

## CHAPTER V

### RETURNS, ASSESSMENT, RECOVERY AND REFUND OF TAX

**29. Periodical Returns and Payment of Tax:-** (1) Every registered dealer shall furnish return in such form for such period, by such dates and to such authority, as may be prescribed:

Provided that the prescribed authority may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or permit any such dealer;

- (a) to furnish them for such different periods; or
- (b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State of Jharkhand for the said period or for such different periods and to such authority, as he may direct.

(2) If the prescribed authority has reason to believe that the turnover of sales or the turnover of purchases of any dealer is likely to exceed or has exceeded the specified quantum as specified. In sub-Section (5) of Section 8, he may, by notice served in the prescribed manner, require such dealer to furnish return as if he were a registered dealer to furnish return, but no tax shall be payable by him unless his gross turnover exceeds the specified quantum provided under sub-Section (5) of Section 8,

(3) If any dealer having furnished returns under sub-Section (1) or sub-Section (2), discovers any omission or any other error in the return so filed, he may furnish a revised return before the expiry of three months, following the last date prescribed for furnishing the original return relating to the tax period.

(4) Every dealer required to file return under sub-Section (1) or sub-Section (2) shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, into the Government Treasury or in such other manner as may be prescribed, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount.

(5) Every return under this Section shall be signed and verified-

(a) in case of an individual, by the individual himself, and where the individual is absent by some person duly authorised by him in this behalf;

(b) in the case of a Hindu Undivided family, by the Karta,

(c) in the case of a company or local authority, by the principal officer or Chief Executive Officer thereof;

(d) in the case of a firm, by any partner thereof not being a minor;

(e) in the case of any other association, by the person competent to act on behalf of the association.

Explanation :- For the purpose of this section, the post of " Principal Officer " shall have the same meaning as that of section 2, part 35 of Income Tax Act 1961.

**30. Return Defaults: -** (1) If a dealer required to file return under sub-Section (1) or sub-Section (2) of Section 29,

(a) fails without sufficient cause to pay the amount of tax due as per the return for any tax period; or

(b) furnishes a revised return under sub-Section (3) of Section 29 showing a higher amount of tax to be due than was shown by him in the original return; or

(c) fails to furnish return;

such dealer shall be liable to pay Interest in respect of;

(i) the tax payable by him according to the return; or

(ii) the difference of the amount of tax according to the revised return; or

(iii) the tax payable for the period for which he has failed to furnish return;

at the rate of 1% per month from the date the tax payable has become due to the date of its payment or to the date of order of assessment, whichever is earlier.

(2) 'Month' for this purpose shall mean thirty days, and the interest payable in respect of a period of less than one month, shall be computed proportionately.

(3) If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest along with return or revised return in accordance with the provisions of sub-Section (1), the prescribed

authority may, after giving the dealer reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him a penalty, at the rate of 2% per month on the tax and interest so payable from the date it has become due to the date of its payment or to the date of order of assessment, whichever is earlier.

(4) If a registered dealer or any other dealer required to furnish return under sub-Section ( 2 ) of Section 29; without any sufficient cause;

(a) fails to comply with the requirements of the notice issued under sub-Section (2) of Section 29; or

(b) fails to furnish any return by the prescribed date as required under sub-Section (2) of Section 29; or

(c) being required to furnish revised return, fails to furnish the revised return by the date prescribed under sub-Section (3) of Section 29; or

(d) having paid the tax payable according to a return in time, fails to furnish along with the return proof of payment made in accordance with sub-Section (4) of Section 29; the prescribed authority may, after giving the dealer reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-Section (3), payable or paid by him, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.

(5) Any penalty imposed under this Section shall be without prejudice to any prosecution for any offence under this Act.

(6) For the purposes of this Act, any return signed by a person who is not authorised under sub-Section (5) of Section 29 shall be treated as if no return has been filed.

**31. Collection of Tax only by Registered Dealers:-** No person who is not a registered dealer shall collect in respect of any sale of goods by him in the State of Jharkhand any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the Rules made thereunder and not beyond the rate specified.

Notwithstanding anything contained in this Section a registered dealer who has been permitted by the Government to pay presumptive tax under Section 22 or Composition Tax under Section 58, shall not collect any sum by way of tax on the sale of goods during the period to which such payment relates.

