

CHAPTER VIII

INSPECTION OF ACCOUNTS, DOCUMENTS, SEARCH OF PREMISES AND ESTABLISHMENT OF CHECK POSTS

69. Bureau of Investigation

(1) The State Government may, by an order published in the Official Gazette, constitute a Bureau of Investigation, and it shall consist of such personnel and in such number of officers and such hierarchy of supervision and control, as may be specified by the State Government in the said order.

Provided that if authorities appointed under sub-Section (1) of Section 4 are specified as such it shall without prejudice to the powers under sub-Section (1) of Section 4 exercise the powers of an authority under Section 62, 70 and 72 for carrying out the purpose of this Act.

2(i) The State Government may by an order published in the Official Gazette, vest an officer of the Bureau of Investigation with the powers of an officer in-charge of a police-station under the Code of Criminal Procedure, 1973 and with such other powers under different Acts, as it may consider necessary.

(ii) The Commissioner may, by an order published in the Official Gazette, authorise an officer of the Bureau of Investigation to exercise the powers of an authority appointed under Section 4 in respect of such matter, as may be specified in the order.

(iii) The Bureau of Investigation shall function under the control and supervision of the Commissioner, and shall discharge such duties as may be assigned to it, by the Commissioner, including investigation of offences under Section 87 of this part.

70. Production and Inspection of Accounts and Documents and search of premises:-

(1) The prescribed authority may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents, or to furnish any information, relating to stocks of goods of, or to sale, purchase and delivery of goods or to payments made or received by the dealer or any other information relating to his business, as may be necessary for the purpose of this Act.

(2) All accounts, registers and documents, records, computer or any electronically stored data relating to stocks of goods of, or to purchase, sale and delivery of goods, payments made or received by any dealer and all goods and cash kept in any place of business of any dealer, shall at all reasonable time be open to inspection by the prescribed authority, and the prescribed authority may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appears to him necessary for the purpose of this Act.

(3) If the prescribed authority has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for the prosecution, under any law.

(4) For the purposes of sub-Section (2) or sub-Section (3) the prescribed authority may enter and search any place of business of any dealer or any other place where the prescribed authority has reason to believe that the dealer keeps or is for the time being keeping any account, registers or documents of his business or stocks of goods relating to his business.

(5) (a) If the Prescribed Authority has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, shall have the powers to seize such goods not properly accounted for in the books, accounts, registers and other documents of the dealer or the Broker, or the owner of the warehouse, or the clearing, booking or forwarding agent, or the person engaged in the business of transporting goods in the manner prescribed.

(b) The Prescribed Authority shall, in a case where the dealer or the person in-charge of goods as mentioned in clause (a) fails to produce any evidence or fails to satisfy the said authority regarding the proper accounting of goods, impose a penalty, after allowing an opportunity of hearing in the prescribed manner to the dealer or such person, which shall be equal to three times the amount of tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid.

(c) If the dealer or the person in-charge of the goods mentioned in clause (a) demands time for production of necessary documents in support of proper accounting, the authority referred to in clause (a) shall release the goods on the condition that the dealer or such person furnishes a security equivalent to three times the amount of tax calculated on the value of the goods, either in the form of cash, to be

deposited in a Government treasury, or in the form of Bank guarantee or in such other form as acceptable to the authority.

(d) If the goods seized under clause (a) are not claimed by any person, the authority referred to in the said clause shall arrange for the safe custody of goods.

(e) In case the penalty imposed under clause (b) is not paid or the goods remain unclaimed for a period of thirty days or more from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed under clause (b); The balance of the sale-proceeds, if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner:

Provided that in the case of goods of a perishable nature, the prescribed authority may decide to sell the goods by auction before a period of thirty days.

(f) In case where the goods have been released on furnishing of a security as mentioned in clause (c) and evidence regarding proper accounting of goods, to the satisfaction of the authority referred to in clause (a), is not produced within the date granted from the date on which the security is furnished, the amount of security shall stand forfeited to the State Government. If, however, evidence or document to the satisfaction of the authority mentioned in clause (a) regarding the proper accounting of goods is produced within the said date granted, the security shall be released in the prescribed manner.

