

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **1: Short title, extent and commencement:**

(1) This Act may be called The Uttaranchal Value Added Tax Act, 2005.

(2) It extends to the whole of the State of Uttaranchal.

(3) It shall be deemed to have come into force on the 1st day of October, 2005

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **2: Definitions:**

In this Act, unless the context otherwise requires-

(1) "**Assessee**" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him;

(2) "**Assessing Authority**" means any person appointed by the State Government or the Commissioner to perform all or any of the functions of assessing authority under this Act;

(3) "**Assessment Year**" means a period of 12 months ending on March 31;

(4) "**Appellate Authority**" means the authority to whom an appeal lies under section 51;

(5) "**Appellate Tribunal**" means the Appellate Tribunal constituted under section 54 of this Act;

(6) "**Business**" includes:

(a) any trade, commerce or manufacture; or

(b)any adventure or concern in the nature of trade, commerce or manufacture; or

(c)any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or

(d)any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; or

(e)the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period); and

(f)Any transaction of buying, selling or supplying plant, machinery, raw materials, processing material, packing material, empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern or works contract or lease but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods;

(7) **Casual dealer:**

*(substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1093/2012/181(120)/XXVII(8)/08 Dt. 14-12-2012 as below )*

“**Casual dealer**” means a person who whether as principal, agent or in any other capacity, undertakes occasional transactions involving buying, selling, supplying or distributing goods or conducting any exhibition-cum-sale in the State of Uttarakhand, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, for a period not exceeding 60 days at a time or such other period as may be prescribed and includes,

- (a) a transporter as defined in sub-section(49) of section 2 or a transporting agent, whether he has fixed place of business in Uttarakhand or not, who, while holding goods in custody for any person before or after their transportation, or while carrying goods in his vehicle, fails to disclose the name and address of the consignor or consignee in Uttarakhand or fails to furnish a copy of invoice, challan, goods receipt (G.R)/bilty or consignment note or document of like nature in respect of such goods, or
- (b) an owner or lessee or occupier of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy that such goods are for his personal use or consumption, and such transporter, transporting agent or owner or lessee or occupier of a warehouse, shall be deemed to have purchased such goods on his own account.

*Prior to the substitution this sub-section read as under :-*

*"Casual Dealer" means a person who whether as principal, agent or in any other capacity, undertakes occasional transactions involving buying, selling, supplying or distributing goods or conducting any exhibition-cum-sale in the State of Uttarakhand, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, for a period not exceeding 60 days at a time or such other period as may be prescribed;*

(8) **"Capital Goods"** means plant, machinery and equipments (including pollution control equipments, quality control equipments or laboratory equipments) used in the manufacturing or processing of taxable goods excluding Special Category Goods specified in Schedule III of this Act, and also excluding such goods when used in civil structures as may be prescribed;

(9) **"Commissioner"** means the Commissioner of Commercial Tax appointed by the State Government and includes an Additional Commissioner and a Joint Commissioner of Commercial Tax appointed by the Government;

*(substituted vide notification no. 1314/XXXVI(4)/2008 Dated 31<sup>st</sup> March, 2008)*

*"Commissioner" means the Commissioner of Commercial Tax appointed by the State Government and includes an Additional Commissioner, Additional Commissioner Grade-*

*1, Additional Commissioner Grade-2, a Joint Commissioner and a Deputy Commissioner of Commercial Tax appointed by the Government;*

(10) "**Date of commencement**" means the date on which this Act comes into force.

(11) "**Dealer**" means any person who, for the purposes of or in connection with or incidental to or in the course of his business, carries on in Uttarakhand the business of buying, selling, supplying or distributing goods with a motive of profit or not directly or indirectly, regularly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration, and includes:-

- (a) a department of the Central Government or any State Government or a local authority by name of any Panchayat, Municipality, Development Authority, Cantonment Board or any autonomous or statutory body;
- (b) 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;
- (c) a commission agent, factor, broker, arhti, del credere agent, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or

distributing goods on behalf of any principal, whether disclosed or not;

(d) any person who acts within the State as an agent of a non-resident dealer i.e. as an agent on behalf of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer, as

(i) a mercantile agent as defined in the Sale of Goods Act, 1930, or

(ii) an agent for handling of goods or documents of title relating to goods, or

(iii) an agent for the collection or the payment of the sale price of goods or a guarantor for such collection or such payment.

(e) an individual, a firm or a company or other body corporate, club, Hindu undivided family or any other system of joint family, association of persons, trust, and cooperative society or any other society, whether such society is incorporated or un-incorporated, and which carries on such business including buying goods for and selling to its members for a price, fee or subscription, whether in the course of business or not;

(f) a non-resident dealer whether an individual, or a firm or a company or association or other body of persons, whether incorporated or not, the principal office or head quarter whereof is outside the State, whether or not having branch or

office in the State, in respect of purchases or sales, supplies or distribution of goods in the State of Uttarakhand directly or through his agent or through such branch or office;

(g) an auctioneer, who carries on the business of selling or auctioning 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;

(h) a casual dealer;

(i) a person who supplies by way of or as a part of any service or any other manner whatsoever, goods, being foods or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash or deferred payment or other valuable consideration;

(j) any person who, for the purposes of or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale;

(k) a person engaged in the business of transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;



(l) any person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract;

(m) Any person who carries on the business of transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(n) any person engaged in business of delivery of goods on hire purchase or any other system of payment by instalment;

Provided that a person who sells agricultural or horticultural produce grown by him or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods, be treated as a dealer;

(12) "**Declared Goods**" means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter- state trade or commerce;

(13) "**Document**" means title deeds, writing or inscription and includes electronic data, computer programmes, computer tapes, computer discs computer floppies and the like that furnishes evidence;

**(13A) Document of Title :**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1093/2012/181(120)/XXVII(8)/08 Dt. 14-12-2012 as below )*

**“Document of Title”** means, any document which confers a title of goods and includes a bill of lading, dock warrant, goods receipt/ bilty, railway receipt, warehouse keeper’s certificate, warrant or order for the delivery of goods and any other like document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented.

(14) **"Goods"** means every kind or class of movable property (other than newspaper, actionable claims, stocks, shares and securities and postal stationery sold by the Postal Department) and includes-

(a) livestock, growing crops, grass, trees and things attached to or fastened to any thing permanently attached to the earth which under the contract of sale are agreed to be severed;

(b) all materials, commodities and articles (whether as goods or in some other form) involved in the execution of works contract including those used in the fitting out, improvement or repair of any movable or immovable property, or involved in lease or hire purchase;

(15) " **Government**" means the Government of the State of Uttarakhand;

(16) **Importer:**

*(Substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1093/2012/181(120)/XXVII(8)/08 Dt. 14-12-2012 as below)*

**“Importer”** in relation to any goods means a dealer who brings or receives any goods into the State from any place outside the State and includes a dealer-

(i) who makes first sale of any goods brought or received into the State from any place outside the State; or

(ii) who receives any goods into the State on behalf of any other persons from any place outside the State; or

(iii) on whose behalf any goods are received into the State from any place outside the State by any other person;

*Prior to the substitution this sub-section read as under :-*

*"Importer" in relation to any goods means the dealer who makes the first sale of such goods after their import into the State;*

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1093/2012/181(120)/XXVII(8)/08Dt. 14-12-2012 as below )*

(16A) **Import :**

**“Import”** means bringing or receiving of goods, into the State from outside the State or from outside the country, as a result of purchase or otherwise.

(17) "**Input Tax**" in relation to any registered dealer means a tax paid or payable under this Act by the dealer to another registered dealer on the purchase of any taxable goods other than Special Category Goods in the course of business for re-sale or for use in manufacturing or processing of such taxable goods for sale or for use as containers or packing materials for packing of such manufactured goods.

(18) "**Lease**" means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalment;

(19) "**Lessee**" means any person to whom the right to use any goods for any purpose is transferred under a lease;

(20) "**Lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease;

(21) "**Manufacture**" means any activity that brings out a change in an article or results in transformation into a new and different article so

understood in commercial parlance, and would include producing, making, mining, collecting, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, but would not include any such process or mode of manufacture as may be prescribed;

(22) "**Manufacturer**" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes a dealer who makes purchases from any other dealer not liable to tax on the sales under the Act other than sales exempted under section 4;

(23) "**Non-resident Dealer**" means a dealer who carries on business in Uttarakhand, but who has no fixed place of business or residence in Uttarakhand;

(24) "**Official Gazette**" means the Gazette of Government of Uttarakhand;

(25) "**Officer-in-charge of a check post or barrier**" includes an officer not below the rank of Commercial Tax Officer, posted at such check post or barrier;

*(substituted vide notification no. 1314/XXXVI(4)/2008 Dated 31<sup>st</sup> March, 2008)*

*"Officer-in-charge of a check post or barrier" includes an officer not below the rank of Commercial Tax Officer, Grade-2 posted at such check post or barrier;*

(26) "**Out put Tax**" in relation to any registered dealer means the tax charged or chargeable under this Act in respect of any sale or supply of taxable goods made by the dealer in the course of business and includes tax paid by a Commission Agent in respect of sale of taxable goods made on behalf of such dealer;

(27) "**Person**" includes:-

(a) an individual;

(b) a Joint Hindu Family;

(c) a company or a corporation *or a financial institution or a bank*;

*(Added vide notification no. 1314/XXXVI(4)/2008 Dated 31<sup>st</sup> March, 2008)*

(d) a firm;

(e) an association of persons or a body of individuals, whether incorporated or not;

(f) the Central Government or the Government of Uttarakhand or the Government of any other State or Union Territory in India;

(g) a local authority, a club, a society or trust;

(28) "**Place of Business** " means any place where a dealer carries on business and includes-

(a) any shop, ware-house, godown or other place where a dealer stores his goods;

(b) any place where a dealer produces or manufactures goods;

(c) any place where a dealer keeps his books of accounts;

(d) any place where a dealer executes the works contract or where the right to use goods is exercised;

(e) in any case where a dealer carries on business through an agent (by what ever name called), the place of business of such agent;

(f) any place where a dealer or a person books or delivers goods and any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting goods.

(29) "**Prescribed**" means prescribed under this Act or under the rules made or notifications issued under this Act;

(30) "**Purchase**" with all its grammatical variation and cognate expressions shall be construed from the word "Sale";

(31) "**Purchase Price**" means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed by

the seller as cash discount according to trade practice and shall include any sum charged for any thing done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of freight or delivery, or the cost of installation when such cost is separately charged;

(32) "**Recipient**" means a person receiving goods, as defined for the purpose of this Act;

(33) "**Registered Dealer**" means dealer registered under this Act, and includes a dealer who has obtained registration voluntarily;

(34) "**Repealed Act** " means the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002;

(35) "**Repealed Ordinance** " means the Uttarakhand Value Added Tax Ordinance, 2005;

(36) "**Re- Sale**" means a sale of purchased goods-

(a) in the same form in which they were purchased, or

(b) without using them in the manufacture of any goods, or



(c)without doing any thing to them, which amounts to, or results in a manufacture;

(37) "**Return**" means any return prescribed and / or required to be furnished under this Act or the rules made there under;

(38) "**Reverse Tax**" means that portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as container or packing materials within the State;

(39) "**Rules**" means rules made under this Act;

(40) "**Sale**" with its grammatical variation and cognate expressions means any transfer of property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration, and includes-

(a)a transfer other wise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration.

(b)a transfer of property in goods(whether as goods or in some other form) involved in the execution of a works contract

(c)the delivery of goods on hire purchase or any system of payment by instalments;

(d)a 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;

(e)a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f)any 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 drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,

(g)a transfer of property in goods by an auctioneer referred to in clause (g) of sub-section (11) or sale of goods by any dealer in the course of any other activity in the nature of banking or insurance, who in the course of his main activity also sells goods repossessed or reclaimed;

And such delivery, transfer or supply of any goods under clauses(a) to (g) above shall be deemed to be the sale of those goods by the person making the delivery, transfer or supply, and purchaser of those goods shall be the person to whom such delivery, transfer or supply is made;

Explanation 1: A sale or purchase shall not be deemed to have taken place in side the State if the goods are sold-

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

(b) out side the State of Uttarnachal otherwise than by way of sale; or

(c) in the course of import into or export out of the territory of India;

Explanation 2: A sale or purchase shall be deemed to have taken place in the State under sub- clause (b) if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of works contract, notwithstanding that the agreement for works contract has been wholly or in part entered into outside the State;

Explanation 3: Notwithstanding any thing contained in this Act, two independent sales or purchases shall, for the purpose of this Act, be deemed to have taken place-

(a)when the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser;

(b)when the goods are transferred from the seller to a buying agent and from the buying agent to principal, and if the agent is found in either of the cases aforesaid-

(i) to have sold the goods at one rate and passed on the sales proceeds to his principal at another rate, or

(ii) to have purchased the goods at one rate and passed them to his principal at another rate; or

(iii) not to have accounted to his principal for the entire collection or deductions made to him, from the sales or purchases effected by him on behalf of his principal; or

(iv) to have acted for a fictitious or non-existent principal;

(41) "**Sale Invoice**" means a document listing goods sold, with price, quantity, tax charged, and such other particulars as may be prescribed in the Act or the Rules made thereunder;

(42) "**Sale Price**" means the amount of valuable consideration received or receivable by a dealer for sale of any goods and shall include any sum charged for any thing done by the dealer in respect of goods at the time or before the delivery thereof, excise duty, special excise duty or any other duty or tax but shall not include-

(a) any sum allowed by the seller of goods to the purchaser as cash discount, commission or trade discount according to normal trade practice, at the time of sale of goods;

(b) the cost of outward freight or delivery or the cost of installation in cases where such cost is separately charged;

(c) the amount of tax under this Act, if separately charged by the dealer;

Explanation: For the purpose of this sub-section "Sale Price" includes

(a) in relation to the delivery of goods on hire purchase or any other system of payment by installments, the total amount of valuable consideration including deposit or other initial payment in order to complete the purchase or the acquisition of the property in goods. It includes hire charges, interest and other charges incidental to such transaction, but does not include any sum payable as penalty or as compensation or damages for breach of agreement;

(b) 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 hire charges received or receivable for such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement;

(c) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, the valuable consideration paid or payable to a person for the execution of such works contract, less the actual amount representing labour and such other charges as may be prescribed, but does not include any sum payable as a penalty or as compensation or damages for breach of agreement;

(d) the amount of duties paid or payable under Central Excise Act, 1944, or Customs Act, 1962, or U.P. Excise Act, 1910, as applicable in Uttarnachal, in respect of such goods at the time of clearance of the goods from bonded warehouse, whether such duties are paid or payable by or on behalf of the seller or by any other person;

(e) the price of packing material in which goods sold are packed;

(43) "**Special Category Goods**" means the goods specified in Schedule III of this Act on which tax is payable at the point of Importer or Manufacturer;

(44) "**State**" means the State of Uttarakhand;

(45) "**State Government**" means the Government of State of Uttarakhand;

(46) "**Tax**" means the tax payable under this Act, and includes the amount as lump sum (composition money) accepted in lieu of actual amount of tax due on the turnover as provided under section 7 of the Act and amount of reverse input tax credit *and the amount of additional tax leviable under section 3(A)*.

*(substituted vide notification 22 January 07,2010 as above)*

(47) "**Tax Period**" means a calendar month, a quarter of a year, or a year, as may be prescribed, or part thereof;

(48) "**Taxable Turnover**" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed;

(49) "**Transporter**" means any person who, for the purpose of or in connection with or incidental to or in the course of business, transports or

causes to transport goods, or holds goods in custody for any person before or after their transportation and includes railway, shipping company, air cargo service or courier service;

(50) "**Turnover of Sales**" means the aggregate amount for which goods are sold or supplied or distributed by a dealer, either directly or through another, whether on his own account or on account of others, whether for cash or deferred payment or other valuable consideration;

Explanation 1: "Turnover of Sales" for the purpose of this Act shall include any sum charged for any thing done by the dealer in respect of the goods sold or supplied at the time of or before delivery thereof but shall not include the sale value of agricultural or horticultural produce effected by a person who produces it by agriculture or horticulture from land owned or held by him as lessee, usufructuary mortgagee or in any other capacity recognized or permitted by law, but the expression agricultural or horticultural produce shall not include timber or standing trees, manufactured tea or any other produce which is subjected to manufacture or processing after harvest;

Explanation 2: "Turnover of Sales" in relation to

(a) the transfer of property in goods (whether as goods or in some other form) involved in execution of works contract, means the amount of valuable consideration paid or payable to a person for the execution of such works contract (b) the delivery of goods on hire purchase or any system of payment by instalment, means the amount of valuable consideration paid or payable to a person for such delivery; and

(c) the transfer of the right to use any goods for any purpose (whether or not for a specified period) means the valuable consideration received or receivable for such transfer;

Explanation 3: Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:

(a) the amount for which goods are sold shall include the price of the packing material in which they are packed, and any sum charged for any thing done by the dealer in respect of the goods sold at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as tax on sale or purchase of goods, when such cost or amount is separately charged; (b) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in turnover; and

(c) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sale in respect of such goods shall be included in the turnover of the latter dealer alone;

(51) "**Turnover of Purchases**" with its cognate expression means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by or through him whether for cash or deferred payment, after deducting the amount, if any, refunded to the dealer by the seller in respect of any goods returned to such seller within such period as may be prescribed;



(52) "**Vehicle**" means every wheeled conveyance used for carrying goods solely or in addition to passengers and includes a vessel, an auto vehicle, a bicycle, a hand driven or an animal driven cart, an animal carrying load, a rickshaw, or a person carrying goods;

(53) "**Value of Goods**" means the value as ascertained from the purchase invoice (s)/ bill(s) and includes insurance charges, excise duties, countervailing duties, sales tax, transport charges, freight charges and all other charges incidental to the transaction of the goods:

Provided that where the purchase invoice(s)/bill(s) are not produced or when the goods are acquired or obtained otherwise than by way of purchase, the value of goods shall be the value at which the goods of like kind or quality are sold or are capable of being sold in open market;

(54) "**Vessel**" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(55) "**Works Contract**" include any agreement for carrying out, for cash, deferred payment or other valuable consideration, building, constructing, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

(56) "**Year**" means the financial year beginning from 1<sup>st</sup> April and ending with 31<sup>st</sup> March;

(57) "**Year of Commencement**" means the assessment year in which the date of commencement of this Act, falls.