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

**33. Scrutiny of Returns:-** (1) Each and every return in relation to any tax period furnished by a registered dealer and to whom notice has been issued by the prescribed authority under sub-section (2) of Section 29 shall be subject to scrutiny by the Assessing Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.

(2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub- Section (1) the Assessing Authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, if it is payable by a date specified in the said notice.

**34. Tax Audit:-** (1) The prescribed authority shall undertake tax audit of the records; stock in trade and the related documents of the dealer, who are selected by the Commissioner in the manner as may be notified for the purpose.

(2) The tax audit shall be generally taken up in the office, business premises or warehouse of the dealer.

(3) For the purpose of tax audit under sub-Section (1) the prescribed authority or any other tax officer directed by him shall examine the correctness of return or returns filed and admissibility of various claims including input tax credit.

**35. Self Assessment:-** (1) Subject to provisions of sub-Section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for the Tax Period during which the dealer is so liable as prescribed.

(2) Notwithstanding anything contained in this Section, if a registered dealer has failed to furnish return or returns under sub-Section (1) of Section 29 in respect of any tax period or periods, the prescribed authority shall proceed to make provisional assessment under Section 36.

(3) Subject to Sub-section 5 of this Section, if a registered dealer has filed all the returns and the annual return in respect of any tax period within the prescribed time and the return so filed are found to be in order, it shall be accepted as self-assessment in the prescribed manner, subject to adjustment of any arithmetical error; apparent on the face of the said return(s).

(4) The amount of input tax credit, exemptions and other credits or concessions claimed by the dealer in the return(s) for which no supporting declarations, certificates or evidence required under this Act or Central Sales Tax Act is furnished, self assessment shall be made accordingly without such input tax credit, exemption and other claims, treating such sales as taxable by levying appropriate rate of tax, notwithstanding the fact that the dealer may have been prevented by sufficient cause to produce such declarations, certificates or evidence in support of his claim.

(5) If a dealer has furnished all the returns and the revised returns, if any, within the prescribed period and in the prescribed manner or within next fifteen days thereafter and -

(a) The prescribed authority is satisfied that the returns or the revised returns as the case may be, and self assessment claim are prima-facie correct, consistent and complete, he shall accept the self assessment as filed by the dealer and shall assess the amount of tax and interest due from the dealer on the basis of such returns, after making prima-facie adjustment in the nature of arithmetical errors, if any, in the returns and the self assessment;

(b) If the self assessment has not been filed within the time prescribed or if filed, the prescribed authority is not satisfied that the return or the revised returns as the case may be, and the self assessment are consistent and complete, he may, assess after allowing the dealer an opportunity of being heard, the amount of tax and interest due from the dealer on the basis of such returns and documents which have come on record, after making such adjustments as may be necessary including -

- (i) disallowance of claim of input tax credit, exemptions and deductions and any other concessions or rebates not supported by requisite evidence as required under the Act or the rules made thereunder; and
- (ii) disallowance of claims of tax payments and refund adjustment not verified or otherwise not admissible; and
- (iii) withdrawal of claim of tax credit including carry forward of tax credit not admissible; and
- (iv) levying of interest applicable under this Act.

(6) No assessment under this Section shall be made after the expiry of two years, from the end the Tax Period\_ in respect of which or part of which the tax is assessable.

**36. Provisional Assessment:-** (1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the prescribed authority shall, notwithstanding anything contained in Section 37, proceed to assess the dealer provisionally for the period for such default.

(2) The provisional assessment under sub-Section (1) shall be made on the basis of past returns, or past records. Where no such returns are available, or on the basis of information received by the prescribed authority: the prescribed authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date, as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified under sub-Section 2, provisional assessment made under sub-Section (1) shall stand revoked to the extent of tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.

(4) Nothing contained in this Section shall prevent the prescribed authority from assessment under Section 37; and any tax, interest or penalty paid against provisional assessment shall be adjusted against tax, interest and penalty payable under this Section.

