A (A \times B / C)$ ; or

(ii)  $A B$ ;

where

A = the tax for which the dealer would be liable in respect of the sale apart from this section;

B = the amount by which the tax credit of the dealer in respect of the goods was reduced under sub-section (4) of section 9 of this Act;

C = the amount of the tax credit before reduction under sub-section (4) of section 9 of this Act.

## 9. Tax credit

1. Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making
  - a. sales which are liable to tax under section 3 of this Act; or sales which are not liable to tax under section 7 of this Act.
  - b. Explanation.- Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.

2. No tax credit shall be allowed
  - a. in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;
  - b. for the purchase of non-creditable goods;  
for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;
  - c. Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;
  - d. for goods purchased from a dealer who has elected to pay tax under section 16 of this Act;
  - e. for goods purchased from a casual trader;
  - f. to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.
- 3.. The amount of the tax credit to which a dealer is entitled in respect of the purchase of goods shall be the amount of input tax arising in the tax period reduced in the manner described in sub-sections (4) and (6) of this section.
4. Where a dealer has purchased goods and the goods are to be used partly for the purpose of making the sales referred to in sub-section (1) of this section and partly for other purposes, the amount of the tax credit shall be reduced proportionately.
- 5.. The method used by a dealer to determine the extent to which the goods are used in the manner specified in sub-section (4) of this section, shall be fair and reasonable in the circumstances:

PROVIDED that the Commissioner may -

after giving reasons in writing, reject the method adopted by the dealer and calculate the amount of tax credit; and

prescribe methods for calculating the amount of tax credit or the amount of any adjustment or reduction of a tax credit in certain instances.

Explanation.- A person may object in the manner referred to in section 74 of this Act to a decision of the Commissioner to reject a method of calculating a tax credit.

- 6.. Notwithstanding anything contained to the contrary in sub-section (1), where
  - a. a dealer has purchased goods (other than capital goods) for which a tax credit arises under sub-section (1) of this section;
  - b. the goods or goods manufactured out of such goods are to be exported from Delhi by way of transfer to a

- i. non-resident consignment agent; or
  - ii. non-resident branch of the dealer; and
- c. the transfer will not be by way of a sale made in Delhi;

the amount of the tax credit shall be reduced by the prescribed percentage.

7. For the removal of doubt, no tax credit shall be allowed for -
- a. the purchase of goods from an unregistered dealer;
  - b. the purchase of goods which are used exclusively for the manufacture, processing or packing of goods specified in the First Schedule.
  - c. any purchase of consumables or of capital goods where the dealer is exclusively engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him and incidental to the business of job work or labour work, obtains any waste or scrap goods which are sold by him.
8. The tax credit may be claimed by a dealer only if he holds a tax invoice at the time the prescribed return for the tax period is furnished.
9. a. Notwithstanding anything contained to the contrary in sub-sections (1) and (3) and subject to sub-section (2), tax credit in respect of capital goods shall be allowed as follows: -
- i. 1/3rd of the input tax on such capital goods arising in the tax period, in the same tax period;
  - ii. balance 2/3rd of such input tax, in equal proportions in two immediately successive financial years :

PROVIDED that, where the dealer sells such capital goods, the dealer shall be allowed as tax credit, the balance amount of the input tax, if any, in respect of such capital goods as has not been earlier availed as tax credit, such tax credit shall be allowed in the tax period in which such capital goods are sold and only after adjusting the output tax payable by him:

[27][PROVIDED FURTHER that where the dealer transfers such capital goods from Delhi otherwise than by way of sale before the expiry of three years from the date of purchase, he shall, after claiming the balance amount of input tax, if any, not availed earlier in respect of such capital goods, reduce the input tax credit by the prescribed percentage of the purchase price of such capital goods and make adjustments in the input tax credit in the tax period in which these capital goods are so transferred:

PROVIDED ALSO that where a dealer has purchased capital goods and the capital goods are to be used partly for the purpose of

making sales referred to in sub-section (1) of this section and partly for other purposes, the amount of tax credit shall be reduced proportionately:]

PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed if such capital goods are used exclusively for the purpose of making sale of exempted goods specified in the first schedule:

PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed on that part of the value of such capital goods which represents the amount of input tax on such capital goods, which the dealer claims as depreciation under section 32 of the Income Tax Act, 1961 (43 of 1961).

- b. If any capital goods in respect of which tax credit is allowed under clause (a) of this sub-section is transferred to any other person otherwise than by way of sale at the fair market value before the expiry of a period of five years from the date of purchase, the tax credit claimed in respect of such purchase shall be [28][reversed] in the tax period during which such transfer takes place.]

#### 10. Adjustment to tax credit

Where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates,

1. becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.
2. If goods which have been purchased were -
  - intended to be used for the purposes specified under sub-section (1) of section 9 of this Act and are subsequently used, fully or partly, for purposes other than those specified under the said sub-section; or
  - intended for purposes other than those specified under sub-section (1) of said section 9 of this Act, and are subsequently used, fully or partly, for the purposes specified in the said sub-section;

the tax credit claimed in respect of such purchase shall be reduced or increased (as the case may be) for the tax period during which the said utilization otherwise has taken place.
3. Where
  - goods were purchased by a dealer;
  - the dealer claimed a tax credit in respect of the goods, and did not reduce the tax credit by the prescribed percentage; and

the goods are exported from Delhi, other than by way of a sale, to a branch of the registered dealer or to a consignment agent; the dealer shall reduce the amount of tax credit originally claimed by the prescribed proportion.

If goods which have been purchased by a dealer were

intended to be used for the purposes specified under sub-section (1) of section 9 of this Act; and

are subsequently incorporated into the structure of a building owned or occupied by the person;

the tax credit claimed in respect of such purchase shall be reduced in the tax period during which such incorporation takes place.

#### 11. Net tax

The net tax payable by a dealer for a tax period shall be determined by the formula:

$$\text{Net Tax} = O - I - C$$

where

O = the amount of tax payable by the person at the rates stipulated in section 4 of this Act in respect of the taxable turnover arising in the tax

1. period, adjusted to take into account any adjustments to the tax payable required by section 8 of this Act.

I = the amount of the tax credit arising in the tax period to which the person is entitled under section 9 of this Act, adjusted to take into account any adjustments to the tax credit required by section 10 of this Act.

C = the amount, if any, brought forward from the previous tax period under sub-section (2) of this section.

2. Where the net tax of a dealer calculated under sub-section (1) of this section amounts to a negative value, the dealer shall

- a. adjust the said amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 (74 of 1956), if any; and

- b. be entitled to claim a refund of any surplus amount and the Commissioner shall deal with the refund claim in the manner described in section 38 and section 39 of this Act.

Explanation.- The dealer may elect to adjust the refund as a tax credit in the next tax period.

#### 11A. Tax on goods supplied by contractee

No tax shall be payable under this Act by a contractor on the amount representing the value of the goods supplied by the contractee to the contractor in the execution of works contract in which the ownership of such goods remains with the contractee under the terms of the contract and the amount representing the value of the goods supplied by the contractee to the contractor does not form part of the contract and is not deductible from the amount payable to the contractor by the contractee for the execution of the works contract.

12. Time at which turnover, turnover of purchases and adjustments arise
  1. Subject to sub-sections (2), (3) and (4) of this section, the amount of the turnover and the turnover of purchases of a dealer which arises during any tax period shall be the amount recorded in the accounts of the dealer where those accounts are regularly and systematically prepared and maintained, give a true and fair view of his dealings, and are employed by the dealer in determining the turnover of the dealers business for commercial or income tax purposes.
  2. The Commissioner may by notification
    - a. permit certain classes of dealer to record turnover based on amounts paid or received; and
    - b. require certain classes of dealer to record turnover based on amounts payable or receivable.
  3. Where a dealer wishes to change the method of determining the turnover and turnover of purchases, he may only make the change with the consent of the Commissioner and on such terms and conditions as the Commissioner may impose.
  4. The Government may prescribe the time at which a dealer shall treat the
    - a. turnover;
    - b. turnover of purchases; and
    - c. adjustment of tax or adjustment to a tax credit;as arising for a class of transactions.

## Chapter III

### Special Regimes

#### 13 Priority

Where a provision in this Chapter is inconsistent with a provision in Chapter II, the provision in this Chapter shall, to the extent of the inconsistency, prevail.

#### 14. Treatment of stock brought forward during transition

1. Within a period of four months of the commencement of this Act, all registered dealers wishing to claim the credit referred to in sub-section (2) of this section, shall furnish to the Commissioner a statement of their trading stock, raw materials and packaging materials for trading stock (in this section referred to as opening stock) which
  - a. is held in Delhi on the date of the commencement of this Act;
  - b. was purchased by the dealer after the first day of April 2004;

in such form as may be prescribed.

2. If
  - a. the dealer has furnished the statement referred to in sub-section (1) of this section;
  - b. the opening stock has borne tax under the Delhi Sales Tax Act, 1975 (43 of 1975) at the point specified by the Government under section 5 of the said Act; and
  - c. the opening stock has been purchased by the dealer from a registered dealer for such purposes as are specified in sub-section (1) of section 9 of this Act;

the amount of tax borne under the Delhi Sales Tax Act, 1975 (43 of 1975) on such opening stock, determined in such manner and subject to such conditions and restrictions and up to the extent as may be prescribed, shall be credited to the registered dealer as a tax credit under section 9 of this Act:

**PROVIDED** that no tax credit under this section shall be allowed unless the dealer has in his possession, invoices issued by a dealer registered under the Delhi Sales Tax Act, 1975 (43 of 1975) in respect of the purchases of the said goods:

**PROVIDED FURTHER** that the dealer shall claim the entire amount of credit to which he is entitled in a single statement, which accompanies a return furnished under this Act.

3. For the avoidance of doubt, no tax credit under sub-section (2) of this section can be claimed -
  - a. for finished goods manufactured out of tax paid raw material or capital goods;
  - b. for any goods that were taxable at last point under the Delhi Sales Tax Act, 1975 (43 of 1975) held at the time of the commencement of this Act;
  - c. in a statement furnished more than four months after the commencement of this Act; or
  - d. for opening stock which is held outside Delhi.

4. Every dealer wishing to claim a tax credit in excess of one lakh rupees on opening stock shall furnish with the statement a certificate signed by an accountant in the prescribed form certifying that the net credit claim made is true and correct.

[30][(4) ]

[31][\*\*\*]

#### 15 Second-hand goods

1. This section applies where
  - a. a registered dealer sells second-hand goods;
  - b. the registered dealer has purchased goods from a resident seller who was not registered under this Act;
  - c. the goods were purchased either as trading stock for re-sale in an unmodified form or otherwise or as raw material for incorporation or division into trading stock;
  - d. the registered dealer will be liable to tax under section 3 of this Act on the sale of the goods or the goods into which they were incorporated, as the case may be; and
  - e. the registered dealer has adequate proof of the amount paid for the goods.
2. In the circumstances mentioned in sub-section (1) of this section, the registered dealer shall be entitled to a tax credit for the purposes of section 9 of this Act of the least of
  - a. the input tax borne by the resident seller when he purchased the goods;
  - b. the tax fraction of the original cost of the goods to the resident seller;
  - c. the tax fraction of the fair market value of the goods at the time of their purchase by the registered dealer; or
  - d. the tax fraction of the consideration paid by the registered dealer for the goods.

[33][Explanation I.- For the purpose of this sub-section, the words input tax borne means the tax paid by the resident seller under the Delhi Sales Tax Act, 1975 (Act 43 of 1975) or under this Act and the word tax fraction shall be construed accordingly.

Explanation II.- This section shall apply only if the resident seller had purchased goods in Delhi.]

3. Where the amount paid by the registered dealer for the goods exceeds two thousand rupees, the tax credit shall be allowed in the tax period

when the goods are sold by the registered dealer or the goods into which they have been incorporated are sold by the registered dealer.

16. Composition scheme for specified dealers

1. Notwithstanding anything contained to the contrary in this Act, every dealer whose
  - a. turnover in the year preceding the commencement of this Act; or
  - b. turnover in the current year,

[34][\*\*\*] does not exceed fifty lakh rupees or such other amount as may be specified by the Government by notification in the official Gazette, shall have an option to pay tax under this section:

PROVIDED that this section shall not apply to dealers procuring goods from any place outside Delhi or selling or supplying goods to any place outside Delhi at any time during the year in which he opts to pay tax under this section or if he is registered [35][in Delhi] under the Central Sales Tax Act, 1956 (74 of 1956).

2. At the time of making application for registration under section 19 of this Act, the dealer covered under sub-section (1) shall be required to specify if he intends to pay tax under this section:

PROVIDED that once the dealer chooses to pay tax under this section, the option may be reversed only after the end of the year for which the option is made, by application to the Commissioner within such time and in such manner as may be prescribed:

PROVIDED FURTHER that where a dealer chooses to reverse his option to pay tax under this section, he shall be eligible to claim credit of the tax paid under this Act on the trading stock, raw material and packaging material held by him in Delhi on the date when such reversal takes effect subject to the conditions contained in section 20 of this Act in so far as they are applicable.

3. In case a person who [36][elects] to pay tax under this section -
  - a. who is registered under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) [37][or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002),] at the time of the commencement of this Act; and
  - b. whose turnover in the year preceding the commencement of this Act [38][\*\*\*] does not exceed [39][fifty lakh] rupees or such other amount as may be specified by the Government by notification in the official Gazette, he shall be required to specify the [40][election] to pay tax under this section within such time and in such manner as may be prescribed.

4. Where a dealer [41][elects] to pay tax under this section, the dealers net tax shall be the amount determined at the rate of one paisa in the rupee of the turnover of the dealer.
5. A dealer who elects to pay tax under this section shall -
  - a. not purchase goods from a person who is not registered under this Act:  

PROVIDED that this restriction shall not apply for the purchase of goods from an un-registered dealer dealing exclusively in goods mentioned in the First Schedule;
  - b. not compute his net tax under section 11 of this Act;
  - c. not be allowed to claim credit under section 9, section 14 and section 15 of this Act;
  - d. not be entitled to issue tax invoice;
  - e. not be allowed to collect any amount by way of tax under this Act; and
  - f. continue to retain tax invoices and retail invoices for all of his purchases as required under section 48 of this Act.
6. In case a person -
  - a. who is registered under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) [48][or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002),] at the time of the commencement of this Act;
  - b. whose turnover in the year preceding the commencement of this Act [49][\*\*\*] does not exceed [50][fifty lakh] rupees or such other amount as may be specified by the Government by notification in the official Gazette; and
  - c. who has opted to pay tax under this section in terms of sub-section (3) of this section,  

he shall be required to pay tax on the trading stock, raw material, packaging material (in this sub-section referred to as opening stock) and finished goods held on the date of the commencement of this Act at the rates specified in section 4 of this Act on the fair market value of such opening stock and finished goods where such opening stock and finished goods have not borne tax under the Delhi Sales Tax Act, 1975 (43 of 1975).
7. The tax due under sub-section (6) of this section shall be paid at any time before the person specifies his intention to pay tax under this section.
8. The proof of payment of tax referred to in sub-section (6) of this section along with a statement of opening stock and finished goods in such form as may be prescribed shall be furnished to the Commissioner at the time the person specifies his intention to pay tax under this section.
9. Subject to the other provisions of this section, where a registered dealer pays tax at the rates specified in section 4 of this Act, he may choose to pay

tax under this section only from the beginning of the following year:

PROVIDED that such registered dealer shall be required to pay tax at the rates specified in section 4 of this Act on the trading stock, raw material, packaging material and finished goods held by him on the first day of the said following year.

- 10 If the turnover of a dealer who elects to pay tax under this section exceeds fifty lakh rupees or such other amount as may be specified by the Government by notification in the official Gazette, he shall be liable to pay tax under section 3 of this Act on and from the day his taxable turnover exceeds fifty lakh rupees or such other amount as may be specified by the Government by notification in the official Gazette and shall be entitled to claim credit of the input tax paid under this Act on trading stock, raw material and packaging material held by him in Delhi on such day:

PROVIDED that such dealer has intimated the Commissioner within seven days of his becoming liable to pay tax under section 3 of this Act in the prescribed form and has furnished such other information to the Commissioner as may be prescribed.

11. The Commissioner may notify a dealer or a class of dealers who shall not be entitled to opt for payment of tax under this section.
12. Notwithstanding anything to the contrary contained in this Act, the Government may -
  - a. by notification in the official Gazette, notify schemes of composition, subject to such conditions and restrictions as may be specified therein, of tax payable by a class of dealers or classes of dealers and different types of schemes may be notified for different classes of dealers;
  - b. specify, in any scheme of composition of tax payable by the class of dealers or classes of dealers, different rates of taxes for different class or classes of dealers but, in such scheme, the net tax liability of the dealer opting to pay tax thereunder shall not exceed eight paise in the rupee of the turnover of the dealer.

#### 16A Special provisions relating to casual traders

1. Notwithstanding anything contained to the contrary in this Act, a casual trader shall -
  - a. at least three days before commencing business in Delhi, inform the Commissioner of such particulars of his business in such form and manner as may be prescribed;
  - b. deposit security in cash or in the form of bank draft as may be fixed by the Commissioner which shall not exceed estimated liability to pay tax for seven days or such lesser period for which the casual trader is conducting the business in Delhi;
  - c. pay tax daily on the sales made during the previous day;
  - d. furnish to the Commissioner, immediately after conclusion of his

business in Delhi, a return in the prescribed form and manner; and  
e. not issue any tax invoice.

2. The Commissioner shall, after verification of information furnished to him under clause (a) of sub-section (1) and after getting security under clause (b) of that sub-section, shall register the casual trader.
3. The Commissioner shall, after examination of the return furnished by the casual trader under clause (d) of sub-section (1), the forms referred to in sub-section (3) and the accounts maintained by him including the retail invoices issued, assess him to tax within five days and shall serve upon him a notice of assessment and after adjusting any tax and any other dues payable under this Act, refund the balance amount of security to him in case security is deposited in the form of cash deposit.
4. The casual trader shall pay immediately the amount mentioned in the notice of assessment.
5. On being satisfied that the amount due has been paid, the Commissioner shall release the security or balance security, as the case may be.
6. Notwithstanding anything contained in this Act the taxable quantum in respect of a casual trader shall be nil.]

#### 17. Transactions between related parties

If

- a. a registered dealer sells or gives goods to a related person;
- b. the terms or conditions of the transaction have been influenced by the relationship; and
- c. the related person had purchased the goods, the related person would not be entitled to a tax credit for the purchase, or the amount of the tax credit would be reduced under sub-section (3) of section 9 of this Act;

the transaction shall be deemed to be a sale made by the registered dealer and the sale price of the goods shall be deemed to be their fair market value.

### Chapter IV

#### Registration and Security

#### 18. Mandatory and voluntary registration

1. Every dealer is required to apply for registration under this Act if -
  - a. the dealers turnover in the year preceding the commencement of this Act exceeded the taxable quantum; or
  - b. the dealers turnover in the current year exceeds the taxable quantum; or
  - c. the dealer is liable to pay tax, or is registered or required to be registered

under Central Sales Tax Act, 1956 (74 of 1956):

PROVIDED that a dealer dealing exclusively in goods mentioned in the First Schedule shall not be required to register.

Explanation.- For the purposes of this section, in case of dealers involved in execution of works contracts, the taxable quantum shall be calculated with reference to the total contract amount received.

2. For the purposes of this Act, taxable quantum of a dealer shall be [54][ten lakh rupees], or such other amount as may be specified by the Government by notification in the official Gazette:

PROVIDED that a dealer who imports for sale any goods into Delhi, the taxable quantum shall be Nil or such other amount as may be specified by the Government by notification in the official Gazette.

3. The taxable quantum of a dealer shall not include turnover from-
  - a. sales of capital assets;-
  - b. sales made in the course of winding up the dealers activities; and
  - c. sales made as part of the permanent diminution of the dealers activities.
4. Any person who is not required by sub-section (1) to be registered but who -
  - a. is a dealer; or
  - b. intends from a particular date to undertake activities which would make him a dealer,may apply for registration.

## 19. Registration

An application for registration shall be made in the prescribed form, within such time, containing such particulars and information and accompanied by such fee, security and other documents as may be prescribed.

1. Explanation.- The Commissioner may, by order to be published in the official Gazette, specify certain classes of persons who may not be required to furnish a security.
2. Where
  - a. an applicant furnishes a security in the prescribed form and for the prescribed amount, and
  - b. all other forms and evidence required by and prescribed under this Act are complete and in order, the Commissioner shall register the applicant.

Where the Commissioner has not registered the person within fifteen days

3. from the date on which the application is made, the Commissioner shall, after conducting such inquiries as he deems fit, either

- a. register the person forthwith as a registered dealer; or
- b. issue a notice to the applicant, clearly stating the grounds on which his application is proposed to be rejected and permitting him to show cause in writing, within fifteen further days, why his application should not be rejected:

PROVIDED that where the Commissioner has not registered the person or issued a notice by the required date, the applicant shall be deemed to be registered for the purposes of this Act, and the Commissioner shall issue a certificate of registration to such person.