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1093/2012/181(120)/XXVII(8)/08 Dt. 14-12-2012 as below )*

**(58) Web site :**

“**Web site**” means, world wide web of the department of commercial tax, Uttarakhand with domain “uk.nic.in” and with address <http://comtax.uk.gov.in>” or any other website as may be notified by the Commissioner.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 3 : Incidence of tax:**

- (1) Tax shall be levied and charged in accordance with the provisions of this Act on every sale made within the State by a dealer or a person;
- (2) Every person who is registered or is liable to be registered under the provisions of this Act shall be a taxable person and liable to pay tax in the manner provided in the Act.
- (3) Subject to provisions of sub-section (4) or sub-section (5) as may be applicable, every dealer or a person shall pay from the date he becomes so liable, a tax for each assessment year on his turnover, to be determined in the prescribed manner, of all sales inside the State, made on or after the date he becomes liable to pay tax at such rates as provided by or under section 4 of the Act;
- (4) Where a dealer carries on the business of-
  - (a) sale of any taxable goods in the course of inter-state trade or commerce; or
  - (b) sale of any taxable goods in the course of export out of the territory of India; or
  - (c) consigns any taxable goods for delivery at a place outside the State; or
  - (d) sale of any taxable goods purchased or received from outside the State; or

- (e) purchases of any taxable goods after furnishing any form of declaration or certificate prescribed either under Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956; or under this Act; or
- (f) sales or purchases of taxable goods if such dealer is already registered under the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956; and desires to retain such registration after the commencement of this Act or applies for grant of registration voluntarily under the provisions of this Act; and
- (i) if such dealer has been carrying on the business in the immediately preceding assessment year and continues it on the date of commencement of this Act, he shall be liable to pay tax from the date of commencement of this Act; and
- (ii) if such dealer commences business on or after the date of commencement of this Act, he shall be liable to pay tax from the date on which any of events from (a) to (f) above takes place for the first time in any assessment year;

(5) Where any dealer carries on business of purchases and, or of sales of goods inside the State only and has neither furnished nor received any form of declaration or certificate prescribed under this Act or the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956 or rules made or notifications issued thereunder in respect of any purchases or sales, and the business continues on the date of commencement of this Act, and

(a) if such dealer has been carrying on business for whole or part of the immediately preceding assessment year, and continues it on the date of commencement of this Act and-

(i) the aggregate of his turnover as per the provisions of the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 in the preceding year exceeded the amount prescribed under sub-section (7) in case of whole year or the proportionate amount in case of part of the year, he shall be liable to pay tax from the date of commencement of this Act; or

(ii) the aggregate of turnover as per the provisions of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 for the period from the first day of the year of commencement upto the date of commencement of this Act, exceeds the amount prescribed under sub section (7) proportionately, he shall be liable to pay tax from the date of commencement of this Act; or

(iii) if such dealer is not liable to pay tax from the date of commencement, of the Act under clause (a) (i) and clause (ii) above, he shall be liable to pay tax from the date the aggregate of his turnover for the first time exceeds the taxable quantum in any assessment year; or

(iv) if such dealer is already registered under the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 or the Central Sales Tax Act, 1956

and desires to retain it voluntarily, he shall be liable to pay tax from the date of commencement of this Act;

(b) if such dealer commences business in the year of commencement on the first day or any other subsequent date but before the date of commencement of this Act, and

(i) the aggregate of his turnover from commencement of business till the date of commencement of this Act exceeds the proportionate amount of taxable quantum, he shall be liable to pay tax from the date of commencement of this Act;

(ii) if such dealer is not liable to pay tax from the date of commencement of this Act, under sub clause (i) above, he shall be liable to pay tax from the date the aggregate of his turnover for the period starting from the date of commencement of business and ending on the last date of the assessment year, for the first time exceeds the proportionate amount of taxable quantum;

(c) (i) If such dealer commences business on or after the date of commencement of this Act either in the year of commencement or in any subsequent assessment year, he shall be liable to pay tax in such first assessment year from the date when the aggregate of his turnover for the period starting from the date of commencement of his business and ending on the last date of that assessment year for the first time exceeds the proportionate amount of taxable quantum; and

(ii) If such dealer is not liable to pay tax in the year of commencement of business as per sub- clause (i) above, he

shall be liable to pay tax in the first assessment year in which the aggregate of his turnover exceeds taxable quantum and shall be liable from the date his turnover so exceeds for the first time;

(6) Where by any order passed under this Act, it is found that any person registered as dealer ought not to have been so registered and the registration certificate is cancelled, then notwithstanding anything contained in this Act, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, as if he was a dealer;

**(7) Taxable Quantum-**

(a) No dealer shall, except as otherwise provided under clause (e) of this sub-section, be liable to tax under sub-section (3), if, during the assessment year, the aggregate of his turnover of sales of all goods, whether such sale is made by the dealer directly or through his branch, depot or agent inside the State, or in the course of inter-state trade or commerce, or in the course of export out of the territory of India or by way of consignment outside the State, is less than the amount mentioned hereinafter-

- |       |  |           |
|-------|--|-----------|
| (i)   | in the case of manufacturers or producers<br>of any goods for sale | Rs 5 lacs |
| (ii)  | in case of execution of works contract                             | Rs 5 lacs |
| (iii) | in case of transfer of right to use goods                          | Rs 5 lacs |
| (iv)  | in case of dealers engaged in any other business                   | Rs 5 lacs |

Provided that the State Government may, by notification in the Gazette, fix a larger amount either in respect of all dealers in any goods or in respect of particular class of dealers;

(b) Nothing in clause (a) shall apply in respect of –

(i) the sale by a dealer of goods imported by him from out side Uttaranchal, the turnover whereof is liable to tax under this Act,

(ii) the sale by a dealer of-

(a) goods imported by him from out side Uttaranchal after furnishing to selling dealer a declaration under sub-section (4) of section (8) of the Central Sales Tax Act, 1956;

(b) goods purchased or imported by furnishing any declaration or certificate prescribed under any provision of this Act;

(c) goods manufactured by him by using the goods referred to in sub-clause (i) or sub-clause (ii);

(c) Where the amount specified in, or notified under clause (a) is altered during an assessment year, the tax payable by a dealer under this section shall be computed as follows:-

(i) on the turnover relating to the period prior to such alteration, as though the amount specified in or notified under clause (a) had not been altered; and

(ii) on the remainder, as though the altered amount has been in force on all material dates;



(d) Where tax is payable, and has been so paid, by a commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover;

(e) (i) Every dealer commencing business during the course of an assessment year shall be liable to pay tax in that year with effect from the date immediately following the day on which the aggregate of his turnover from the date of commencement of his business for the first time exceeds the proportionate amount of taxable quantum;

(ii) Every dealer discontinuing business during the course of an assessment year, shall be liable to pay tax up to that date if the aggregate of his turnover for the period from the first day of the commencement of the assessment year to the date of discontinuance of his business exceeds the amount of taxable quantum proportionately.

Explanation: The dissolution of a firm or association of persons or partition of a Joint Hindu Family or transfer by a dealer of his business shall be deemed to be discontinuance of business within the meaning of this sub-section.

(8) For the purpose of calculating the gross turnover to determine the liability to pay tax under the Act-

(a) except as otherwise expressly provided, the turnover of all sales (whether taxable or not) and as the case may be, the turnover of all purchases on which tax is payable under the provisions of sub-section (10) of this section shall be included;

(b) the turnover shall include all sales and such purchases made by the dealer in his account and also on behalf of principals whether disclosed or not;

(9) Taxable Turnover -

(a) The tax payable by a dealer liable to pay tax under sub-section (3) of section 3 shall be levied on his taxable turnover of sales;

(b) Taxable turnover of sales in relation to a dealer liable to pay tax on sale of goods under sub-section (3) of section 3 shall be that part of the gross turnover of sales during any period which remains after deducting therefrom,

(a) sales of goods declared as exempt from tax in Schedule 1

(b) sales of goods which are shown to the satisfaction of the assessing authority to have taken place-

(i) in the course of inter-state trade or commerce, or

(ii) outside the State of Uttaranchal other than by way of sale, or

(iii) in the course of export of the goods out of the territory of India

Explanation: section 3, section 4 and section 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in sub-clause (i), sub-clause (ii) or sub-clause (iii).

(c) in case of turnover of sales in relation to works contract certain deductions as may be prescribed and subject to such conditions and restrictions as may be imposed;

(d) such other sales as may be prescribed and subject to such conditions and restrictions as may be imposed;

(10) Tax on Purchases in certain circumstances - Every dealer who in the course of his business purchases any goods-

(a) from a registered dealer in the circumstances in which no tax under this Act is payable by that registered dealer on the sale price of such goods; or (b) from a person other than a registered dealer and tax on sale of such goods can not be levied on the seller either in view of any provision of this Act or because the selling dealer though liable to pay tax has not obtained registration; he shall be liable to pay tax on purchase price of such goods if-

(i) goods are not sold within the State of Uttaranchal, or in the course of Inter-State trade or commerce or in the course of export out of the territory of India; or

(ii) goods are consumed or used in the manufacture of goods exempt from tax under this Act; or

(iii) goods are used or consumed in the manufacture of goods and such manufactured goods are disposed of otherwise than by way of sale in the State of Uttaranchal or in the course of interstate trade or commerce or in the course of export out of the territory of India; or

(iv) goods are used or consumed otherwise,

and such tax shall be levied at the same rate at which it would have been levied under this Act on the sale of such goods within the State on the date of such purchases:

Provided that if the goods are purchased through a Commission Agent, whether for a Principal residing within the State or outside the State, the Commission Agent shall be liable to pay the tax and he may realise the same from the Principal.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification 22 January 07, 2010 as below)*

## **3(A): Levy of Additional Tax:**

(1) Notwithstanding anything to the contrary contained in any other provision of this Act but subject to the provisions of sub-section (2), every dealer liable to pay tax under this Act shall be liable to pay in addition to the tax payable under any other provision of this Act, an additional tax on the taxable turnover of sale or purchases of goods or both, as such rate not exceeding five percent, as may be specified by the State Government by notification in the gazette. Different rates may be specified in respect of different goods or different classes of goods.

- (2) No additional tax under sub-section (1) shall be levied and paid on
- (a) the turnover of sale or purchases or both as the case may be, of goods specified in Schedule-I, II(A), II(C) and III;
  - (b) turnover of sale or purchases or both as the case may be, of goods declared to be special importance in the Inter-State trade or commerce under section-14 of the Central Sales Tax Act, 1956;
  - (c) such sale or purchases, or sale or purchases of such goods by such class of dealer, as may be specified in the notification issued by the State Government under section 4(6).

- (3) The amount paid under sub-section (1) shall be eligible for input tax credit in accordance with the provisions of Section 6.
- (4) Any dealer who avails the facility of composition of tax under section 7(2) shall also be eligible for availing the facility of composition with respect to additional tax.
- (5) The additional tax leviable under this section shall cease to be levied after a period of five years from the date of publication of the notification issued by the State Government under sub-section (1.)

# THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

## **4: Rate of Tax:**

(1) The tax payable by a dealer under this Act shall be levied on his taxable turnover at such rates as may be prescribed in Schedules under sub-section (2), but not exceeding-

(a) the maximum rate for the time being specified in section 15 of Central Sales Tax Act, 1956 in respect of declared goods, and

(b) **fifty percent** in respect of goods other than the goods referred to in clause (a) above;

Provided that in case of transfer of the **right to use** any goods, the rate of tax shall not exceed **twenty percent** in respect of goods other than the goods referred to in clause (a) above.

(2) (a) No tax under this Act shall be payable on the sale or purchase of the goods specified in Schedule-I;

(b) Subject to the provisions of section 3, a dealer shall be liable to pay tax on his taxable turnover-

(i) At **every point of sale** at the rate hereafter provided:

(a) In respect of goods specified in Schedule II (A)      1 percent

(b) In respect of goods specified in Schedule II (B)      **5 percent**

*(substituted vide notification no.-189/2012/02(120)/XXVII(8)/12*

*Dated 28 May, 2012 as above)*

***Prior to above notification this sub-section read as under:-***

*(b) In respect of goods specified in Schedule II (B)      4 percent*

(c) In respect of goods specified in Schedule II (C) at the rate specified therein

(d) In respect of goods other than those included 13.5 percent  
in any of the Schedules

*(substituted vide notification no.-189/2012/02(120)/XXVII(8)/12*

*Dated 28 May, 2012 as above)*

***Prior to above notification this sub-section read as under:-***

(d) In respect of goods other than those included 12.5 percent  
in any of the Schedules

(ii) At the point of sale by Manufacturer or sale by at the rate  
Importer in respect of Special Category Goods specified  
therein specified in Schedule III

(c) Sale of goods to or by the dealer or persons specified in Schedule IV shall be exempt from whole or any part of tax, as may be specified therein

(d) A sale in the course of export of goods out side the territory of India as specified under sub-section(1) and sub-section(3) of section 5 of the Central Sales Tax Act,1956 shall be Zero -Rated which means that there shall be **no tax** on the sale turnover of such transaction and the exporter shall be entitled to refund of tax paid by him on purchase of goods which are so exported:

Provided that units established in Special Economic Zones (SEZ), shall be entitled to claim refund of tax paid on purchase from units established in Domestic Tariff Area.



(e) Any person or a dealer or an international organisation listed in Schedule V shall be entitled to refund of tax paid by it on the purchase of taxable goods.

(f) Where the State Government is satisfied that it is expedient in public interest so to do, it may by notification and subject to such conditions and restrictions as may be specified therein, allow a rebate up to full amount of the tax payable on sale or purchase of any goods where tax on sale or purchase of such goods is leviable under any other State Act and if it is proved that the turnover of sales and/ or of purchases have been disclosed before the authority competent to levy tax under that Act.

*"(g) in case of sale of used capital goods, purchased within one year prior to the date of the commencement of this Act or, as the case may be, from the date of registration under this Act, and on the purchase of which no tax has been paid in the State under this Act or under the repealed Act at the time of purchase, the tax shall be payable at the rates as per the schedules;*

*Provided that in case tax has been paid in the State under this Act or the repealed Act at the time of purchase an an Input Tax Credit in respect thereof has been claimed, no tax shall be payable on such sale.*

*(Inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31<sup>st</sup> March,2008)*

(3) (a) When goods are sold or purchased in containers or packed in any packing material, the rate of tax applicable to such containers or packing

material, as the case may be, shall, whether **the price of container or packing material is charged separately or not**, be the same as those applicable to the goods contained or packed and turnover in respect of container and packing material shall be included in the turnover of such goods.

(b) Where the sale of goods contained in container or packed in packing material is exempt from tax, then the sale of such container or packing material shall also be exempted from tax.

*(inserted vide notification no.-22 Dated 07 Jan,2010 as follows)*

***(c) the rate of tax on such parts, spares and accessories, which are not classified elsewhere in the Principal Act, shall be same, as applicable to that commodity under said Act.***

(4) The State Government may, by notification in the official gazette, declare different rates in respect of different goods, or add or remove any schedule (s), or add to, amend or alter any Schedule of this Act,

(5) Every dealer shall pay a tax on the net turnover, determined in the prescribed manner, in respect of-

(a) transfer of the right to use any goods for any purpose (whether or not for a specified period) at the rate of **four percent**; and

(b) transfer of property in goods ( whether as goods or in some other form) involved in the execution of works contract at such rates as are provided under sub-section (2) above:

Provided that where any goods purchased are involved in execution of works contract and tax has been paid or is payable within the State in accordance with the provisions under section 3 at the rate prescribed under sub-section (2) of section 4, on any earlier sale or purchase of

such goods, the purchase price of such goods shall be deducted from the total turnover under a works contract;

Provided further that the State Government may, by notification in the Gazette, declare different rates for different goods or for different class of dealers so as not to exceed the limits specified under sub-section (1) above.

**(6) Rebate on tax on certain purchases and sales:** (a) Subject to such conditions as it may impose, the Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt the sale or purchase of any goods, or 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 date of commencement of this Act and such exemption shall take effect from the date of the publication of the notification in the Gazette or such other earlier or later date as may be mentioned therein;

(b) 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-

(i) any of the conditions subject to which such exemption was granted; or

(ii) any of the restrictions or the conditions of the declaration or the certificate, are not complied with for any reasons 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 under section 4 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 including the sale price of such goods therein, and also 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.

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

**(7) Special relief to certain manufacturers:**

(a) Notwithstanding anything contained in section 3 and/or this section where any goods **liable to tax** under this Act are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer in prescribed form and manner a certificate to the effect that he holds a Recognition Certificate issued under clause (b) in respect thereof, the selling dealer shall be liable in respect of those goods to tax **“at the rate prescribed under sub-section (1) of section 8 of the Central Sales Tax Act, 1956** (at the rate of 4%),*(inserted vide notification no. 1314/XXXVI(4) Dated 31 March 2008)* **(at the rate of 2 percent)**,*(inserted vide notification no.-22 Dated 07 Jan,2010)* subject to the conditions and restrictions as may be notified by the State Government in the Gazette in that behalf:

Provided that where such goods are exempt from tax or subject to tax at a rate which is lower (the rate prescribed under sub-section (1) of section 8 of the Central Sales Tax Act, 1956), (*inserted vide notification no. 1314/XXXVI(4) Dated 31 March 2008*) (*than 2 percent*), (*inserted vide notification no.-22 Dated 07 Jan,2010*) then the tax shall be nil or, as the case may be, shall be calculated at the lower rate.