**37. Audit Assessment:-** (1) Where

- (a) a registered dealer has failed to furnish any return under sub-Section (1) of 29 in respect of any period; or
- (b) a registered dealer is selected for audit assessment by the prescribed authority on the basis of any criteria or on random basis; or
- (c) the prescribed authority is not satisfied with the correctness of any return filed under Section 29; or bona fides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or
- (d) the prescribed authority has reasons to believe that detailed scrutiny of the case is necessary;

The prescribed authority may, notwithstanding the fact that the dealer may have already been assessed under Section 35 or 36, serve on such dealer, in the prescribed manner, a notice requiring him to appear on a date and place specified therein, which may be business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice.

(2) The dealer shall provide full cooperation and assistance to the prescribed authority, to conduct the proceedings under this Section at his business premises.

(3) If proceedings under this Section are to be conducted at the business premises of the dealer, giving him a notice to be present on prescribed date and time at his business premises and it is found that the dealer or his authorised representative is not available or not functioning from such premises, the prescribed authority shall proceed to assess to the best of judgement the amount of tax due from him.

(4) If the prescribed authority is prevented from conducting the proceedings under this Section, he may impose, a sum equal to the amount of tax so assessed, by way of penalty.

(5) The prescribed authority shall, after considering all the evidence produced in course of proceedings or collected by him and is satisfied that;

the dealer-

- (a) has not furnished returns in respect of any period(s) by the prescribed date; or
- (b) has furnished incomplete and incorrect returns for any period ;or
- (c) has failed to comply with any notice under sub-Section (1) or sub-Section (3); or
- (d) has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting;

the prescribed authority shall assess to the best of his judgement, the amount of tax due from such dealer.

(6) If the prescribed authority is satisfied that the dealer, in order to evade or avoid payment of tax-;

- (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or
- (b) has furnished incomplete and incorrect returns for any period; or
- (c) has availed Input Tax Credit to which he is not entitled to or
- (d) has employed such method of accounting which does not enable the prescribed authority to assess the tax due from him;

he shall, after giving the dealer reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty; a sum equal to twice the amount of additional tax assessed on account of the said reasons under this Section.

**38. Assessment of Dealer who fails to get himself Registered:-** (1) If the prescribed authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, the prescribed authority shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer reasonable opportunity of being heard.

(2) Notwithstanding anything contained in Section 28, the prescribed authority may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum equal to the amount of tax assessed or a sum of rupees ten thousand whichever is greater.

**39. No Assessment after five years:-** (1) No assessment under Section 37 or 38 shall be made after the expiry of five years from the end of the tax period to which the assessment relates

Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this sub-Section shall not apply.

(2) Any assessment made or penalty imposed under this Chapter shall be without prejudice to prosecution for any offence under this Act.

**40. Turnover escaping Assessment:-** (1) Where after a dealer is assessed under Section 35 or Section 36 for any year or part thereof, and the Prescribed Authority, upon information or otherwise has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has -

(a) escaped assessment; or

(b) been under assessed; or

(c) been assessed at a rate lower than the rate on which it is assessable

(d) been wrongly allowed any deduction therefrom; or

(e) been wrongly allowed any credit therein;

the prescribed authority may, serve or cause to serve a notice on the dealer and after giving the dealer reasonable opportunity of being heard and making such inquiries as he considers necessary, proceed to assess to the best of his judgement, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall so far as may be, apply accordingly.

(2) No order of assessment and reassessment shall be made under sub-Section (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

**41. Exclusion of time period for Assessment:-** In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.

**42. Power of Reassessment in certain Cases:-** (1) Where any order passed by the prescribed authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of any judgment or order of any Court or Tribunal, which has become final, then notwithstanding anything contained in this Act, the prescribed authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the Judgment or order.

(2) Where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof, may be assessed or reassessed, as the case may be, to a tax at any time within two years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to, the assessment or reassessment made.

**43. Payment and Recovery of Tax, Penalty and Interest:-**

(1) Tax shall be paid in the manner herein provided and at such intervals as may be prescribed.

(2) A registered dealer furnishing returns under sub-Section (1) of Section 29 shall pay into Government treasury, in such manner and at such interval as may be prescribed, the amount of tax due from him for the period covered under the return along with the amount of penalty or interest or both payable by him under Section 29 and shall furnish a receipt from the Treasury, showing the payment of such amount.