(6) (i) The power conferred under sub-Sections (3), (4) and (5) shall include the power to break open the lock of any box or receptacle or door of any other place or premises where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept.

(ii) The powers conferred under sub-Sections (3), (4) and (5) shall also include the power to seal any box or receptacle, godown or building where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept.

(7) An authority appointed under Section 4, may require the assistance of any person, public servant or police officer in making a search and a seizure or for safe custody of goods seized under this Section, and such person, public servant or police officer shall render necessary assistance in the matter.

(8) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search under sub-Section (2), (3) or (5), it shall be presumed, unless it is proved to the contrary, that such books of accounts, documents, money or goods belong to such person.

Explanation:- For the purposes of this Section the expression "proper accounting", shall-

(i) in the case of a dealer, mean that the goods have either not been entered in the books of accounts or they have been classified in a manner which is likely to lead to evasion of tax payable under this Act; or

(ii) in the case of the owner of a warehouse, or a clearing, booking or forwarding agent, or a person engaged in the business of transporting goods, mean properly entered in such registers and accounts as may be prescribed under sub-Section (2) of Section 73.

71. Survey:- (1) With a view to identify dealers who are liable to pay tax under the Act, but have remained unregistered, the prescribed authority shall from time to time cause a survey of unregistered dealers to be taken.

(2) For the purpose of the survey, the prescribed authority may by general or special notice require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.

(3) For the purposes of survey, the prescribed authority may call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies, which he is of the opinion, will be relevant and useful for the purposes of the survey. He may from time to time cause the results of the survey to be published in any manner that he thinks fit so however as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.

(4) The prescribed authority may for the purposes of the survey enter any place where a person is engaged in business but is unregistered or has not applied for grant of the certificate of registration, whether such place will be principal place of business or not of such business and require any proprietor,

employee or any other person who may at that time and place be attending in any manner to, or helping in, the business;

(i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,

(ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or things which may be found there in, and

(iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Act.

Explanation -For the purposes of this sub Section, a place will also include any other place in which the person engaged in business or the employee or other person attending or helping in business stays and a place where any books of accounts or other documents or any part of the cash, stock or other valuable articles or things relating to the business are or is kept.

(5) The prescribed authority shall enter the place where the person is carrying on business only during the hours at which such place is open for business and in case of any other place only after sunrise and before sunset. The prescribed authority may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash stock or other valuable articles or thing checked or verified by him, and record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

(6)The prescribed authority, in exercise of the powers under this Section shall on no account, remove or cause to be removed from the place where he has entered any books of accounts other documents or any cash, stock or other valuable article or thing.

72. Establishment of Check Posts, Inspection of Goods in Transit and Movement of Goods across the State:

- (1) The Government may, with a view to prevent or check avoidance or evasion of tax, by notification in the official gazette, direct the establishment of the check post or barrier at such places as may be specified in the notification, and every officer who exercises powers and discharges his duties at such check post, by way of inspection of documents produced and goods being moved, shall be Officer in-charge.

(2) Notwithstanding any contained in sub-section (1), no person shall transport from any railway station, steamer station, airport, post-office or from any other place in the State, whether of similar nature or otherwise, notified in this behalf by the State Government, any consignment of such goods, exceeding such quantity, as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act.

(3) The driver or person in charge of vehicle or goods carrier in movement, whether for the purpose of sub-section (1) or (2) of this Section, shall

(a) carry with him the records of the goods including challan, bills of sale or dispatch memos and prescribed declaration form duly filled in and signed by the consignor of goods carried.

(b) stop the vehicle or goods carrier at every check post set up under sub Section (1) or at any other place by an officer authorised by the Commissioner in this behalf;

(c) produce all the documents including the prescribed form relating to the goods before the officer in charge of the check post or the authorised officer;

(d) give all the information in his possession relating to the goods;

(e) allow the inspection of the goods for search of the vehicle by the officer in charge of the check post or any authorised officer.