*Explanation:* For the purpose of this sub-section the conditions and restrictions that may be specified for the grant of concession in respect of, or exemption from tax, may include the requirement that the notified goods referred to in clause(b) shall be manufactured in a manufacturing unit covered under section 4-A of the Uttaranchal (the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002, which goes into production after such date, whether before or after the date of the notification under this sub-section , and within such period as may be specified.

(b) *Where a dealer requires any goods, referred to in clause (a) for use by him in the manufacture of any taxable goods in the state, or in the packing of such goods manufactured or processed by him, and such goods are intended to be sold by him in the State or in the course of inter-state trade or commerce or in the course of export out of India, he may apply to the Assessing Authority in such form and manner and within such period as may be prescribed, for the grant of a Recognition Certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee and conditions as may be prescribed, the Assessing Authority shall grant to him in respect of such goods a Recognition*

Certificate in such form and subject to such conditions, as may be prescribed:

*(substituted vide notification no. 1314/XXXVI(4) Dated 31 March 2008)*

***Prior to the substitution this sub-section read as under:-***

*(b) Where a dealer requires any goods, referred to in clause (a) for use by him in the manufacture in the State of any goods, or in the **packing** of such goods manufactured or processed by him, and such goods are intended to be sold by him in the State or in the course of inter-state trade or commerce or in the course of export out of India, he may apply to the Assessing Authority in such form and manner and within such period as may be prescribed, for the grant of a Recognition Certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee and conditions as may be prescribed, the Assessing Authority shall grant to him **in respect of such goods** a Recognition Certificate in such form and subject to such conditions, as may be prescribed:*

Provided that every dealer who held a Recognition certificate under section 4-B of the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and the same has neither been cancelled by the Assessing Authority nor such dealer has discontinued business till the date of commencement of this Act, he shall, subject to the provisions of this sub-section, be deemed to be a Recognition certificate holder under this Act with effect from the date of commencement of this Act and if such a dealer is not desirous of continuing to be a Recognition certificate holder under this Act, he shall submit an application to the Assessing Authority to this effect within 30 days of the commencement of this Act

*Explanation:* For the purposes of this sub-section the "goods" required for use in the manufacture shall mean Capital Goods and raw materials, processing materials, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants; and in the packing of such manufactured goods.

(c)(i) Where the assessing authority is satisfied that the dealer in whose favour a Recognition Certificate in respect of any goods was granted under clause(b)-

(aa) has discontinued the business or the manufacturing of goods in respect whereof the Recognition Certificate was granted; or

(ab) has made a breach of any condition of the Recognition Certificate; or

(ac) has failed to furnish the security, if any, required under section 20; or

(ad) has failed to pay any tax, penalty or other dues payable under this Act within a period of three months from the date when such tax, penalty or other dues became payable; such authority may, either of its own motion or on the application of the dealer, cancel the Recognition Certificate with effect from such date as it may specify.

*Explanation:* The dissolution or reconstitution of a firm, association of persons or partition a joint Hindu family or transfer by a dealer of his business shall be deemed to be discontinuance of business within the meaning of this clause.

(ii) The assessing authority may amend a Recognition Certificate granted under clause(b) either of its own motion or on the application of the dealer where the dealer has changed the name or place of his business or has closed down any branch or opened a branch, or for any other sufficient reason:

Provided that no Recognition Certificate shall be cancelled or amended by the Assessing Authority of its own motion except after

reasonable opportunity of being heard has been given to the dealer.

(d) Where a dealer in whose favour a Recognition Certificate has been granted under clause(b) has purchased the goods after payment of tax at concessional rate or, as the case may be, without payment of tax under this sub-section and has used such goods for a purpose other than that for which the Recognition Certificate was granted or has otherwise disposed of the said goods, such dealer shall be liable to pay as penalty such amount as the Assessing Authority may fix which shall not be less than the difference between the amount of tax on the sale or purchase of such goods payable under this sub -section and the amount of tax payable under any other provisions of this Act, but not exceeding **three times** the amount of such **difference**.

(e) Where a dealer in whose favour a Recognition Certificate has been granted under clause(b) has purchased "**the goods**"(the special category goods) *(inserted vide notification no. 1314/XXXVI(4) Dated 31 March 2008)* **or after packing such manufactured goods with such packing material** after payment of tax at concessional rate or, as the case may be, without payment of tax under this sub-section **and the goods manufactured out of such raw material procured** or after packing such manufactured goods with such packing material are sold or disposed of other than by way of sale in the state or in the course of inter-state trade or commerce or in the course of export outside Indian territory, such dealer shall be liable to pay an amount **equal to 2 percent of the amount of stock transfer or other such transactions**.

*(inserted vide notification no.-22 Dated 07 Jan,2010 as above)*



***Prior to the substitution this sub-section read as under:-***

*(e) Where a dealer in whose favour a Recognition Certificate has been granted under clause(b) has purchased the goods after payment of tax at concessional rate or, as the case may be, without payment of tax under this sub-section and the Special Category Goods manufactured out of such goods or after packing such with manufactured goods with such packing material are sold or disposed of otherwise than by way of sale in the state or in the course of inter-state trade or commerce or in the course of export, such dealer shall be liable to pay "as penalty"(deleted vide notification no. 1314/XXXVI(4) Dated 31 March 2008) an amount **equal to the difference between the amount of tax on the sale or purchase of such goods payable under this sub -section and the amount of tax payable under any other provisions of this Act***

Explanation : For determining whether a sale or purchase in the course of inter-state trade or commerce, within the State, or in the course of export out of India, the provisions of section 3, section 4 and section 5 of the Central Sales Tax Act, 1956, shall respectively apply.

(g) No penalty under this section shall be imposed unless the dealer has been given a reasonable opportunity of being heard.

(h) No penalty under section 58 shall be imposed in respect of the same facts on which a penalty has been imposed under this section.

**(8):Specified Goods on which Tax shall be payable at M.R.P.:**

(a) Where the State Government is satisfied that it is expedient in public interest so to do, it may, by notification and subject to such conditions and restrictions as may be specified therein, direct any class or category of dealers to pay, on sale of such goods as may be specified in the notification, in lieu of tax payable at the actual sale price, a tax at the rate specified in the respective Schedule on the Maximum Retail Price (M.R.P.).

(b) A dealer paying tax at M.R.P. under clause (a) above, shall, in addition to mentioning in the Sale Invoice, the actual sale price, separately indicate in

the sale invoice the M.R.P. on which tax has been charged and also print on the top **"INVOICE FOR TAX ON M.R.P."**.

(c) Any dealer purchasing goods on which tax has been paid on M.R.P., shall neither be entitled to Input Tax Credit on such purchases nor shall be liable to pay tax on sale on such goods.

(d) Where the State Government is of the opinion that it is no longer in the public interest to continue any scheme under the above provisions, it may, by notification, at any time withdraw any such scheme, and thereafter the tax shall be payable under the relevant provisions of the Act .

Explanation: The expression M.R.P.(Maximum Retail Price) means the price printed on label or packet of the goods or the regulated price of the goods, if any.

(9) Every notification made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the State Legislative Assembly may during said period make. However any such modification or annulment shall be without prejudice to the validity of any thing previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said notification or annulment.

(10) Notwithstanding anything contained in this section, the State Government may grant moratorium for payment of the admitted tax in case of industrial units under the provisions of section 76 of this Act.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with notification no.- 1093/2012/181(120)/XXVII(8)/08 Dt. 14-12-2012 as below)*

### **4A. Levy of tax by weight volume, measurement or unit on certain goods :**

Notwithstanding anything contained in Section 3 and Section 4, the State Government may, by notification, fix the amount of tax payable on the sale or purchase of certain goods or a class of goods in respect of a specified area or whole of the State, on the basis of weight, volume, measurement or unit, and subject to such terms and condition as may be notified.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 5: Net Tax Payable:**

(1) The net tax payable by a taxable person for a tax period shall be determined by the formula:

$$\text{Net tax payable} = (A+B)-C$$

Where "**A**" is **Output Tax** being the total of the tax payable as per sub- section (2) below: and

**"B" is Tax on Purchases** for the said tax period under the provisions of sub-section (10) of section 3: and

**"C" is Input Tax** being the total of the tax paid as per sub-section (3) below and subject to the provisions of section 6.

(2) Output Tax- (a) Output tax in relation to a registered dealer means the tax charged or chargeable under this Act in respect of any sale or supply of taxable goods made by the dealer in the course of his business and includes tax paid by a commission agent in respect of sale of taxable goods made on behalf of such dealer;

(b) Subject to the provisions of section 6, a dealer shall be liable to pay the output tax under this Act leviable on the taxable turnover at the rate and subject to such conditions as may be prescribed from time to time.

(3) Input Tax- Subject to the provisions of section 6, Input tax in relation to any registered dealer means the tax paid or payable under this Act by the dealer to another registered dealer on the purchase of any taxable goods

other than Special Category Goods, in the course of business for resale or for use in manufacturing or processing of such taxable goods for sale or for use as container or packing materials for packing of such manufactured goods.

(4) The net tax payable by a dealer liable to pay tax but not registered under this Act for a tax period shall be equal to the out put tax and tax on purchases, if any, payable for the said period.

(5) Every taxable person shall pay in full the tax payable by him for the tax period at the time that person is required to file his return pursuant to sub-section (1) of section 23.

(6) If the amount calculated under sub-section (1) is a **negative** quantum, the same shall be adjusted against tax liability, if any, or **refunded** as per the provisions under sub-section (10), sub-section (11),sub-section(12) and sub-section(13) of section 6 of this Act.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 6: Input Tax Credit:**

(1) Input Tax Credit shall be allowed only to a *registered dealer*, and for the purpose of calculating the net tax payable by a registered dealer for any tax period after being registered, an input tax credit as determined under the provisions of this Act shall be allowed to such registered dealer for the tax paid or payable in respect of all taxable sales other than sale of goods specified in Schedule III or any other sales as may be prescribed:

Provided that **no input tax** credit shall be allowed in respect of the taxable purchases on which the tax is paid or payable under sub-section(10) of section 3;

Provided further that notwithstanding any thing contained in sub-section (1) or its proviso above, input tax credit in respect of purchases on which tax is paid or payable under sub-section (10) of section 3, shall be allowed in the following circumstances-

(a) purchase from a person who sells *agriculture or horticulture produce grown by him* or grown on any land in which he has an interest whether as a owner, usufructuary mortgagee, tenant or otherwise, or who sells *poultry or dairy products* from fowls or animals kept by him, and such persons are, in respect of such goods, not treated as a dealer under the provisions of sub-section (11) of section 2 of this Act; or

(b) purchase of any goods as may be notified by the State Government for this purpose, subject to such conditions and restrictions as may be specified in said notification.

(2) The input tax credit to which the registered dealer is entitled shall be the amount of tax paid by the registered dealer to the seller, on his turnover of purchases made during the tax period, intended to be used for the purposes and subject to the conditions as specified in this section and calculated in such manner as may be prescribed.

(3) Input tax credit shall be **allowed** for the goods purchased within the State of Uttaranchal, from a registered dealer holding a valid certificate of registration under section 15 or section 16, for the purpose of-

- (a) sale in Uttaranchal; or
- (b) sale in the course of inter-state trade and commerce; or
- (c) sale in the course of export out of the territory of India; or
- (d) use as raw material "**and consumables**" (*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) in manufacturing or processing of goods (other than those specified in Schedule I or Schedule III) and containers or other packing materials used for packing of such manufactured goods, for sale or resale within the State or in the course of inter-state trade or commerce;
- (e) use as raw material "**and consumables**" (*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) in manufacturing or processing of any goods (other than

those specified in Schedule III) and containers and other packing materials used for packing of such manufactured goods, for sale in the course of export of goods out of the territory of India:

Provided that with reference to clause (d) above, in case such finished products are dispatched out side the state other than by way of sale, a partial amount of input tax credit shall be allowed in respect of tax paid ***in excess of 2 percent***, (*inserted vide notification no. 22 dated 01 January 2010*) on the ***raw materials*** used directly in the manufacture of such finished products;

Provided further that partial input tax credit shall be allowed in respect of tax paid ("in excess of the rate prescribed under sub section (1) of section 8 of the Central Sales Tax Act 1956") (*inserted vide notification no. 1314/XXXVI(4) Dated 31 March 2008*) ***in excess of 2 percent***, (*inserted vide notification no. 22 dated 01 January 2010*) on petroleum products used as fuel (other than Petrol. Aviation Turbine Fuel, Natural Gas and Diesel) and other fuels used in production of taxable goods or captive power, but excluding fuel when used as fuel in motor vehicles.

(4) (a) Where during a tax period a registered person purchasing goods (other than Capital goods) on which an input tax credit is admissible under the provisions of this section, and the purchases are used partially for various purposes specified in sub-section (3), input tax credit shall be allowed proportionate to the extent they are used for the purposes specified therein, and such different purposes include-

(i) sales consisting of sale of taxable goods and sale of goods exempted from tax, or



(ii) sales outside the State consisting of sale of goods and dispatches of goods in the form of consignment or stock transfer to other States, or

(iii) inputs being used in the course of business and inputs being used for any other purposes;

(b) Amount of input tax credit in respect of purchases of a particular commodity during the tax period shall be the aggregate of all amounts of input tax credit computed in respect of each purpose the commodity purchased is utilized. The total amount of input tax credit shall be the aggregate of input tax credit for all commodities;

(c) The method that is used by a person to determine the extent to which goods are sold or supplied, or used or consumed in the manufacturing of goods, or intended to be sold or supplied, or used or consumed in the manufacturing of the goods, for different purposes, should be in an intelligible form and fair and reasonable in the circumstances:

Provided that the State Government may, from time to time, frame rules consistent with the provisions of this Act for computation of input tax and when such rules are framed, no input tax shall be computed except in accordance with such rules.

(5) For the purpose of calculating the net tax payable by a registered person for his first tax period after commencement of this Act or his becoming registered, as the case may be, an input tax credit as determined under this section shall be allowed, subject to the following conditions, to the registered person for the tax paid or payable in respect of stock in hand of all taxable goods (excluding capital goods) purchased by the person prior to the

commencement of this Act, or, as the case may be, the person becoming registered-

(a) goods were purchased by a registered dealer for use in his business,

(b) goods were purchased not more than one year prior to the date of commencement of this Act or, as the case may be, the date of registration, and goods are in hand on such date,

(c) goods, if purchased before the commencement of this Act, have suffered tax under Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and are also taxable under this Act,

(d) input tax credit shall be the actual rate of tax paid on purchase of such goods or the rate as applicable under this Act, whichever is lower,

(6) An input tax credit shall be claimed by a registered dealer in the following manner:

(a) In respect of goods held in the opening stock (excluding Capital Goods) on the date of commencement of this Act, or on the date the dealer applies for grant of registration, input tax credit shall be claimed in six equal monthly instalments in returns for the tax periods covering period of six months starting after expiry of (three) **"six"** (*inserted vide notification no. 1314/XXXVI(4/) Dated 31 March 2008*) months from the month in which the date of commencement of this Act or, as the case may be, the date of presentation of application for registration falls;

(b) In respect of purchase of Capital Goods up to the date of commencement of commercial production, a manufacturer shall be eligible to claim the input tax, in **two equal yearly** instalments following the year in which the date of first sale of such taxable goods falls. In case of purchase of Capital Goods after the date of commencement of commercial production, the total amount of such input tax credit for a financial year shall be claimed in two equal yearly installments commencing from the next financial year. The yearly instalments shall be claimed in the return for the period ending September "**or in the return of any of the subsequent tax periods**" *(inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008)* in each of the two years:

Provided that the amount of input tax credit in case of goods sold in the course of export out of the territory of India shall be claimed by dealer in ***one yearly installment*** instead of two yearly installments as above.

(c) In other cases input tax credit shall be claimed in the return of the tax period in which purchase of goods to which such input tax credit relates, have been made.

(7)(a) **No input tax** credit shall be allowed on purchase of Capital Goods when-

- (i) goods are not connected with the business of the dealer; or
- (ii) goods purchased from an un-registered dealer or a dealer whose Certificate of Registration has been cancelled; or
- (iii) goods purchased from outside the State; or

(iv) goods are purchased or paid for prior to the date of commencement of this Act or the date of registration under this Act; or

(v) goods are used in manufacturing or processing of goods exempt from tax or Special Category Goods specified in schedule III, or providing services or trading activities which are not liable to tax under this Act; or

(vi) goods are used for lease under an agreement of transfer of right to use goods (whether for a specified period or not) for any purpose; or

(vii) goods are used in connection with transfer of property in goods involved in the execution of works contract; or

(viii) goods on which tax being payable under this Act or under the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 has not been paid on any earlier sale or purchase of such goods; or

(ix) goods are used in generation of energy/power including captive power; or

(x) goods have been already used, or acquired for use in any other factory or workshop in India.

**“(xi) goods purchased from a registered dealer who has given an option to pay Presumptive Tax at a percentage of turnover of sales under sub-section (1) of section 7 or a lump sum amount in lieu of tax on sale and / or purchase of such goods by way of composition under sub-section (2) of section 7.”**

*(inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008)*

Explanation: The Government may, by notification, declare any Capital Goods which shall not be deemed, for purpose of this section, to be included in plant, machinery and equipment above.