(3) A registered dealer furnishing a revised return in accordance with the sub-Section (3) of Section 29, which shows that a higher amount of tax is due than what was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the differential amount in the manner provided in sub-Section (2).

(4) (a) The amount of tax-

(i) due where returns have been filed without full payment of tax due; or

(ii) assessed under Section 35, Section 36 and Section 37 less the sum already paid in respect of such period together with interest, if any, required to be paid and the penalty, if any, imposed to be paid under sub-Section (6) of Section 37 or sub-Section (2) of Section 38.

(b) the amount of penalty imposed under any provision of this Act not covered under sub-clause (ii) of clause (a); or

(c) any other dues under this Act;

Shall be paid by the dealer or the person concerned in the Government Treasury, or in such other manner, as may be prescribed by such date as may be specified in a notice issued by the prescribed authority for this purpose and the date to be so specified shall, ordinarily, not be less than 30 days from the date of service of such notice;

Provided that the prescribed authority may, in respect of any particular dealer or person and for reason to be recorded in writing extend the date of such payment or allow such dealer or person to make payment of such dues in installment.

Provided further that where the prescribed authority considers it expedient in the interest of State revenue, it may, for the reasons to be recorded in writing require any dealer, or person to make payment forthwith.

(5) Notwithstanding any contained in the Act, the Prescribed Authority may, subject to such conditions and restrictions as may be prescribed, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the date of such payment and allow such dealer or person to pay any demand in installments on the condition that the said dealer or the person furnishes sufficient security to the satisfaction of Prescribed Authority.

(6) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the prescribed authority shall, after giving the dealer reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due pay, by way of penalty, a sum equal to 2% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.

(7) The amount that remains unpaid even after the due date of payment or installment granted in pursuance of the notice issued under sub-Section (4) and sub-Section (6) shall be recoverable as arrears of land revenue.

Provided that where an appeal in respect of such amount has been entertained under Section 79, the appellate authority may, subject to such rule as may be made by the State Government under this Act, stay recovery of such amount or portion thereof for so long as the appeal remains pending or for such shorter period as the said authority may consider to be adequate.

(8) Where in pursuance of sub-Section (6), any proceeding for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, have been commenced and the amount of tax, penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal revision or rectification under this Act, the prescribed authority may, in such manner and within such period as may be prescribed, inform the dealer and the authority by whom or under whose order the recovery is to be made and there upon such proceeding may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, had been substituted for the tax, penalty, interest or any other amount which was to be recovered under sub-Section (7).

#### **44. Special Provisions relating to Deduction of Tax at source in certain Cases—**

(1) The State Government may, having regard to the effective recovery of tax, require in respect of contractors or any other class or classes of dealers that any person making payment of any valuable

consideration to them for the execution of a works contract in the State involving transfer of property in goods, whether as goods or in some other form or for sale of goods in the State, as the case may be, shall, at the time of making payment, whether by cash, adjustment, credit to the account, recovery of dues or in any other manner, deduct tax in advance therefrom which shall be calculated by multiplying the amount paid in any manner with such rate not exceeding ten per cent, as the State Government may, by notification in the Official Gazette, specify and different rates may be specified for different works contracts or class or classes of dealers, and that such person shall keep record, of the payments made and, of the tax deducted in advance therefrom, for a period of five years from the close of the year when the payments were made and shall produce such record before the prescribed authority when so required for carrying out the purposes of this Act.

Provided that, no deduction shall be admissible, in the circumstances, where a works contractor opts for Composition Scheme of Tax under Section 58 of the Act.

(2) The provisions of sub-Section (1) shall not apply where the amount or the aggregate of the amounts paid or likely to be paid during a year by any person to a dealer does not or is not likely to exceed one lakh rupees or such other amount as may be prescribed.

(3) Every person who is required to deduct tax in advance under sub-Section (1) shall furnish such returns at such intervals by such dates in such manner to such authority as may be prescribed and shall pay the tax deducted according to such returns to the State Government in such manner as may be prescribed.

(4) Every person referred to in sub-Section (3) shall issue to the payee a certificate of tax deduction and payment in such form in such manner as may be prescribed.