(4) Where any goods are in movement within the territory of the State of Jharkhand, an officer empowered by the state government in this behalf may stop the vehicle or the goods carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and provisions of sub Section (3) shall mutatis mutandis apply.

(5) Where any goods in movement are without documents, or are not supported by documents as referred to in sub Section (3), or documents produced appear to be false or forged, the officer in charge of the check post or the officer empowered under sub-Section (4), may –

(a) direct the driver or the person in-charge of the vehicle or goods carrier or of the goods not to part with the goods in any manner including by transporting or re-booking, till a proper verification is done or an inquiry is made, which shall not take more than seven days; or

(b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods to the person, from whose possession of control they are seized;

(6) The officer in charge of the check post or the officer empowered under sub Section (4), after having given the person in charge of the goods a reasonable opportunity of being heard and after having held such inquiry as he may deem fit, shall impose for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub Section (3) or for submission of false or forged documents or prescribed form, a penalty equal to the amount of three times of the tax, leviable on such goods, or rupees five thousand whichever is greater.

(7) During the pendency of the proceeding under sub Section (6) and anyone prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the said officer in charge or the empowered officer on being satisfied may permit him to be included as a party to the case; and thereafter, all provisions of this Section shall mutatis mutandis apply to him.

(8) The officer in charge of the check post or the officer empowered under sub Section (4) may release the goods to the owner of the goods or to any person duly authorised by such owner on payment of the penalty imposed under sub Section (6).

(9) Where the driver or person in charge of the vehicle or the carrier is found guilty for violation of the provisions of sub Section (3), subject to the provisions of Clause (a) of sub-Section (5), the officer in charge of the check post or the officer empowered under sub Section (4) may detain such vehicle or carrier and affording an opportunity of being heard to such driver or person in charge of the vehicle, or the carrier, may impose a penalty on him as provided under sub Section (6).

(10) Where a transporter, while transporting goods, is found to be in collusion with dealer to avoid or evade tax, the officer in charge of the check post or the officer empowered under sub Section (4) shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with prior approval in writing by the commissioner, may confiscate such vehicle or carrier. (11) Where a vehicle carrying goods, coming from any place outside the State and bound for any other place outside the State, pass through the State, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer-in-charge of the first check post or barrier after his entry into the state and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State, by the owner or person-in-charge of the vehicle and accordingly the tax is assessed and penalty, if any shall be levied in accordance with the provisions of this Act.

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State, by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State shall be on the owner or person-in-charge of the vehicle.

Explanation: - If a vehicle is hired for transportation of goods by any person, the hirer of that vehicle shall be deemed to be the owner of the vehicle.

73. Furnishing of Information by Clearing, Forwarding or Booking Agent, Government Departments, Banks, Financial Institutions, Warehouses, Godowns, Cold Storages and any other Person:-

(1) Every clearing, forwarding or booking agent, Government Departments, Banks, Financial Institutions, warehouses, godowns, cold storages or Broker or a person transporting goods who in course of his business handles the document of title to the goods or transports goods or takes delivery of goods for or on behalf of a dealer and having his place of business in the State of Jharkhand, shall furnish information about his place of business to the Prescribed Authority, within such time and in such manner as may be prescribed.

(2) Every such agent or person shall maintain true and complete accounts, registers and documents, as may be prescribed, in respect of the goods handled by him and the documents of title relating thereto and shall produce the said accounts, registers and documents before the prescribed authority as and when required by him.

(3) If any agent or person referred to in sub-Section (1) contravenes the provisions of sub-Section (2) in a manner, which is likely to lead to evasion of any tax payable under this Act, the Prescribed Authority may, without prejudice to any action under Section 84, on charge of abetment, after giving such agent or person an opportunity of being heard, direct him to pay by way of penalty an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which complete particulars have not been furnished or incorrect particulars or information have been furnished.

(4) Every bank, including any branch of a bank, or any clearing house in the State, or any financial institution, department of Government, corporation, institution, organizations or companies, boards, authorities, undertakings or any bodies owned, financed or controlled wholly or partly by the State Government or Central Government; or

(5) Every clearing, forwarding or booking agent or Broker or a person engaged in the business of transporting goods shall, if so required by any authority appointed under Section 4, furnish any such particulars as may be required by such authority in respect of the transactions of any dealer with or through such banks or clearing house or any financial institution, department of Government, corporations, institutions, organization or companies, boards, authorities, undertakings or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government relating to sales or purchases of goods by such dealers.