(b) **No input tax** credit shall be allowed on the capital or other expenditure on land, ***civil structure or construction, and motor car, accessories or spare parts.***

(c) In case of closure of business before the period specified above, no further input credit shall be allowed and input tax credit carried forward, if any, shall be forfeited;

(8) **No** input tax credit shall be allowed on purchase of goods, other than the Capital Goods, when-

(a) goods not connected with the business of the dealer; or

(b) goods purchased from an un-registered dealer or a dealer whose Certificate of Registration has been cancelled; or

(c) goods purchased from out side the State; or

(d) goods the ***sale of which is exempted*** under this Act or the goods used in manufacture, processing or packing of such goods; or

(e) goods whether goods as such or constituents of finished or semi finished goods which remain unsold in stock at the time of closure of business due to discontinuance by the dealer or cancellation of his registration or his being declared non-taxable under the provisions of this Act; or

(f) goods transferred outside the State, otherwise than by way of sale;

or

- (g) in respect of raw material used in manufacture or processing of goods where the finished products are dispatched out side the State other than by way of sales; or
- (h) goods purchased from a registered dealer who has given an option to pay Presumptive tax at a percentage of turnover of sales under sub-section (1) of section 7 and a lump sum amount in lieu of tax on sale and, or purchase of such goods by way of composition under sub-section(2)of section 7; or
- (i) goods that are stolen or lost or destroyed or disposed of in any manner other than in *ordinary course of business* or goods distributed by way of free sample or gift; or
- (j) goods leased under an agreement of transfer of right to use any goods (whether for a specified period or not) for any purpose; or
- (k) goods sold by way of transfer of property in goods(whether as goods or in some other form) involved in the execution of works contract, or
- (l) goods on which tax being payable under this Act or under the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 has not been paid on any earlier sale or purchase of such goods; or
- (m) Special Category Goods specified in Schedule III or the goods "**except molasses**"(*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) used in manufacture, processing or packing of such goods;or
- (n) goods are used in generation of energy/power including captive power:

Provided that in respect of transactions falling under 'item (f)' **"item (g)"**, (*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) a partial amount of input tax credit shall be allowed in respect of tax paid "in excess of the rate prescribed under sub section (1) of section 8 of the Central Sales Tax Act 1956" (*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) **in excess of 2 percent** , (*inserted vide notification no. 22 dated 01 January 2010*) on the raw materials used directly in the manufacture of finished products;

Provided further that if input tax credit on purchase of goods in the circumstances referred to in 'item (f)' **"item (g)"**, (*inserted vide notification no. 1314/XXXVI(4)/2008 Dated 31 March 2008*) above, has been claimed by a dealer, the same shall stand reversed.

(9) (a) Input tax credit shall not be claimed by a dealer where the Sale Invoice from the registered dealer selling the goods evidencing the input tax paid is-

(i) not available with the dealer in original or its duplicate copy as per the provisions under section 60 ; or

(ii) the assessing authority has reason to believe that the original Sale invoice has not been issued by the selling dealer from whom the goods are purported to have been purchased;

(b) Where a taxable person does not have an original Sale invoice or a duplicate copy thereof, evidencing the input tax paid, Assessing Authority may after recording the reasons in writing allow an input tax credit in the tax period in which the credit arises where the assessing Authority is satisfied –

(i) that the taxable person took all the reasonable steps to obtain a Sale invoice;

(ii) that the failure to obtain Sale invoice was not due to any fault of the taxable person; and

(iii) the amount of input tax claimed by the taxable person is correct;

(10) If the input tax credit of a registered dealer, for a tax period exceeds the tax liability for that period, the excess amount shall be adjusted against the tax liability, if any, under the Central Sales Tax Act, 1956, for the same tax period and the balance shall be credited against **any outstanding** tax, penalty or interest **under this Act** or under the Central Sales Tax Act, 1956 and only the remaining amount shall be carried forward by the dealer to succeeding tax periods and the amount shall be deemed to be an input tax credit for that period:

Provided that if any amount is refundable to a dealer on account of sale of goods in the course of export, he shall , after the end of every quarter of a year, be entitled to the refund of excess amount as per the provisions of section 37 of this Act.

(11) Every dealer liable to file returns under section 23 shall, after the end of the assessment year, file, **within 90 days**, a statement showing his admitted tax liability and the amount of input tax credit for the assessment year after calculating the adjustments, if any, made between different tax periods during the relevant assessment year and also the amount if any, adjusted towards outstanding tax, penalty and interest dues.



(12) If any amount is claimed by the dealer to his credit in excess after adjustments as per sub-section (11) above, he may adjust such excess amount in subsequent year in returns of different tax periods.

(13) Notwithstanding any thing contained in sub-section (10), sub-section (11) or sub-section (12), the assessing authority shall determine the amount of input tax credit paid by the dealer in excess of his tax liability at the time of final assessment for the relevant assessment year under section 25 or section 26, and if any amount is found refundable, the same shall be refunded or adjusted under the provisions of section 36:

Provided that if the assessment for a financial year is not completed within a period of two years after the close of the relevant financial year, the dealer shall be entitled to provisional refund, if any, pending assessment and the due amount shall be refunded to him and the provisions of section 37 shall mutatis mutandis apply in case of such refunds.

(14) Adjustment in Tax Credit:

(a) Adjustments as provided under this section shall be made in relation to taxable sales by a person, when-

(i) the rate of tax charged to that sale is different from the rate of tax as applicable under the provisions of this Act; or

(ii) the sale amount is altered whether due to the offer of discount allowed as a normal trade practice or for any other reason; or

(iii) the goods or part of the goods sold have been returned to the seller within 6 months from the date of sale; and the seller has, as a result of the

occurrence of one or more of the events described in sub-clauses (i) to (iii) in clause (a) above-

(i) issued a Sale invoice in relation to that sale and the amount shown therein as tax charged on that sale is incorrect in relation to the amount properly chargeable on that sale; or

(ii) filed a return for the tax period in which the sale occurred and had accounted for an incorrect amount of output tax on that sale in relation to the amount properly chargeable on that sale;

(b) Where a seller has accounted for an incorrect amount of output tax as contemplated in clause (a), that seller shall make an adjustment in calculating the tax payable by that seller in the return for the tax period during which it has become apparent that the output tax is incorrect, and if-

(i) the output tax properly chargeable in relation to that sale exceeds the output tax actually accounted for by the seller, the amount of that excess shall be deemed to be tax charged by that seller in relation to a taxable sale attributable to the tax period in which the adjustment is to be made, and shall not be attributable to any prior tax period; or

(ii) the output tax actually accounted for exceeds the output tax properly chargeable in relation to that sale, that seller shall reduce the amount of output tax attributable to the said tax period in terms of section 4 by the amount of that excess:

(c) The credit allowed under sub clause (i) of clause (b) above is treated as a credit for input tax;

(d) No credit shall be allowed under (b) (i) clause above where

(i) the excess tax has been borne by the purchaser of the goods,

(ii) the sale has been made to a person who is not a registered person,

(iii) unless the amount of the excess tax has been repaid by the taxable person to the person from whom the excess tax collection is made, whether in cash or by adjustment through a credit note and the registered person maintains evidence to the satisfaction of the assessing authority for such payment;

(15) Credit notes and Debit notes:

(a) Where a Sale invoice has been issued and the amount shown as tax charged in the Sale invoice exceeds the tax payable under this Act in respect of that sale, the registered dealer making the sale shall provide the purchaser with a credit note to this effect.

(b) Where the Sale invoice has been issued and the tax payable under this Act in respect of the sales exceeds the amount of tax charged in that Sale invoice the registered dealer making the sale shall provide the purchaser with a debit note to this effect.

(c) In case of goods returned or rejected by the purchaser, a credit note to this effect shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer.

(16) Reverse tax credit: If goods purchased for use specified under sub-section (3) are subsequently used, fully or partly, for purposes other than those specified under the said sub-section, the input tax credit there on shall be calculated and be reduced from the tax credit for the tax period during which the said utilization otherwise has taken place:

Provided that if part of purchased goods are utilized otherwise, the amount of reverse tax credit shall be proportionately calculated;

(17) Net Input Tax Credit: The net input tax credit to which a registered dealer is entitled shall be determined by the formula:

$$\text{Net Input Tax Credit} = A+B-C$$

Where

A = the amount of input tax credit the dealer is entitled to under sub-section (2).

B = tax credit as determined under sub-section (10) and sub-section (14) of this section.

C = reverse tax credit as determined under sub-section (16) of this section.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 7: Composition Schemes;**

(1) Levy of Presumptive Tax on registered retailers: All registered retailers, whose gross turnover of sales within the State, excluding the sale of goods specified in Schedule II (C) and Schedule III, and the goods specified in Schedule I on which additional excise duty is leviable under Additional Duties of Excise(Goods of Special Importance) Act, 1957, in any assessment year, is neither likely to exceed fifty lakh rupees nor his such turnover, for the assessment year preceding such assessment year, has exceeded fifty lakh rupees, subject to such conditions and restrictions as may be prescribed, shall pay, in lieu of the tax under the provisions of this Act, a tax on the entire turnover of such sales excluding sale of goods specified above at the rate of 1% on such turnover. Such dealer shall not be entitled to charge or collect any tax on such sales and shall not be entitled to any input tax credit on his purchases:

Provided that this sub-section shall not apply to a registered retailer who is an importer or manufacturer and imports goods within the territory of India or exports the goods outside the territory or transfers right of ownership of property (whether goods or in some other form) involved in execution work contracts or in case of transfer of the right to use goods for any purpose (whether or not for a specified period).

Provided further that if a registered retailer does not exercise option to pay tax as per the provisions of this sub-section, he shall be liable to pay tax as per the provisions of section 3 of this Act.

Explanation: Where a dealer has exercised the option to pay tax under this sub-section, he shall be liable to pay tax during the year accordingly even if the turnover exceeds the amount mentioned above.

*(substituted vide notification no.- 204/XXXVI(3)/27/2008 Dt. 22-12-2008 as above)*

**prior to the substitution this sub-section (1) read as under:-**

(1) Levy of Presumptive Tax for registered retailers: All registered retailers whose gross turnover of sales within the State in the previous year, excluding the sale of goods specified in Schedule II (C), Schedule III and the goods specified in Schedule I on which additional excise duty is leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957, does not exceed rupees fifty lakhs, subject to such conditions and restrictions as may be prescribed, shall pay, in lieu of the tax under the provisions of this Act, a tax on the entire turnover of such sales excluding sale of goods specified above at the rate of 1% on such turnover. Such dealer shall not be entitled to charge or collect any tax on such sales and shall not be entitled to any input tax credit on his purchases:

Provided that this sub-section shall not apply to a registered retailer who manufactures goods within the State or imports goods from outside the State, or who imports goods from outside the territory of India, or in case of transfer of property in goods (whether as goods or in some other form) involved in execution works contract or in case of transfer of the right to use goods for any purpose (whether or not for a specified period.

Provided further that if a registered retailer does not exercise option to pay tax as per the provisions of this sub-section, he shall be liable to pay tax as per the provisions of section 3 of this Act.

Explanation: Where a dealer has exercised the option to pay tax under this sub-section, he shall be liable to pay tax during the year accordingly even if the turnover exceeds the amount mentioned above.

(2) Payment of money in lump sum in lieu of tax:

(a) Notwithstanding anything contained in this Act, but subject to the directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon and such dealer shall not realize from any person any amount in lieu of composition money by giving it a different name or colour, by way of tax on sale of goods and no input tax credit shall be allowed on his purchases.

Provided that this section shall not apply to a registered dealer who imports goods inside or exports goods outside the territory of India.

(b) Where a composition money for a period has been accepted in respect of a single commodity any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the assessment during which the changed rate remains in force.

(c) Where the State Government is of the opinion that it is no longer in the public interest to continue any scheme of composition of tax liability, it may at any time during the period, withdraw such scheme and in that case if a lump sum amount of composition money has been fixed, a part of it in proportion to the part of the period during which the scheme remained in force shall be payable by the dealer.

Explanation: For the purpose of this section the dealer includes –

(i) a dealer who makes sale of goods by way of transfer of property in goods (whether as goods or in some other form) involved in a works contract, or

(ii) a dealer who makes sale of goods by way of transfer of right to use of any goods (whether or not for a fixed period) for any purpose.



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 8: Liability of a Proprietary Concern:**

(1) Where a dealer dies, his **executor, administrator or other legal representative** shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer.

(2) If the business carried on by the dealer is continued after his death by his legal representative or any other person, such representative or person shall be liable to pay tax including any penalty and interest due from such dealer under this Act or any earlier law, in the like manner and to the same extent as the deceased dealer, whether such tax including penalty and interest has been assessed before his death, but has remained unpaid or is assessed after his death;

(3) If the business carried on by the dealer is discontinued whether before or after his death his legal representative shall be liable to pay in the like manner and to the same extent as the deceased dealer would have been liable to pay if he had not died, the tax including any penalty and interest due from such dealer under this Act or under any earlier law.

(4) Where a dealer liable to pay tax under this Act, is succeeded in the business by any other person in the manner described in sub-section (2) then such person shall be liable to pay tax on the sales or purchases of goods made by him on or after the date of such succession and shall (unless he already holds a certificate of registration) within 60 days thereof apply for registration.

(5) In respect of any liability of the deceased, his executor, administrator or other representative shall however be liable only to the extent of the assets of the deceased in his hand;

(6) Any proceedings under this Act, including the proceedings for recovery, may be continued from the stage at which it was pending at the time of the death of the dealer;

(7) The provisions of sub-section (1) and sub-section (2) shall mutatis mutandis apply to a dealer being a partnership firm, which may stand dissolved in consequence of the death of any partner.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 9: Liability in case of a Firm etc.:**

(1) Notwithstanding any thing contained in the Indian Partnership Act, 1932 or any contract to the contrary, where any firm is liable to pay tax including penalty and interest under this Act, the firm and each of the partners of the firm shall be **jointly and severally** liable to pay tax including penalty and interest and accordingly any notice or order under this Act may be served on any person who was a partner during the relevant time whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly;

(2) Where any such partner retires from the firm he shall be liable to pay the tax, penalty and interest remaining unpaid at the time of his retirement and any such amount due up to the date of retirement though un-assessed at that date.

(3) Where any such partner retires from the firm, he shall intimate the date of his retirement to the assessing authority in writing and shall be liable to pay tax including any penalty or interest remaining unpaid at the time of his retirement and any such amount due up to the date of his retirement though un-assessed on that date. However if no such intimation is given within 30 days from the date of retirement, the liability of the partner shall continue

until the date on which such intimation is received by the assessing authority.

(4) Where a dealer is a firm or association of persons or a Joint Hindu Family, and such firm, association or Family has discontinued business, -

(a) tax including penalty, if any, payable under this Act by such firm, association or family up to the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place: and

(b) every person who was at the time of such discontinuance, partner of such firm, or a member of such association or family shall, notwithstanding such discontinuance, be liable severally and jointly for the payment of the tax assessed or any penalty imposed and payable by such firm, association or family whether assessment is made or penalty is imposed prior to or after such discontinuance, and subject to as aforesaid, the provisions of this Act shall apply as if every such person or partner were himself a dealer :

Provided that where it is found that a change has occurred in constitution of the firm or association, the firm or association, as re-constituted, as well as partners or members of the firm or association, as it existed before re – constitution, shall jointly and severally be liable to pay tax including penalty, if any, due from such firm or association for any period before its re-constitution.

Explanation: The dissolution or re-constitution of a firm or association of persons or partition of a Joint Hindu Family shall be deemed to be discontinuance of business within the meaning of this section.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 10: Liability in cases of Minors and Incapacitated Persons:**

(1) In case of any guardian or trustee of any minor or other incapacitated person carrying on the business on behalf of or for the benefit of such minor or other incapacitated person the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such person or other incapacitated person, if he were of full age and sound mind and as if he were conducting the business himself, and all provisions of this Act and the rules made thereunder shall apply accordingly;

(2) If the guardianship or the trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax including any penalty and interest due from such dealer up to the time of the termination of the guardianship or trust, whether such amount has been assessed before the termination of the guardianship or trust, but has remained unpaid, or is assessed thereafter.

## **THE UTTARAKHAND VALUE ADDED TAX RULES, 2005**

### **Sec. 11: Liability in case of Court of Wards etc.:**

In case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator General, the Official Trustee or any Receiver or Manager (including any person whatever his designation who in fact manages the business on behalf of a dealer) appointed by him or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards,

Administrator General, Official Trustee, Receiver or Manager, in like manner and in the same terms as it would be leviable upon and recoverable from the dealer, as if he were conducting the business himself, and all the provisions of this Act and the rules made thereunder shall apply accordingly.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 12: Liability in case of a Company:**

### **(1) Liability of Directors of Private Company in Liquidation:**

Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, can not 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 payment of such tax unless he proves that the non-recovery can not be attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company.

### **(2) Liability in case of Company in Liquidation**

#### **(a) Every person –**

- (i) who is a liquidator of any company which is being wound up whether under the orders of a court or otherwise; or
- (ii) who has been appointed the receiver of any assets of a company (herein after referred to as the "Liquidator"), shall, within 30 days after he has become such liquidator, give notice of his appointment as such to the assessing authority ;

(b) The assessing authority shall, after making such enquiries or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives notice of the appointment of the liquidator, the amount which in the opinion of the assessing authority would be sufficient to provide for any tax (including any penalty or interest) which is then, or is likely thereafter, to become payable by the company,

(c) 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 assessing authority under clause (b) above and on being so notified, the liquidator shall set aside an amount equal to the amount notified by the assessing authority 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 clause 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 tax and penalty, if any, payable by the company under this Act or for making any payment to secure 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 cost and expenses of the winding up of the company as are in the opinion of the assessing authority reasonable;

(d) If the liquidator fails to give notice in accordance with clause (a) or fails to set aside the amount as required by clause (c) or parts with any assets of the company or the properties in his hand in contravention of the provision of that clause, he shall be personally liable for the payment of tax, penalty and interest, if any which the company would be liable to pay under this Act:



Provided that if the amount of tax, penalty and interest, if any, payable by the company is notified under clause (b) the personal liability of the liquidator under this sub-section shall be to the extent of such amount:

(e) Where there are more liquidators than one, the obligation and liabilities attached to the liquidator under this section shall attach to all liquidators jointly and severally;

(f) the provisions of this section shall have effect notwithstanding any thing to the contrary contained in any other law for the time being in force;

(g) for the purpose 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.