(5) Any tax paid to the State Government in accordance with sub-Section (3) shall be adjustable by the payee, on the authority of the certificate issued to him under sub-Section (4), with the tax payable by him under this Act and the assessing authority shall, on furnishing of such certificate to it, allow the benefit of such adjustment after due verification of the payment.

(6) If any person fails to deduct the whole or any part of the tax as required by or under the provisions of sub-Section (1), or fails to pay the whole or any part of the tax as required by or under sub-Section (3), then, the authority referred to in sub-Section (3) may, at any time within five years of the close of the year when he failed to do so, by order in writing, direct him, after giving him a reasonable opportunity of being heard, to pay, by way of penalty, a sum equal to the amount of tax which he failed to deduct or pay as aforesaid.

#### **45. Special Provision relating to Advance Recovery of Tax on Sales and Supplies to Governments and Other Persons:-**

(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 14, 49 and 57, any person responsible for paying sale price or any amount purporting to be the full or part payment of sale price in respect of sales or supplies of taxable goods exceeding rupees one lac during a year made to-

(i) the State Government; or

(ii) Central Government; or

(iii) a Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled either wholly or partly by the State Government or the Central Government shall, at the time of payment, subject to such conditions and restrictions as may be prescribed, deduct an amount at the rate as may be specified by the State Government by a notification on account of tax on the amount of such payment:

Provided that the rate or rates to be specified by the State Government shall not be more than the rate of tax applicable to the goods sold or supplied.

(2) Notwithstanding any law or contract to the contrary, the person making such deduction shall be lawfully competent to make such deduction.

(3) Payment of the amount deducted under sub-Section (1) into the Government Treasury in the prescribed manner, shall be the liability of the person making such deduction.

(4) Payment of the amount deducted under sub-Section (1) into the Government Treasury by the person making the deduction shall be deemed to be a payment by or on behalf of the seller or supplier concerned.

(5) If any person contravenes any or all of the provisions of sub-Section (1), (2) or (3), he shall be liable to pay, by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-Section (1):

Provided that such penalty shall not be imposed unless the person contravening the provisions is given an opportunity of being heard by the prescribed authority.

(6) The provisions of Section 43 and 47 for recovery of any amount of tax due from a dealer shall, mutatis mutandis, apply for recovery of any amount of tax deducted and or any penalty imposed but not deposited under this Section.

Explanation:- A "person" in this Section includes all officers or authorities who are competent or authorised to make payment of the sale-price including the tax charged in respect of sales to State Government or Central Government or to Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government.

(7) The provisions of sub-Sections (4) and (5) of Section 44 of the Act shall, mutatis mutandis, apply, so far as it relates, to issuance of certificate to person from whose bills deduction has been made and for filing of quarterly statements.

**46. Special mode of Recovery:-** (1) Notwithstanding anything contained in Section 43 or any law or contract to the contrary, the prescribed authority may at any time or from time to time, by notice in writing, ( a copy of which shall be forwarded to the dealer at his last known address) direct-

(a) Any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served under Section 43, or

(b) Any person who holds or may subsequently hold any money for, or on account of such dealer, to pay into the Government Treasury in the manner specified in the notice, either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice (not being before money becomes due or is held) so much of the money as is sufficient to pay the amount of tax due from the dealer, together with penalty, as the case may be, under this Act, or part or the whole of the money when it is equal to or less than that amount.

(2) The prescribed authority issuing the notice under sub-Section (1) may at any time or from time to time, amend or revoke any such notice or extend the time for making such payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-Section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall construe a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

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

(5) Where a person on whom a notice is served under sub-Section (1) proves to the satisfaction of the prescribed authority that the money demanded or any part thereof were not due to the dealer, or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof is likely to become due to the dealer or be held for or on account of the dealer, then such person shall not be liable to pay into Govt. treasury any such money or part thereof.

(6) Any amount of money which a person is required to pay under sub-Section (1) or for which he is personally liable under sub-Section (4) shall, if it remains unpaid, be recoverable in the same manner as provided under sub-Section (7) of Section 43.

(7) No action shall be taken under this Section in respect of any amount of tax, interest and penalty, if any, the date of payment of which has been extended or the realization of which has been stayed, under this Act during the period of such extension or stay.