- Where, pursuant to clause (b) of sub-section (3) of this section, the applicant furnishes a reply to the notice, the Commissioner may, either accept the application and register the person, or reject the application for reasons to be recorded in writing.

- 4.
5. If the applicant fails to respond to the notice issued under clause (b) of sub-section (3) of this section within the stipulated time, the application for registration shall stand rejected.

- Where a registered dealer has furnished a security as a condition of registration, such security shall be required for the continuance in effect of registration, unless otherwise provided by the Commissioner.
- 6.

Explanation.- The decision of the Commissioner not to register a person may be the subject of an objection under section 74 of this Act.

## 20. Effect of registration

1. If at the time at which an unregistered dealers registration takes effect after the commencement of this Act and
  - a. the dealer holds trading stock for the purpose of sale, or for use as raw materials for the production of [55][finished goods];
  - b. the dealer has borne input tax on the purchase of the trading stock or raw materials;
  - c. the dealer furnishes a statement of its trading stock and raw materials in the prescribed form to the Commissioner; and
 

the dealer holds adequate proof of the amount of input tax in respect of the purchases;

the dealer shall be entitled to a tax credit for the trading stock or raw materials held by the dealer on the date that the dealers registration takes effect;
  - d.

PROVIDED that the dealer must claim the entire amount of tax credit to which he is entitled in a single claim, which accompanies the first return furnished by the dealer under this Act.

Explanation I.- This section applies where goods have borne tax imposed

after the commencement of this Act;

Explanation II.- Section 14 deals with goods which have borne sales tax prior to the commencement of this Act.

2. For the purposes of sub-section (3) of section 9 of this Act, the amount of the tax credit shall be the least of -
  - a. the amount of input tax disclosed in the proof referred to in clause (d) of sub-section (1) of this section;
  - b. the tax fraction of the cost of the goods;
  - c. the tax fraction of the fair market value of the goods at the time of registration; or
  - d. such amount as may be prescribed.
3. Where the registered dealer accounts for turnover on the basis of amounts received and amounts paid, he shall exclude from his turnover -
  - a. any amount received after he is registered in respect of sales made while he was unregistered; and
  - b. any amount paid after he is registered in respect of purchases made while he was unregistered.

## 21 Amendment of registration

1. A registered dealer shall inform the Commissioner in the prescribed manner within one month, if he -
  - a. sells or otherwise disposes of his business or any part of his business or any place of 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 warehouse, or opens a new place of business, or closes the business for a period of more than one month; or
  - c. changes the name, style, constitution or nature of his business; or
  - d. enters into partnership or other association in regard to his business or adds, deletes or changes the particulars of the persons having interest in business;  
and if any such registered dealer dies, his legal representative shall, in like manner, inform the said authority.
2. The Commissioner may, after considering any information furnished under this Act or otherwise received and after making such inquiry as he may deem fit, amend from time to time any registration.
3. An amendment of the registration made under sub-section (2) shall take effect from the date of contingency which necessitates the amendment whether or not information in that behalf is furnished within the time prescribed under sub-section (1) of this section.
4. Any amendment of a registration under this section shall be without prejudice

to any liability for tax or penalty imposable or for any prosecution for an offence under this Act.

5. For the removal of doubts it is hereby declared that where a registered dealer

- 
- a. effects a change to the nature of the goods ordinarily sold;
- b. is a firm and there is a change in the constitution of the firm without dissolution thereof; or
- c. is a trustee of a trust and there is a change in the trustees thereof; or
- d. is a Hindu undivided family and the business of such family is converted into a partnership business with all or any of the members of the family as partners thereof; or
- e. is a firm or a company or a trust or other organisation, and a change occurs in the management of the organisation,

then, merely by reason of the circumstances aforesaid, it shall not be necessary for the registered dealer to apply for a fresh certificate of registration and on information being furnished the registration shall be amended.

## 22. Cancellation of registration

### 1. Where

- a. a registered dealer who is required to furnish security under the provisions of this Act has failed to furnish or maintain such security;
- b. a registered dealer has ceased to carry on any activity which would entitle him to be registered as a dealer under this Act;
- c. an incorporated body is closed down or otherwise ceases to exist;
- d. the owner of a proprietorship business dies leaving no successor to carry on the business;
- e. in the case of a firm or association of persons, it is dissolved;
- f. registered dealer has ceased to be liable to pay tax under this Act;
- g. a registered dealer knowingly furnishes a return which is misleading or deceptive in a material particular;
- h. a registered dealer has committed one or more offences or contravened the provisions of this Act and the offence or contravention is, in the opinion of the Commissioner, of such magnitude that it is necessary to do so; or
- i. the Commissioner, after conducting proper inquiries, is of the view that it is necessary to do so;

the Commissioner may, after service of a notice in the prescribed form and after providing the dealer an opportunity of being heard, cancel the registration of the dealer with effect from the date specified by him in the notice.

## 2. Where

- a. a registered dealer has ceased to carry on any activity which would entitle him to be registered as a dealer under this Act;
- b. an incorporated body is closed down or otherwise ceases to exist;
- c. the owner of a proprietorship business dies leaving no successor to carry on business;
- d. in the case of a firm or association of persons, it is dissolved; or
- e. a registered dealer has ceased to be liable to pay tax under this Act;

the registered dealer or the dealer's legal representative in case of clause (c) above, shall apply for cancellation of his registration to the Commissioner in the manner and within the time prescribed.

Explanation.- For the purpose of this sub-section legal representative has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

3. On receipt of such application, if the Commissioner is satisfied that the dealer has ceased to be entitled to be registered, he may cancel the registration.
4. If a registered dealer ceases to be registered, the Commissioner shall cancel the dealer's registration with effect from a specified date.
5. If a dealer's registration which has been cancelled under this section is reinstated as a result of an appeal or other proceeding under this Act, the registration of the dealer shall be restored and he shall be liable to pay tax as if his registration had never been cancelled.
6. If any registered dealer whose registration has been restored under sub-section (5) of this Act satisfies the Commissioner that excess tax has been paid by him during the period his registration was inoperative which but for the cancellation of his registration he would not have paid, then the amount of such tax shall be adjusted or refunded in such manner as may be prescribed.
7. Every registered dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him and every registered dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within seven days of the date of communication to him of the cancellation.
8. The Commissioner shall, at intervals not exceeding three months, publish in the official Gazette such particulars as may be prescribed, of registered dealers whose registration has been cancelled.
9. The cancellation of registration shall not affect the liability of any person to pay tax due for any period and unpaid as on the date of such cancellation or which is assessed thereafter notwithstanding that he is not otherwise liable to pay tax under this Act.

## 23. Effect of de-registration

1. Every person whose registration is cancelled shall pay in respect of all goods held on the date of cancellation an amount equal to the higher of
  - a. the tax that would be payable in respect of those goods if the goods were sold at their fair market value on that date; or
  - b. the tax credit previously claimed in respect of those goods.
2. Where the dealer has accounted for turnover on the basis of amounts received and amounts paid, he shall include in the turnover of his final return -
  - a. any amount not yet received in respect of sales made while he was registered; and
  - b. any amount not yet paid in respect of purchases made while he was registered.

#### 24. Registration during transition

1. Every dealer who is registered under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002), at the time of commencement of this Act shall be deemed to be registered under this Act with effect from the first day of April, 2005.
2. The security furnished by a dealer registered under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) [57][or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002)] under the said Acts and valid on the date of the commencement of this Act, shall be deemed to have been furnished under this Act and shall be deemed to be valid under this Act for a period of six months from the commencement of this Act or till the time a fresh security as required under sub-section (3) of this section is furnished, whichever is later.
3. Within a period of six months of the commencement of this Act, every dealer covered under sub-section (1) of this section shall be required to furnish a fresh security under this Act:

PROVIDED that the Commissioner may, by notification, exempt a class or classes of dealers from the requirement of furnishing a fresh security under this sub-section.

#### 25. Security from certain classes of dealers and other persons

1. The Commissioner may, if it appears to him to be necessary so to do, for the continuance of the certificate of registration, or for the proper realisation of tax, composition money or other dues payable under this Act or as a condition of registering a person as a dealer or as a condition of making a refund under section 38 of this Act, require a person or prescribed class of persons to furnish security for the proper performance of their responsibilities under this Act or under the Central Sales Tax Act, 1956 (74 of 1956) in the prescribed amount, in the prescribed manner and within such time as may be prescribed.
2. Notwithstanding sub-section (1) of this section, the Commissioner may

increase, vary, reduce or waive the prescribed amount of the security, having regard to

- a. the nature and size of the business activities of the person;
  - b. the amount of any tax, interest or penalty for which the person may be or is likely to become liable at any time under this Act;
  - c. the creditworthiness of the person;
  - d. the nature of the security; and
  - e. any other matter which the Commissioner considers relevant.
3. Where the security or additional security furnished by a person is in the form of a surety bond and the surety dies or becomes insolvent, the person shall within one month of the occurrence of such event, inform the Commissioner and shall within three months of such occurrence, execute a fresh surety bond.
4. Where the surety bond has been executed by another registered dealer and the dealer's registration is either cancelled or he has closed down his business, the person shall furnish a fresh security as may be prescribed and in the manner as stated in sub-section (3) of this section.
5. The Commissioner may, for good and sufficient cause, order the forfeiture of the whole or any part of the security furnished by a person.
6. Where the security furnished by any person is forfeited in whole or is rendered insufficient, he shall furnish a fresh security of the requisite amount or, as the case may be, shall make up the deficiency in such manner and within such period as may be specified.

## Chapter V

### Returns

26. Periodical payment of tax and furnishing of returns
- a. Every registered dealer who is liable to pay tax under this Act shall furnish to the Commissioner such returns for each tax period and by such dates as may be prescribed and in the prescribed form.
  - b. Notwithstanding anything contained in sub-section (1), the Commissioner may require a dealer or class or classes of dealers, as may be notified by him by special or general order, to file, in addition to the returns required to be filed under sub-section (1), the returns in such electronic forms from such date and within such time and in such manner as may be prescribed.
  - c. Without prejudice to the provisions of sub-section (1), any person, being a company or being a person other than a company, required to furnish a return under sub-section (1), may, at his option, on or before the due date, furnish a return in accordance with such scheme as may be specified by the Government in this behalf by notification in the official Gazette and subject to such conditions as may be specified therein, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer

readable media) and in the manner as may be specified in that scheme, and in such case, the return furnished under such scheme shall be deemed to be a return furnished under sub-section (1), and the provisions of this Act shall apply accordingly.

#### 27. Power to require other returns

In addition to the returns specified in section 26 of this Act, the Commissioner may require any person, whether a registered dealer or not, to furnish (whether on that persons own behalf or as an agent or trustee) him with such other returns in the prescribed form as and when the Commissioner requires.

#### 28. Correction of deficiencies

1. If, within four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and he has as a result of the mistake or error paid less tax than was due under this Act, he shall, within one month after the discovery, furnish a revised return and pay the tax owed and interest thereon.
2. If, within four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated in section 74 of this Act.

#### 29. Signing returns

1. Every return under this Chapter shall be signed and verified
  - a. in the case of an individual, by the individual himself, and where the individual is absent from India, either by the individual or by some person duly authorised by him in this behalf and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
  - b. in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
  - c. in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
  - d. in the case of a company or local authority, by the principal officer thereof;
  - e. in the case of a firm, by any partner thereof, not being a minor;
  - f. in the case of any other association, by any member of the association or persons;
  - g. in the case of a trust, by the trustee or any trustee; and
  - h. in the case of any other person, by some person competent to act on his behalf.

Explanation 1.- For the purposes of this section the expression principal officer shall have the meaning assigned to it under sub-section (35) of section 2 of the Income Tax Act, 1961 (43 of 1961).

Explanation 2.- For the purposes of this Act, any return signed by a person who is not authorized under this section shall be treated as if no return has been furnished.

## Chapter VI

### Assessment and Payment of Tax, Interest and Penalties and Making Refunds

#### 30. Assessment of tax, interest or penalty

No claim may be made by the Commissioner for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount.

#### 31. Self assessment

1. Where a return is furnished by a person as required under section 26 or section 27 of this Act which contains the prescribed information and complies with the requirements of this Act and the rules
  - a. the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the tax payable of the amount specified in the return;
  - b. the return is deemed to be a notice of the assessment and to be under the hand of the Commissioner; and
  - c. the notice referred to in clause (b) is deemed to have been served on the person on the day on which the Commissioner is deemed to have made the assessment.
2. No assessment shall arise under sub-section (1) of this section, if the Commissioner has already made an assessment of tax in respect of the same tax period under another section of this Act.

#### 32. Default assessment of tax payable

1. If any person
  - a. has not furnished returns required under this Act by the prescribed date; or
  - b. has furnished incomplete or incorrect returns; or
  - c. has furnished a return which does not comply with the requirements of this Act; or
  - d. for any other reason the Commissioner is not satisfied with the return furnished by a person;

the Commissioner may for reasons to be recorded in writing assess or re-assess to the best of his judgment the amount of net tax due for a tax period [59][or more than one tax period by a single order so long as all such tax periods are comprised in one year.]

[60][(1A) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period or periods, has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods.]

2. Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.
3. Where the Commissioner has made an assessment under this section and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

### 33. Assessment of penalty

1. Where the Commissioner has reason to believe that a liability to pay a penalty under this Act has arisen, the Commissioner, after recording the reason in writing, shall make and serve on the person a notice of assessment of the penalty that is due under this Act.
2. The amount of any penalty assessed under this section is due and payable on the date on which the notice of assessment is served by the Commissioner.
3. Any assessment made under this section shall be without prejudice to prosecution for any offence under this Act.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

### 34. Limitation on assessment and re-assessment

1. No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from
  - a. the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or  
the date on which the Commissioner made an assessment of tax for the tax period,
  - b. whichever is the earlier:

PROVIDED that where the Commissioner has reason to believe that tax

was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

2. Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.
35. Collection of assessed tax and penalties
1. Subject to sub-sections (2) and (4) of this section, where an amount of tax or penalty has been assessed under sections 32 or 33 of this Act, the Commissioner may not proceed to enforce payment of the amount assessed until two months after the date of service of the notice of assessment.
  2. Where a person has made an objection to an assessment or part of an assessment in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of any amount in dispute under that assessment until the objection is resolved by the Commissioner.
  3. Nothing in this section shall stay any proceedings by the Commissioner or before a court for the recovery of
    - a. any amounts due under this Act that are not the subject of a dispute before the Commissioner; or
    - b. any amounts due under this Act where the person has made an appeal to the Appellate Tribunal.
  4. Notwithstanding sub-section (1) of this section, where an amount of tax or penalty has been assessed by the Commissioner and he is satisfied that there is a likelihood that it may not be possible to recover the amount assessed if collection is delayed, the Commissioner may specify a date in the notice of assessment as the date on which collection of the amounts due and payable may commence which is earlier than two months after the date of service of the notice of assessment.
36. Manner of payment of tax, penalties and interest
- Every person liable to pay tax, interest, penalty or any other amount under this Act shall pay the amount to the Government Treasury of Delhi, the Reserve Bank of India or a branch in Delhi of a bank prescribed under the rules, or at such other place or in such other manner as may be prescribed.
- 36A Tax deducted at source
1. Any person, not being an individual or a Hindu undivided family, who is responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, for value exceeding twenty thousand rupees or such amount as may, by order in writing published in official Gazette, be notified by the

Commissioner from time to time, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two percent.

- 1A. Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, for value exceeding twenty thousand rupees or such amount as may, by order in writing and published in the official Gazette, be notified by the Commissioner from time to time, for the transfer of property in goods (whether as goods or in some other form) involved in the execution, whether wholly or in part, of the works contract undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or any other mode, deduct an amount equal to two percent of such payment or discharge, purporting to be part of full amount of the tax payable under this Act.]
2. Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract involves both transfer of property in goods and labour and service, or involves only labour and service and accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate and for such period as may be appropriate:  
  
PROVIDED that nothing in the said certificate shall affect liability of the contractor to pay tax under this Act.
3. Where any such certificate is granted, the person responsible for making payment under sub-section (1) shall, until such certificate is cancelled by the Commissioner, deduct tax at the rate specified in such certificate or deduct no tax, as the case may be.
4. The amount deducted under this section shall be deposited into the appropriate Government treasury by the person making such deduction [63][before the expiry of fifteen days] following the month in which such deduction is made in the manner as may be prescribed.
5. The person making such deduction under this section shall, at the time of payment or discharge, furnish to the contractor from whose bills or invoices such deduction is made, a certificate as may be prescribed in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.
  - 5A. If any person referred to in sub-section (5) fails to furnish to the contractor the certificate of tax deduction at source within seven days of making payment or discharge, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day of making payment to the contractor or discharge until the failure is

rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.]

6. Any deduction made in accordance with the provisions of this section and credited into the appropriate Government treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and he shall claim the adjustment towards the payment of output tax of the amount so deducted in his return for the tax period in which certificate of such deduction was issued to him.
7. A dealer claiming adjustment in his tax return of the amount deducted under this section shall preserve the certificate issued to him for a period of seven years and shall produce the same to the Commissioner on demand.
8. If any person as is referred to in this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the appropriate Government treasury.
9. Without prejudice to the provisions of sub-section (8), if any person fails to make deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the annual rate to be notified by the Government on the amount deductible under this section but not so deducted, and if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited into the appropriate Government treasury.
10. Where the amount has not been deposited after deduction such amount together with interest and penalty referred to in sub-section (8) and sub-section (9) shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.
11. Every person responsible for making deduction of tax under this section shall apply to the Commissioner for a Tax Deduction Account Number within the prescribed time and in the prescribed form and shall also furnish a return in the prescribed form within the prescribed period:

PROVIDED that, unless intimated otherwise by the Commissioner, every person having obtained Tax Deduction Account Number under the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) shall be deemed to have obtained a Tax Deduction Account Number under this Act and shall use the same Tax Deduction Account Number under this Act.

12. Any person who fails to comply with the requirement under sub-section (11) shall be liable to pay, by way of penalty, a sum of two hundred rupees per day from the day on which requirement arose until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub- section shall not exceed twenty thousand rupees.

Explanation. - Nothing contained in this section shall apply to works contract executed in the course of inter-state trade or commerce or outside the state, or in the course of import into or export out of India.]

37. Order of application of payments

Where a person owes to the Commissioner tax, interest, or penalty and the person pays to the Commissioner or the Commissioner recovers some but not all of the amounts owed by the person, the amounts shall be treated as reducing the persons obligations to pay

- a. interest, penalty and tax owed under this Act; and
- b. interest, penalty and tax owed under the Central Sales Tax Act, 1956 (74 of 1956);

in the above order.

38. Refunds

1. Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.
2. Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).
3. Subject to [65][sub-section (4) and sub-section (5)] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either  
[66][(a) refunded to the person,
  - a.
    - i. within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;
    - ii. within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or]
  - b. carried forward to the next tax period as a tax credit in that period.
4. Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken [67][or sought additional information under section 59 of this Act,] the amount shall be carried forward to the next tax period as a tax credit in that period
5. The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act [68][within fifteen days from the date on which the return was

furnished or claim for the refund was made.]

6. The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).
7. For calculating the period prescribed in clause (a) of sub-section (3), the time taken to -
  - a. furnish the security under sub-section (5) to the satisfaction of the Commissioner; or
  - b. furnish the additional information sought under section 59; or
  - c. furnish returns under section 26 and section 27,

shall be excluded.]]

8. Notwithstanding anything contained in this section, where
  - a. a registered dealer has sold goods to an unregistered person; and
  - b. the price charged for the goods includes an amount of tax payable under this Act;
  - c. the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section;

no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

9. Where
  - a. a registered dealer has sold goods to another registered dealer; and the price charged for the goods expressly includes an amount of tax payable under this Act,
  - b. the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.
10. Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.
11. Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.

### 39 Power to withhold refund in certain cases

1. Where a person is entitled to a refund and any proceeding under this Act,

including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

2. Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

#### 40 Collection of tax only by registered dealers

1. No person who is not a registered dealer shall collect in respect of any sale of goods by him in Delhi any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder and at the rates specified under this Act.
2. Tax collected by a person who is not a registered dealer shall not be refunded and shall stand forfeited.

#### 40A Agreement to defeat the intention and application of this Act to be void

1. If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.
2. For the purposes of this section -
  - a. arrangement includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;
  - b. tax advantage includes, -
    - i. any reduction in the liability of any dealer to pay tax,
    - ii. any increase in the entitlement of any dealer to claim input tax credit or refund,
    - iii. any reduction in the sale price or purchase price receivable or payable by any dealer.

#### 41. Refund of tax for embassies, officials, international and public organizations

1. The bodies listed in the Sixth Schedule shall be entitled to claim a refund of

tax paid on goods purchased in Delhi, subject to such restrictions and conditions as may be prescribed.