### (3) Amalgamation of Companies:

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

(b) Notwithstanding any thing contained in the said order, for all the purposes of this Act, the said two or more companies will be treated as distinct companies and will be treated as such for all periods up to the date

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

(c) Words and expressions used in this section, but not defined will have the respective meaning assigned to them in the Companies Act 1956.

## **THE UTTARAKHAND VALUE ADDED TAX RULES, 2005**

### **Sec. 13: Certain Agents liable to tax for sales on behalf of Principal:**

(1) Where any person sells or purchases any taxable goods on behalf of his principal as a commission agent, then he and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases:

Provided that the first liability to pay the tax shall be that of the commission agent and he may realize the same from the principal;

Provided further that if the principal shows to the satisfaction of the assessing authority that the tax has been paid by such commission agent on such goods, the principal shall not be liable to pay the tax again in respect of the same transaction.

(2) Where a manager or commission agent of a non-resident dealer sells or purchases any goods on behalf of a non-resident dealer in the State, then the non-resident dealer and the manager or agent residing in the State, shall be jointly and severally liable to pay tax on the turnover of such sales or purchases;

Provided that the first liability to pay the tax shall be that of the manager or commission agent and he may realize the same from the non-resident dealer; Provided further that if the non-resident dealer shows to the satisfaction of the assessing authority that the tax payable in respect of such

sale or purchase has been paid by the manager or commission agent residing in the State, then the non-resident dealer shall not be liable to pay the tax in respect of the same transaction.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 14: 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, license, hire or in any other manner whatsoever the transferor and the transferee shall jointly and severally be liable to pay tax (including any penalty and interest) due from the dealer upto the time of such transfer, whether such tax (including any penalty and interest) has been assessed before such transfer but has remained unpaid or is assessed thereafter;

(2) Where the transferee or lessee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing dealer, apply within the prescribed time for amendment of his certificate of registration.

(3) Where a tax including penalty and interest, if any is recovered from a transferee under sub-section (1) such transferee shall be entitled to recover the same from the person who was originally liable to pay the tax.

(4) Where a dealer liable to pay tax under this Act is succeeded in the business by any person, then such person shall be liable to pay tax on the sales or purchases of goods made by him on or after the date.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 15: Registration:**

(1) Any dealer or a person, carrying on business and liable to pay tax under this Act shall get himself registered within such time and in such manner as may be prescribed:

Provided that a dealer liable to pay tax shall be allowed thirty days time from the date from which he is first liable to pay such tax, to get himself registered.

(2) Every dealer-

(a) who sells any goods imported by him from out side Uttaranchal; or

(b) who sells goods manufactured by him by using goods imported from out side the State; or

(c) who is liable to pay tax under any other provision of this Act, or

(d) who is subjected to tax deduction at source under the provisions of section 35 ; or

(e) who would be liable to pay tax (had the exemption not been granted under this Act), provided his actual or estimated turnover for the assessment year is not less than the taxable quantum as per sub- section (7) of section 3; or

(f) who commences business during the course of an assessment year and whose average monthly estimated turnover for the

remainder of such year, or whose actual turnover in any month during the aforesaid period is not less than one-twelfth of the amount specified in sub-section (7) of section 3, shall be liable for registration

Provided that it shall not be necessary for a dealer who deals exclusively in goods exempted from tax under the provisions of this Act other than those exempted conditionally, to obtain registration under this Act.

(3) Notwithstanding any thing contained in this section, following dealers who otherwise may not be liable to pay tax, shall also be deemed liable for obtaining registration under this Act, from the date on which a dealer for the first time-

- (a) receives any taxable goods from outside the State, or
- (b) imports goods inside or export goods outside the territory of India, or
- (c) consigns any taxable goods out side the State except by reason of a sale.

(4) Notwithstanding any thing contained in this section, the following class of dealers shall be liable for registration irrespective of their turnover at the commencement of their business in the State-

- (a) every casual dealer,
- (b) every dealer registered under the Central Sales Tax Act, 1956, within the State,
- (c) every dealer residing out side the State but carrying on business within the State,

- (d) every dealer in liquor including beer,
- (e) every commission agent, broker, del credere agent, auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling supplying or distributing goods on behalf of his principal.

(5) Every dealer required to be registered as per the provisions referred to above, shall make an application in this behalf to the assessing authority within such time and in such manner as may be prescribed.

*"Provided that an application for registration without furnishing the prescribed details shall not be accepted."*

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(6) Every dealer who under any provisions of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 had-

(a) held a registration certificate; or

(b) held a provisional registration certificate, on the date immediately preceding the date of commencement of this Act and to whom sub-section (4) or sub-section (5) of section 3 of this Act applies, and neither the registration certificate has been cancelled by the assessing officer nor such dealer has discontinued business till the date of commencement of this Act, he shall, subject to the provisions of section 17, be deemed to be a registered dealer under this Act from the date of commencement of this Act, and if such a dealer is not desirous of continuing to be a registered dealer under this Act, he shall submit an application to the Assessing Authority to this effect within 30 days of the commencement of this Act



(7) Every dealer who has been a registered dealer under the provisions of Uttaranchal (the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002 immediately before the commencement of this Act and is not liable to registration under this Act in view of the turnover limits mentioned in sub-section (7) of section 3, but if he desires to retain registration, he may be granted Voluntary Registration under this Act on his application submitted within such time and in such manner as may be prescribed and shall be deemed to be registered under this Act from the date of commencement of this Act;

(8) Every dealer who had applied for grant of registration certificate under any provision of the Uttaranchal(the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002 before the date of commencement of this Act, and whose such application is pending for disposal before the assessing authority under that Act, if registration certificate is subsequently granted to him under that Act, and if he has not discontinued business till the date of commencement of this Act, he shall be deemed registered dealer with effect from the date of commencement of this Act.

(9) Any dealer who had become liable for obtaining registration certificate under any provisions of Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and is liable to pay tax under this Act on the date of commencement of this Act, if such dealer had not applied for issue of registration under Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 then without prejudice to any other liability under that Act shall, for grant of

registration, present an application for registration within such time and such manner as may be prescribed.

(10) Any dealer, if otherwise is not liable to tax under this Act according to the provisions under sub-section (4) and sub-section (5) of section 3, he shall not be deemed to be a registered dealer unless he presents application within such time and in such manner, as may be prescribed, for grant of voluntary registration certificate.

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 16: Voluntary Registration:**

(1) Any dealer who-

(a)intends to manufacture any taxable goods for sale, or

(b)intends to carry on business of sale or purchase of taxable goods, or

(c)is carrying on business of sale or purchase of goods but otherwise

is not liable

to obtain registration if he so desires, may present an application in the prescribed manner for grant of voluntary registration under this Act, and such registration certificate if granted, shall be valid with effect from the date on which the application is presented.

(2) Any dealer who has been granted voluntary registration under this section or under the provisions of sub-section (7) of section 15, shall, for so long as his registration remains in force, be liable to pay tax under this Act.

(3) The registration of a dealer on application made under this section shall remain in force unless cancelled under the provisions of this Act.

(4) Subject to provisions of sub-section (3) above, a dealer registered on application made under this section may apply in the prescribed manner to the assessing authority for cancellation of such registration and the assessing authority may, unless the dealer is liable to pay tax under this Act, cancel the

registration from the date of such application or any other date as he may deem fit.

(5) When the turn over of any dealer registered on application made under this section has, for three successive years remained below the taxable quantum in each of the years, his liability to pay tax shall cease.

(6) Provisions under section 17, section 18 and section 19 shall mutatis mutandis apply in relation to registration certificate to be granted under this section as those apply to registration under section 15.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 17: Procedure for Registration:**

(1) Where a dealer has not paid the required fee for renewal of registration certificate under the provisions of the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 the registration certificate shall not be deemed valid on the date of commencement of this Act, but if such dealer deposits the amount of renewal fee along with rupees 100 as late fee within 30 days from the date of commencement of this Act, he shall be deemed to be a registered dealer from the date he deposits the renewal fees.

(2) Every dealer who is required to be registered under section 15 or under section 16 shall submit an application for registration in such form, accompanied with such fee, within such time and in such manner as may be prescribed.

(3) The assessing authority may, after such enquiry as it considers necessary and subject to the provisions of section 20 and such other conditions as may be prescribed in this behalf allow the application and cause the dealer to be registered, and issue a certificate of registration in the prescribed form.

Provided that where **any security** for grant of registration has been demanded from the dealer, registration shall be granted **after** the dealer has furnished such security to the satisfaction of the assessing authority.

(4) Registration shall, subject to the provisions of this Act and the Rules made thereunder take effect from the date on which the dealer becomes liable to registration in case he applies for registration within the period prescribed, and, in any other case, from the date on which he applies for registration.

(5) Registration certificate granted to a dealer shall remain in force till the date of discontinuance of business, unless the registration certificate is cancelled by the assessing authority at any time before, under the provisions of section 18 of this Act;

(6) *Subject to the provisions of sub-section(5) of Section 15* If application for registration is **incorrect or incomplete** or is not in order or the fee or penalty has not been paid or the security demanded has not been furnished or for any other sufficient reasons to be recorded in writing by the assessing authority, it may after giving a reasonable opportunity of being heard to the applicant **reject the application by an order in writing.**

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(7) (a) If a dealer to whom a certificate of registration has been granted –  
(i) has **failed to file the returns** under this Act within the time prescribed; or  
(ii) **knowingly** furnishes incomplete or **incorrect particulars in return** ; or

(iii)has **failed to pay any tax** (including penalty or interest, *and late fee, if any*) due from him under the provisions of this Act within the time prescribed, the certificate of registration of such dealer may be **suspended** by the assessing authority after giving such dealer an opportunity of being heard;

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(b) Where any proceedings for cancellation of registration under section 18 are pending for disposal before the assessing authority, the certificate of registration of such dealer may be suspended for the period the proceeding of cancellation are pending, after giving such dealer an opportunity of being heard:

Provided that under clause (a) above the certificate of registration of a dealer shall not be suspended if he has furnished return or returns *and diposited the amount of tax due, interest and late fee, if any, payable* within the *time* prescribed in the notice.

*(Substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 6.10.2010)*

(8) Suspension of certificate of registration under clause (a) of sub-section (7) will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes (including penalty or interest, *and late fee, if any*) and on furnishing of overdue return or returns with in 45 days from the date of suspension.

*(Substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 6.10.2010)*

(9) If the dealer whose certificate of registration has been suspended under clause (a) of sub-section (7) fails to comply with the provisions of sub-section (8), the assessing authority may cancel the registration of such dealer, after giving him an opportunity of being heard.

(10) Suspension of certificate of registration under clause (b) of sub-section (7) shall be withdrawn retrospectively with effect from the date of its suspension if cancellation of certificate of registration is not made

(11) If any dealer to whom the provisions of section 15 apply-

(a) transfers his business or any part thereof by sale, lease, leave, license, hire or in any other manner whatsoever, or otherwise disposes off his business or any part thereof; or

(b) acquires any business, whether by purchase or otherwise; or

(c) effects or comes to know of **any other change in the ownership** or constitution of his business; or

(d) discontinues his business or changes his place of business or ware house or **opens a new place of business** or ware house; or

(e) changes the name, style or nature of his business or effects any change in the class or description of goods in which he carries on his business, as specified in his certificate of registration; or

(f) **enters into partnership** or other association in regard to his business; or

(g) starts a new business or joins another business either singly or jointly with other person; or



(h) in case of a company incorporated under a statute or a company or a private company registered under the Companies Act effects any change in the constitution of Board of Directors; or

(i) effects any change in particulars furnished in application for grant of registration certificate under section 15 or section 16, shall **within thirty days** of the occurring of any of the events aforesaid, inform the assessing authority in the manner as may be prescribed.

(12) Where a dealer's application for registration is rejected under the provisions of this Act, and the dealer, pending the decision on his application for registration, has realised tax from purchasers, he shall be liable to deposit the realised tax in the Government treasury as per the provisions of the Act, and the purchaser shall be entitled to input tax credit as if the dealer, for this purpose, was a registered dealer during the period commencing from the date of his submitting the application for registration to the date of the receipt of such order of rejection by the dealer.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 18: Cancellation of registration:**

(1) A certificate of registration granted under section 15 or under section 16 to a dealer, may be cancelled by the assessing authority, either on the application of the dealer or on its own motion, where the assessing authority is satisfied that-

- (a) any business in respect of which a certificate of registration has been granted to a dealer under this Act has been **discontinued**:  
or
- (b) in the case of **transfer of business** by a dealer where the transferee already holds a certificate of registration under this Act; or
- (c) an incorporated body is **closed down** or if it otherwise ceases to exist; or
- (d) the owner of a proprietorship business **dies** leaving no successor to carry on business; or
- (e) in case of a firm or association of persons if it is dissolved; or
- (f) a dealer has ceased to be liable to pay tax under this Act or has ceased to be subject to registration; or
- (g) a dealer has **failed to pay any tax** (including any penalty or interest) due from him under the provisions of this Act within three months of the due date; or

- (h) a dealer having issued any Sale invoice to any person regarding sales of goods, has deliberately failed to **account for** the said invoice in his books of account; or
- (i) a dealer holds or accepts or furnishes or causes to be furnished a declaration form, which he knows or has reason to believe to be false; or
- (j) a dealer who has been required to furnish security under the provisions of section 20 but has failed to furnish such **security**; or
- (k) a dealer to whom registration certificate was granted has **misused** it; or
- (l) a dealer to whom registration was granted has permitted some other person to carry on business in the name of the dealer; or
- (m) a dealer has transferred any prescribed form of declaration or a certificate under this Act obtained by him, to any other person or a dealer except for lawful purposes; or
- (n) a dealer has been **registered by mistake**; or
- (o) there is **any other reason** which in the opinion of the assessing authority warrants such action, the assessing authority may at any time, for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, cancel the certificate of registration held by any dealer from such date as the assessing authority may specify in this behalf..

(2) Notwithstanding any thing contained in sub-section (1) above, the assessing authority may with the permission of Commissioner or any officer authorised by him for the purpose, cancel the registration of a dealer who has not applied for cancellation of registration if the assessing authority is satisfied that the person is not entitled to registration or voluntary registration under section 15 or section 16.

(3) The registration certificate shall not be cancelled on its own motion, and the dealer's application for cancellation of registration certificate shall not be rejected by the assessing authority without the dealer being given a reasonable opportunity of being heard.

(4) The cancellation of registration will take effect from the date of order of cancellation by the assessing authority unless it is to take effect from a different date ordered by the assessing authority.

(5) Every person whose registration is cancelled under this section shall pay in respect of every taxable goods held as stock or as capital goods on the date of cancellation an amount equal to-

- (a) the tax that would be payable in respect of those goods if the goods were sold at fair market price on that date; or
- (b) the total tax credit previously claimed in respect of those goods, whichever is higher.

(6) If an order of cancellation passed under this section is set aside as a result of an appeal or other proceedings under this Act, the certificate of registration of the dealer shall, subject to the provisions of section 15 and section 16, be restored and he shall be liable to pay tax in the same manner as if his certificate of registration had never been cancelled:

Provided that if the dealer, pending disposal of his appeal or such other proceedings, has realised tax from purchasers, he shall be liable to deposit the realised tax in the Government treasury as per the provisions of this Act.

(7) Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him and every dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within 15 days of date of communication to him of the order of cancellation:

Provided that such dealer shall furnish the details of all forms of declaration and certificates under this Act or the Central Sales Tax Act, 1956 obtained and used by him if not already filed, and shall also surrender the remaining unused forms of declaration and certificates with his application for cancellation of Registration Certificate or, as the case may be, within fifteen days of the date of communication to him of the order of cancellation.

(8) The obligations and liabilities under this Act (including the filing of returns and payment of tax required section 23 of any person in respect of

any thing done or omitted to be done by that person while the person is a registered person are not affected by the cancellation of the registration certificate.

Provided that the cancellation of registration on an application of the dealer or otherwise shall not affect the liability of a dealer to pay the tax (including any penalty and interest) due for any period irrespective of such cancellation whether such tax (including any penalty and interest) is assessed before the date of cancellation but remains unpaid or is assessed thereafter.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec.19: Amendment of certificate of registration:**

(1) The assessing authority 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 certificate of registration, and such amendment of the certificate of registration shall take effect,

(a) in case of change in the name, ownership or place of business or opening of a new place of business, from the date of the event necessitating the amendment whether or not information in that behalf is furnished within the time prescribed under sub-section (11) of section 17;

(b) in case of any addition or modification in the description of any goods in the certificate of registration, from the date of the event necessitating the amendment if information on that behalf is furnished within the time prescribed under sub-section (11) of section 17 and in any other case, from the date of receipt of request for such addition or modification by the assessing authority;

(c) in case of deletion of any goods or class of goods from the date of order of deletion:

Provided that where in consequence of a change in the ownership of a

business, the liability of a dealer to pay tax ceases, the amendment of certificate of registration shall take effect from the date on which information in respect of such change is furnished under sub-section (11) of section 17;

Provided further that the assessing authority shall, before amending on his own motion a certificate of registration, give the dealer affected by such amendment an opportunity of being heard.

(2) Where a registered dealer-

(a) effects a change in the name of his business; or

(b) is a firm and there is change in the constitution of the firm without dissolution thereof; or

(c) is a trust and there is a change in the trustees thereof; or

(d) is a guardian of a ward and there is a change in the guardianship ;  
or

(e) is a "Joint Hindu family" and the business of such family is converted into a partnership business with all or any of the coparceners as partners thereof, then merely by reason of any of the circumstances aforesaid, it shall not be necessary for such dealer or such firm to apply for a fresh certificate of registration and on information being furnished in the manner required under this section, the certificate of registration shall be amended.

(3) Any amendment of a certificate of registration under this section shall be without prejudice to any liability for tax or penalty imposable for an offence under this Act.



## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 20: Security in the Interest of Revenue:**

- (1) The assessing authority may, where it appears necessary to him so to do-
- (a) for the proper realization of any tax, penalty or other sums due or payable under this Act; or
  - (b) for the proper custody or use of forms prescribed under this Act or the rules framed thereunder; or
  - (c) as a condition for the grant or as the case may be, the continuance in effect of registration certificate,

by an order in **writing** and for **reasons to be recorded** therein, direct, before the grant of or, as the case may be, at any time while the certificate of registration is in force, that the dealer or the person concerned shall furnish, in the prescribed manner and within the specified time, such security or if the dealer or the person concerned has already furnished such security, such additional security of any nature, as may be specified for all or any of the aforesaid purposes.

- (2) The assessing authority may, by order in writing and for sufficient reasons to be recorded therein, demand from **any person** (other than a registered dealer) who imports into the State of Uttaranchal any consignment of goods, reasonable security for ensuring that there is no evasion of tax.

(3) No dealer or the person concerned shall be required to furnish any security or additional security under this section by the assessing authority unless he has been given an opportunity of being heard;

(4) The amount of such security or additional security that may be required to be furnished by any dealer or any person concerned, shall-

(a) in the case of dealer liable to pay tax under the provisions of section 3 who has applied for the grant of certificate of registration under section 15 or section 16, be such amount as the assessing authority may, having regard to the **nature and size** of the business of such dealer, determine for the payment of the tax for which the dealer may be or become liable under this Act;

(b) in any other case not to exceed the tax payable in accordance with the estimate of the assessing authority on the turnover of the dealer or the person concerned for the assessment year in which such security is required to be furnished.

(5) Notwithstanding any thing contained in this section, the Commissioner may, in respect of goods notified by the Government in this behalf, by a general order in writing, direct that the cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or a person requiring any of the forms prescribed under this Act.

(6) Where the surety bond has been executed by a registered dealer and the said registered dealer's certificate of registration is either cancelled or he has

closed down his business the dealer shall furnish a fresh surety bond as may be directed or in the manner as stated in sub-section (7).

(7) Where the security furnished by a dealer or a person concerned under this section is in the form of a surety bond and the surety dies or becomes insolvent, the dealer or the person concerned shall, **within 30 days** of the occurrence of any of the aforesaid events, inform the assessing authority and shall **within 60 days** of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security of the amount of the bond, to the satisfaction of the assessing authority.

(8) The assessing authority may, **by order in writing and for sufficient reasons to be recorded** therein, forfeit the whole or any part of the security which includes the **additional security** furnished by a dealer or a person concerned, for-

(a) recovery of tax or any other sum due, or

(b) recovery of any financial loss caused to the State Government due to negligence or default in not making proper use of or not keeping in safe custody the blank or unused forms as referred to in sub-section (1) above, or

(c) recovery of loss of revenue caused by issuing of false invoices:

Provided that no order shall be passed under this sub-section without giving the dealer or person concerned an opportunity of being heard.

(9) The assessing authority may-

(a) refuse to grant registration certificate, or

(b) **suspend** any such certificate already issued, or

(c) refuse to issue any of the forms as referred to in sub-section (1) to any dealer or person concerned, until the dealer or the person concerned has complied with the order regarding furnishing of the security or the additional security, as the case may be:

Provided that no order under this sub-section shall be passed without giving the dealer or the person concerned an opportunity of being heard.

(10) Where the security furnished by any dealer or person concerned is forfeited in whole or in part or is rendered insufficient he shall furnish a fresh or further 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 in the order.

(11) The assessing authority may, on application by a dealer who has furnished security as required, refund in the prescribed manner, any amount of security or part thereof if such security is not required for the purpose for which it was furnished.

(12) **No security** under this section shall be required to be furnished by a dealer exclusively dealing in **goods exempted** from tax under section 4 and **not making use of any of the forms** prescribed under this Act or under the

Central Sale Tax Act, 1956. *(substituted by notification no.-1314/XXXVI(4)/2008 Dated 31 march 2008)*

(13) An appeal under section 51 may within such time and in such manner as may be prescribed, be filed against any order passed under this section.

(14) Any dealer or person concerned aggrieved by an order of appellate authority may, within such time and in such manner as may be prescribed, file an appeal under section 53.

(15) The provisions of this section shall mutatis mutandis, apply in relation to security required to be furnished under the order of any authority under this Act or the Court.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 21: Quoting of Registration Number:**

(1) Every registered dealer shall get his registration number and the date from which it is effective, printed on every Sale invoice, challan or any such documents relating to sales or purchases.

(2) Every registered dealer shall present his registration certificate if so desired by any authority under this Act in connection with any proceedings under this Act.

(3) Every registered dealer shall show his registration certificate if so required by the purchaser of any goods.

(4) Every registered dealer while purchasing any goods shall give his name, address and his registration number to the selling dealer who shall mention the same on Sale invoice challan or any such documents relating to such sale or purchase.

(5) Every registered dealer shall get his name, registration number and the date from which it is effective, painted on the signboard on all his business places, in such manner that the same are easily readable from the road.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 22: Realisation of Tax by Dealer:**

(1) Where any tax on sale of goods is payable on any turnover by a dealer (including a commission agent or any of the persons mentioned in clause (c) of sub-section (11) of section 2) registered under this Act, such a dealer may recover an amount, equivalent to the amount of tax on sale of goods payable, from the person to whom the goods are sold by him, whether on his own behalf or on behalf of his principal:

Provided that no dealer shall realise from any person whom the goods are sold, any amount by way of tax or any amount in lieu of the tax by giving it a different name or colour, which is not payable by him or is in excess of the amount payable by him under the provisions of this Act;

Provided further that no dealer who agrees to pay a Presumptive Tax under the provisions of sub-section (1) of section 7 or from whom the Assessing Authority agrees under sub-section (2) of section 7 to accept a composition money in lieu of the amount of the tax payable by him, shall realise from any person any amount by way of tax on sale of goods or an amount in lieu thereof by giving it a different name or colour.

(2) No person who is not a dealer registered under this Act, shall in respect of any sale and purchase of goods made by or through him realize from any person any amount by way of tax on sale or purchase of goods under this

Act or any amount in lieu of the tax on sale or purchase of goods by giving it a different name or colour.

(3) No dealer registered under this Act, shall, in respect of any sale or purchase of goods made by or through him realize from any person to whom goods are sold, any amount by way of tax on such sale or any amount in lieu of tax by giving it a different name or colour, which is not payable by him or which is in excess of the amount payable by him under the provisions of the Act.

(4) Where a registered dealer realises tax on sale of goods from the purchaser, the Sale Invoice shall separately show the price of the goods sold and the amount realised as tax.

(5) If a dealer who is liable to pay tax on sale of any goods, does not charge amount of tax separately from the purchaser of such goods or after charging the amount of tax, does not show such amount separately on Sale invoice, the selling dealer shall be liable to pay tax on total price of goods.

(6) A person may refuse to pay any amount in the name of tax on any purchase of goods if the seller of such goods does not comply with the provisions of sub-section (4) above.

(7) If any dealer purchases any goods from a registered dealer who does not comply with the provision of sub-section (4) above, such dealer shall not be entitled to the input tax credit in respect of such purchase.



(8) Where any amount in excess of the amount of tax due under this Act, has been wrongly realised by a dealer who is required to file return under section 23 of this Act, he shall deposit in the prescribed manner the excess amount along with the return relating to his turnover for the respective period, together with the relevant details.

(9) Where any amount in excess of the amount of tax due under this Act, has been wrongly realised by a person who is not a dealer registered under this Act, he shall deposit in the prescribed manner the excess amount before the expiry of the next succeeding month, along with the relevant details.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 23: Periodical Returns and Payment of Tax:**

(1) Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner as may be prescribed.

(2) Notwithstanding any thing contained in sub-section (1) every registered dealer and every dealer who is liable to get himself registered under section 15, shall submit a return or returns relating to his turnover for such period and in such manner as may be prescribed.

(3) Every dealer or a person liable to pay tax shall also submit along with the return a list of purchases from registered dealers of goods in respect of which input tax credit is being claimed "**and also a list showing sale to the registered dealers**", in the prescribed manner containing such particulars as may be prescribed. *(Added vide notification no.-1314/XXXVI(4)/2008 Dated 31 March2008)*

(4) Every person making any payment to any contractor or sub-contractor in connection with the transfer of property in goods in pursuance of a works contract or transfer of right to use any goods for any purpose, and responsible for deduction of tax at source, shall submit a return of such

payment with their complete name, address and the amount paid and deduction made during the tax period, within such time and in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section(1) or sub-section (2) or sub-section(4) above, the Commissioner 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 or class of dealers-

(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 Uttaranchal for the said period or for such different periods and to such authority as he may direct.

(6) Every dealer required to file return under this section shall pay the amount of tax payable according to the return *and also late fee, if any* or the differential tax payable according to the revised return furnished, along with any such amount which has been wrongly realized in excess of an amount of tax due under this Act and also the amount of tax, if any, deducted at source as per the provisions under section 35, in such 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.

*(Substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 6.10.2010)*

(7) The assessing authority may *in its discretion*, for reasons to be recorded in writing, extend the date for **submission of the return** by any person or class of persons.

*"Provided that every dealer required by sub-section (1) of section 23 to furnish a return shall be liable to pay such late fee not exceeding rupees 2000/- for each month or part thereof, of delay in furnishing return, as may be prescribed, and pay before furnishing such return the full amount of tax, interest and late fee, if any, payable according to such return in the manner as may be prescribed."*

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(8) Where as a consequence of the date for the submission of return being extended under sub-section (7), the deposit of tax under sub-section (1) or sub-section (2) is deferred, there shall be payable an interest at the rate of fifteen percent per annum on such deposit from the date immediately following the last date prescribed for the submission of the return till the date of deposit of such amount.

(9) If any dealer discovers any omission or other error in any return submitted by him, he may, at any time before the time prescribed for submitting the next return, submit a revised return. If the revised return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable and if the revised return shows lesser amount of tax to be due than was shown in the original return the dealer may adjust the excess amount toward the tax due for the subsequent periods.

(10) If goods sold or purchased by a dealer are returned within six months of the date of sale or purchase, and assessment for the year to which such sale or purchases relates is as yet to be made, he may within thirty days of the expiry of the month in which such goods are returned, submit for that purpose only a revised return for the period during which such sale or purchase was made.

(11) A registered dealer who ceases to carry on business shall file a final tax return within sixty days from the date of cessation. He shall be required to comply with other provisions as applicable regarding filing of return under this section.

(12) If the assessing 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 taxable limit as specified in sub-section (7) of section 3, it may, by notice served in the prescribed manner, require such dealer to furnish return as if he were a dealer liable to pay tax but tax shall be payable by him only if it is due under any provisions of this Act.

(13) Every dealer liable to pay tax under this Act, including a dealer who has carried on business during part of any assessment year shall submit to assessing authority in addition to the returns for the tax periods filed, an annual return of turnover of purchases and sales in prescribed form, in the prescribed manner and within the prescribed time along with such other details and documents as may be prescribed.

(14) For the purpose of this Act, any return signed by a person who is not authorised under the rules, shall be treated as if no return has been filed.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 24: Provisional Assessment:**

(1) The assessing authority may scrutinize any return or returns in relation to any tax period furnished by any dealer 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) above, the assessing authority shall, without prejudice to any thing contained in section 58, serve a notice in the prescribed manner on the dealer to make payment of the extra amount of tax, if any, along with the interest as per the provisions of this Act.

(3) Where in case of a *registered dealer or any dealer* liable to pay tax or a dealer to whom notice has been issued by the assessing authority under sub-section (12) of section 23, and in respect of any tax period during an assessment year-

- (a) the return is not submitted within the time prescribed or extended by the assessing authority; or
- (b) the return is submitted but not in the prescribed manner; or
- (c) the return submitted is, in the opinion of the assessing authority, incorrect or incomplete or contains wrong particulars; or

- (d) the return is submitted without payment of tax in the manner prescribed; or
  - (e) the return required under sub-section (11) of section 23 is not filed within the prescribed time, the assessing authority shall after making such inquiries as it considers necessary, determine the turnover of sales or of purchases or both, as the case may be, provisionally and assess the tax payable thereon.
- (4) If in respect of any one or more tax period, as the case may be-
- (a) the tax payable as shown in the return appears to the assessing authority to be incorrect; or
  - (b) the tax paid along with the return is less than the amount due under this Act or shown payable in the return; or
  - (c) the input tax credit claimed in the return is not supported by the required information, as per sub-section(3) of section 23, the assessing authority shall provisionally assess the tax payable on the turnover of sales or purchases or both as the case may be, shown in the return at the rates prescribed under the Act.
- (5) The provisional assessment under this section shall be made on the basis of past returns, or past records or on the basis of information received by the assessing authority, and the assessing authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be prescribed.



(6) Nothing contained in this section shall prevent the assessing authority from making final assessment for the whole year under section 25 or section 26 and any tax paid against the provisional assessment shall be adjusted against tax, interest and penalty payable on final assessment under sections referred to above.

(7) No provisional assessment against a dealer shall be made without giving the dealer a reasonable opportunity of being heard.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **25: Assessment of Registered Dealer for the Assessment Year:**

*(Substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010 as below)*

(1) There shall be an assessment of taxable turnover, amount of tax payable on such turnover, and amount of input tax credit admissible to a dealer for each assessment year or where the dealer has carried on his business for a part of an assessment year, for such part of assessment year during which the dealer has carried on business.

(2) Every dealer shall, for the assessment year, submit to the assessing authority in addition to periodical returns, an annual return of his turnover and the amount of tax due from him, complete in all material particulars, in the prescribed form and manner, including electronic methods, within the prescribed time, containing such information, particulars and annexure as may be prescribed, accompanied by supporting documents, including.

(a) particulars of turnover of purchase, sale and other transactions and value of opening and closing stocks;

(b) computation of his own final assessment of amount of tax due from him on the basis of such return including claim for input tax credit;

(c) such declaration, certificates, and such other evidences on which the dealer relies in support of his claim of exemption, concession or

rebate of tax declared in 'the computation of his own final assessment of amount of tax due from him';

(d) proof of payment of the additional tax, interest, composition money or fee due as per computation of his own assessment;

(e) proof of tax or part thereof, if any claimed to have been deducted at source(TDS).

(f) proof of payment of late fee as may be prescribed in case such return is not filed within the prescribed time;

(g) a true copy of the audit report as required under section 62 of the Act and

(h) such other particulars, information, documents and statments as may be prescribed.

An annual return shall not be treated as such if it is not complete in all material particulars, is not filed in the prescribed form and manner, does not contain such information, particulars and annexures as may be prescribed or does not comply with the requirments of this sub-section. The date, on which the annual return as contemplated above is submitted, shall be treated as the date of its submission;

Provided that every dealer required to furnish annual return shall be liable to pay such late fee not exceeding rupees 2000/- for each month or part thereof, of delay in furnishing annual return, as may be prescribed, and pay before furnishing such return the full amount of tax, interest and late fee, if any, payable according to such return in the manner, as may be prescribed.

**(3) Deemed Assessment:**

Subject to the provisions of sub-section (4) and sub-section (9) of this Section, every dealer, excluding works contractors who have not opted for composition under the provisions of sub-section (2) of Section 7, shall be deemed to have been assessed to tax, based on annual return filed by him as provided in sub-section (2) of Section 25, provided that it is filed within the prescribed time or if filed late, but not beyond 30th June of the succeeding assessment year, along with the proof of the payment of late fee, if any.

(4) Notwithstanding anything contained in this section, from among the dealers who are deemed to have been assessed under sub-section (3), a dealer or dealers may be selected for assessment under sub-section (6) and sub-section (7). Selection of such dealer/s shall be made after scrutiny. Selection of dealer/s for scrutiny and thereafter selection for assessment, for an assessment year, shall be made in the manner as may be prescribed by the Commissioner.

(5) For the purposes of this Act and the rules made there under-

(a) the annual return, referred to in sub-section (2) of Section 25 or in sub-section (13) of Section 23, filed by the dealer, shall be deemed to the assessment order and the facts disclosed and the figures mentioned in such return shall be deemed to be a part of such assessment order; and

(b) the last date, prescribed for submission of annual return or the actual date, on which such return is filed along with the prescribed late fee, if any, whichever is later, shall be deemed to be the date of such assessment order.

(6) Notwithstanding anything contained in this section, to assess a dealer who has not been deemed assessed under sub-section (3) or who has been selected for assessment under sub-section (4), the assessing authority shall serve on such dealer, a notice requiring him to appear on a date and at a place specified therein, to attend and submit periodical returns and annual return of his turnover, if not filed earlier, along with the proof of payment of late fee, if any, and to produce or cause to be produced the books of accounts and all evidences on which the dealer relies in support of his returns including sale and purchase invoices, or to produce such evidences as may be specified in the notice.

Explanation : Opportunity given under this sub-section for submission of periodical returns and annual return shall not prevent the assessing authority from imposing penalties, interest or late fee, if any, under any other provisions of the Act, for not filing such returns within the time prescribed.

(7) If the dealer complies with the notice issued under sub-section (6) and the assessing authority after examining periodical returns the annual returns, books of account and documents and after considering all the evidences produced in the course of proceedings or the evidences collected or received by the assessing authority and after making such enquiry, as he may deem fit,

- (a) is satisfied that turnover of sales and purchases disclosed and amount of tax shown as payable by the dealer in the annual return is correct, assess the dealer to tax in accordance with the provisions of the Act, by an order in writing.
- (b) if the assessing authority is of the opinion that the turnover or the liability of the tax disclosed by the dealer and the amount of tax paid by the dealer does not appear to be correct shall give him reasonable opportunity of being heard by giving him a show cause notice stating the reason, for non acceptance of the turnover of sales or purchase or liability of tax as disclosed by the dealer, and after considering the reply submitted by the dealer;
  - (i) if he is satisfied that the turnover disclosed by the dealer in the annual return is correct, shall assess the dealer to tax by an order in writing according to the provisions of the Act,
  - (ii) if he is not satisfied with the reply submitted by the dealer, shall determine the turnover to the best of his judgement and the tax payable thereon according to the provisions of the Act, by an order in writing;

Provided that where the opportunity under sub-section (6) for submission of periodical returns and annual return along with the proof of deposit of late fee and production of books, accounts and documents and evidences on which the dealer relies in support of his returns including sale invoices, or for production of such evidences as may be specified in the notice has been afforded to the dealer but for any reason he has not availed such opportunity and thereby the assessing authority could not examine the correctness and propriety of

particulars shown in such returns, it shall not be necessary to issue show cause notice to such dealer before making an assessment order to the best of his judgement;

Provided further that, no assessment order under this subsection shall be passed after the time limit as prescribed in Section 32 of the Act.