Provided that nothing in this Section shall operate to affect any action taken or prevent any action that may be or is being taken under Section 43 for recovery from the dealer the amount due from him.

**47. Collection of Tax by Dealer:-** (1) If any person -

- (a) not being a dealer liable to pay tax under this Act, collects any sum by way of tax; or
- (b) being a registered dealer, collects any amount by way of tax in excess of the tax payable by him shall be liable, in addition to the tax for which he may be liable, to a penalty of an amount equal to twice the sum so collected by way of tax.

(2) If the prescribed authority in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to a penalty, or forfeiture, or both, under sub-Section (1), he shall serve on such person a notice in the prescribed form requiring him to appear and show cause as to why a penalty or forfeiture or both of any sum as provided under sub-Section (1) should not be imposed on him.

(3) The prescribed authority shall thereupon hold an inquiry as he deems necessary and shall make such order as he deems fit.

**48. Forfeiture of Tax Collected in Violation of this Act –** (1) Any amount collected by any person in contravention of the provisions of Clause (b) of sub-Section (1) of Section 47 or any amount collected by any person by way of tax, by whatever name called, or in any other manner not payable under any provision of this Act shall be liable to forfeiture to the State Government.

(2) If the Prescribed authority, in the course of any proceeding under this Act or otherwise, has reason to believe that any amount is liable for forfeiture under sub-Section (2) of Section 47, he shall serve, on the person who has collected such amount, a notice in the prescribed form requiring to show cause why the said amount should not be forfeited to the State Government and on receipt of the reply, if any, and after making such inquiries as may be deemed fit, he shall make an order of forfeiture if the amount is found so liable.

(3) Where an order of forfeiture under sub-Section (2) of Section 47 has been made, the person making the unauthorized collection shall forthwith pay the amount so forfeited to the State Government, if it has not already been paid and on his failure to do so, such amount shall be recoverable from him as if it were a tax due from him.

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

(5) On the publication of the notice under sub-Section (4), a refund of such amount or part thereof may be claimed from the State Government within one year from the date of publication of the said notice by the person from whom it was unauthorisedly realized by way of tax and for this purpose the person claiming the refund shall make an application in the prescribed form.

(6) On receipt of an application under sub-Section (5) the Commissioner shall hold such enquiry as he deems fit and if he is satisfied that the claims is valid and admissible and that the amount so claimed as refund was actually paid to the State Government and no refund or remission in respect of that amount was granted, the Commissioner shall refund such amount or any part thereof to the person concerned.

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

**49. Sales not liable to Tax and Zero Rated Sales:-** (1) Notwithstanding anything contained in this Act, a Value Added Tax shall not be imposed under this Act;

(i) Where such sale or purchase takes place out side the State of Jharkhand; or

(ii) Where such sale or purchase takes place in the course of Import of goods into the territory of India or Export of goods out of the territory of India.

(2) The following shall be Zero-rated sales for the purpose of this Act, and shall be eligible for Input Tax Credit under sub-Section (4) of Section 18 of this Act -

(i) Sale of taxable goods in the course of inter-State trade and commerce falling within the scope of Section 3 of the Central Sales Tax Act, 1956.

(ii) Sale of goods falling within the scope of sub-Sections (1) and (3) of Section 5 of the Central Sales Tax Act, 1956.

(iii) Sale of goods: to an unit located in Special Economic Zone or a STP unit or an EHTP unit or an EOU unit.

(3) For the purpose of this Section, whether a sale or purchase takes place;

(i) outside the State of Jharkhand or

(ii) in the course of inter-state trade and commerce; or

(iii) in the course of Import of goods into the territory of India or Export of goods out of the territory of India.

shall be determined in accordance with the provisions of Section 3, 4 and 5 of the Central Sales Tax Act, 1956.

**50. Tax to be first charge on Property:-** (1) Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer under this Act on account of tax, penalty or interest or any amount which a person required to pay under this Act shall be a first charge on the property of the dealer or such person.