2. Any person entitled to a refund under sub-section (1) of this section may apply to the Commissioner in the manner and within the time prescribed.

#### 42. Interest

1. A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the Government from time to time, computed on a daily basis from the later of
  - a. the date that the refund was due to be paid to the person; or
  - b. the date that the overpaid amount was paid by the person,

until the date on which the refund is given.

PROVIDED that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):

PROVIDED FURTHER that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation.- If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

2. When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.
3. Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.
4. Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.
5. The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen.

## Recovery of Tax, Interest and Penalties

### 43. Recovery of tax

The amount of any tax, interest, penalty or other amount due under this Act shall be paid in the manner specified in section 36 of this Act and a notice

1. of assessment served on the person for such an amount shall constitute a demand for payment of the amount stated in the assessment by the time stipulated in the notice of assessment.

On an application made before the expiry of the due date under section 35 of this Act, the Commissioner may, in respect of any dealer or person and

2. for reasons to be recorded in writing, extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.
3. Any amount of tax, interest or penalty, composition money or other amount due under this Act which remains unpaid, shall be recoverable-
  - a. as arrears of land revenue, or
  - b. by the Commissioner in accordance with the provisions of sub-section (6) of this section and the rules regulating the procedure of recovery of tax, interest or penalty, composition money or other amount due as may be prescribed.

Where security, other than in the form of surety bond, has been furnished under the Act, the Commissioner may, for reasons to be recorded in

4. writing, recover any amount of tax, interest, penalty, composition money or other amount due or part thereof by ordering the forfeiture of the whole or any part of the security.
5. Where any security tendered for the purposes of this Act is to be sold, it shall be sold in the manner stipulated in section 63 of this Act.

Where any amount of tax, interest or penalty, composition money or other amount due under this Act is recoverable in accordance with the provisions of clause (b) of sub-section (3), the Commissioner may prepare a recovery certificate (hereinafter referred to as certificate) under his signature

6. specifying the amount of such tax, interest or penalty, composition money or other amount due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods or any other person (hereinafter referred to as the certificate-debtor) and he shall cause the said certificate to be served upon the certificate debtor, in such manner and form as may be prescribed and proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules as may be prescribed:-

- a. attachment and sale of movable property of the certificate debtor;
- b. attachment and sale of immovable property of the certificate-debtor;
- c. arrest of the certificate-debtor and his detention in prison for a period

of fifteen days;

- d. appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.

7. The Commissioner may serve upon the defaulter the recovery certificate under sub-section (6), notwithstanding that proceedings for recovery of such tax, interest or penalty, composition money or other amount due have been initiated or continuing by any other mode.

8. On the service of the certificate under sub-section (6) upon a certificate-debtor.-

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

9. The certificate-debtor may, within thirty days from the service of the certificate, present to the Commissioner a petition denying his liability in whole or in part.

10. The Commissioner shall hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which certificate was signed.

Where any proceedings for the recovery of any tax, interest or penalty, composition money or other amount due remaining unpaid have been commenced under this section and the tax, interest or penalty, composition money or other amount due is subsequently modified, enhanced or reduced in consequence of any assessment made, or order passed on objection,

11. appeal, revision or review under this Act, the Commissioner may inform the certificate-debtor and thereupon such proceedings may be continued as if the tax, interest or penalty, composition money or other amount due as so modified, enhanced or reduced has been substituted for the tax, interest or penalty, composition money or other amount due which was to be recovered under sub-section (3).

44. Application of the Delhi Land Reforms Act, 1954 for purposes of recovery

For the purposes of recovery of any amount recoverable as arrears of land revenue under this Act, the provisions of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954), as to the recovery of arrears of land revenue shall,

1. notwithstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue Recovery Act, 1890 (1 of 1890) shall have effect accordingly.
2. For the purposes of sub-section (1) -
  - a. the Additional Commissioner of Value Added Tax and the Joint Commissioner of Value Added Tax shall have and exercise all the

powers and perform all the duties of the Deputy Commissioner under the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954);

- b. the Deputy Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of Revenue Assistant under the said Act;
- c. the Value Added Tax Officers and the Assistant Value Added Tax Officers shall have and exercise all the powers and perform all the duties of Tehsildar and Assistant Collector of the First Grade under the said Act.

#### 45. Continuation of certain recovery proceedings

Where an assessment or notice of demand in respect of any tax, penalty or other amount payable under this Act (hereinafter in this section referred to as government dues) is served upon any person and any objection or appeal is initiated by the person against the assessment or demand for such government dues then

- a. if the objection or appeal is disallowed in whole or in part, any recovery proceedings taken for the recovery of such government dues before the making of the objection or appeal, may, without the service of any fresh assessment or notice of demand, be continued from the stage at which such recovery proceedings stood immediately before the person made the objection or appeal; and
- b. where such government dues are reduced in any objection or appeal
  - i. it shall not be necessary for the Commissioner to serve upon the person a fresh assessment or notice of demand; and
  - ii. the Commissioner shall give intimation of such reduction to him and to the person with whom recovery proceedings are pending.
  - iii. [76][any recovery proceedings initiated on the basis of an assessment or notice of demand served upon a person before the disposal of such objection or appeal, may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before the person made the objection or appeal.]
- c. [77][no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such objection or appeal or such Government dues have been enhanced or reduced in such objection or appeal.]

#### 46. Special mode of recovery

- 1. Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the person at his last known address, require, -
  - a. any person from whom any amount of money is due, or may become

due, to the person (in this section called the taxpayer) liable to pay tax, interest or penalties u/s 45 of this Act, or

- b. any person who holds or may subsequently hold money for or on account of the taxpayer,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of the arrears of tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.- For the purposes of this sub-section, the amount of money due to a taxpayer from, or money held for or on account of a taxpayer by any person, shall be calculated by the Commissioner after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such taxpayer to such person.

2. The Commissioner may 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 the authority of the taxpayer, and the receipt thereof by the Commissioner shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.
4. Any person discharging any liability to the taxpayer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer for tax and penalty, whichever is less.
5. Where a person to whom a notice under this section is sent, proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the taxpayer or that he does not hold any money for or on account of the taxpayer, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Commissioner.
6. Any amount of money which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as if arrears of land revenue.
7. The Commissioner may apply to the court in whose custody there is money belonging to the taxpayer for payment to him of the entire amount of such money or if it is more than the tax, interest and penalty, if any, due, an amount sufficient to discharge such tax and the penalty.

#### 46A Provisional attachment to protect revenue in certain cases

1. Where, during the course of inquiry of any proceeding including any

proceeding for recovery of any amount due in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, by order in writing, attach provisionally any property movable or immovable, belonging to such person or dealer.

2. Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

PROVIDED that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

PROVIDED FURTHER that the Commissioner may, by an order, revoke such order if the person or the dealer furnishes to the Commissioner, a Bank Guarantee in such time, for such period as may be specified by the Commissioner in this behalf:

PROVIDED ALSO that the power under this section shall be exercised by the Commissioner himself or by the Additional Commissioner to whom the Commissioner has delegated such power.]

47. Transfer of assets during pendency of proceedings void

Where, during the pendency of any proceedings for the recovery of an amount owed by a person under this Act, that person creates a charge on or parts with the possession by way of sale, mortgage, gift or exchange or any other mode of transfer whatsoever, any of his assets in favour of any other person, such charge or transfer shall be void against any claim by the Commissioner in respect of the amount which is the subject of proceedings, unless the other person

- a. acted bona fide and without notice of the recovery proceedings; and
- b. has paid the fair market value for the assets.

[79][Explanation. In this section assets includes land, building, machinery, plant, equipments, shares, securities and fixed deposits in the banks, vehicles, furniture and fixture to the extent to which any of the assets aforesaid does not form part of the stock in trade of the business of the person.]

[80][47A Liability under this Act to be the first charge

Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, composition money, sum forfeited, fine or any other sum payable by a dealer or any other

person under this Act, shall be the first charge on the property of the dealer or, as the case may be, the person.]

## Chapter VIII

### Accounts and Records

#### 48. Records and accounts

1 Every

- a. dealer;
- b. person on whom a notice has been served to furnish returns under section 27 of this Act;

shall prepare and retain sufficient records to allow the Commissioner to readily ascertain the amount of tax due under this Act, and to explain all transactions, events and other acts engaged in by the person that are relevant for any purpose of this Act.

2. Notwithstanding the generality of sub-section (1) of this section

- a. every registered dealer shall preserve a copy of all tax invoices issued by him;
- b. every dealer shall preserve the original of all tax invoices received by him; and
- c. every person who has paid an amount of tax, interest, penalty or other amount owed under this Act, shall preserve a copy of the challan evidencing the making of the payment.

3. The Commissioner may prescribe the manner and form in which accounts and records are to be prepared.

4. If the Commissioner considers that such records are not sufficiently clear and intelligible to enable him to make a proper check of the obligations required of the person under this Act, he may require such person by notice in writing to keep such accounts (including records of purchase and sales) as may be specified therein.

5. The Commissioner may, by notification in the official Gazette, direct any class of dealers, transporters or operators of warehouses to keep such accounts (including records of purchases and sales) as may be specified in the notification.

6. Every person required to prepare or preserve records and accounts shall retain the required records and accounts for, at least, seven years after the conclusion of the events or transactions which they record unless any proceedings in respect of that year are pending in which case they shall be preserved till the final decision in those proceedings. Any loss thereof shall be reported to the Police and the Commissioner within a period of fifteen days from the date of occurrence.

#### 49. Accounts to be audited in certain cases

If, in respect of any particular year, the gross turnover of a dealer exceeds forty lakh rupees or such other amount as may be prescribed, then, such dealer shall get his accounts in respect of such year audited by an accountant within a period of nine months from the end of that year and obtain within that period a report of such audit in the form duly signed and verified by such accountant and setting forth such particulars as may be prescribed under section 44 AB of the Income Tax Act, 1961 (43 of 1961), as amended from time to time, and a true copy of such report shall be furnished by such dealer to the Commissioner within twenty eight days from the end of the tax period ending on 31st December of the following year:

PROVIDED that in a case where the dealer is required under section 44AB of the Income Tax Act, 1961 (43 of 1961) to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such dealer gets his accounts audited under the said section 44AB of the Income Tax Act 1961 (43 of 1961) and the rules framed thereunder and furnishes to the Commissioner a true copy of the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed under section 44AB of the Income Tax Act, 1961 (43 of 1961):

PROVIDED FURTHER that the Commissioner may require a dealer or class or classes of dealers to get his or their accounts audited by an accountant and obtain report of such audit duly signed and verified by such accountant and setting forth such particulars and in such format as may be notified by the Commissioner and furnish copy of such report to the Commissioner by the date notified by him.]

#### 50. Tax invoices

1. A registered dealer making a sale liable to tax under this Act shall, at the request of the purchaser, provide the purchaser at the time of sale with a tax invoice containing the particulars specified in sub-section (2) of this section and retain a copy thereof:

PROVIDED that a tax invoice shall not be issued by a dealer who

- a. is specified in the Fifth Schedule;
- b. elects to pay tax under section 16 of this Act; or
- c. is making the sale in the course of interstate trade or commerce or export:

PROVIDED FURTHER that not more than one tax invoice shall be issued for each sale:

PROVIDED FURTHER that if an invoice has been issued under the provisions of the Central Excise Act, 1944 (1 of 1944), it shall be deemed to be a tax invoice if it contains the particulars specified in sub-section (2) of this section.

Explanation.- For removal of doubts, a registered dealer shall be authorized to issue tax invoices only after a certificate of registration is

issued by the Commissioner.

2. The tax invoice issued under sub-section (1) of this section shall contain the following particulars on the original as well as copies thereof:
  - a. the words tax invoice in a prominent place;
  - b. the name, address and registration number of the selling registered dealer;
  - c. the name and address of the purchaser and his registration number, where the purchaser is a registered dealer;
  - d. an individual pre-printed serialised number and the date on which the tax invoice is issued;

[82][PROVIDED that a dealer may maintain separate numerical series, with distinct codes either, as a prefix or suffix, for each place of business in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;]

  - e. description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon indicated separately;
  - f. the signature of the selling dealer or his servant, manager or agent, duly authorized by him; and
  - g. the name and address of the printer and first and last serial number of tax invoices printed and supplied by him to the dealer.
3. A tax invoice in respect of a sale shall be issued in duplicate; the original shall be issued to the purchaser (or the person taking the delivery, as the case may be) and the duplicate shall be retained by the selling dealer.
4. Except when a tax invoice is issued under sub-section (1) of this section, if a dealer sells any goods exceeding such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a retail invoice containing the particulars specified in sub-section (5) of this section and retain a copy thereof.
5. The retail invoice issued under sub-section (4) of this section shall contain the following particulars on the original as well as copies thereof:
  - a. the words retail invoice or cash memorandum or bill in a prominent place;
  - b. the name, address and registration number of the selling dealer, if registered;
  - c. in case the sale is in the course of inter-state trade or commerce, the name, registration number and address of the purchasing dealer and type of statutory form, if any, against which the sale has been made;
  - d. an individual pre-printed serialized number and the date on which the retail invoice is issued;
  - e. description, quantity, volume and value of goods sold and services provided, inclusive of amount of tax charged thereon; and
  - f. the signature of the selling dealer or his servant, manager or agent, duly

authorized by him.

6. Retail invoice shall be issued in duplicate, the original shall be issued to the purchaser and the copy shall be retained by the selling dealer.
7. The Commissioner may, by notification in the official Gazette, specify the manner and form in which the particulars on a tax invoice or retail invoice are to be recorded.
8. If a purchaser claims to have lost the original tax invoice, the selling dealer may, subject to such conditions and restrictions as may be prescribed, provide a copy clearly marked as a duplicate.

#### 51 Credit and debit notes

Where a tax invoice has been issued in respect of a sale and

- a. the amount shown as tax in that tax invoice exceeds the tax payable in respect of the sale, the dealer shall provide the purchaser with a credit note, containing such particulars as may be prescribed; or
- b. the tax payable in respect of the sale exceeds the amount shown as tax on the tax invoice, the dealer shall provide the purchaser with a debit note, containing such particulars as may be prescribed.

### Chapter IX

#### Liability in Special Cases

#### 52. Liability in case of transfer of business

1. Where a dealer liable to pay tax under this Act transfers his business in whole or in part, by sale, gift, lease, leave or licence, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax, interest or penalty due from the dealer up to the time of such transfer, whether such amount has been assessed before such transfer, but has remained unpaid or is assessed thereafter.
2. Where the transferee or the lessee of a business referred to in sub-section (1) of this section carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is registered as a dealer, apply within the time specified in section 21 of this Act for the amendment of his registration.

#### 53. Liability in case of company in liquidation

1. Every person
  - a. who is a liquidator of any company which is being wound up, whether under the orders of a 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 one month 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 deem fit, notify 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, interest or penalty which is then, or is likely thereafter, to become payable by the company.
3. The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Commissioner under sub-section (2) of this section and on being so notified, the liquidator shall set aside an amount equal to the amount notified and, until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand:

PROVIDED that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax and penalty, if any, payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payments over debts due to government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

4. If the liquidator fails to give notice in accordance with sub-section (1) of this section or fails to set aside the amount as required by sub-section (3) of this section or parts with any assets of the company or the properties in his hand in contravention of the provisions of that sub-section, he shall be personally liable for the payment of tax and penalty, if any, which the company would be liable to pay under this Act:

PROVIDED that if the amount of tax and penalty, if any, payable by the company is notified under sub-section (2) of this section the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

5. Where there is more than one liquidator, the obligations and liabilities attached to a liquidator under this section shall attach to all the liquidators jointly and severally.

When any private company is wound up and any tax and penalty, if any, assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax and penalty, if any, unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

6. The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.
7. For the purposes of this section, the expressions company and private company shall have the meanings respectively assigned to them under clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).

54. Liability of partners of firm to pay tax

Notwithstanding any contract to the contrary, where any firm is liable to pay any tax, interest or penalty 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 intimate the date of his retirement to the Commissioner by a notice to that effect in writing and he shall be liable to pay tax, interest or penalty remaining unpaid at the time of his retirement and any tax, interest or penalty due up to the date of his retirement though unassessed on that date:

PROVIDED FURTHER that if no such intimation is given within fifteen days from the date of retirement, the liability of the partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

55. Liability of guardians, trustees etc.

Where the business in respect of which tax is payable under this Act is carried on by, or is in the charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

56. Liability of Court of Wards, etc.

Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

57. Liability in other cases

1. Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or family has discontinued business
  - a. the tax payable under this Act, by such firm, association or family up to

the date of such discontinuance may be assessed 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 jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm, association or family, whether such tax, interest or penalty has been assessed prior to or after such discontinuance, and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a dealer:

PROVIDED that where the partner of a firm liable to pay such tax, interest or penalty dies, the provisions of sub-section (4) of this section shall, so far as may be, apply.

2. Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of the association as it existed before and as it exists after its reconstitution shall, without prejudice to the provisions of section 54 of this Act, jointly and severally be liable to pay tax, interest or penalty due from such firm or association for any period before its re-constitution.
3. The provisions of sub-section (1) of this section shall, so far as may be, apply where the dealer, being a firm or association of persons is dissolved or, being a Hindu undivided family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as references to dissolution or, as the case may be, to partition.
4. Where a dealer liable to pay tax under this Act dies, then
  - a. if a business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay the tax, interest or penalty due from the dealer under this Act, whether such tax, interest or penalty had been assessed before his death but has remained unpaid, or is assessed after his death,
  - b. if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased, to the extent the estate is capable of meeting the charge, the tax, interest or penalty due from the dealer under this Act, whether such tax, interest or penalty had been assessed before his death but has remained unpaid, or is assessed after his death:and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

Explanation.- For the purposes of this section legal representative has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

## Chapter X

### Audit, Investigation and Enforcement

#### 58. Audit

1. The Commissioner may serve on any person in the prescribed manner a notice informing him that an audit of his business affairs shall be performed and where applicable, that an assessment already concluded under this Act may be reopened.

Explanation.- A notice may be served notwithstanding the fact that the person may already have been assessed under sections 31, 32 or 33 of this Act.

2. A notice served under sub-section (1) of this section may require the person on whom it is served, to appear on a date and place specified therein, which may be at his business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.
3. The person on whom a notice is served under sub-section (1) shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the proceedings under this section at his business premises.
4. The Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either
  - a. confirm the assessment under review; or
  - b. serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to sections 32 and 33 of this Act.
5. Any assessment pursuant to an audit of the persons business affairs shall be without prejudice to prosecution for any offence under this Act.

#### 58A Special Audit

1. If, at any stage of the proceeding under this Act, the Commissioner, having regard to the nature and complexity of the business of a dealer and the interest of the revenue, is of the opinion that it is necessary so to do, he may direct the dealer by a notice in writing to get his records including books of accounts, examined and audited by an accountant or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.
2. The provision of sub-section (1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other provision of this

Act or any other law for the time being in force or otherwise.

3. Every report under sub-section (1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner:

PROVIDED that the Commissioner may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit:

PROVIDED FURTHER that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred eighty days from the date on which the direction under sub-section (1) is received by the dealer.

4. The expenses of, and incidental to, the examination and audit of records under sub section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be paid by the dealer as determined by the Commissioner and that determination shall be final and default in such payment shall be recoverable from the dealer as tax and in the manner provided for the recovery of arrears of tax under this Act.

#### 59. Inspection of records

1. All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.
2. The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require
  - a. any dealer; or
  - b. any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organisation, any officer thereof;to
  - i. produce before him such records, books of account, registers and other documents;
  - ii. answer such questions; and
  - iii. prepare and furnish such additional information; relating to his activities or to the activities of any other person as the Commissioner may deem necessary.
3. The Commissioner may require a person referred to in sub-section (2) above, to
  - a. prepare and provide any documents; and

- b. verify the answer to any question; in the manner specified by him.
  - 4., The Commissioner may retain, remove, take copies or extracts, or cause copies or extracts to be made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held.
60. Power to enter premises and seize records and goods
  1. All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open to inspection by the Commissioner.
  2. Where the Commissioner, upon information in his possession or otherwise has reasonable grounds to believe that any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner and for the purposes of administration of this Act, it is necessary so to do, the Commissioner may-
    - a. enter and search any business premises or any other place or building;
    - b. break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;
    - c. seize and remove any records, books of account, registers, other documents or goods;
    - d. place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;
    - e. seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.
  3. Where any premises have been sealed under clause (f) of sub-section (2), of this section or an order made under sub-section (3) of this section, the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, permit the de-sealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manners as may be directed.
  4. The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified in sub-section (2) of this section.
  5. Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

Explanation.- The powers under this section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery.

## 61. Power to stop, search and detain goods vehicles

1. To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the [84][owner,] driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in the possession of such [85][owner,] driver or person in charge.
2. The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.
- 2A. The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

PROVIDED that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half times the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.