(8) Any provisional assessment order in respect of any tax period under Section 24 shall not prevent the assessing authority to make final assessment and the provisional assessment order shall stand merged in the final assessment order passed under this Section.

**(9) Tax audit:**

(a) Notwithstanding anything contained in this Act tax audit of records and related documents of a dealer, selected for this purpose may be conducted for the purpose of ensuring the compliance by the dealer of requirements of the Act or for examining the correctness of periodical and final returns and admissibility of various claims including input tax credit;

Provided that no dealer may be selected for tax audit, for an assessment year for which proceedings under subsection (6) or (7) of Section 25 have been initiated or completed by the assessing authority;

Provided further that no dealer may be selected for tax audit for an assessment year after of expiration of five years from the end of such assessment year.

- (b) Tax audit may be conducted by an officer, posted in the tax audit wing or by any other officer authorized for this purpose by the commissioner;
- (c) The selection of dealer or dealers for the purpose of tax audit shall be in the manner as may be prescribed by the Commissioner,
- (d) Tax audit may be taken up in the office, business premises or warehouse of the dealer. However, the officer conducting audit may, if he deems fit, require the dealer either to attend and produce or cause to be produced the books of accounts and other documents in his office or any other place which may be specified in the notice,

If in compliance of the notice served in this sub-section, the dealer does not attend the office of the officer in charge of tax audit or any other place which may be specified in the notice; or if attends does not produce or cause to be produced the books of accounts and other documents, the officer in charge of tax audit may impose a penalty of upto Rs. 5000/- for each non compliance of the notice. No such penalty shall be imposed without giving the dealer a reasonable opportunity of being heard. The provisions relating to recovery of dues shall mutatis mutandis apply for recovery of imposed penalty;

- (e) The officer conducting the tax audit shall have powers to make or cause to be made extracts or copies from the books of accounts and other documents, seek such information or statement. which may be useful and relevant to any proceeding under this Act. The dealer shall provide full co-operation and assistance to the audit party during the course of audit.



If the dealer prevents or obstructs the officer from making extracts or copies from the books of the account and other documents required for the purpose of tax audit, or from seeking such information or statements required for the purpose of tax audit or does not cooperate and assist the audit party during the course of audit, the officer in charge of the tax audit may impose a penalty upto Rs. 10,000/- for each non compliance. No such penalty shall be imposed unless a reasonable opportunity of being heard has been given to the dealer. The provisions relating to recovery of dues shall mutatis mutandis apply for recovery of imposed penalty;

- (f) After the completion of the tax audit, a tax audit report shall be sent to the Assessing Authority and the dealer concerned;

Provided that in case the officer conducting the audit has reason to believe that;

- (i) the whole or any part of the turnover in respect of any tax has escaped the assessment; or
- (ii) the whole or any part of the turnover in respect of any tax has been under assessed; or
- (iii) the whole or any part of the turnover in respect of any tax has been assessed, at a rate lower than the rate at which it is assessable; or
- (iv) any exemption or deduction has been wrongly claimed; or
- (v) any tax credit has been wrongly claimed, no tax audit report shall be finalized without giving the dealer a reasonable opportunity of being heard.

(g) The Assessing authority on the basis of the "tax audit report" may initiate necessary proceedings as per the provisions of the Act;

(10) In cases of the following dealers or class of dealers in respect of different transactions more than one assessment may be made for the same assessment year and will be treated as part of one assessment year-

(a) dealer who has obtained more than one authorization for transit of goods through the State; in respect of each authorization for transit of goods to the State;

(b) casual dealer who has no fixed place of business, by different assessing authorities in whose jurisdiction he has carried on business;

(c) unregistered dealer who imports taxable goods on each occasion, he imports the goods;

(d) unregistered dealer who either executes, works contracts or effects transfer of right to use any goods, for any purpose in jurisdiction of more than one assessing authorities and has no fixed place of business, by each assessing authority in respect of business carried out in his jurisdiction;

Provided that more than one assessment shall not be made in respect of the same turnover of sales or the same turnover of purchase..

(11) Where during the course of an assessment year the rate of tax on the turnover of any goods or class of goods is varied or an exemption in respect thereof is granted or cancelled the assessment, so far as it relates to the portion of such turnover for the period after the date of variation,

exemption or cancellation shall be made on the basis of the so varied or the exemption so granted or cancelled.

(12) Any assessment made under this section shall be without prejudice to any penalty imposed under the Act.

*(Added vide notification no.- 103/XXXVI(3)/2014/21(1)/2014 Dt. 04.03.2014 w.e.f. 04.03.2014 as below)*

### **25-A Deemed Assessments in Certain Cases:**

(1) With the objective to dispose of a large number of pending annual assessments in which relatively smaller amount of turnover or tax is involved, notwithstanding anything contained in this Act, it is hereby provided that Commissioner may, by notification declare that the registered dealers, as listed in such notification, are deemed to have been self assessed, under The Uttarakhand VAT Act, 2005 or under sub-section (2) of section 9 of The Central Sales Tax Act, 1956 read with The Uttarakhand VAT Act for the assessment year as mentioned in such notification, on the basis of;

(a) the tax liability admitted in all the periodical returns, in the cases where all the periodical returns are filed but annual return is not filed till the date of commencement of the provisions of this section; and

(b) the tax admitted in the annual return, in the case where any or all of the periodical returns are not filed but annual return is filed till the date of commencement of the provisions of this section; and

(c) the tax admitted in the annual return, in the case where all of the

periodical returns and annual return are filed till the date of commencement of the provisions of this section:

Provided that-

assessment of such dealer is pending and is not related to the assessment years other than **2011-12 or 2012-13**; and

the “**Annual Gross Turnover**” of such dealer in the related assessment year is **not more than Rs. 1 crore**. However there shall be **no** such limit for the dealer who has exclusively dealt in the **Special Category Goods** as specified in schedule III at serial no. 2, 3 or 8, and sold it after purchase from registered dealers within the State; and

where any exemption, concession or rebate of tax under the provisions of the Central Sales Tax Act, 1956 or Uttarakhand VAT Act, 2005 is claimed, the annual return and the required declarations, certificate or other evidence in support of such claim are submitted as per provision of the related Act and Rules made there under; and

any appeal under Section 51 or Section 53 or any writ against any order or notice of the assessing officer under any section of the Act, related to such assessment year is not filed.

Provided further that-

such dealer has not made any transaction of transfer of property in goods(whether as goods or in some other form) involved in the execution of a works contract; and

such dealer has not made any transaction of sale of “**iron and steel**” or “**edible oil**” to a registered dealer within the state or outside the state; and

such dealer has not made any sale, after purchase, of **bricks** or any kind of **minor minerals**;

such dealer has not sold any **Timber product**, the rate of tax on which is either zero or less than the general rate of VAT on Timber and which is made of such timber which is imported from outside the State or purchased from within the State on a concessional VAT rate; and such dealer has **not claimed a Refund of more than Rs. 5000.**

(2) Deemed assessment under sub-section(1) cannot be made a ground for any legal dispute, in any other assessment of the same dealer or in any assessment of any other dealer, regarding the rate of tax on a particular commodity, certain transaction being a transaction of sale of goods or service, certain transaction being an inter-state sale or intra-state sale or certain transaction being inter-state sale, consignment/ stock transfer etc.

(3) No proceedings for imposing or realising penalty or late fees for not filling or late filing of return or not depositing the admitted tax within prescribed time shall be initiated in the cases notified under sub-section (1) and if already initiated shall be dropped. However, the tax admitted or interest due, if not deposited shall be realised as per provisions of the Act.

(4) After the issue of the notification as provided in sub-section (1) if, on the basis of scrutiny or any information received, the assessing officer is satisfied that the tax liability in any case related to any assessment year exceeds the admitted tax liability by **Rs.5000** or more, the case for such an assessment year may be opened, with the permission of the Commissioner or the officer not below the rank of Joint Commissioner

authorised for this purpose by the Commissioner, for reassessment after examining the books of accounts and the related documents and notwithstanding anything contained in this Act the limit for opening such case for reassessment shall not be more than 5 year after the close of such assessment year and the limit for finalizing such reassessment shall not be more than one year from the date on which the case is opened.

(5) No appeal under the Act shall lie against any decision under sub-section (4) for opening any case for reassessment.

(6) “Annual gross turnover”, for the purpose of clause (ii) of sub-section (1), shall be the sum of :

The State Transactions as under:

- (a) taxable sales of goods within the State;
- (b) taxable purchase under sub-section(10) of section 3 of the Act;
- (c) non taxable sales of goods listed in sch.-I of clause (a) of sub-section(2) of section 4 of the Act;
- (d) non taxable sales of goods (as per other provisions of the Act);

and

The Inter-state Transactions as under:

- (a) taxable inter-state sale of goods;
- (b) non taxable inter-state sale of goods listed in sch.-I of clause (a) of

sub-section(2) of section 4 of the Act;

- (c) non taxable inter-state sale (as per other provisions of the Central Sales Tax Act, 1956);
- (d) turnover of export out of the Country;
- (e) value of goods stock transferred/ consigned to outside the State.

(7) To carry out the objective and purpose of this section Commissioner may, if required, issue necessary instructions or clarifications so that, due to minor omissions or errors on the part of any dealer, the benefit of the provisions of this section could not be denied.

**Prior to the substitution Sec. 25 read as under :-**

*(1) There shall be an assessment of turnover of taxable sales, amount of tax payable on such turnover, turnover of taxable purchases and amount of input tax credit admissible to a dealer for each assessment year or where the dealer has carried on his business for a part of an assessment year, for such part of assessment year during which the dealer has carried on business.*

*(2) Every dealer shall submit to the assessing authority in addition to the returns for the tax period filed, an annual return of his turnover for the assessment year in the prescribed form, containing such particulars and accompanied by supporting documents, including*

*(a) particulars of turnover of purchase, sale and other transactions and value of opening and closing stocks;*

*(b) such declaration, certificates, and such other evidence on which such dealer relies in support of his returns;*

*(c) computation of his own assessment of amount of tax due from him on the basis of such returns including claim for input tax credit;*

*(d) proof of payment of the additional tax admitted as due and interest due as*

*per his own calculation; and*  
(e) *such other particulars, documents and statements as may be prescribed.*

*(3) The returns furnished by a dealer shall be duly acknowledged in the manner prescribed. The cases remaining after the scrutiny under the provisions of sub-section (4) shall be taken up for self assessment and in respect of such cases where all the returns including the annual return relating to an assessment year have been filed and are correct and complete in material particulars, the dealer shall, be deemed to have been self-assessed for that year and the acknowledgement of the annual return shall be deemed to be the copy of assessment order **and facts disclosed and figures mentioned in such return shall be deemed to be part of such assessment order.***

*Provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete them, and the assessing authority shall, after the required documents have been furnished to him and/or arithmetical mistake, if any, has been corrected and tax due, if any, as a result thereof has been paid, **pass an order in the matter.***

*Explanation:- A return is complete in material particulars if it contains the information required to be furnished therein, is correct arithmetically, accompanied with the statutory lists, documents and proof of payment of tax due and the supporting declarations, certificates, or evidence required under this Act or the Central Sales Tax Act, 1956 in respect of amount of deductions (including deduction on the basis of input tax credit), exemptions and any other concessions or rebates claimed by the dealer in the returns are furnished.*

[\*\(substituted vide notification no. 22 January 2010 as above\)\*](#)

*(3) The returns furnished by a dealer shall be duly acknowledged in the manner prescribed. The cases remaining after the scrutiny under the provisions of sub-section (4) shall be taken up for self assessment and in respect of such cases where all the returns including the annual return relating to an assessment year have been filed and are correct and complete in material particulars, the dealer shall, be deemed to have been self-assessed for that year and the acknowledgement of the annual return shall be deemed to be the copy of assessment order;*

*Provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete them, and the assessing authority shall, after the required documents have been furnished to him and/or arithmetical mistake, if any, has been corrected and tax due, if any, as a result thereof has been paid, **pass an order in the matter.***



*Explanation:- A return is complete in material particulars if it contains the information required to be furnished therein, is correct arithmetically, accompanied with the statutory lists, documents and proof of payment of tax due and the supporting declarations, certificates, or evidence required under this Act or the Central Sales Tax Act, 1956 in respect of amount of deductions (including deduction on the basis of input tax credit), exemptions and any other concessions or rebates claimed by the dealer in the returns are furnished.*

**“(4) Notwithstanding any thing contained in sub-section (3) above, the cases of the following categories shall be subjected to regular assessment after scrutiny—**

- (a) cases in which the gross turnover exceeds five crore rupees in a financial year;**
- (b) cases in which the claim of input tax credit exceeds five lakh rupees in a year;**
- (c) cases in which the claim of refund exceeds one lakh rupees in a year;**
- (d) cases based on definite intelligence about evasion of tax;**
- (e) cases selected to a maximum of 20% on the basis of any criteria or on random basis from amongst the cases covered under the provisions of sub-section (3) and sub-section (4) for self assessment;**

*Provided that the State Government may, by notification in the Official Gazette, change the criteria for selection of cases for scrutiny.”*

**(substituted vide notification no.- 1314/XXXVI(4/2008). Dt. 31.03.2008 as above)**

*(4) Notwithstanding any thing contained in sub-section (3) above, the cases of the following categories shall be subjected to regular assessment after scrutiny-*

- (a) cases in which the gross turnover exceeds fifty lakh rupees in a financial year;**
- (b) cases in which the claim of input tax credit exceeds three lakh rupees in a year;**
- (c) cases in which the claim of refund exceeds one lakh rupees in a year;**
- (d) cases in which there is fall exceeding fifteen percent in gross turnover or payment of tax compared to last year;**
- (e) cases in which the ratio between purchases and sales or between input tax and output tax or between stocks and sales is abnormally inconsistent with the general trend in the trade or industry ;**
- (f) cases based on definite intelligence about evasion of tax;**
- (g) cases in which the dealer fails to complete the return (s) in material particulars after being given an opportunity for the same;**
- (h) cases in which the claim of sale, purchase or consignment of goods, or input tax credit is not matching with the accounts of the other party to the transaction;**
- (i) cases selected to a maximum of 20% on the basis of any criteria or on random basis from amongst the cases covered under the provisions of sub-**

*section (3) and sub-section (4) for self assessment:*

*Provided that the State Government may, by notification in the official Gazette, change the criteria for selection of cases for scrutiny.*

*(5) Save the cases covered under the provisions of sub-section (3) and sub-section (4) for self assessment, in rest of the cases the assessing authority shall, notwithstanding the fact that the dealer may already have been provisionally assessed under section 24, serve on such dealer in the prescribed manner a notice requiring him to appear on a date and place specified therein, to 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 Sale invoice, or to produce such evidence as may be specified in the notice:*

*Provided that such notice shall be **served** on the dealer before the expiry of one year from the last date prescribed for filing the annual return relating to the assessment year or the actual*

*date when the return has been filed, whichever is later, and after the notice has been **served** the case may be disposed of **within three years from the close of the year to which the assessment relates.***

*(6) The assessing authority shall, after examination of returns, books of accounts and documents and after considering all the evidences produced in the course of proceedings including tax audit proceedings under sub-section (8) or collected by him otherwise and after making such enquiry, as it may deem fit, shall-*

*(a) If he is satisfied that turnover of sales and, or of purchases disclosed and amount of tax shown payable by the dealer in annual return is correct, assess the dealer to tax in accordance with the provisions of the Act, by an order in writing, on the turnover admitted by the dealer; and*

*(b) If he is of the opinion that the turnover disclosed and the amount of tax paid by the dealer does not appear to be correct, cause a notice to be served on the*

*dealer, stating the reason, for non acceptance of the turnover of sales or purchases or both, as disclosed by him and shall give him a reasonable opportunity of being heard and after considering the reply submitted by the dealer the assessing authority-*

*(i) if he is satisfied that the turnover disclosed by the dealer is correct, he shall assess the dealer, by an order in writing, to tax according to the provisions of this Act, on the turnover admitted by the dealer; or*

(ii) *if he is not satisfied with the reply submitted by the dealer he shall determine the turnover to the best of his judgment and tax payable thereon according to the provisions of this Act, by an order in writing.*

*Provided that where the opportunity for production of books, accounts and documents has been afforded to the dealer but for any reason he has not availed such opportunity and thereby the assessing authority could not examine the correctness and propriety of particulars shown in the returns, it shall not be necessary to issue show cause notice to such dealer before making an assessment order to the best of his judgment.*

*Provided further that no order under this sub-section shall be passed after the expiry of three years from the close of the year to which the assessment relates.*

*(7) Any provisional assessment order in respect of any tax period under section 24 shall not prevent the assessing authority to make final assessment and the provisional assessment order shall stand merged in the final assessment order passed under this section.*

*(8)(a) The assessing authority or any other officer authorised by the Commissioner may for the purpose of complying with the requirements of this Act, undertake audit of the records, stock in trade and related documents of the dealer, who is selected by the assessing authority in the manner as may be prescribed for the purpose.*

*(b) For the purpose of audit under clause (a) the assessing authority or any other officer authorised by the Commissioner shall examine the correctness of return or returns filed and admissibility of various claims including input tax credit.*

*(c) The audit may be taken up in the office, business premises or warehouse of the dealer. However, the assessing authority may, if he deems it necessary, require the dealer to either attend and produce or cause to be produced the books of accounts and other documents in his office or any other place which may be specified in the notice.*

*(d) The dealer shall provide full cooperation and assistance to the assessing authority or the authorised officer to conduct the proceedings under this section at his business premises and if it is found that the dealer or his authorised representative, without any reasonable cause, is not available or not functioning from such premises, the assessing authority shall assess the dealer under this section or, as the case may be, provisionally assess the dealer under section 24 of this*

*Act, to the best of his judgment as to the amount of turnover and tax due from the dealer.*

*(9) In cases of the following dealers or class of dealers in respect of different transactions more than one assessment may be made for the same assessment year and will be treated as part of one assessment year-*

*(a) dealer who has obtained more than one authorisation for transit of goods through the State; in respect of each authorisation for transit of goods to the State;*

*(b) casual trader who has no fixed place of business, by different assessing authorities in whose jurisdiction he has carried on business;*

*(c) unregistered dealer who imports taxable goods on each occasion, he imports goods;*

*(d) unregistered dealer who either executes works contracts or effects transfer of right to use any goods, for any purpose in jurisdiction of more than one assessing authorities and has no fixed place of business, by each assessing authority in respect of business done in his jurisdiction:*

*Provided that more than one assessment shall not be made in respect of the same turnover of sales or turnover of purchases.*

*(10) Where during the course of an assessment year the rate of tax on the turnover of any goods or class of goods is varied or an exemption in respect thereof is granted or cancelled the assessment, so far as it relates to the portion of such turnover for the period after the date of variation, exemption or cancellation shall be made on the basis of the rate so varied or the exemption so granted or cancelled.*

*(11) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act*

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 26: Assessment of unregistered person liable to tax**

The Assessing Authority, upon information which has come to his possession, is satisfied that any person who is liable to pay tax under this Act in respect of any period has failed to get himself registered, he shall, before expiry of three years following the end of the relevant financial year, proceed to assess the person to the best of his judgment as to the amount of tax due from such person in respect of such period and all subsequent periods and shall direct him further to pay, by way of penalty, a sum equal to the amount of tax found due as a result of such assessment :

Provided that no such assessment shall be made without giving the dealer a reasonable opportunity of being heard.