(2) Where, during the pendency of any proceeding under this Act or under the Repealed Act, any person creates a charge on or parts with the possession: by way of Sale, Mortgage, Gift, Exchange or any other mode of Transfer whatsoever, of any of his Assets in favour of any other person with the intention to defraud Revenue, such Charge or Transfer shall be void, as against any claim in respect of any tax or any other sum payable by such person, as a result of completion of the said proceeding.

**51. Period of limitation for Recovery of Tax:-** Notwithstanding anything contained in any law for the time being in force, no proceeding for recovery of any amount under sub-Section (7) and (8) of Section 43 and sub-Section (6) of Section 47 shall be initiated after the expiry of twelve years from the date of the relevant assessment.

Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

## **52. Refund:-**

(1) Subject to other provisions of this Act and the Rules made thereunder, the prescribed authority shall, refund to a dealer the amount of tax, penalty and interest, if any paid by such dealer in excess of the amount due from him.

(2) Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable as per the returns filed under Section 29 for any subsequent period in the year:

Provided that, the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the date of such adjustment shall first be deducted from such refund before adjustment.

**53. Provisional Refund:-** (1) If a registered dealer has filed any return as required under this Act and the return shows any amount to be refundable to the dealer on account of Zero Rated Sales or in course of export out of the territory of India, then the dealer may apply in the manner and form prescribed to the prescribed authority for grant of provisional refund pending assessment, audit and investigation to establish the correctness of the claim and consequent assessment, if any.

(2) Provided further the Refund shall also be admissible to a registered dealer, who owns an industrial unit in the Software Technology Park, or who owns an Export Oriented Unit within the meaning of the Export and Import Policy as formulated under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), situated anywhere in Jharkhand a Special Economic Zone or Software Technology Park, the amount of tax realised or realizable from him by another registered dealer in respect of the purchases in Jharkhand—

- (i) of goods for use directly in the manufacture of goods by him in such unit for sale by him in the course of export within the meaning of Section 5 of the Central Sales Tax Act, 1956 (74 of 1956).
- (ii) of goods, being the containers or other packing material for packing of the goods manufactured in such unit.

(3) Subject to the provisions of sub-Section (1) or (2), the prescribed authority may require the dealer to furnish a Bank Guarantee or other security as may be prescribed for an amount equal to the amount of refund and on receipt of such guarantee or other security, the prescribed authority shall grant the dealer a provisional refund for the amount that may be determined as refundable.

(4) The prescribed authority may direct the assessment under Section 36 or 37 of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment.

(5) If, on assessment, the provisional refund granted under sub-Section (3) is found to be in excess, then the excess shall be recovered as if it is tax due from the dealer under this Act.

(6) Interest will be charged on such excess amount at the rate of two percent per month from the date of grant of provisional refund till the date of assessment.

**54. Refund of Tax to certain categories:-** Refund of tax, paid on officials/personal purchases of foreign diplomatic missions/ their diplomats shall be allowed in the State of Jharkhand on reciprocal basis and shall be allowed to U.N. bodies/ their diplomats promptly, as prescribed.

**55. Interest:-** (1) A registered dealer entitled to refund in pursuance of any order under this Act (including assessment under Section 35, Section 36 or Section 37) or in pursuance of any order by any Court, shall be entitled to receive, in addition to the refund, simple interest at the rate of six percent per annum for the period commencing after ninety days of the application claiming refund in pursuance to such order till the date on which the refund is granted.

(2) 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.

(3) If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced such interest shall be enhanced or reduced accordingly.

(4) When a dealer is in default or is deemed to be in default in making the payment under Section 35, Section 36 and Section 37, be liable to pay simple interest on such amount at the rate of two percent per month from the date of such default for so long as he continues to make default in the payment of the said tax.

(5) Where as a result of any final order the amount of tax (including any penalty) due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly:

(6) Where any amount of tax payable is enhanced by any such order, interest shall be payable on the amount by which the tax is enhanced after the expiry of a period of three months from the date of the order.

(7) Where the realization of any amount remains stayed by the order of any court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation

(8) The interest payable under this Act shall be deemed to be tax due under this Act.

**56. Power to withhold Refund in certain Cases:-** (1) Where an order giving rise to refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the prescribed authority is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the prescribed authority may, withhold the refund till such time as he may determine.