- a. his name and address;
  - b. the name and address of the owner of the vehicle;
  - c. the name and address of the consignor of the goods;
  - d. the name and address of the consignee of the goods; and
  - e. the name and address of the transporter.
3. If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner [89][or driver] or person in charge of such goods vehicle is not carrying the documents as required by sub-section (2) of this section or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely:-
  4.
    - a. refuse to allow the goods or the goods vehicle to enter [90][or leave] Delhi;
    - b. seize the goods and any documents relating to the goods; and
    - c. seize the goods vehicle and any documents relating to the goods vehicle.
  5. Where the owner [91][, driver] or the person in charge of the goods

vehicle

- a. requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and
- b. furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount; the goods vehicle, the goods and the documents so seized may be released.

[92][PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.]

6. The Commissioner may permit the owner [93][, driver] or person in charge of goods vehicle to remove any goods or goods vehicle seized under sub-section (4) subject to an undertaking
  - a. that the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and
  - b. that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner,and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.
7. Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.
8. Nothing contained in this section shall apply to the rolling stock as defined in the Railway Act 1989 (24 of 1989).

## 62. Custody and release of records

1. Where the Commissioner seizes any books of accounts or other documents, he shall give the dealer or the person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him.

PROVIDED that if the dealer or person from whose custody the books of accounts or other documents are seized refuses to give an acknowledgement, the Commissioner may leave the receipt at the premises and record this fact.

2. The Commissioner shall keep in his custody the books of accounts, registers, other documents seized under section 60 of this Act for a period

not exceeding one year, and thereafter shall return the same to the dealer or person from whose custody or power they were seized;

PROVIDED that the Commissioner may, before returning the books of accounts, registers and other documents, require the dealer or the person, as the case may be, to give a written undertaking that the books of accounts, registers and other documents shall be presented whenever required by the Commissioner for any proceedings under this Act:

PROVIDED FURTHER that the Commissioner shall, when requested, allow the person whose books of accounts, registers and documents have been seized, reasonable access to the books of accounts, registers and documents for the purpose of inspection and shall allow the person the opportunity to make copies thereof at the persons own expense.

PROVIDED ALSO that the period of custody of the books of accounts, registers and other documents seized under section 60 of this Act may be extended beyond one year if any proceedings under this Act are pending or for reasons to be recorded by the Commissioner in writing.

63. Custody, return and disposal of goods, goods vehicle and security

1. Where the Commissioner seizes any goods or goods vehicle, he shall give the dealer, person in charge of the goods vehicle or a person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him:

PROVIDED that if the person from whose custody the goods or goods vehicle are seized refuses to give an acknowledgement, the Commissioner may leave the receipt in his presence and record this fact.

2. The Commissioner
  - a. shall keep any goods or goods vehicle seized under section 61 in his custody;
  - b. may retain them for such time as he considers reasonable; and
  - c. subject to sub-section (3) of this section, shall return the goods or goods vehicle to the dealer or other person from whose custody or power they were seized.
3. Where the Commissioner -
  - a. has seized any goods;
  - b. has seized a goods vehicle; or
  - c. holds any goods as security for the performance of an obligation under this Act; the Commissioner may, not sooner than one month after the service of notice on
    - i. the person from whom the goods were seized;
    - ii. the person from whom the goods vehicle was seized;

- iii. the person for whom the security was given; and  
any person against whom the security is to be enforced;
  - iv. as the case may be, of his intention to sell the goods, direct the auction of such goods or goods vehicle to meet any arrears of tax, interest or penalty owed under this Act.
4. An auction of goods or a goods vehicle shall be carried out in the manner prescribed for the sale of property held by the Commissioner.
64. Detention of goods pending disclosure
- i. If any person on being required by the Commissioner, fails to give any information in respect of any goods in his possession or fails to permit the inspection thereof, the Commissioner may seize any goods in his custody or possession in respect of which the default is committed.
  - ii. The seizure shall remain in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.
65. Obligation to provide reasonable assistance
- Every person shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the Commissioners activities under the Act.

## Chapter XI

### Value Added Tax Authorities and Appellate Tribunal

#### 66. Value Added Tax Authorities

1. For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.
2. To assist the Commissioner in the administration of this Act
  - a. the Government may appoint as many Additional Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and
  - b. the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties;

in this Act referred to as Value Added Tax Authorities.
3. The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.
4. The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the

computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions.

#### 67. Powers and responsibilities of the Commissioner

1. The Commissioner shall have responsibility for the due and proper administration of this Act and shall have jurisdiction over the whole of Delhi.
2. Subject to sub-section (3) of this section, the Commissioner may, from time to time, issue such orders, instructions and directions to any Value Added Tax authorities as he thinks fit for the due and proper administration of this Act and all such persons engaged in the administration of this Act shall observe and follow such orders, instructions and directions of the Commissioner.
3. No order, instruction or direction may be issued by the Commissioner to a person exercising the power to determine
  - a. a particular objection made or to be made under section 74 of this Act; or
  - b. a particular question under section 84 of this Act;so as to require the person to determine the objection or answer the question of a particular person in a particular manner.
4. Nothing in sub-section (3) shall prevent the Commissioner from issuing general orders, instructions and directions to any person who determines objections under section 74 or answers questions under section 84 of this Act about the manner of determining classes of objections or answering classes of questions.

#### 68. Delegation of Commissioners powers

1. Subject to such restrictions and conditions as may be prescribed, the Commissioner may delegate any of his powers under this Act to any Value Added Tax authorities.
2. Where the Commissioner delegates his powers under Chapter X, the delegate shall carry and produce on demand evidence in the prescribed form of the delegation of these powers when exercising the powers.
3. Where the Commissioner has delegated a power to a Value Added Tax Authority, the Commissioner may supervise, review and rectify any decision made or action taken by that Authority.

Explanation.- The exercise of this power of supervision, review or rectification will not lead to the issue of an assessment or re-assessment after the expiry of the time referred to in section 34 of this Act.

4. Notwithstanding any law or doctrine to the contrary, the power delegated by the Commissioner to a person to determine an objection under section 74 of this Act may be exercised by that person, even though the person determining the objection is equal in rank to the person whose decision is under objection.

69. Change of an incumbent of an office

Whenever in respect of any proceeding under this Act the Commissioner or any Value Added Tax authority is succeeded by another person-

- a. no delegation of power made by the former incumbent shall be revoked by virtue of the succession; and
- b. the person so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

70. Power of Commissioner to make notifications

1. The Commissioner may notify and publish any forms which may be necessary for the reporting of information to the Value Added Tax authorities.
2. Where the Commissioner has notified a form for a particular purpose, all persons shall be required to report the information using the form.
3. Where in his opinion it is necessary or convenient to do so, the Commissioner may issue notifications for carrying out the purposes of this Act:

PROVIDED that any notification shall not be inconsistent with this Act or any rules or regulations made pursuant to it.

4. In particular and without prejudice to the generality of the foregoing power, a notification issued by the Commissioner may stipulate all or any of the matters which in the opinion of the Commissioner are necessary or convenient for the proper administration of this Act.
5. Failure to comply with a requirement in a notification may be punishable with fine provided that the amount of the fine does not exceed five hundred rupees or such other amount as may be prescribed.
6. Every notification issued by the Commissioner under this Act shall be published in the official Gazette, and shall not have any effect prior to such publication.

71. Persons to be public servants

The Commissioner, all Value Added Tax authorities and all members of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

72. Immunity from civil suit

No suit shall be brought in any civil court against the Government, the Commissioner, any Value Added Tax authorities, or member of the Appellate Tribunal for anything done or intended to be done in good faith under this Act or the rules made thereunder.

73. Appellate Tribunal

1. The Government shall, as soon as may be after the commencement of this Act, constitute an Appellate Tribunal consisting of one or more members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by or under this Act:

PROVIDED that where the Appellate Tribunal consists of one member, that member shall be a person who has held a civil judicial post for at least ten years or who has been a member of the Indian Legal Service (not below Grade III) for at least three years or who has been in practice as an advocate for at least ten years, and where the Appellate Tribunal consists of more than one member, one such member shall be a person qualified as aforesaid.

2. Where the number of members of the Appellate Tribunal is more than one, the Government shall appoint one of those members to be the Chairperson of the Appellate Tribunal.
3. Subject to the provisions of sub-section (1) of this section, the qualifications and other conditions of service of the member or members constituting the Appellate Tribunal and the period for which such member or members shall hold office, shall be such as may be determined by the Government.
4. Any vacancy in the membership of the Appellate Tribunal shall be filled up by the Government as soon as practicable.
5. Where the number of members of the Appellate Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, the decision of the Chairperson of the Appellate Tribunal thereon shall be final.
6. Subject to the previous sanction of the Government, the Appellate Tribunal shall, for the purpose of regulating its procedure and disposal of its business, make regulations consistent with the provisions of this Act and the rules made there-under.
7. The regulations made under sub-section (6) shall be published in the official Gazette.
8. The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Commissioner under section 75 of this Act and any proceeding before the Appellate Tribunal 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 (45 of 1860) and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

## Chapter XII

### Objections, Appeals, Disputes and Questions

#### 74. Objections

1. Any person who is dis-satisfied with

- a. an assessment made under this Act (including an assessment under section 33 of this Act); or
- b. any other order or decision made under this Act;

may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner;

PROVIDED that no objection may be made against a non-appealable order as defined in section 79 of this Act:

PROVIDED FURTHER that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid [failing which the objection shall be deemed to have not been filed:]

PROVIDED ALSO that only one objection may be made by the person against any assessment, decision or order.

PROVIDED ALSO that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

[PROVIDED ALSO that no objection shall be made to the Commissioner against an order made under section 84 or section 85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.]

2. A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing was served by the person, may make an objection against such failure.
3. An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.
4. The objection shall be made
  - a. in the case of an objection made under sub-section (1) of this section, within two months of the date of service of the assessment, or order or decision, as the case may be,; or
  - b. in the case of an objection made under sub-section (2) of this section, no sooner than six months and no later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

5. The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any

other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

6. Where a person has requested a hearing under sub-section (5) of this section and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.
7. Within three months after the receipt of the objection, the Commissioner shall either
  - a. accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or
  - b. refuse the objection or the remainder of the objection, as the case may be;

and in either case, serve on the person objecting, a notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

8. Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days.
9. If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.
10. Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of five years from the date of the commencement of this Act.
11. Where the dispute referred to in sub-section (10) of this section has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer.

After any order including an order under this section or any decision in objection is passed under this Act, rules or notifications made thereunder, by

1. any officer or person subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether -

1. any turnover of sales has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, or any claim is incorrectly granted or that the liability to tax is understated, or
2. in any case, the order is erroneous, in so far as it is prejudicial to the interest of revenue,

and after examination, the Commissioner may pass an order to the best of his judgment, where necessary.

For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice, the dealer to

- a. produce or cause to be produced before him such books of accounts and other documents or evidence as he thinks necessary for the purposes aforesaid.

Notwithstanding anything contained to the contrary in section 34,

- b. no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer.

Notwithstanding anything contained to the contrary in section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing the objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the appeal, the Commissioner may, within five

- c. years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said objection hearing authority or the appellate authority including the Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary.

3. If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject matter of the order of the Tribunal, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue, but shall stay the recovery of the

dues including the interest or penalty, insofar as they relate to such issue until the decision by the appropriate forum and after such decision, may modify the order of revision, if necessary.

4. No proceedings under this section shall be entertained on any application made by a dealer or a person.

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1. Notwithstanding anything contained to the contrary in section 34, the Commissioner may, at any time within four years from the end of the year in which any order passed by him has been served, on his own motion, rectify any mistake apparent on record and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order.
  2. The provisions of sub-section (1) shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority as they apply to the rectification of mistake by the Commissioner:

PROVIDED that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

3. Where any such rectification has the effect of reducing the amount of the tax or penalty or interest, the Commissioner shall refund any amount due to such person in accordance with the provisions of this Act.
  4. Where any such rectification has the effect of enhancing the amount of the tax or penalty or interest or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of this Act.
  5. Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed under this Act or the rules made thereunder by any person appointed under section 66 may be reviewed by such person suo motu or upon an application made in that behalf.
75. Power of Commissioner and other authorities to take evidence on oath, etc.
1. The Commissioner or any person determining objections under section 74 of this Act, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit, in respect of the following matters, namely:
    - a. enforcing the attendance of any person and examining him on oath or affirmation;
    - b. compelling the production of accounts and documents; and
    - c. issuing commissions for the examination of witnesses;  
and any proceeding under this Act before the Commissioner or person

determining objections under section 74 of this Act 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 (45 of 1860).

2. Subject to any rules made in this behalf, the Commissioner or any person determining objections under section 74 of this Act may impound and retain in his custody, any books of accounts or other documents produced before him in any proceedings under this Act until such proceedings are concluded:

PROVIDED that the Commissioner or the person determining an objection under section 74 shall not impound any books of accounts or other documents without recording in writing his reasons for so doing.

#### 76. Appeals to Appellate Tribunal

1. Any person aggrieved by a decision made by the Commissioner under sections 74, 84 and 85 of this Act may appeal to the Appellate Tribunal against such decision:

PROVIDED that no appeal may be made against a non-appealable order under section 79 of this Act.

Explanation. The Commissioner does not appeal to the Appellate Tribunal but may make a re-assessment of tax where he is of the opinion that further tax is owed.

2. Subject to the provisions of section 77 of this Act, no appeal shall be entertained unless it is made within two months from the date of service of the decision appealed against.
3. Every appeal made under this section shall be in the prescribed form, verified in the prescribed manner and shall be accompanied by such fee as may be prescribed.
4. No appeal against an assessment shall be entertained by the Appellate Tribunal unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute and any other amount assessed as due from the person:

PROVIDED that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount as it may direct:

PROVIDED FURTHER that no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.

5. In proceedings before the Appellate Tribunal
  - a. the person aggrieved shall be limited to disputing only those matters

stated in the objection;

- b. the person aggrieved shall be limited to arguing only those grounds stated in the objection; and
- c. the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.

6 The Appellate Tribunal shall

- a. in the case of an assessment, confirm, reduce, or annul the assessment (including any penalty and interest imposed);
- b. in the case of any other decision of the Commissioner, affirm or reject the decision; or
- c. pass such other order for the determination of the issue as it thinks fit:

PROVIDED that the Appellate Tribunal shall give reasons in writing for its decision which shall include its findings on material questions of fact and the evidence or other material on which those findings were based.

7. The Appellate Tribunal shall use its best endeavours to make a final resolution of the matter before it and for this purpose may make a decision in substitution for the order in dispute, including the exercise or re-exercise of any discretion or power vested in the Commissioner.
8. The Appellate Tribunal shall not set aside an assessment and remit the matter to the Commissioner for a further assessment, unless it has first
  - a. advised the aggrieved person of the proposed order;
  - b. offered the person the opportunity to adduce such further evidence before it as might assist the Appellate Tribunal to reach a final determination.
9. Where the Appellate Tribunal sets aside an assessment and remits the matter to the Commissioner for a further assessment, the Appellate Tribunal shall at the same time order the Commissioner to refund to the person some or all of the amount in dispute:

PROVIDED that where no order is made, it shall be presumed that the Appellate Tribunal has ordered the refund of the amount in dispute.

10. Where a person has failed to attend the hearing at the time and place stipulated, the Appellate Tribunal may adjourn the proceedings, strike out the appeal or proceed to make an order determining the objection in the absence of the person.
11. Save as provided in section 81 and sub-section (12) of this section, an order passed by the Appellate Tribunal on an appeal shall be final.
12. The Appellate Tribunal may rectify any mistake or error apparent from the record of its proceedings.
13. Any order passed by the Appellate Tribunal may be reviewed suo-motu or

upon an application made in that behalf:

PROVIDED that before any order which is likely to affect any person adversely is passed, such person shall be given a reasonable opportunity of being heard.

77. Extension of period of limitation in certain cases

1. The Appellate Tribunal may admit an appeal under section 76 of this Act after the period of limitation laid down in that section, if the appellant satisfies the Appellate Tribunal that he had sufficient cause for not preferring the appeal within such period.
2. In computing the period laid down under sections 76 and 81 of this Act, the provisions of sections 4 and 12 of the Limitation Act, 1963 (36 of 1963), shall, so far as may be, apply.
3. In computing the period of limitation prescribed by or under any provision of this Act, or the rules made thereunder, other than sections 76 or 81 of this Act, any period during which any proceeding is stayed by an order or injunction of any court shall be excluded.

78. Burden of proof

The burden of proving any matter in issue in proceedings under section 74 of this Act, or before the Appellate Tribunal which relates to the liability to pay tax or any other amount under this Act shall lie on the person alleged to be liable to pay the amount.

Explanation.- The burden of proof in criminal prosecutions is unaffected by this section.

79. Bar on appeal or objection against certain orders

1. No objection or appeal shall lie against
    - a. a decision of the Commissioner to make an assessment of tax or penalty;
    - b. a notice requiring a person to furnish a return;
    - c. a notice issued under section 58, section 59 and direction under section 58A of this Act;
    - d. a decision of the Commissioner to notify any matter;
    - e. a notice asking a dealer to show cause why he should not be prosecuted for an offence under this Act;
    - f. a decision relating to the seizure or retention of books of account, registers and other documents;
    - g. a decision sanctioning a prosecution under this Act;
    - h. an interim decision made in the course of any proceedings;
    - i. a decision of the Commissioner touching on the internal administration of the Value Added Tax authorities;
    - j. an assessment issued by the Commissioner to give effect to an order of the [103][Appellate Tribunal or a court; or
    - k. a notice served on the person under sub-section (10) of section 84.(in this Act referred to as non-appealable orders).
  2. Save as provided in [105][clause (j)] of sub-section (1) of this section, nothing in sub-section (1) of this section shall prevent the person from objecting to the amount or the obligation to pay any amount assessed by the Commissioner under section 74 of this Act.
80. Assessment proceedings, etc. not to be invalid on certain grounds
1. No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.
  2. The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.
  3. No assessment made under this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act.
81. Appeal to High Court

1. An appeal shall lie to the High Court from every order passed by the Appellate Tribunal in appeal under this Act, if the High Court is satisfied that the case involves a substantial question of law.
  2. The Commissioner or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be
    - a. filed within sixty days from the date on which the order appealed against is received by the Commissioner or [107][served upon] the other party.
    - b. in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
  3. Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that 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 on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
  5. 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 cost as it deems fit.
  6. The High Court may determine any issue which-
    - a. has not been determined by the Appellate Tribunal;
    - b. has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).
  7. Where an appeal has been filed before the High Court, it shall be heard by a bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.
  8. Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.
  9. Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.
82. Appearance before any authority in proceedings
1. Any person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may attend

- a. by a person authorised by him in writing in this behalf, being a relative or a person regularly employed by him; or
  - b. by a legal practitioner or chartered accountant [or cost accountant] who is not disqualified by or under sub-section (2) of this section; or
  - c. by a Value Added Tax practitioner who possesses the prescribed qualifications and is entered in the list, which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2) of this section.
2. The Commissioner may, for reasons to be recorded in writing, disqualify for a period from appearing before any such authority, any legal practitioner, chartered accountant or Value Added Tax practitioner-
- a. who has been dismissed from government service; or
  - b. who, being a legal practitioner or chartered accountant, [109][or cost accountant] is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or
  - c. who, being a Value Added Tax practitioner, is found guilty of such misconduct by the Commissioner.
3. Any person who is disqualified under this section may, within one month of the date of disqualification, appeal to the Government to have the disqualification cancelled.
4. The decision of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred, until the appeal is decided.
5. The Commissioner may, at any time, suo moto or on an application made to him in this behalf, revoke any decision made against any person under sub-section (2) of this section and thereupon such person shall cease to be disqualified.

Explanation.- A decision made by the Commissioner under this section may also be the subject of an objection under section 74 of this Act.

83. Bar of suits in civil courts

No suit shall be brought in any civil court to set aside or modify any assessment made or any order passed under this Act or the rules made thereunder.

84. Determination of specific questions

- If any determinable question arises, otherwise than in proceedings before a
1. court, a person may apply in the prescribed manner to the Commissioner for the determination of that question.
- Subject to sub-section (3) of this section, an application for the
2. determination of a determinable question may be made in respect of a proposed transaction, a transaction that is being undertaken, or a transaction has been concluded.

3. An application for the determination of a determinable question may not be made after
  - a. the Commissioner has commenced the audit of the person pursuant to section 58 of this Act; or
  - b. the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question occurred.

Explanation.- For the purposes of this sub-section, the Commissioner shall be deemed to have commenced the audit of a person under section 58 of this Act when the Commissioner serves a notice to this effect.