Explanation:- For the purposes of this sub-Section-

(i) "Broker" shall include a person who renders his services for booking of, or taking delivery of, consignment of goods at a Railway station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise.

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

74. Automation: - (1) The Government shall endeavor to introduce and establish an automated data processing system for complementing the purposes of the Act, and for incidental and allied matters.

(2) In order to make effective the said system, the State Governments may from time to time make Resolutions for regulating the interactions between the dealers, authorities appointed or constituted under the Act and the Government Treasury.

(3) The Regulations shall be published in the Official Gazette and may be made retrospective to any date, not earlier than as specified in the Notification.

75. Power to collect Statistics:- (1) If the Commissioner considers that for the purposes of the better administration of this Act it is necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection to this Act.

(2) Upon such direction being made, the Commissioner or any officer appointed under Section 4 of this Act or person authorised by the Commissioner in his behalf any person or persons authorised by him in this behalf, if found necessary by notice in any news papers or in such other manner as in the opinion of the Commissioner or the said officer or person, is best calculated to bring the notice to the attention of dealers and other person or persons, call upon all dealers or any class of dealers or persons to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

(3) Without prejudice to the generality of the foregoing provisions, the Government may by rules provide that every registered dealer or, any class of registered dealer as the case may be shall furnish, in addition to any other returns provided for elsewhere, an annual return in such form, by such date and to such authority as may be prescribed and different provisions may be made for different classes of registered dealers.

76. Disclosure of Information by a Public Servant:- (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 proceeding before a Criminal Court), or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall, save as provided in sub-Section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall save as aforesaid, be entitled to require any 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), any servant of the Government discloses any of the particulars referred to in sub-Section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both;

Provided that no prosecution shall be instituted under this Section except with the previous sanction of the State Government.

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

(a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1947, or this Act, or any other law for the time being in force or

(b) of any such particulars to the State Government or to any person acting in the execution of this Act or to any person for the purposes of this Act; or

(c) of any such particulars when 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 demands; or

(d) of any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or

(e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

(f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Commercial Taxes Department to any person or persons appointed as Commissioner under the Commission of Enquiry Act or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or

(g) of such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realize any tax or duty imposed by it; or

(h) of any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorised under sub-Section (2) of Section 75 as may be necessary for enabling the Director or such person or persons to carry on their official duties.

(i) of any such particulars to an officer of the Central, Government or any State Government as may be necessary for the administration of any law in force in India.

77. Disclosure of Information required under Section 75, and failure to furnish Information or Return under that Section:-

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of Section 75, shall without the previous consent in writing of the owner or dealer or person concerned for the time being or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular dealer and no such information shall be used for the purpose of any proceedings under the provisions of this Act.

(2) Except for the purposes of prosecution under this Act or any other Act, no person who is not engaged in the collection of statistics under this Act or of compilation or computerization thereof for the purposes of administration of this Act, shall be permitted to see or have access to any information or any individual return referred to in that Section.

(3) If any person required to furnish any information or return under Section 75:

(a) willfully refuses or without lawful excuse neglects to furnish such information or return as may be by that Section be required, or

(b) willfully furnishes or causes to be furnished any information or return which he knows to be incorrect or false.

He shall on conviction be punished with fine which may extend to one thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues.

(4) If any person engaged in connection with the collection of statistics under Section 75 or compilations or computerization thereof willfully discloses any information or the contents of any return given or made under that Section, otherwise than in execution of his duties under that Section or for the purposes of the prosecution of an offence under this Act or under any other Act, he shall on conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(5) Nothing in this Section will apply to publication 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.

78. Publication and disclosure of Information in respect of Dealers and other persons in Public Interest:-

(1) Notwithstanding anything contained in Section 76 or 77, if the State 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 the 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.

(2) 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 authority 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 person, 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.