(2) Where a refund is withheld under sub-Section (1) the dealer shall be entitled to interest as provided under sub-Section (1) of Section 55, if as a result of the appeal or further proceeding or any other proceeding, he becomes entitled to the refund.

**57. Exemption of certain Sales and Purchases:** - (1) Subject of such conditions as it may impose, the Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any sales or purchases made to or by a class of dealers or persons specified in the said notification from payment of the whole or any part of any tax payable under the provisions of this Act and any notification issued under this Section may be issued so as to be retrospective to any date, not earlier than the appointed date and such exemption shall take effect from the date of the publication of the notification in the Official Gazette or such other earlier or later date as may be mentioned therein.

(2) Where any dealer or person has purchased any goods under a declaration or certificate given by him under any notification issued under this Section and -

- (a) any of the condition subject to which such exemption was granted, or
- (b) any of the recitals or the conditions of the declaration, or certificate are not complied with for any reason whatsoever, then without prejudice to the other provisions of this Act, such dealer or person shall be liable to pay tax on the sale price of the goods at the rate set out against each of such goods in the Schedule-II notwithstanding that such dealer or person was not liable to pay tax under any other provisions of this Act and accordingly the dealer or the person who has become liable to pay tax under this sub- Section shall file a return in the prescribed form to the prescribed authority within a prescribed time and shall include the sale price of such turnover in his return, and pay the tax in the prescribed manner. The tax due from any such dealer or person shall be assessed and recovered as if the person or dealer is a dealer liable to be proceeded against under the provisions of this Act.

(3) If the prescribed authority has reason to believe that any person or dealer is liable to pay tax under sub-Section (2), the prescribed authority shall, after giving him a reasonable opportunity of being heard, assess the amount of tax so due.

(4) Notwithstanding anything contained in this Act, the power to exempt any sales or purchases to or by a class of dealers or persons specified in any notifications thereof shall also include to withdraw, amend, alter or delete the said notification(s).

### **58. Composition of Tax**

(1) (a) The State Government may, by a notification in the Official Gazette, in lieu of the amount of tax payable under this Act; provide for a Scheme of Composition of Tax Payable: by such dealers or class of dealers, or dealers who are engaged in the business of reselling at retail of any goods, or dealers who are liable to pay tax on sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; subject to such conditions and restrictions as may be specified and as prescribed.

Provided the scheme of Composition of Tax shall be available to only such Dealer(s), other than the works contractors, whose gross turnover does not exceeds Rs.50 lakhs in a year.

(b) For the purpose of this Section, a dealer shall be considered to be engaged in the business of selling at retail, if 9/10th of his turnover of sales consists of sales made to such persons who are not dealers, and in the circumstances, if any question arises as to, whether any particular dealer is a retailer or not, the question shall be referred to the Joint Commissioner, who shall after hearing the dealer, if necessary, decide the question to this effect. The order made by the Joint Commissioner shall be final.

(c) Nothing in this sub-Section shall apply to a dealer who is a Manufacturer, or who is an Importer of goods into the State, or who sells liquor: including liquor imported from outside of India, or Indian Made Foreign Liquor or Country Liquor.

(d) The provisions of Section 44 shall not apply to such contractors, who have been granted permission to pay tax by way of composition; so long they comply with all the terms and conditions as specified in the Notification and prescribed in Rule 23, read with sub-rule (7) of Rule 14.

(2) The Rate of Tax applicable under the Composition scheme referred in this Section shall not be exceeding 8%, on the Gross Annual Turnover and no Input Tax Credit shall be admissible to such dealers.

(3) Where the registered dealer is permitted to pay tax by way of Composition Scheme under sub-Section (1) of this Section, the provisions of Section 29, 35 and 36 shall not apply to him, so long as he complies with all the terms and conditions as specified in this Section and as prescribed.

(4) Any dealer eligible for Composition of Tax under sub-Section (1) may apply, to the Prescribed Authority in the prescribed manner, to exercise his option and he shall pay such amount due, and furnish a Return in such manner as may be prescribed.

Provided that once the dealer elects the option 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 an Application to the Prescribed Authority, within such time and in such manner as may be prescribed.

Provided further, such dealer shall not be allowed to issue Tax Invoice, and shall not be allowed to collect any amount, by way of Tax under this Act.