4. For the purposes of this section, the following shall be determinable questions:-
  - a. whether any person, society, club or association or any firm or any branch or department of any firm is or would be a dealer;
  - b. whether any dealer is or would be required to be registered under this Act;
  - c. the amount of the taxable quantum of a dealer for a period;
  - d. whether a transaction is or would be a sale, or requires an adjustment to be made under section 8 of this Act arising out of a sale;
  - e. whether a transaction is or would be in the nature of works contract, or transfer of right to use any goods;
  - f. whether a sale is not liable to tax under section 7 of this Act;
  - g. the sale price of a transaction;
  - h. the proportion of the turnover or turnover of purchases of a dealer which arises in a tax period, and the time at which an adjustment to tax or tax credit arises;
  - i. whether any transaction is or would be the import of goods;
  - j. the value of any goods imported into Delhi;
  - k. the rate of tax that is payable on a sale or import of goods and the classification of the goods under the Schedules;
  - l. whether a transaction is the purchase of goods, or requires an adjustment to be made under section 10 of this Act arising out of a purchase;
  - m. the amount of any tax credit to which the dealer is entitled in respect of a purchase or import of goods;
  - n. the amount of any tax credit in respect of any used goods purchased by a dealer;
  - o. the location of any sale or purchase;

- p. the application of a composition scheme in the circumstances of the dealer; or
  - q. the tax period of a dealer.
5. The Commissioner shall make the determination within such period as may be prescribed.
6. Where
- a. the Commissioner fails to make a determination under this section within the time prescribed under sub-section (5) of this section;
  - b. the person thereafter implements the transaction which is the subject of the application and in the manner described in the application; and
  - c. the person has, in the application for the determination of the determinable question, indicated the answer to the determinable question which the person believes to be correct (in this section called the proposed determination);

the Commissioner shall be deemed for the purposes of this Act to have made and issued to the person on the day after the expiry of the prescribed period, a determination of the determinable question in the terms of the proposed determination.

7. The Commissioner may
- a. direct that the determination shall not affect the liability of any person under this Act with respect to any transaction effected prior to the determination;
  - b. limit the period for which the determination will apply;
  - c. limit the transactions to which the determination will apply; and
  - d. impose such other limitations or restrictions on the determination as seem appropriate.

- If any such question arises from any order already passed under this Act or under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 (Delhi Act 4 of 1995), as then in force in Delhi, no such question shall be entertained for determination under this section but such question may be raised in an objection or appeal against such order.
- 8.

9. Where
- the Commissioner has issued to a person a determination in respect of a particular transaction; and
  - the person implements the transaction based on the determination issued to him under this section and in the manner described in the application; no assessment may be raised by the Commissioner against that person which is inconsistent with the determination and no penalty may be imposed on the person if the determination is later held incorrect.

- The Commissioner may, by notice served on the person, withdraw or qualify a determination issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the determination with respect to any transaction or action which he has commenced or which he has completed prior to the withdrawal or qualification.
- 10.

#### 85. Ruling on general questions

1. The Commissioner may, by notification in the official Gazette, publish his ruling on the answer to any question involving the interpretation of this Act or application of this Act to a class of persons or class of transactions.
2. A ruling issued by the Commissioner under this section may be issued subject to such restrictions and conditions as the Commissioner may deem fit.
3. The ruling shall be treated as coming into effect on the date stated in the ruling (which may be a date prior to the publication of the ruling) or, if no date is stated in the ruling, on the date of publication of the official Gazette.
4. Where
  - a. the Commissioner has published a ruling in respect of a class of persons or transactions;
  - b. a person implements a transaction or undertakes any action based on the ruling;
  - c. the ruling has, at the time of implementing the transaction or undertaking the action, not been withdrawn by the Commissioner; and
  - d. according to the terms of the ruling, the ruling purports to apply to the transaction or action undertaken by the person;

no assessment which is inconsistent with the ruling, may be raised by the Commissioner against that person and no penalty may be imposed on the person if the ruling is later held incorrect.

Explanation.- A person may rely on the Commissioner's ruling or on the determination made under section 84 of this Act.

5. The Commissioner may, by notification published in the official Gazette, withdraw or qualify a ruling already issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the ruling with respect to any transaction or action commenced or completed by him prior to such withdrawal or qualification.

### Chapter XIII

#### Penalties and Offences

#### 86. Penalties

1. In this section tax deficiency means the difference between the tax properly

payable by the person in accordance with the provisions of this Act and the amount of tax paid by the person in respect of a tax period.

2. The Government may, from time to time, if it deems it necessary, vary the amount of any penalty due under this section by a notification to that effect in the official Gazette:

PROVIDED that any penalty which is increased under this section shall have effect only for offences or failures occurring after the date of such notification;

PROVIDED FURTHER that the penalty imposed under this section can be remitted where a person is able to prove existence of a reasonable cause for the act or omission giving rise to penalty during objection proceedings under section 74 of this Act.

3. Where two or more penalties arise under this Act in respect of the same conduct of a person, the person shall be liable to pay only the greater penalty.
4. Where a person who is required to be registered under this Act has failed to apply for registration within one month from the day on which the requirement arose, the person shall be liable to pay, by way of penalty, an amount equal to one thousand rupees per day from the day immediately following the expiry of the said period until the person makes an application for registration in the prescribed form, containing such particulars and information and accompanied by such fee, security and other documents as may be prescribed:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed one lakh rupees.

5. If, a registered dealer fails to comply with the provisions of sub-section (1) of section 21 of this Act, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day of default subject to a maximum of five thousand rupees.
6. If a registered dealer
  - a. fails to comply with the provisions of sub-section (2) of section 22 of this Act; or
  - b. fails to surrender his certificate of registration as provided in sub-section (7) of section 22 of this Act;

the registered dealer shall be liable to pay, by way of penalty, a sum equal to one hundred rupees for every day of default subject to a maximum of five thousand rupees.

7. If any person falsely represents that he is registered as a dealer under this Act, he shall be liable to a penalty equal to the amount of tax wrongly collected or one lakh rupees, whichever is the greater.
8. Where a person

1. has applied for registration under sub-section (4) of section 18 of this Act;
2. has been registered; and either
  - a. has failed to undertake activities which would make the person a dealer within the period specified in his application; or
  - b. has failed to comply with any of the restrictions or conditions subject to which such registration was granted,

the person shall be liable to pay a penalty of ten thousand rupees.

9. If a person required to furnish a return under Chapter V of this Act
  - a. fails to furnish any return by the due date; or
  - b. fails to furnish with a return any other document that is required to be furnished with the return; or
  - c. being required to revise a return already furnished, fails to furnish the revised return by the due date;

the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day immediately following the due date until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed ten thousand rupees.

10. Any person who
  - a. furnishes a return under this Act which is false, misleading or deceptive in a material particular; or
  - b. omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular;

shall be liable to pay, by way of penalty, a sum of ten thousand rupees or the amount of the tax deficiency, whichever is the greater.

11. Any dealer who
  - a. has claimed tax credit under section 14 of this Act to which he is not entitled; or
  - b. has claimed a greater tax credit under section 14 than is allowed; shall be liable to pay, by way of penalty, an amount equal to the amount of tax credit so claimed or ten thousand rupees, whichever is the greater.
12. Where a tax deficiency arises in relation to a person, the person shall be liable to pay, by way of penalty, a sum equal to one per cent of the tax deficiency per week or a sum equal to rupees one hundred per week, whichever is higher, for the period of default.

13. Where a person is required under this Act to
  - i. prepare records or accounts; or
  - ii. prepare records or accounts in a prescribed manner; or
  - iii. retain records or accounts; and the person
    - a. fails to prepare the required records and accounts; or
    - b. fails to prepare records and accounts in the prescribed manner; or
    - c. fails to retain the records and accounts for the prescribed period; the person shall be liable to pay, by way of penalty, a sum of fifty thousand rupees or twenty per cent of the tax deficiency, if any, whichever is greater.
14. Any person who fails to comply with the requirement under sub-section (2) or sub-section (3) of section 59 of this Act shall be liable to pay, by way of penalty, a sum of fifty thousand rupees.
15. Where a person who is required to prepare records and accounts under this Act, prepares records and accounts in a manner that is false, misleading or deceptive, the person shall be liable to pay, by way of penalty, a sum of one lakh rupees or the amount of the tax deficiency, if any, whichever is greater.
16. Where a person
  - a. has issued a tax invoice or retail invoice with incomplete or incorrect particulars; or
  - b. having issued a tax invoice or retail invoice, has failed to account it correctly in his books of account;

the person shall be liable to pay, by way of penalty, an amount of five thousand rupees or twenty per cent of the tax deficiency, if any, whichever is greater.
17. Where a person who is not authorised under this Act to issue a tax invoice has issued a tax invoice for a sale, the person shall be liable to pay, by way of penalty, an amount of one lakh rupees or the tax deficiency, if any, whichever is greater.
18. If any dealer liable to have his accounts audited under section 49 of this Act fails to furnish a true copy of such report within the prescribed time, the person shall be liable to pay, by way of penalty, a sum of ten thousand rupees.
19. Where goods are being carried by a transporter without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to in sub-section (2) of section 61 of this Act, the transporter shall be liable to a penalty equal to the amount of tax payable on such goods.
20. Any person who
  - a. makes a statement to the Commissioner which is false, misleading or deceptive in a material particular; or

- b. omits from a statement made to the Commissioner any matter or thing without which the statement is false, misleading or deceptive in a material particular;

the person shall be liable to pay, by way of penalty, a sum of fifty thousand rupees, or the amount of the tax deficiency, whichever is greater.

Explanation.- The liability to pay a penalty and the amount of the penalty may be the subject of an objection under section 74 of this Act.

21. Where a casual trader who is required to be registered under this Act has failed to apply for registration within stipulated period, the casual trader shall be liable to pay, by way of penalty, an amount equal to five thousand rupees per day, from the day immediately following the expiry of the due date until the person makes an application for registration under this Act :

PROVIDED that the amount of penalty payable under this sub-section shall not exceed one lakh rupees.

22. If a casual trader required to furnish a return under this Act
  - a. fails to furnish any return by the due date; or
  - b. fails to furnish with a return any other document that is required to be furnished with the return;

the person shall be liable to pay, by way of penalty, a sum of one thousand rupees per day from the day immediately following the due date until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed ten thousand rupees.

23. Where any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails
  - a. to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or
  - b. to ensure that all such participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or
  - c. to permit inspection of the business premises or goods or account and records of the participants; or
  - d. to permit inspection of the accounts and records of the organizer in respect of the exhibition-cum-sale;

such person shall be liable to pay, by way of penalty, a sum equal to fifty thousand rupees or a sum equal to the amount of tax payable on such goods if such goods were sold in Delhi, whichever is greater.

## 87 Automatic mitigation and increase of penalties

1. Where as a result of any proceedings the amount of tax with respect to which a penalty was levied has been wholly reduced, the penalty levied shall be cancelled and if the penalty has been paid, it shall be refunded.
2. If
  - i. a person is liable to pay a penalty under [113][\*\*\*] sub-section (12) of section 86 of this Act; and  
the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency before the Commissioner informs the
    - ii. person that an audit of the persons tax obligations is to be carried out; the amount of the penalty otherwise due shall be reduced by eighty per cent of the penalty.
  - iii. If
    - a. a person is liable to pay a penalty under [114][\*\*\*] sub-section (12) of section 86 of this Act; and
    - b. the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency after the Commissioner informs the person that an audit of the persons tax obligations is to be carried out;  
  
the amount of the penalty due shall be reduced by fifty per cent of the penalty.
  - iv. If  
a person is liable to pay a penalty under [115][\*\*\*] sub-section (12) of section 86 of this Act;  
the tax deficiency arose because the person treated this Act as applying to the person in a particular way; and  
the decision to adopt that treatment was made by the person relying on a determination given to the person by the Commissioner under section 84 of this Act or a ruling issued by the Commissioner under section 85 of this Act; the amount of the penalty otherwise due shall be reduced to nil.
  - v. Where
    - a. penalty under this Act has been assessed;
    - b. the penalty has not been remitted in full after objection; and
    - c. the person is subsequently assessed to a further penalty in respect of the same or a substantially similar failure occurring on another occasion (in this section called the subsequent offence);  
  
the penalty otherwise due under this Act shall be increased by
      - i. in the case of the first subsequent offence, fifty per cent of the

specified penalty; and

- ii. in the case of the second and any further subsequent offence, one hundred per cent of the specified penalty.

88. Relationship to assessment and impact on criminal penalties

1. The penalties specified under this Act are owed notwithstanding that no assessment of tax owed under this Act has been made.
2. Any penalty imposed under this Act shall be without prejudice to any prosecution for any offence under this Chapter.

89. Offences and criminal penalties

1. Whoever

- a. not being a registered dealer, falsely represents that he is or was a registered dealer at the time when he sells or buys goods;
- b. knowingly keeps false account or does not keep the account of the value of the goods bought or sold by him in contravention of section 48,; or
- c. issues to any person a false invoice, bill, cash-memorandum, voucher or other document which he knows or has reason to believe to be false;

shall, on conviction, be punished with rigorous imprisonment for a term which may extend to six months, and with a fine.

2. Whoever knowingly

- a. furnishes a false return;  
produces before the Commissioner, false bill, cash-memorandum,
- b. voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit; or
- c. produces false accounts, registers or documents or knowingly furnishes false information; shall
  - i. in case where the amount of tax which could have been evaded if the false return, bill, cash-memorandum, voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit, accounts, registers or documents or false information, as the case may be, had been accepted as true exceeds fifty thousand rupees, on conviction, be punished with rigorous imprisonment for a term which may extend to six months ; and
  - ii. in any other case, with rigorous imprisonment for a term which may extend to six months, and with a fine.

Whoever, willfully attempts, in any manner whatsoever, to evade payment of

3. tax, penalty or interest or all of them under this Act, shall, on conviction, be punished
  - a. in any case where the amount involved exceeds fifty thousand rupees

during the period of a year, with rigorous imprisonment for a term which may extend to six months, and with a fine; and

- b. in any other case, with rigorous imprisonment for a term which may extend to three months and with a fine.

4. Whoever

1. carries on business as a dealer without being registered in willful contravention of sub-section (1) of section 18 of this Act;
2. fails without sufficient cause to furnish any information required under section 21 of this Act;
3. fails to surrender his certificate of registration as provided in sub-section (7) of section 22 of this Act;
4. fails without sufficient cause to furnish any returns as required under section 27 of this Act by the date or in the manner prescribed;
5. without reasonable cause, contravenes any of the provisions of section 40 of this Act;
6. without sufficient cause fails to issue invoice as required under section 50 of this Act;
7. fails without sufficient cause, when directed so to do under section 48 of this Act to keep any accounts or record, in accordance with the directions;
8. fails without sufficient cause, to comply with any requirements made of him under section 59 of this Act, or obstructs any officer making inspection or search or seizure under sections 60 and 61 of this Act;
9. obstructs or prevents any officer performing any function under Chapter X of this Act;
10. being owner in charge of a goods vehicle fails, neglects or refuses to comply with any of the requirements contained in section 61 of this Act; or
11. interferes with or obstructs the Commissioner or any officer exercising any other power conferred under this Act; shall, on conviction, be punished with imprisonment for a term which may extend to six months, and with a fine.
12. Whoever aids or abets any person in the commission of any act specified in sub-sections (1) to (3) of this section shall, on conviction, be punished with rigorous imprisonment which may extend to six months, and with a fine.
13. Whoever commits any of the acts specified in sub-sections (1) to (5) of this section and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with a fine of not less than one hundred rupees per day during the period of the continuance of the offence, in addition to the punishments provided under this section.

14. Notwithstanding anything contained in sub-sections (1) to (5) of this section, no person shall be proceeded under these sub-sections if the total amount involved is less than two hundred rupees during the period of a year.

- Where a dealer is accused of an offence specified in sub-sections (1), (2) or (3) or in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (4), or sub section (6) of this section the person deemed to be the
15. manager of the business of such dealer under section 95 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

90. Offences by companies, etc.

1. Where an offence under this Act or the rules has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1) of this section, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section

- a. company means a body corporate, and includes a firm or other association of individuals; and
- b. director in relation to a firm means a partner in the firm.
3. Where an offence under this Act has been committed by a Hindu undivided family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render the Karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence:

PROVIDED FURTHER that where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has

been committed with the consent or connivance of or is attributable to any neglect on the part of any adult member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

91. Cognizance of offences

1. No court shall take cognizance of any offence under this Act or rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.
2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

92. Investigation of offences

1. Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.
2. Every officer or person so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer in charge of a police station for the investigation of a cognizable offence.

93. Compounding of offences

1. The Commissioner may, before the institution of proceedings for any offence punishable under sub-section (4) of section 89 of this Act or under any rules made under this Act, accept from any person charged with such offence by way of composition of offence, a sum not exceeding fifty thousand rupees or a sum not exceeding three times the amount of tax which would thereby have been avoided, whichever is higher.
2. On payment of such sum as may be determined by the Commissioner under sub-section (1) of this section, no further proceedings shall be taken against such person in respect of the same offence.

94. Chapter XXXVI of the Code of Criminal Procedure, 1973, not to apply to certain offences

Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to

- a. any offence punishable under this Act; or
- b. any other offence which under the provisions of that Code may be tried along with such offence; and

every offence referred to in clause (a) or clause (b) above may be taken cognizance of by the court having jurisdiction under this Act as if the provisions of that Chapter were not enacted.

## Miscellaneous

95. Dealer to declare the name of manager of business and permanent account number
1. Every dealer being a Hindu undivided family or an association of persons or club or society or firm or company or any person or body who is engaged in business as the guardian or trustee or otherwise on behalf of another person, and who is liable to pay tax under this Act, shall, within the period prescribed, furnish a declaration in the manner prescribed, stating the name of the person or persons who shall be deemed to be the manager or managers of such persons business for the purposes of this Act.
  2. The declaration furnished under sub-section (1) of this section may be revised from time to time as required.
  3. Every dealer liable to pay tax under this Act who is liable to obtain a Permanent Account Number (PAN) under the Income Tax Act, 1961 (43 of 1961), shall communicate to the Commissioner, in the prescribed time and manner, the said number if he has obtained the same and, in any other case, shall state whether he has applied for the same and provide the details of the application.
  4. Any person who fails to furnish a declaration or, as the case may be, a revised declaration as provided in sub-section (1) and sub-section (2) of this section or fails to communicate the permanent account number obtained under the Income Tax Act, 1961 (43 of 1961) or as the case may be, fails to state, whether he has applied for the same and fails to provide the details of the application, as provided in sub-section (3) of this section, shall be liable to pay by way of penalty, a sum of ten thousand rupees.
96. Service of notice when family is disrupted or firm is dissolved
1. Where a Hindu undivided family has been partitioned, notices under this Act shall be served on the person who was the last manager of the Hindu undivided family, or if such person cannot be found, then, on all adults who were members of the Hindu undivided family, immediately before the partition.
  2. Where a firm or an association of persons is dissolved, notices under this Act may be served on any person who was a partner (not being a minor) of the firm, or member of the association, as the case may be, immediately before its dissolution.
97. Service of notice in the case of discontinued business
- Where an assessment is to be made in respect of business which has been discontinued, a notice under this Act shall be served in the case of a firm or an association of persons or any person who was a member of such firm or association at the time of its discontinuance or in the case of a company on the principal officer thereof.
98. Returns, etc. to be confidential

1. All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than proceedings before a criminal court, shall, save as provided in sub-section (3) of this section, be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall, save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.
2. If, save as provided in sub-section (3) of this section, any servant of the Government discloses any of the particulars referred to in sub-section (1) of this section, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to a fine.
3. Nothing in this section shall apply to the disclosure
  - i. of any of the particulars referred to in sub-section (1) of this section for the purposes of investigation or prosecution under this Act or the Indian Penal Code 1860 (45 of 1860) or any other enactment for the time being in force;
  - ii. of such facts to an officer of the Central Government or any State Government as may be necessary for verification of such facts or for the purposes of enabling that Government to levy or realise any tax imposed by it;
  - iii. of any such particulars where such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand;
  - iv. of any such particulars to a civil court in any suit or proceeding to which the Government or any Value Added Tax authority is a party and which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any Value Added Tax authority to exercise any powers thereunder;
  - v. of any such particulars by any public servant where the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 (2 of 1899) to impound an insufficiently stamped document;
  - vi. of any such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payment;
  - vii. of any such particulars to any officer appointed by the Comptroller and Auditor-General of India for purpose of audit of tax receipts or refunds;
  - viii. of any such particulars relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a legal practitioner or chartered accountant, to the authority empowered to take disciplinary action against members of the profession to which he

belongs;

- x. of such particulars to the officers of the Central Government or any State Government for such other purposes, as the Government may, by general or special order, direct; or
- xi. of any information relating to a class of dealers or class of transactions, if, in the opinion of the Commissioner it is desirable in the public interest to publish such information.

99. Publication and disclosure of information in respect of dealers and other persons in public interest

- a. Notwithstanding anything contained in this Act, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any other particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.
- b. No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the appropriate appellate body has expired without an appeal having been presented or the appeal, if presented has been disposed of.

Explanation.- In the case of a firm, company or other association of persons, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Government, the circumstances of the case justify it.

100. Power to collect statistics

- a. If the Commissioner considers that for the purposes of the better administration of this Act it is necessary so to do, he may by notification in the Official Gazette, direct that statistics be collected relating to any matter dealt with, by or in connection with this Act.
- b. Upon such direction being made, the Commissioner or any person or persons authorised by him in this behalf may call upon all dealers or any class of dealers or persons to furnish such information or statements as may be stated therein relating to any matter in respect of which statistics a

## DEPARTMENT OF LAW, JUSTICE &amp; LEGISLATIVE AFFAIRS

## NOTIFICATION

Delhi, the 28th March, 2005

No. F. 14(6)/LA-2005/112.— The following Act of the Legislative Assembly of the National Capital Territory of Delhi received the assent of the Lieutenant Governor of National Capital Territory of Delhi on 24<sup>th</sup> March, 2005 and is hereby published for general information:-

**“THE DELHI VALUE ADDED TAX (AMENDMENT) ACT, 2005”  
(DELHI ACT 5 OF 2005)**

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 21<sup>st</sup> March, 2005).

(24<sup>th</sup> March, 2005)

An Act to amend the Delhi Value Added Tax Act, 2004

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty-sixth Year of the Republic of India as follows: -

1. **Short title, extent and commencement.** - (1) This Act may be called the Delhi Value Added Tax (Amendment) Act, 2005.
  - (2) It extends to the whole of the National Capital Territory of Delhi.
  - (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
- 
2. **Amendment of section 2.** - In the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) (hereinafter referred to as “the principal Act”), in section 2, in sub-section (1)-
    - (a) In clause (a), the sub-clause (iii) shall be re-lettered as sub-clause (iv) and before sub-clause (iv) as so re-lettered, the following shall be inserted, namely:-

“(iii) a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 ( 23 of 1959); or”;

(b) In clause (d), for sub-clause (i), the following shall be substituted, namely:-

"(i) the provision of any services, but excluding the services provided by an employee;" ;

(c) In clause (j), for sub-clause (ii), the following shall be substituted, namely:-

"(ii) any department of the Central Government or a State Government, a local authority, Panchayat, Municipality, Development Authority, Cantonment Board and each autonomous or statutory body or an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State Governments or of a local authority, if it buys, sells, supplies or distributes goods;" ;

(d) after clause (r), the following shall be inserted, namely:-

"(ra) 'manufacture' with its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;" .

3. **Amendment of section 3.** – In the principal Act, in section 3 -

(a) for sub-section (2), the following shall be substituted, namely:-

**"(2) Every dealer shall be liable to pay tax at the rates specified in section 4 of this Act on every sale of goods effected by him-**

**(a) while he is a registered dealer under this Act; or**

(b) on and from the day on which he was required to be registered under this Act.”;

(b) for sub-section (3), the following shall be substituted, namely:-

“(3) -The amount of tax payable under this Act by a dealer, is the dealer’s net tax for the tax period calculated under section 11 of this Act.”.

4. Amendment of section 4. - In the principal Act, in section 4, in sub-section (1)-

(a) in clause (c), the word “and” occurring at the end thereof, shall be omitted;

(b) clause (d) shall be re-lettered as clause (e) and before clause (e) as so re-lettered, the following shall be inserted, namely:-

“(d) In respect of the goods involved in the execution of the works contract, at the rate of twelve and a half paise in the rupee; and” .

5. Amendment of section 5. - In the principal Act, in section 5, for sub-section (2), the following shall be substituted, namely: -

“(2) In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed:

Provided that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.”

6. **Amendment of section 8.** -In the principal Act, in section 8, in sub- section (1), for the opening phrase reading as "This section shall apply where, in relation to the sale of goods by any dealer-", the following shall be substituted, namely: -

"Subject to such conditions as may be prescribed, this section shall apply where, in relation to the sale of goods by any dealer - "

7. **Amendment of section 9.** - In the principal Act, in section 9 -

- (a) for sub- section (1), the following shall be substituted, namely:-

"(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making -

- (a) sales which are liable to tax under section 3 of this Act;  
or
- (b) sales which are not liable to tax under section 7 of this Act.

**Explanation.** - Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries." ;

- (b) in sub- section (2), clause (e) shall be re-lettered as clause (f) and before clause (f) as so re-lettered, the following shall be inserted, namely:-

"(e) for goods purchased from a casual trader;" ;

in sub-section (6), for the opening phrase reading as "Where-", the following shall be substituted, namely: -

- Notwithstanding anything contained to the contrary in sub-section (1), where- "

after sub-section (8), the following shall be inserted, namely:-

"(9)(a) Notwithstanding anything contained to the contrary in sub-sections (1) and (3) and subject to sub-section (2), tax credit in respect of capital goods shall be allowed as follows :-

(i)  $1/3^{\text{rd}}$  of the Input tax on such capital goods arising in the tax period, in the same tax period;

(ii) balance  $2/3^{\text{rd}}$  of such Input tax, in equal proportions in two immediately successive financial years:

Provided that, where the dealer sells such capital goods, the dealer shall be allowed as tax credit, the balance amount of the input tax, if any, in respect of such capital goods as has not been earlier availed as tax credit, such tax credit shall be allowed in the tax period in which such capital goods are sold and only after adjusting the output tax payable by him:

Provided further that where the dealer exports from Delhi such capital goods otherwise than by way of sale, the dealer shall be allowed as tax credit, the balance amount of the input tax, if any, in respect of such capital goods as has not been availed earlier as tax credit, in the tax period in which such capital goods are transferred and as reduced by the prescribed percentage of the purchase price of such capital goods :

Provided also that no tax credit in respect of capital goods shall be allowed if such capital goods are used

exclusively for the purpose of making sale of exempted goods specified in the first schedule:

Provided also that no tax credit in respect of capital goods shall be allowed on that part of the value of such capital goods which represents the amount of input tax on such capital goods, which the dealer claims as depreciation under section 32 of the Income Tax Act, 1961 (43 of 1961).

- (b) If any capital goods in respect of which tax credit is allowed under clause (a) of this sub-section is transferred to any other person otherwise than by way of sale at the fair market value before the expiry of a period of five years from the date of purchase, the tax credit claimed in respect of such purchase shall be reduced in the tax period during which such transfer takes place."

8. Amendment of section 14. - In the principal Act, in section 14 -

- (a) for sub-section (4), the following shall be substituted, namely:-

"(4) Every dealer wishing to claim a tax credit in excess of one lakh rupees on opening stock shall furnish with the statement a certificate signed by an accountant in the prescribed form certifying that the net credit claim made is true and correct.";

- (b) sub-sections (5) and (6) shall be omitted.

9. Amendment of section 16. - In the principal Act, in section 16 -

- (a) in sub-section (1) -

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- (i) after the opening words "Notwithstanding anything contained" and before the words "in this Act", the words "to the contrary" shall be inserted;
  - (ii) for the words "twenty five lakh", the words "fifty lakh" shall be substituted;
  - (iii) in the proviso, after the words "section or if he is registered" and before the words "under the Central Sales Tax Act, 1956 (74 of 1956)", the words "In Delhi" shall be inserted;
- (b) in sub-section (3)-
- (i) for the word "intends" and the word "intention", the word "elects" and the word "election" shall respectively be substituted;
  - (ii) in clause (a), after the words, brackets and figures "(Delhi Act 9 of 1999)" and before the words "at the time of the commencement of this Act," the words, bracket and figures, "or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002)," shall be inserted;
  - (iii) In clause (b), for the words "twenty five lakh", the words "fifty lakh" shall be substituted ;
- (c) in sub-section (4), for the word "chooses", the word "elects" shall be substituted;
- (d) In sub-section (5), clauses (a) to (e) shall be re-lettered as clauses (b) to (f) respectively, and before clause (b) as so re-lettered, the following shall be inserted, namely:-
- "(a) not purchase goods from a person who is not registered under this Act;" ;

(e) in sub-section (6) -

(i) In clause (a), after the words, brackets and figures "(Delhi Act 9 of 1999)" and before the words "at the time of the commencement of this Act ;", the words, brackets and figures "or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002)," shall be inserted;

(ii) in clause (b), for the words 'twenty five lakh', the words 'fifty lakh' shall be substituted ;

(f) after sub-section (9), the following shall be inserted, namely:-

"(10) If the turnover of a dealer who elects to pay tax under this section exceeds fifty lakh rupees or such other amount as may be specified by the Government by notification in the official Gazette, he shall be liable to pay tax under section 3 of this Act on and from the day his taxable turnover exceeds fifty lakh rupees or such other amount as may be specified by the Government by notification in the official Gazette and shall be entitled to claim credit of the input tax paid under this Act on trading stock, raw material and packaging material held by him in Delhi on such day :

Provided that such dealer has intimated the Commissioner within seven days of his becoming liable to pay tax under section 3 of this Act in the prescribed form and has furnished such other information to the Commissioner as may be prescribed.

(11) The Commissioner may notify a dealer or a class of dealers who shall not be entitled to opt for payment of tax under this section."

10. Insertion of new section 16A. - In the principal Act, after section 16, the following shall be inserted, namely: -

"16A. Special provisions relating to casual traders. -(1) Notwithstanding anything contained to the contrary in this Act, a casual trader shall -

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(a) at least three days before commencing business in Delhi, inform the Commissioner of such particulars of his business in such form and manner as may be prescribed;

(b) deposit security in cash or in the form of bank draft as may be fixed by the Commissioner which shall not exceed estimated liability to pay tax for seven days or such lesser period for which the casual trader is conducting the business in Delhi;

(c) pay tax daily on the sales made during the previous day;

(d) furnish to the Commissioner, immediately after conclusion of his business in Delhi, a return in the prescribed form and manner; and

(e) not issue any tax invoice.

(2) The Commissioner shall, after verification of information furnished to him under clause (a) of sub-section (1) and after getting security under clause (b) of that sub-section, shall register the casual trader.

(3) Upon registration of casual trader, the Commissioner may issue the required forms to him for use as the declaration referred to in sub-section (2A) of section 61 of this Act for bringing goods for sale in Delhi and for taking the unsold goods out of Delhi and the casual trader shall render complete account of the used forms and surrender the unused forms alongwith the return referred to in clause (d) of sub-section (1).

(4) The Commissioner shall, after examination of the return furnished by the casual trader under clause (d) of sub-section (1), the forms referred to in sub-section (3) and the accounts maintained by him including the retail invoices issued, assess him to tax within five days and shall serve upon him a notice of assessment and after adjusting any tax and any other dues payable under this Act, refund the balance amount of security to him in case security is deposited in the form of cash deposit.

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(5) The casual trader shall pay immediately the amount mentioned in the notice of assessment.

(6) On being satisfied that the amount due has been paid, the Commissioner shall release the security or balance security, as the case may be.

(7) Notwithstanding anything contained in this Act the taxable quantum in respect of a casual trader shall be nil."

11. Amendment of section 20. - In the principal Act, in section 20, in sub-section (1), in clause (a), for the words "trading stock;" appearing at the end thereof, the words "finished goods;" shall be substituted.

12. Amendment of section 24. - In the principal Act, in section 24 -

(a) for sub-section (1), the following shall be substituted, namely:-

"(1) Every dealer who is registered under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002), at the time of commencement of this Act shall be deemed to be registered under this Act with effect from the first day of April, 2005.";

(b) In sub-section (2), after the words, brackets and figures "or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999)" and before the words "under the said Acts and valid", the words, brackets and figures "or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002)" shall be inserted.

13. Amendment of section 32. - In the principal Act, in section 32, after sub-section (1), the following shall be inserted, namely: -

"(1A) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period or periods, has failed to get himself registered, the Commissioner may for purposes of section 32,

writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods."

14. Insertion of new section 36A. - In the principal Act, after section 36, the following shall be inserted, namely -

" 36A. Tax deducted at source. - (1) Any person, not being an individual or a Hindu undivided family, who is responsible for making payment to any dealer (hereinafter in this section referred to as "the contractor") for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two percent.

(2) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract involves both transfer of property in goods and labour and service, or involves only labour and service and accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate and for such period as may be appropriate :

Provided that nothing in the said certificate shall affect liability of the contractor to pay tax under this Act.

(3) Where any such certificate is granted, the person responsible for making payment under sub-section (1) shall, until such certificate is cancelled by the Commissioner, deduct tax at the rate specified in such certificate or deduct no tax, as the case may be.

(4) The amount deducted under this section shall be deposited into the appropriate Government treasury by the person making such deduction before the expiry of twenty eight days following the month in which such deduction is made in the manner as may be prescribed.

- (5) The person making such deduction under this section shall, at the time of payment or discharge, furnish to the contractor from whose bills or invoices such deduction is made, a certificate as may be prescribed in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.
- (6) Any deduction made in accordance with the provisions of this section and credited into the appropriate Government treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and he shall claim the adjustment towards the payment of output tax of the amount so deducted in his return for the tax period in which certificate of such deduction was issued to him.
- (7) A dealer claiming adjustment in his tax return of the amount deducted under this section shall preserve the certificate issued to him for a period of seven years and shall produce the same to the Commissioner on demand.
- (8) If any person as is referred to in this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the appropriate Government treasury.
- (9) Without prejudice to the provisions of sub-section (8), if any person fails to make deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the annual rate to be notified by the Government on the amount deductible under this section but not so deducted, and if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited into the appropriate Government treasury.
- (10) Where the amount has not been deposited after deduction such amount together with interest and penalty referred to in sub-section (8) and sub-section (9) shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.
- (11) Every person responsible for making deduction of tax under this section shall apply to the Commissioner for a Tax Deduction Certificate.

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within the prescribed time and in the prescribed form and shall also furnish a return in the prescribed form within the prescribed period:

Provided that, unless intimated otherwise by the Commissioner, every person having obtained Tax Deduction Account Number under the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) shall be deemed to have obtained a Tax Deduction Account Number under this Act and shall use the same Tax Deduction Account Number under this Act.

(12) Any person who fails to comply with the requirement under sub-section (11) shall be liable to pay, by way of penalty, a sum of two hundred rupees per day from the day on which requirement arose until the failure is rectified:

Provided that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

*Explanation.* - Nothing contained in this section shall apply to works contract executed in the course of inter-state trade or commerce or outside the state, or in the course of import into or export out of India."

15. Amendment of section 38. - In the principal Act, in section 38 -

(a) in sub-section (3), for the word, brackets and figures " sub-section (4)", the words, brackets and figures " sub-section (4) and sub-section (5)" shall be substituted;

(b) in sub-section (4), after the words "will be undertaken" and before the words "the amount shall", the words and figures "or sought additional information under section 59 of this Act," shall be inserted;

(c) in sub-section (5), after the word "Act" occurring at the end thereof, the words "within fifteen days from the date on which the return was furnished or claim for the refund was made." shall be inserted ;

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(d) sub-sections (6) to (8) shall be re-numbered as sub-sections (8) to (10) respectively and after sub-section (5), the following sub-sections shall be inserted, namely:-

"(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5)."

(7) For calculating the period of one month under clause (a) of sub-section (3), the time taken to furnish the security under sub-section (5) to the satisfaction of the Commissioner shall be excluded."

(e) after sub-section (10) as so renumbered, the following shall be inserted, namely :-

"(11) Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."

18. Substitution of new section for section 49. - In the principal Act, for section 49, the following shall be substituted, namely: -

"49. Accounts to be audited in certain cases. - If, in respect of any particular year, the gross turnover of a dealer exceeds forty lakh rupees or such other amount as may be prescribed, then, such dealer shall get his accounts in respect of such year audited by an accountant within a period of nine months from the end of that year and obtain within that period a report of such audit in the form duly signed and verified by such accountant and setting forth such particulars as may be prescribed under section 44 AB of the Income Tax Act, 1961 (43 of 1961), as amended from time to time, and a true copy of such report shall be furnished by such dealer to the Commissioner within twenty eight days from the end of the tax period ending on 31<sup>st</sup> December of the following year :

Provided that in a case where the dealer is required under section 44AB of the Income Tax Act, 1961 (43 of 1961) to get his accounts audited, it shall be sufficient compliance with the provisions

of this section if such dealer gets his accounts audited under the said section 44AB of the Income Tax Act 1961 (43 of 1961) and the rules framed thereunder and furnishes to the Commissioner a true copy of the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed under section 44AB of the Income Tax Act, 1961 (43 of 1961):

Provided further that the Commissioner may require a dealer or class or classes of dealers to get his or their accounts audited by an accountant and obtain report of such audit duly signed and verified by such accountant and setting forth such particulars and in such format as may be notified by the Commissioner and furnish copy of such report to the Commissioner by the date notified by him."

17. Amendment of section 50. - In the principal Act, in section 50, in sub-section (2), to clause (d), the following proviso shall be inserted, namely: -

"Provided that a dealer may maintain separate numerical series, with distinct codes either, as a prefix or suffix, for each place of business in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;"

18. Insertion of new section 58A. - In the principal Act, after section 58, the following shall be inserted, namely: -

"58A. Special Audit. - (1) If, at any stage of the proceeding under this Act, the Commissioner, having regard to the nature and complexity of the business of a dealer and the interest of the revenue, is of the opinion that it is necessary so to do, he may direct the dealer by a notice in writing to get his records including books of accounts, examined and audited by an accountant or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.

(2) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other provision of this Act or any other law for the time being in force.

(3) Every report under sub-section (1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner:

Provided that the Commissioner may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit:

Provided further that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred eighty days from the date on which the direction under sub-section (1) is received by the dealer.

(4) The expenses of, and incidental to, the examination and audit of records under sub-section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be paid by the dealer as determined by the Commissioner and that determination shall be final and default in such payment shall be recoverable from the dealer as tax and in the manner provided for the recovery of arrears of tax under this Act."

19. Amendment of section 61. - In the principal Act, in section 61-

(a) In sub-section (1)-

- (i) after the words "require the" and before the words "driver or person", the word "owner," shall be inserted ;
- (ii) after the words " possession of such" and before the words "driver or person" the word "owner," shall be inserted ;

(b) for sub-section (2), the following shall be substituted, namely :-

"(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods .

carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.”;

(c) after sub-section (2), the following shall be inserted, namely,:-

“(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

Provided that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half times the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.”;

(d) in sub-section (3), after the opening words “The” and before the words “driver or person in charge”, the word “owner,” shall be inserted;

(e) in sub-section (4) -

(i) after the words “has reason to believe that the owner” and before the words “or person in charge”, the words “or driver” shall be inserted;

(ii) In clause (a), after the words “goods vehicle to enter” and before the word “Delhi”, the word “or leave” shall be inserted;

(f) in sub-section (5) -

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(i) after the opening words "Where the owner" and before the words "or the person in charge", the word ", driver" shall be inserted;

(ii) to clause (b), the following proviso shall be inserted, namely:-

"Provided that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.";

(g) In sub-section (G), after the opening words "The Commissioner may permit the owner" and before the words "or the person in charge of goods", the words ", driver" shall be inserted.

20. Amendment of section 74. - In the principal Act, in section 74, in sub-section (1), in the second proviso, the following shall be inserted at the end thereof, namely:-

"failing which the objection shall be deemed to have not been filed:"

21. Amendment of section 79. - In the principal Act, in section 79 -

(a) In sub-section (1)-

(i) for clause (c), the following shall be substituted, namely:-

"(c) a notice issued under section 58, section 59 and direction under section 58A of this Act;" ;

(ii) in clause (i), the word "or" shall be inserted at the end;

(iii) clause (j) shall be omitted and clause (k) shall be re-lettered as clause (j);

(b) In sub-section (2), for the word, brackets and letter " clause (k)", the word, brackets and letter "clause (j)" shall be substituted.

22.

**Substitution of new section for section 81.** - In the principal Act, for section 81, the following shall be substituted, namely: -

**"81. Appeal to High Court. - (1)** An appeal shall lie to the High Court from every order passed by the Appellate Tribunal in appeal under this Act, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

(a) filed within sixty days from the date on which the order appealed against is received by the Commissioner or the other party.

(b) In the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that 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 on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) 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 cost as it deems fit.

(6) The High Court may determine any issue which-

(a) has not been determined by the Appellate Tribunal;

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Where an appeal has been filed before the High Court, it shall be heard by a bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(8) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5-of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

23. Amendment of section 82. - In the principal Act, in section 82-

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- (a) in sub-section(1), in clause (b), after the words "or chartered accountant" and before the words "who is not", the words "or cost accountant" shall be inserted,
- (b) in sub-section (2), in clause (b), after the words "or chartered accountant" and before the words "is found guilty", the words "or cost accountant" shall be inserted.

24. Amendment of section 87. - In the principal Act, in section 87-

- (a) in sub- section (2), in clause (a), the words, brackets and letters " clause (b),(c) or (d) of" shall be omitted ,
- (b) in sub- section (3), in clause (a), the words, brackets and letters "clause (b),(c) or (d) of" shall be omitted ;
- (c) in sub- section (4), in clause (a), the words, brackets and letters "clause (b),(c) or (d) of" shall be omitted.

25. Amendment of section 102. - In the principal Act, in section 102, in sub- section (2) -

- (a) after clause (h), the following shall be inserted, namely :-

"(ha) the conditions subject to which a dealer can make adjustments to tax in relation to the sale of goods under section 8 of this Act;" ;

- (b) after clause (i), the following shall be inserted, namely :-

"(ia) the procedure and forms relating to casual dealers under section 16A of this Act ;"

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26. Amendment of section 106.- In the principal Act, in section 106, in sub-section(1) for the words, brackets and figures "Delhi Sales Tax on Transfer of Right to use Goods Act, 2002(Delhi Act 13 of 2002)" the words, brackets and figures " Delhi Sales Tax on Right to Use Goods Act, 2002(Delhi Act 13 of 2002)" shall be substituted.

V. K. BANSAL, Jr. Secy.

DEPARTMENT OF LAW, J  
LEGISLATIVE AFFA

## DELHI SECRETARIATE

Delhi, the 16th November, 2005

No. F. 14(29)/LA/2005/333.—The following Act of the Legislative Assembly of the National Capital Territory of Delhi received the assent of the Lt. Governor on the 2nd November, 2005 and is hereby published for general information :—

**"THE DELHI VALUE ADDED TAX (SECOND AMENDMENT) ACT, 2005"**

(DELHI ACT 10 of 2005)

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 26th September, 2005)

[2nd November, 2005]

An Act further to amend the Delhi Value Added Tax Act, 2004

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty-Sixth Year of the Republic of India as follows :—

**1. Short title, extent and commencement.—**

(1) This Act may be called the Delhi Value Added Tax (Second Amendment) Act, 2005.

(2) It extend to the whole of the National Capital Territory of Delhi.

(3) Except for the provisions of Sections 4 and 5, clause (a) of Section 7, Sections 9, 32 and 33 which shall be deemed to have come into force with effect from the 1st day of April, 2005, the remaining provisions of this Act shall come into force with effect from the date of the publication of this Act in the Official Gazette.

**2. Amendment of section.—**In the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) (hereinafter referred to as "the principal Act"), in Section 2, in sub-section (1)—

(a) for clause (f), the following shall be substituted, namely :—

"(f) "Capital goods" means plant, machinery and equipment used, directly or indirectly, in the process of trade of manufacturing or for execution of works contract in Delhi;";

(b) for clause (j), the following shall be substituted, namely :—

"(j) "dealer" means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business, buys or sells goods in Delhi directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes,—

धारा 103 का संशोधन—मूल अधिनियम की धारा 103 में—

"सातवीं अनुसूची में " के बाद और "से नियमों को जोड़" से पूर्व के स्थान पर शब्द "पूर्वापेक्षी या वर्तमानपेक्षी (प्रोसपेक्टिव) " प्रतिस्थापित किए जाएंगे।

2) इस प्रकार यथासंशोधित धारा 103 में निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थात:—

"शर्त यह है कि ऐसा कोई भी संशोधन पूर्व प्रभाव से नहीं किया जाएगा यदि यह किसी व्यापारी के हितों पर प्रतिकूल डालता है।"

33. धारा 105 का संशोधन—मूल अधिनियम की धारा उपधारा (3) के बाद निम्नलिखित को सन्निविष्ट किया जायेगा,

(4) दिल्ली निर्माण कार्य संविदा बिक्री कर अधिनियम, 1999 (1999 का दिल्ली अधिनियम 9) (इसके बाद इस उपधारा में "निरसित अधिनियम" के रूप में सन्दर्भित) के अंतर्गत पंजीकृत कोई व्यापारी, इस अधिनियम के अंतर्गत कर के भुगतान के प्रति उत्तरदायी है और पहली अप्रैल, 2005 से पहले किसी भी समय कोई कार्य संविदा ली गई थी, जहां निरसित अधिनियम के अंतर्गत देय कर कुल संविदा मूल्य में शामिल था, और जब उक्त कार्य संविदा का निष्पादन पहली अप्रैल, 2005 के पश्चात् तक हुआ है तब इस अधिनियम के अंतर्गत कर भुगतान के लिए व्यापारी का दायित्व इस अधिनियम के अंतर्गत लागू दरों पर निर्वाह होगा, और उक्त संविदा संबंधी इस प्रकार निर्वाह दायित्व उस दायित्व से अधिक नहीं होगा, जो निरसित अधिनियम के अंतर्गत प्राप्त होगा, यदि यह प्रचलन में रहता और किसी उस व्यापारी की स्थिति में जिसने निरसित अधिनियम के अंतर्गत समझौता कर का विकल्प चुना था, किसी संविदा संबंधी इस अधिनियम के अंतर्गत देनदारी जहां 1 अप्रैल, 2005 से पहले संविदा का निष्पादन प्रारम्भ हुआ है और इसके बाद भी चालू रहा है, वहां उस राशि से अधिक नहीं होगा जो निरसित अधिनियम के अंतर्गत उक्त संविदा संबंधी समझौता राशि के रूप में देय होगी यदि यह प्रचलन में बना रहता।

शर्त यह है कि इस उपधारा के उपबंध 31 मार्च, 2007 तक वैध होंगे।

अगर शर्त यह है कि इस उपधारा के उपबंध वहां लागू नहीं होंगे जहां संविदा मूल्य इस अधिनियम के अंतर्गत दायित्व बढ़ने के आधार पर बदल गया है।

यह भी शर्त है कि इस उपधारा के उपबंध केवल तभी लागू होंगे यदि कर देयता के परिवर्तन होने के आधार पर संविदा का मूल्य संशोधन करने के लिए संविदा में कोई प्रावधान हो।"

दिल्ली राष्ट्रीय राजधानी क्षेत्र  
के उप-राज्यपाल के आदेश से  
तथा उनके नाम पर,

वी० के० वंसल, संयुक्त सचिव

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- (i) a factor, commission agent, broker, *deleredere* agents or any other mercantile agent by whatever name called, who for the purpose of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not:
- (ii) a non-resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business;
- (iii) a local branch of a firm or company or association of persons, outside Delhi where such firm company, association of persons is a dealer under any other sub-clause of this definition;
- (iv) a club, association, society, trust, or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;
- (v) an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
- (vi) a casual trader;
- (vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.
- Explanation.**—For the purposes of this clause, each of the following persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:—
- (i) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);
- (ii) Departments of Union Government, Governments and Union Territory Administrations;
- (iii) Local authorities, Panchayats, Municipal Development Authorities, Cantonment Boards;
- (iv) Public Charitable Trusts;
- (v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;
- (vi) Incorporated or unincorporated societies, clubs or other associations of persons;
- (vii) Each autonomous or statutory body, corporation or company or society or any industrial, commercial banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;
- (viii) Delhi Transport Corporation;
- (ix) Shipping and construction companies, air transport companies, airlines and advertising agencies.”
- 3. Amendment of Section 3.**—In the principal Act, in Section 3—
- (a) for sub-section (4), the following shall be substituted, namely:—
- “(4) the net tax of a dealer shall be paid within twenty-eight days of the conclusion of the dealer's tax period;
- Provided that the Commissioner may, by an order, prescribe that irrespective of the tax period of a dealer or class of dealers, the net tax of a dealer or a class of dealers shall be paid within 28 days of the conclusion of a period shorter than the tax period that may be specified in the order;
- Explanation.**—The objection to pay the tax arises by virtue of this provision and is not dependent on furnishing a return, not on the issues of a notice of assessment to the dealer.”
- (b) after sub-section (9), the following shall be inserted, namely:—
- “(10) If any person who, whether as principal, agent or in any other capacity organises any exhibition-cum-sale in Delhi and fails—
- (a) to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or
- (b) to ensure that all the participants in the exhibition-cum-sale have obtained

registration under this Act and paid due tax; or

- (c) to permit inspection of the business premises or goods or account and records of the participants; or
- (d) to permit inspection of the accounts and records of the organiser in respect of the exhibition-cum-sale;

then, without prejudice to any other action which may be taken against such participant, a presumption may be raised that the goods of the participant who fails to obtain registration under this Act or the goods in respect of which the participant has failed to furnish information or failed to permit inspection, are owned by the organizer and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly."

4. Amendment of Section 4.—In the principal Act, in Section 4, in sub-section (1), to clause (d), the following provisions shall be inserted, namely:—

"Provided that tax shall be paid at the rate of four paise in the rupee of the turnover of the dealer pertaining to declared goods, as defined from time to time in the Central Sales Tax Act, 1956 (74 of 1956), involved in the execution of works contract if such goods are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor.

Provided further that in respect of the works contracts which are in the nature of printing works, the rate of tax shall be four paise in the rupee."

5. Amendment of Section 7.—In the principal Act, in Section 7, after clause (c), the following shall be inserted, namely:—

"(d) in accordance with the notification issued by the Central Government in exercise of its powers under Section 3 of the Foreign Aircraft (Exemption from Taxes and Duties on Fuel) Act, 2002 (36 of 2002), no tax shall be levied on sales of the fuel and lubricants which are filled into receptacles forming part of any aircraft registered in a country other than India, if—

- (i) the said country is a party to the Convention on International and Civil Aviation, 1944; and
- (ii) the said country has entered into an Air Services agreement with India; and
- (iii) the aircraft is operating on a scheduled or non-scheduled service to or from India."

6. Amendment of Section 8.—In the principal Act, in Section 8, in sub-section (1), for clause (d), the following shall be substituted, namely:—

- "(d) the goods or part of the goods sold have been returned to the dealer within six months of the date of sale; or"

7. Amendment of Section 9.—In the principal Act, in Section 9—

- (a) in sub-section (2), for clause (f), the following shall be substituted, namely:—

"(f) to the dealers or class of dealers specified in the Fifth Schedule except the entry No. 1 of the said Schedule."

- (b) in sub-section (7), after clause (b), the following shall be inserted, namely:—

"(c) any purchase of consumables or of capital goods where the dealer is exclusively engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him and incidental to the business of job work or labour work, obtains any waste or scrap goods which are sold by him."

- (c) in sub-section (9)—

- (i) in clause (a), in sub-clause (ii), for the second proviso, the following shall be substituted, namely:—

"Provided further that where the dealer transfers such capital goods from Delhi otherwise than by way of sale before the expiry of three years from the date of purchase, he shall, after claiming the balance amount or input tax, if any, not availed earlier in respect of such capital goods, reduce the input tax credit by the prescribed percentage of the purchase price of such capital goods and make adjustments in the input tax credit in the tax period in which these capital goods are so transferred :

Provided also that where a dealer has purchased capital goods and the capital goods are to be used partly for the purpose of making sales referred to in sub-section (1) of this section and partly for other purposes, the amount of tax credit shall be reduced proportionately;"

(ii) in clause (b), for the word "reduced" occurring after the words "claimed in respect of such purchases shall be" and before the words "in the tax period during which such transfer takes place"; the word "reversed" shall be substituted.

**8. Insertion of new Section 11A.**—In the principal Act, after section 11, the following shall be inserted, namely:—

“11A. Tax on goods supplied by contractee.—Notax shall be payable under this Act by a contractor on the amount representing the value of the goods supplied by the contractee to the contractor in the execution of works contract in which the ownership of such goods remains with the contractee under the terms of contract and the amount representing the value of the goods supplied by the contractee to the contractor does not form part of the contract and is not deductible from the amount payable to the contractor by the contractee for the execution of the works contract.”

**9. Amendment of Section 15.**—In the principal Act, in Section 15,—

(a) In sub-section (1), for clause (c), the following shall be substituted, namely:—

“(c) the goods were purchased either as trading stock for re-sale in an unmodified form or otherwise or as raw material for incorporation or division into trading stock;”;

(b) to sub-section (2), the following Explanation shall be inserted, namely:—

“Explanation I.—For the purpose of this sub-section, the words “input tax borne” means the tax paid by the resident seller under the Delhi Sales Tax Act, 1975 (Act 43 of 1975) or under this Act and the word “tax fraction” shall be construed accordingly.

Explanation II.—This section shall apply only if the resident seller had purchased goods in Delhi.”

**10. Amendment of Section 16.**—In the principal Act, in Section 16—

(a) in sub-section (1), the words “exceeds the taxable quantum under this Act, but” occurring after the clause (b) reading as “turnover in the current year”, and before the words “does not exceed fifty lakh rupees” shall be omitted;

(b) in sub-section (3), in clause (b), the words “exceeds the taxable quantum under this Act, but” occurring after the words “commencement of this Act” and before the words “does not exceed fifty lakh rupees” shall be omitted;

(c) in sub-section (5), for clause (a), the following shall be substituted, namely:—

“(a) not purchase goods from a person who is not registered under this Act :

Provided that this restriction shall not apply

for the purchase of goods from an unregistered dealer dealing exclusively in goods mentioned in the First Schedule.”;

(d) in sub-section (6), in clause (b), the words “exceeds the taxable quantum under this Act, but, occurring after the words “commencement of this Act” and before the words “does not exceed fifty lakh rupees” shall be omitted.

(e) after sub-section (11), the following shall be inserted, namely:—

“(12) Notwithstanding anything to the contrary contained in this Act, the Government may—

(a) by notification in the Official Gazette, notify schemes of composition, subject to such conditions and restrictions as may be specified therein, of tax payable by a class of dealers or classes of dealers and different types of schemes may be notified for different classes of dealers;

(b) specify, in any schemes of composition of tax payable by the class of dealers or classes of dealers, different rates of tax for different class or classes of dealers but, in such scheme, the net tax liability of the dealer opting to pay tax thereunder shall not exceed eight paise in the rupee of the turnover of the dealer.”

**11. Amendment of Section 25.**—In the principal Act, in Section 25, for sub-section (1), the following shall be substituted, namely:—

“(1) The Commissioner may, if it appears to him to be necessary so to do, for the continuance of the certificate of registration, or for the proper realisation of tax, composition money or other dues payable under this Act or as a condition of registering a person as a dealer or as a condition of making a refund under Section 38 of this Act, require a person or prescribed class of persons to furnish security for the proper performance of their responsibilities under this Act or under the Central Sales Tax Act, 1956 (74 of 1956) in the prescribed amount, in the prescribed manner and within such time as may be prescribed.”

**12. Substitution of new section for Section 26.**—In the principal Act, for Section 26, the following shall be substituted, namely:—

“26. Periodical payment of tax and furnishing of returns.—(1) Every registered dealer who is liable to pay tax under this Act shall furnish to the Commissioner such returns for each tax period and by such dates as may be prescribed and in the prescribed form.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner may require

dealer or class or classes of dealers, as may be notified by him by special or general order, to file, in addition to the returns required to be filed under sub-section (1), the returns in such electronic forms from such date and within such time and in such manner as may be prescribed.

- (g) Without prejudice to the provisions of sub-section (1), any person, being a company or being a person other than a company, required to furnish a return under sub-section (1), may, at his option, on or before the due date, furnish a return in accordance with such scheme as may be specified by the Government in this behalf by notification in the Official Gazette and subject to such conditions as may be specified therein, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and in the manner as may be specified in that scheme, and in such case, the return furnished under such scheme shall be deemed to be a return furnished under sub-section (1), and the provisions of this Act shall apply accordingly."

13. Amendment of Section 32.—In the principal Act, in Section 32, in sub-section (1), the words, "or more than one tax period by a single order so long as all such tax periods are comprised in one year" shall be inserted at the end thereof.

14. Amendment of Section 36A.—In the principal Act, in Section 36A—

- (a) for sub-section (1), the following shall be substituted, namely:—

(1) Any person, not being an individual or a Hindu undivided family, who is responsible for making payment to any dealer (hereinafter in this section referred to as "the contractor") for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, for value exceeding twenty thousand rupees or such amount as may, by order in writing published in Official Gazette, be notified by the Commissioner from time to time, shall, at this time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two per cent.

(1A) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, for value exceeding twenty thousand rupees or such amount as may, by order in writing and published in the Official Gazette, be notified by the

Commissioner from time

of property in goods (whether as goods or in some other form) involved in the execution, whether wholly or in part, of the works contract undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or any other mode, deduct an amount equal to two per cent of such payment or discharge, purporting to be part of full amount of the tax payable under this Act."

- (b) in sub-section (4), for the words "before the expiry of twenty eight days" occurring after the words "person making such deduction" and before the words "following the month in which" the words "before the expiry of fifteen days" shall be substituted;

- (c) after sub-section (5), the following shall be inserted, namely:—

"(5A) If any person referred to in Sub-section (5) fails to furnish to the contractor the certificate of tax deduction at source within seven days of making payment or discharge, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day of making payment to the contractor or discharge until the failure is rectified:

Provided that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees."

15. Amendments of Section 38.—In the principal Act, in Section 38—

- (a) In sub-section (3) for clause (a), the following shall be substituted, namely:—

"(a) refunded to the person, —

- (i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;
- (ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter, or";

- (b) for sub-section (7), the following shall be substituted, namely:—

"(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to —

- (a) furnish the security under sub-section (5) to the satisfaction of the Commissioner, or
- (b) furnish the additional information sought under section 59; or
- (c) furnish returns under section 26 and Section 27, shall be excluded."

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**16. Insertion of new Section 40A—** In the principal Act, after Section 40, the following shall be inserted, namely :—

**“40A. Agreement to defeat the intention and application of this Act to be void,—**(1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) **For the purposes of this section—**

- (a) “arrangement” includes any contract, agreement, plan or understanding, whether enforceable in law or not and all steps and transactions by which the arrangement is sought to be carried into effect;
- (b) “tax advantage” includes :
- (i) any reduction in the liability of any dealer to pay tax,
  - (ii) any increase in the entitlement of any dealer to claim input tax credit or refund,
  - (iii) any reduction in the sale price or purchase price receivable or payable by any dealer.”

**17. Amendment of Section 43.—** In the principal Act, in Section 43—

- (a) for sub-section (3), the following shall be substituted, namely:
- “(3) any amount of tax, interest or penalty, composition money or other amount due under this Act which remains unpaid, shall be recoverable :
- (a) as arrears of land revenue, or
- (b) by the Commissioner in accordance with the provisions of sub-section (6) of this Section and the rules regulating the procedure of recovery of tax, interest or penalty, composition money or other amount due as may be prescribed.”;
- (b) after sub-section (3), the following shall be inserted, namely :—
- “(6) Where any amount of tax, interest or penalty, composition money or other amount due under

this Act is recoverable in accordance with the provisions of clause (b) of Sub-section (3), the Commissioner may prepare a recovery certificate (hereinafter referred to as “certificate”) under his signature specifying the amount of such tax, interest or penalty, composition money or other amount due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods or any other person (hereinafter referred to as the “certificate-debtor”) and he shall cause the said certificate to be served upon the certificate debtor, in such manner and form as may be prescribed and proceed to recover from the certificate debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules as may be prescribed :—

- (a) attachment and sale of immovable property of the certificate debtor;
  - (b) attachment and sale of immovable property of the certificate debtor;
  - (c) arrest of the certificate-debtor and his detention in prison for a period of fifteen days;
  - (d) appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.
- (7) The Commissioner may serve upon the defaulting certificate debtor the recovery certificate under sub-section (6) notwithstanding that proceedings for recovery of such tax, interest or penalty, composition money or other amount due have been initiated or continuing by any other mode.
- (8) On the service of the certificate under sub-section (6) upon a certificate-debtor :
- (a) any private transfer or delivery of any of his immovable property or of any interest in any such property, shall be void against any claim enforceable in the execution of the certificate; and
  - (b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate debtor, to which every other charge created subsequently to the service of the said certificate shall be postponed.
- (9) The certificate-debtor may within thirty days from the service of the certificate, present to the Commissioner a petition denying his liability in whole or in part.
- (10) The Commissioner shall hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any

of the amount for which certificate was signed. Where any proceedings for the recovery of any tax, interest or penalty, composition money or other amount due remaining unpaid have been commenced under this section and the tax, interest or penalty, composition money or other amount due is subsequently modified, enhanced or reduced in consequence of any assessment made, or order passed on objection, appeal, revision or review under this Act, the Commissioner may inform the certificate debtor and thereupon such proceedings may be continued as if the tax, interest or penalty, composition money or other amount due as so modified enhanced or reduced has been substituted for the tax, interest or penalty, composition money or other amount due which was to be recovered under sub-section (3)."

18. Substitution of new section for Section 44.—In the principal Act, for Section 44, the following shall be substituted, namely :—

Application of Delhi Land Reforms Act, 1954 for the purposes of recovery.—(1) For the purposes of recovery of any amount recoverable as arrears of land revenue under this Act, the provisions of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954), as to the recovery of arrears of land revenue shall, not withstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue Recovery Act, 1890 (1 of 1890) shall have effect accordingly.

(2) For the purposes of sub-section (1)—

- (a) the Additional Commissioner of Value Added Tax and the Joint Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of the Deputy Commissioner under the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954);
- (b) the Deputy Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of Revenue Assistant under the said Act;
- (c) the Value Added Tax Officers and the Assistant Value Added Tax Officers shall have and exercise all the powers and perform all the duties of Tehsildar and Assistant Collector of the First Grade under the said Act."

19. Amendment of Section 45.—In the principal Act, in Section 45—

- (a) in clause (b), after sub-clause (ii), the following shall be inserted, namely :—

"(iii) any recovery proceeding on the basis of an assessment or notice of demand served upon a person before the disposal of such objection or appeal, may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before the person made the objection or appeal";

(b) after clause (b), the following shall be inserted, namely :—

"(c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such objection or appeal or such Government dues have been enhanced or reduced in such objection or appeal."

20. Insertion of new Section 46A.—In the principal Act, after Section 46, the following shall be inserted, namely :—

"46A. Provisional attachment to protect revenue in certain cases.—(1) Where, during the course of inquiry of any proceeding including any proceeding for recovery of any amount due in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, by order in writing, attach, provisionally any property movable or immovable, belonging to such person or dealer.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that the Commissioner may, by an order, revoke such order if the person or the dealer furnishes to the Commissioner, a Bank Guarantee in such time, for such period as may be specified by the Commissioner in this behalf :

Provided also that the power under this section shall be exercised by the Commissioner himself or by the Additional Commissioner to whom the Commissioner has delegated such power."

21. **Amendment of Section 47.**—In the principal Act, in Section 47, after clause (b), the following shall be inserted, namely :—

“Explanation.—In this Section “assets” includes land, building, machinery, plant, equipments, shares, securities and fixed deposits in the banks, vehicles, furniture and fixture to the extent to which any of the assets aforesaid does not form part of the stock in trade of the business of the person.”

22. **Insertion of new Section 47A.**—In the principal Act, after Section 47, the following shall be inserted, namely :—

“47A. **Liability under this Act to be the first charge.**—Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, composition money, sum forfeited, fine or any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, the person.”

23. **Amendment of Section 74.**—In the principal Act, in the Section 74, in sub-section (1), after the fourth proviso, the following shall be inserted, namely :—

Provided also that no objection shall be made to the Commissioner against an order made under section 84 or section 85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.”

24. **Insertion of new Sections 74A and 74B.**—In the principal Act, after Section 74, the following shall be inserted, namely :—

“74A. **Revision.**—(1) After any order including an order under this Section or any decision in objection is passed under this Act, rules or notifications made thereunder, by any officer or person subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether :—

- (a) any turnover of sales has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, or any claims incorrectly granted or that the liability to tax is understated, or
  - (b) in any case, the order is erroneous, in so far as it is prejudicial to the interest of revenue, and after examination, the Commissioner may pass an order to the best of his judgement, where necessary.
- (2) (a) For the purpose of the examination and passing of the order, the Commissioner may

require, by service of notice, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence as he thinks necessary for the purposes aforesaid.

(b) Notwithstanding anything contained to the contrary in Section 34, no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer,

(c) Notwithstanding anything contained to the contrary in Section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing in objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the appeal, the Commissioner may, within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the objection hearing authority or the appellate authority including the Tribunal regarding the examination or the report or the information received by him and the said appellate authority including the Tribunal may thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgement, where necessary

(3) If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may in respect of any order, other than the order which is the subject matter of the order of the Tribunal, call for the record, conduct an examination of the aforesaid, record his findings, call for the books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue. He shall stay the recovery of the dues including interest or penalty, insofar as they relate to the issue until the decision by the appropriate forum and after such decision, may modify the order or revision, if necessary.

(4) No proceedings under this section shall be entertained on any application made by a dealer or a person.

74B. **Rectification of mistakes and Review.**

(1) Notwithstanding anything contained to the

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contrary in Section 34, the Commissioner may, at any time within four years from the end of the year in which any order passed by him has been served, on his own motion, rectify any mistake apparent on record and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order.

(12) The provisions of sub-section (1) shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority as they apply to the rectification of mistake by the Commissioner :

Provided that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(3) Where any such rectification has the effect of reducing the amount of the tax or penalty or interest, the Commissioner shall refund any amount due to such person in accordance with the provisions of this Act.

(4) Where any such rectification has the effect of enhancing the amount of the tax or penalty or interest or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of this Act.

(5) Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed under this Act or the rules made thereunder by any person appointed under Section 66 may be reviewed by such person suo motu or upon an application made in that behalf."

**25. Amendment of Section 76.**—In the principal Act, in Section 76—

(a) for sub-section (1), the following shall be substituted, namely :—

"(1) Any person aggrieved by a decision made by the Commissioner under section 74, 84 and 85 of this Act may appeal to the Appellate Tribunal against such decision :

Provided that no appeal may be made against a non-appealable order under Section 79 of the Act.

Explanation.—The Commissioner does not appeal to the Appellate Tribunal but may make a re-

assessment of tax where no tax is payable and further tax is owed."

(b) after sub-section (12), the following shall be inserted, namely :—

"(13) Any order passed by the Appellate Tribunal may be reviewed suo motu or upon an application made in that behalf :

Provided that before any order which is likely to affect any person adversely is passed, such person shall be given a reasonable opportunity of being heard."

**26. Amendment of section 79.**—In the principal Act, in section 79, in sub-section (1)—

(a) in clause (i), the word "or" occurring at the end thereof, shall be omitted;

(b) in clause (j), for the concluding words "Appellate Tribunal or a court", the words "Appellate Tribunal or a court ; or" shall be substituted;

(c) after the clause (j) as so amended and before the brackets and words "(in this Act referred to as "non-appealable orders")", the following shall be inserted namely :—

"(k) a notice served on the person under sub-section (10) of Section 84".

**27. Amendment of Section 81.**—In the principal Act, in Section 81, in sub-section (2), in clause (a), after the words "received by the Commissioner or" and before the words "the other party," the words "served upon" shall be inserted.

**28. Amendment of section 86.**—In the principal Act, in section 86—

(a) for sub-section (4), the following shall be substituted, namely :—

"(4) Where a person who is required to be registered under this Act has failed to apply for registration within one month from the day on which the requirement arose, the person shall be liable to pay, by way of penalty, an amount equal to one thousand rupees per day from the day immediately following the expiry of the said period until the person makes an application for registration in the prescribed form containing such particulars and information and accompanied by such fee, security and other documents as may be prescribed :

Provided that the amount of penalty payable under this sub-section shall not exceed one lakh rupees;"

(b) for sub-section (9), the following shall be substituted, namely :—

"(9) If a person required to furnish a return under

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## Chapter V of this Act—

- (a) fails to furnish any return by the due date; or
- (b) fails to furnish with a return any other document that is required to be furnished with the return; or
- (c) being required to revise a return already furnished, fails to furnish the revised return by the due date;

the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day immediately following the due date until the failure is rectified:

Provided that the amount of penalty payable under this sub-section shall not exceed ten thousand rupees."

- (c) after sub-section (20), the following shall be inserted, namely:—

"(21) Where a casual trader who is required to be registered under this Act has failed to apply for registration within stipulated period, the casual trader shall be liable to pay, by way of penalty, an amount equal to five thousand rupees per day, from the day immediately following the expiry of the due date until the person makes an application for registration under this Act:

Provided that the amount of penalty payable under this sub-section shall not exceed one lakh rupees.

(22) If a casual trader required to furnish a return under this Act—

- (a) fails to furnish any return by the due date; or
- (b) fails to furnish with a return any other document that is required to be furnished with the return;

the person shall be liable to pay, by way of penalty, a sum of one thousand rupees per day from the day immediately following the due date until the failure is rectified:

Provided that the amount of penalty payable under this sub-section shall not exceed ten thousand rupees:

(23) Where any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails—

- (a) to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or
- (b) to ensure that all such participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or

(c) to permit inspection of the business premises or goods or account and records of the participants; or

(d) to permit inspection of the accounts records of the organizer in respect of the exhibition-cum-sale:

such person shall be liable to pay, by way of penalty, a sum equal to fifty thousand rupees or a sum equal to the amount of tax payable on such goods if such goods were sold in Delhi, whichever is greater."

29. Amendment of section 95.— In the principle Act, in section 95.—

(a) for the title words "Dealer to declare the name of manager of business", the words "Dealer to declare the name of manager of business and permanent account number" shall be substituted;

(b) after sub-section (2), the following shall be inserted, namely:—

"(3) Every dealer liable to pay tax under this Act who is liable to obtain a Permanent Account Number (PAN) under the Income Tax Act, 1961 (43 of 1961), shall communicate to the Commissioner, in the prescribed time and manner, the said number if he has obtained the same and, in any other case, shall state whether he has applied for the same and provide the details of the application.

(4) Any person who fails to furnish a declaration or, as the case may be, a revised declaration as provided in sub-section (1) and sub-section (2) of this section or fails to communicate the permanent account number obtained under the Income Tax Act, 1961 (43 of 1961) or as the case may be fails to state whether he has applied for the same and fails to provide the details of the application, as provided in sub-section (3) of this section, shall be liable to pay by way of penalty, a sum of ten thousand rupees."

30. Insertion of new section 100A.— In the principle Act, after Section 100, the following shall be inserted, namely:—

"100A. Automation.— (1) The Government may, by notification in the Official Gazette, provide that the provisions contained in the Information Technology Act, 2000 (21 of 2000), as amended from time to time, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and

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signature certificates as are specified in the said notification, shall, insofar as they may be applicable, as far as feasible, apply to the procedures under this Act.

Where a notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then, the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it was not personally signed by the Commissioner."

**Amendment of Section 102.**— In the principal Act, in Section 102—

(a) in Sub-section (2)—

(u) after clause (u), the following shall be inserted, namely:—

"the manner and the form in which the recovery certificate under section 43 of this Act is to be served and the amount mentioned in the said certificate is to be recovered;"

(z) for clause (ze), the following shall be substituted, namely:—

(ze) the form and manner in which an objection under section 74 of this Act or an application for review under section 74B of this Act may be filed and the fee payable in respect thereof ;"

(z) in clause (zk), for the words "the declaration" occurring after the words "manner in which" and before the words "under section", the words "the declaration or the communication" shall be substituted;

(b) after sub-section (2), the following shall be inserted, namely:—

Without prejudice to any provision made in this behalf, any rule made under this Act may be made so as to be retrospective to any date not earlier than the date of commencement of this Act :

Provided that no rule shall be given effect retrospectively if it would have the effect of prejudicially affecting the interests of a dealer."

**32. Amendment of Section 103.**— In the principal Act, in section 103—

(i) for the word "prospectively" occurring after the words "Seventh Schedules," and before the words "and thereupon", the words "either

respectively or prospectively", shall be substituted;

(ii) to section 103 as so amended, the following proviso shall be inserted, namely :—

"Provided that no such amendment shall be made retrospectively if it would have the effect of prejudicially affecting the interests of a dealer."

**33. Amendment of section 105.**— In the principal Act, in section 105, after sub-section (3), the following shall be inserted, namely :—

"(4) Where a dealer registered under the repealed Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) (hereinafter referred to in this sub-section as "the repealed Act"), is liable to pay tax under this Act, and has at any time prior to the 1st day of April, 2005 entered into any works contract, where the total contract value was inclusive of the tax payable under the repealed Act, and the execution of the said work contract has continued after the 1st day of April, 2005, then the liability of the dealer to pay tax under this Act shall be charged at the rates applicable under this Act, and the liability so discharged in respect of the said contract shall not exceed the liability which would have accrued under the repealed Act if it had continued to be in force and in the case of a dealer who had opted for composition of tax under the repealed Act, the liability under this Act in respect of a contract where the execution has started before the 1st day of April, 2005 and has continued thereafter shall not exceed the sum which would have been payable by way of composition in respect of the said contract under the repealed Act if it had continued to be in force:

Provided that the provisions of this Sub-section shall be valid up to the 31st day of March, 2007;

Provided further that the provisions of this Sub-section shall not apply where the contract value has been changed on account of increased liability under this Act;

Provided also that the provisions of this Sub-section shall apply only if there was no provision in the contract for revising the value of the contract on account of the change of tax liability."

By Order and in the Name of the  
Lt. Governor of the National Capital  
Territory of Delhi,  
V. K. Bansal, Jt. Secy.

सभा द्वारा पारित निम्नलिखित अधिनियम जनसाधारण की सूचनार्थ इसके द्वारा प्रकाशित किया जा रहा है :—

“दिल्ली मूल्य संवर्धित कर (संशोधन) अधिनियम, 2009  
(2010 का दिल्ली अधिनियम 01)

(राष्ट्रीय राजधानी क्षेत्र दिल्ली की विधान सभा द्वारा दिनांक  
16 दिसम्बर, 2009 को यथा पारित)

(01 जनवरी, 2010)

दिल्ली मूल्य संवर्धित कर अधिनियम, 2004 में संशोधन  
करने के लिए अधिनियम ।

भारत गणराज्य के साठवें वर्ष में राष्ट्रीय राजधानी क्षेत्र दिल्ली की विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. संक्षिप्त नाम, विस्तार एवं प्रारम्भ.—(1) इस अधिनियम का संक्षिप्त नाम दिल्ली मूल्य संवर्धित कर (संशोधन) अधिनियम, 2009 है ।

(2) इसका विस्तार समस्त राष्ट्रीय राजधानी क्षेत्र दिल्ली पर है ।

(3) यह उस तारीख को लागू होगा जो सरकार, सरकारी राजपत्र में अधिसूचना द्वारा नियत करें ।

2. धारा 4 का संशोधन.—दिल्ली मूल्य संवर्धित अधिनियम, 2004 (2005 का दिल्ली अधिनियम 3) (जिसे इसमें इसके पश्चात् “मूल अधिनियम” कहा गया है) की धारा 4 को उप-धारा (1) के खण्ड (ख) के स्थान पर निम्नलिखित खण्ड प्रतिस्थापित किया जाएगा, अर्थात् :—

“(ख) तृतीय अनुसूची में विनिर्दिष्ट वस्तुओं के संबंध में, रुपये में पांच पैसे की दर से :

वर्शत कि केन्द्रीय बिक्री कर अधिनियम, 1956 (1956 का 74) में समय-समय पर यथा परिभाषित घोषित वस्तुओं से संबंधित व्यापारी के कर योग्य सकल बिक्री का रुपये में चार पैसे की दर से कर का भुगतान किया जाएगा ।”

3. धारा 9 का संशोधन.—मूल अधिनियम की धारा 9 को—

(क) उप-धारा (1) में “जहां खरीद की गई” शब्दों के स्थान पर “बिक्री के लिए रखी गई वस्तुओं के अनुपात की सीमा तक” शब्दों को प्रतिस्थापित किया जाएगा;

(ख) उप-धारा (2) में खंड (च) के पश्चात् निम्नलिखित खंड को सन्निविष्ट किया जाएगा, अर्थात् :—

“(छ) व्यापारी अथवा व्यापारियों की श्रेणियों को जब तक क्रेता व्यापारी द्वारा भुगतान किया गया कर विक्रेता व्यापारी द्वारा सरकार के पास वास्तविक रूप से जमा न किया गया हो अथवा आऊटपुट कर देयता के लिए कानूनी रूप से समायोजित न किया गया हो तथा संबंधित कर अवधि के लिए प्रस्तुत विवरणी में सही रूप से प्रतिबिंबित न किया गया हो ।”

4. धारा 10 का संशोधन.—मूल अधिनियम की धारा 10 में उप-धारा (4) के पश्चात् निम्नलिखित उप-धारा सन्निविष्ट की जाएगी, अर्थात् :—

“(5) जहां वे वस्तुएं जो, व्यापारी द्वारा खरीदी गई हैं उस मूल्य से कम मूल्य पर बेची गई हो जिस मूल्य पर व्यापारी द्वारा खरीदी गई थी, ऐसी खरीदों पर कर क्रेडिट, कर अवधि में अनुपातिक रूप से कम की जाएगी जिसके दौरान वस्तुएं बेची गई थीं ।

स्पष्टीकरण.—किसी विशेष खरीद पर दावित कर क्रेडिट उसको बिक्री पर भुगतान योग्य कर की राशि से अधिक नहीं होगी ।”

5. धारा 74 का संशोधन.—मूल अधिनियम को धारा 74 को उप-धारा (10) में “पाँच” शब्द के स्थान पर “छह” शब्द को प्रतिस्थापित किया जाएगा ।

6. धारा 74क का संशोधन.—मूल अधिनियम को धारा 74क में उप-धारा (4) के पश्चात् निम्नलिखित उप-धारा को सन्निविष्ट किया जाएगा, अर्थात् :—

“(5) किसी न्यायालय के निर्णय डिक्ली या आदेश में कुछ भी रहते हुए इस धारा के प्रावधानों को 01 अप्रैल, 2005 से प्रभावी समझा जाएगा ।”

7. धारा 103 के स्थान पर नई धारा का प्रतिस्थापन.—मूल अधिनियम में धारा 103 के स्थान पर निम्नलिखित धारा प्रतिस्थापित की जाएगी :—

“103. अनुसूचियों में संशोधन करने की शक्ति.—(1) यदि सरकार का मत है कि लोकहित में ऐसा करना समीचीन है तो वह राजपत्र में अधिसूचना द्वारा प्रथम, द्वितीय, तृतीय, चतुर्थ, पंचम, षष्ठम एवं सप्तम अनुसूचियों में पूर्व प्रभाव अथवा उत्तर प्रभाव से जोड़ सकती है या हटा सकती है या अन्यथा संशोधन कर सकती है तथा तत्पश्चात् उक्त अनुसूचियाँ तदनुसार संशोधित समझी जाएंगी :

उपबंध है कि पूर्व प्रभाव से ऐसा कोई संशोधन नहीं किया जाएगा यदि उससे व्यापारियों के हितों पर प्रतिकूल प्रभाव पड़ता हो ।

(2) यदि आयुक्त के मत में ऐसा करना लोकहित में समीचीन है तो वह विदेश मंत्रालय, भारत सरकार की सिफारिश पर सरकारी राजपत्र में अधिसूचना द्वारा षष्ठम अनुसूची में जोड़ सकता है, हटा सकता है, अन्यथा संशोधन कर सकता है ।”

राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल के आदेश से और उनके नाम पर,  
सविता राव, संयुक्त सचिव

No. F. 14(16)/LA-2009/LJ/10/LC LAW/1.—The following Act of the Legislative Assembly of the National Capital Territory of Delhi received the assent of the Lt. Governor of Delhi on 1st January, 2010 and is hereby published for general information :—

“THE DELHI VALUE ADDED TAX (AMENDMENT)  
ACT, 2009 (DELHI ACT 01 OF 2010)

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 16th December, 2009)

(1st January, 2010)

An Act to further amend the Delhi Value Added Tax Act, 2004

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Sixtieth Year of the Republic of India as follows:—

**1. Short title, extent and commencement.**—(1) This Act may be called the Delhi Value Added Tax (Amendment) Act, 2009.

(2) It extends to the whole of the National Capital Territory of Delhi.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

**2. Amendment of Section 4.**—In the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) (hereinafter referred to as “the principal Act”), in Section 4, in sub-section (1), for clause (b), the following clause shall be substituted, namely :—

“(b) in respect of goods specified in the Third Schedule, at the rate of five paise in the rupee :

Provided that tax shall be paid at the rate of four paise in the rupee of the taxable turnover of the dealer pertaining to declared goods, as defined from time to time in the Central Sales Tax Act, 1956 (74 of 1956);”.

**3. Amendment of Section 9.**—In the principal Act, in Section 9,—

(a) in sub-section (1), for the words “where the purchase arises”, the words “to the extent of proportion of the goods which have been put to sale” shall be substituted;

(b) in sub-section (2), after clause (f), the following clause shall be inserted, namely:—

“(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.”

**4. Amendment of Section 10.**—In the principal Act, in Section 10, after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.

**Explanation.**—The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale.”

**5. Amendment of Section 74.**—In the principal Act, in Section 74, in sub-section (10), for the word “five”, the word “six” shall be substituted.

**6. Amendment of Section 74A.**—In the principal Act, in Section 74A, after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of this section shall be deemed to have come into effect with effect from the 1st April, 2005.”

**7. Substitution of new section for Section 103.**—In the principal Act, for Section 103, the following section shall be substituted, namely :—

“**103. Power to amend Schedules.**—(1) If the Government is of opinion that it is expedient in the interest of general public so to do, it may, by notification in the Official Gazette, add to, or omit from, or otherwise amend, the First, the Second, the Third, the Fourth, the Fifth, the Sixth, or the Seventh Schedules, either retrospectively or prospectively, and thereupon the said Schedules shall be deemed to have been amended accordingly :

Provided that no such amendment shall be made retrospectively if it would have the effect of prejudicially affecting the interests of a dealer.

(2) The Commissioner may, on the recommendation of the Ministry of External Affairs, Government of India, if he is of opinion that it is expedient in the interest of general public so to do, by a notification in the Official Gazette, add to, or omit from, or otherwise amend, the Sixth Schedule.”

By Order and in the Name of the Lt. Governor of the National Capital Territory of Delhi,  
SAVITA RAO, Jr. Secy.