Explanation:- For the purposes of this section, a dealer shall be deemed to have failed to apply for registration, if he makes an incomplete application for registration or having made an application for registration, fails to comply with any direction given to him by the assessing authority within the time specified by it.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 27: Special Provisions relating to Casual Dealer:**

Notwithstanding anything to the contrary contained in section 15 or section 25:

(1) A casual dealer shall, at least seven days before commencing business in the State, submit to the Assessing Authority an application for registration and such particulars of his business in such form and manner as may be prescribed.

(2) Such casual dealer shall deposit within seven days but before commencement of business, the Assessing Authority, which shall not exceed the estimated liability to pay tax for one month or such lesser period for which the casual dealer is conducting business, may fix security in cash as.

(3) The Assessing Authority shall, after such enquiry as he considers necessary and after the dealer has furnished the demanded security, allow the application and cause the dealer to be registered and issue a Certificate of Registration in the prescribed form.

(4) The Assessing Authority shall, after the dealer is registered, issue him forms as he may deem fit, for bringing goods for sale in the State. The dealer

shall render complete account of forms received and used and surrender the unused forms in such manner as may be prescribed.

(5) Such casual dealer shall submit such returns of his turnover at such intervals, within such period and in such form and manner as may be prescribed.

(6) Such casual dealer when ceases to carry on business shall file a final tax return within seven days of the conclusion of his business, but before leaving the place, in the form and manner as may be prescribed.

(7) The Assessing Authority shall, after examining the returns, books, accounts and after such enquiries as he considers necessary, assess him to tax as soon as possible after the receipt of final tax return from the casual dealer;

Provided that where the period of business of such casual dealer spreads over more than one financial year, the assessment order shall be made separately for the periods falling in separate financial years.

(8) The Assessing Authority after adjusting any tax due from such casual dealer, refund the balance amount of security to him.

(9) Such casual dealer shall be liable to tax if his turnover for this period exceeds the proportionate amount of taxable quantum as per clause (a) of sub-section (7) of section 3 and provisions of clause (b) thereof shall also be applicable.

(10) Where the period of business of such casual dealer during a financial year exceeds 60 days and he ceases to be a casual dealer, he shall apply for registration as a regular dealer under section 15 and shall be assessed to tax as a regular dealer for the whole year as per the provisions of section 25 or section 26;

Provided that the taxable quantum as per sub-section (9) above shall be calculated for total of the broken periods:

Provided further that the turnover and the tax assessed under this section for various periods in a financial year shall be merged in the final assessment and any tax paid as a casual dealer shall be adjusted against the tax payable on final assessment under sections referred to above.



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 28: Assessment in case of special circumstances:**

(1) Assessment in case of Price Variation-Where a dealer receives in any year any amount due to price variation which would have been in his turnover for any previous tax period if it had been received by him during that period, it shall be deemed to be turnover during the tax period in which such amount was received and he shall, during the tax period in which such amount was received, include such amount in the return separately for the tax period, to the assessing authority and the assessing authority shall assess the tax payable on such amount as his turnover for the tax period in which such amount is received:

Provided that the tax shall be charged at the rate at which it would have been charged had such turnover been assessed for the assessment year to which such turnover belongs.

(2) **Protective Assessment**-Where the assessing authority has reason to believe that any person, with a view to evade the payment of tax or in order to claim any input tax credit which he otherwise is not eligible for, or was carrying on business in the name of, or in association with any other person either directly or indirectly, whether as an agent, employee, manager, partner or power of attorney holder, guarantor, relative or sister concern or in any other capacity, such person and the person in whose name the registration certificate, if any, is taken, shall jointly and severally be liable for payment

of the tax , interest or penalty or other amount due under this Act which shall be assessed, levied and recovered from all or any such person as if such person or persons are dealer under the Act. However before taking action under this section the person concerned shall be given a reasonable opportunity of being heard.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 29: Assessment of Escaped Turnover:**

(1) Where after a dealer is assessed under section 25 or section 26 for any year or part thereof, the assessing authority has reason to believe that the whole or any part of turnover of the dealer in respect of any tax period has-

- (a) escaped assessment; or
- (b) been under assessed; or
- (c) been assessed at a rate lower than the rate at which it is assessable;
- or
- (d) been wrongly allowed any exemption or deduction therefrom; or
- (e) been wrongly allowed any tax credit therein,

the assessing authority shall, after recording the reasons in writing, serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as he considers necessary, he shall assess or reassess the turnover of the dealer and tax according to law and the provisions of this Act shall as far as may be, apply accordingly:

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.

Explanation (1): Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

Explanation (2): For the purposes of this section and of section 30, "Assessing Authority" means the officer who passed the earlier

assessment order, if any, and includes the officer having jurisdiction for the time being to assess the dealer.

Explanation (3): Notwithstanding the issuance of notice under this sub-section, where an order of assessment or reassessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of assessment or reassessment made under this section in pursuance of such notice.

(2) Except as otherwise provided in section 28 or under this section, no order of assessment or reassessment shall be made under sub-section (1) after the expiry of three years from the end of the year in respect of which or part of which the tax is assessable.

(3) Assessment or reassessment in respect of turnover escaped from assessment may be passed at any time within three years and nine months ending on 31<sup>st</sup> December after the expiry of assessment year for which assessment is to be made, provided that notice under this section has been served within a period of three years and six months ending on 30<sup>th</sup> September after the expiry of the assessment year for which assessment is to be made.

(4) If the commissioner on his own or on the basis of reasons recorded by the assessing authority is satisfied that it is just and expedient so to do, he may authorise the assessing authority in that behalf, and then such assessment or reassessment may be made after the expiration of the period aforesaid but not after the expiration of six years from the end of such

assessment year, notwithstanding that such assessment or reassessment may involve a change of opinion.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 30: Rectification of Mistakes:**

(1) Any officer or authority, or the Tribunal or the High Court may, on its own motion or on the application of the dealer or any other interested person, rectify *any* mistake in any order passed by him or it under this Act *apparent on the face of the record*, within *three years* from the date of the order sought to be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period;

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fee or other dues shall be made unless a reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 31: Power to set aside an Order of Assessment:**

(1) In any case in which an order of *assessment or reassessment or order of penalty* is passed ex-parte, the dealer may apply to the assessing authority within **thirty days of the service of the order** to set aside such order and reopen the case; and if such officer is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, he may set aside the order and reopen the case for hearing:

Provided that no such application for setting aside an ex-parte assessment order shall be entertained unless *the dealer has submitted all periodical returns and Annual Return completely and correctly and* it is accompanied by satisfactory proof of the payment of the amount of **tax admitted** by the dealer to be due.

*(substituted vide notification no. 22 January 07, 2010 as above)*

(1) In any case in which an order of assessment or reassessment or order of penalty is passed ex-parte, the dealer may apply to the assessing authority within **thirty days of the service of the order** to set aside such order and reopen the case; and if such officer is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, he may set aside the order and reopen the case for hearing:

Provided that no such application for setting aside an ex-parte assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of **tax admitted** by the dealer to be due.

(2) Where an assessment order under section 24 is passed ex-parte, the dealer may apply to the assessing authority within 30 days of the service of the order , to set aside such order and if such authority is satisfied that the

dealer has filed the return and deposited the tax due according to the return within 30 days from the last day prescribed for filing such return, it may modify or set aside such order and also the demand notice, if any, issued thereunder.

(3) If a dealer is granted an eligibility certificate under section 4A of the Uttaranchal(the Uttar Pradesh Trade Tax Act,1948) Adaptation and Modification Order, 2002 for the period for which an order of assessment or reassessment or an order in appeal has been passed prior to the grant of eligibility certificate, such order may be set aside either on its own or on the application of the dealer, by assessing or appellate authority having jurisdiction within one year of receipt by him of the copy of the order granting such eligibility certificate and a fresh order may be passed according to law:

Provided that where the application under this section has been made by the dealer within the period aforesaid, it may be disposed of even beyond such period.



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 32: Period of Limitation for making Assessment or Reassessment:**

(1) No order of assessment under section 24 for any tax period of an assessment year shall be made after the dealer has submitted annual return for such assessment year and where annual return has not been submitted by the dealer, assessment shall not be made after the expiry of the period prescribed or time allowed, if extended, for submission of annual return for such period.

(2) Except as otherwise provided in section 28 no order of assessment or reassessment under any provisions of this Act for any assessment year shall be made after expiration of 3 years from the end of such assessment year.

(3) Assessment or reassessment order under the provisions of section 29 may be made within the time prescribed therein.

(4) If an order of assessment is set aside and the case is remanded for reassessment by any authority under the provisions of this Act or by a competent Court, the order of reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case.

(5) If an order of assessment is quashed on the ground of want of jurisdiction of the assessing authority or due to improper service of any notice or due to service of improper notice or any other like ground, by any competent authority or Court, fresh order of assessment may be made by the assessing authority having jurisdiction within one year from the date of receipt by the assessing authority whose order is so quashed, of the copy of the order of such authority or Court:

Provided that where any assessment or reassessment order made earlier has been quashed for want of proper service of notice or for want of jurisdiction or for want of service of proper notice, fresh order of assessment or reassessment may be made by the assessing authority after serving notice properly and after affording reasonable opportunity of being heard to dealer within the time prescribed.

(6) If an order of assessment or reassessment for any assessment year is set aside under section 31, a fresh order of assessment or reassessment for that year may be made within one year from the date on which such earlier order was set aside.

(7) Where the proceedings for assessment or reassessment for any assessment year remain stayed under the orders of any Court or authority, the period commencing from the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in so computing, the period of limitation comes to less than one year, such assessment or reassessment may be made within one year from the date of receipt by the assessing authority of the order vacating the stay.

(8) The period during which any appeal or other proceedings in respect of any other assessment or reassessment or any other matter of assessee remain pending before the High Court or the Supreme Court, involving a question of law having direct bearing on the assessment or reassessment in question, shall be excluded in computing the period of limitation provided in this section.

(9) Where in the assessment or reassessment of a dealer for any assessment year, any assessing authority, -

(a) has included any turnover and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment -

- (i) of such dealer for any other assessment year, or
- (ii) of such dealer under the Central Sale Tax Act, 1956, or
- (iii) of any other dealer, whether under this Act, or under the Central Sales Tax Act, 1956; or

(b) has not included any turnover on the ground that it relates to assessment under the Central Sales Tax Act, 1956, and any superior authority or Court has, in exercise of the powers lawfully vested in it,

held such turnover to relate to the assessment of the dealer under this Act, whether for such assessment year, or any other assessment year, then nothing contained in this section limiting the time shall apply to assessment or reassessment whether under this Act or under the Central Sales Tax Act, 1956, of such dealer or such other dealer relating to such assessment year or such other assessment year, as the case may be.

(10) Where the eligibility certificate granted under section 4-A of Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification order, 2002 has been amended or cancelled by the Commissioner under sub-section (13) of section 76 of this Act, the order of assessment or reassessment for the relevant year may be made within one year from the date of receipt by the Assessing Authority of the copy of the order amending or cancelling the aforesaid certificate.

(11) Where any order passed by the assessing 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 any thing contained in this Act, the assessing authority may, with the permission of the Commissioner or any officer authorised by him for this purpose, proceed to reassess the tax payable by the dealer in accordance with the judgment or order, at any time within a period of three years from the date of the judgment or order.

(12) Notwithstanding any thing contained in this section, where the State Government is of the opinion that due to any extra-ordinary circumstances prevalent at the time in the State or any part of it, it will be difficult to complete assessment or reassessment in any case or class of cases within the time prescribed under this section, it may, by notification in the Gazette extend the time limit prescribed under this section for making assessment or reassessment in such a case or class of cases.

(13) Where any dealer claims refund of any amount deposited by him as tax or any amount recovered from him as tax or any amount deducted from him as tax under provisions of sub-section (1) of section 35 and where no assessment has been made within the time prescribed under this section, notwithstanding anything contained in this section, the Assessing Authority may, with the prior permission of the Commissioner in writing, make an assessment of the turnover and tax even beyond the time prescribed under this section for such assessment year towards tax liability in respect of the turnover against which such amount has been deposited or deducted or recovered.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 33: Rounding off of Turnover and Tax etc:**

(1) The amount of turnover, determined in prescribed manner shall, if such amount is not in the **multiple of ten**, be rounded off to the nearest multiple of ten rupees, that is to say, a part of ten rupees which is less than five rupees shall be ignored and any other part shall be counted as ten rupees. The amount so rounded off shall be deemed to be the turnover of the assessee for the purpose of assessment of tax under this Act.

(2) The amount of tax, fee, interest, penalty or any other sum payable or the amount of refund due under the provisions of this Act shall, where such amount contains part of a rupee be rounded off to the nearest rupee, that is to say a part of rupee which is less than 50 paisa shall be ignored and any other part shall be counted as one rupee.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 34: Payment and Recovery of tax:**

(1) Amount of tax admittedly payable shall be deposited in the prescribed manner along with the return of the respective tax period. Amount assessed as tax shall be deposited in the manner specified in and within **60 days** (30 days) (*substitued vide notification no.-1314/XXXVI(4)/2008 Dt. 31.03.2008*) of the service of order of assessment and notice of demand. Amount imposed by way of penalty shall be deposited in the prescribed manner and within 30 days of service of the order imposing such amount by way of penalty. Any other amount *including late fee, if any* except the amount of tax admittedly payable or assessed and penalty imposed, that may be determined as payable under any provisions of this Act, shall be paid in the prescribed manner and within the prescribed time:

Provided that where no such time has been prescribed, the period to deposit the due amount shall be deemed to be 30 days of the service of the order by which such amount has been determined.

(2) A registered dealer furnishing return under section 23 shall pay into the 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 *late fee, if any, or all the three* payable by him under section 23 *or late fee, if any, payable by him*

*under section 25* and shall furnish a receipt from the Treasury *or proof of e-payment* showing the payment of such amount.

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(3) A registered dealer furnishing a revised return in accordance with sub-section (9) or sub-section (10) of section 23 which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing the payment of the differential amount in the manner provided in sub-section (2).

(4) The tax admittedly payable shall be deposited within the time prescribed failing which simple interest at the rate of fifteen percent per annum shall become due and be payable on the unpaid amount with effect from the date immediately following the last date prescribed till the date of payment of such amount.

Explanation (1): for the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales, or as the case may be, the turnover of purchases or of both, as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceeding under this Act, whichever is greater.

Explanation (2): "Month" shall mean thirty days and the interest payable in respect of period of less than one month shall be computed proportionately.

(5) The amount of tax assessed under this Act in excess of amount of tax already deposited along with the interest payable according to the provisions



of this Act shall be deposited in the manner specified in and within 30 days of service of order of assessment and notice of demand.

(6) If the tax (other than the tax admittedly payable to which sub-section (2) applies) assessed, reassessed or enhanced by any authority or Court remains unpaid for three months after expiration of the period specified in the order of assessment and demand notice, a simple interest at the rate of nine percent per annum on unpaid amount calculated from the date of such expiration shall become due and be payable:

Provided that the amount of interest under this sub-section shall be re-calculated if the amount of tax is varied on appeal or revision or by any order of a competent Court.

(7) The amount of interest payable under sub-section (2), (3), (4) and (5) shall, without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, be added to the amount of the tax and shall also be deemed for all purposes to be part of the tax.

(8) Where an order of assessment or reassessment referred to in sub-section (4) of section 32 or an order of assessment or reassessment referred to in sub-section (6) of section 32 has been made and tax payable is enhanced the dealer shall be liable to pay interest on such enhanced tax as if it was enhanced in the order of assessment made for the first time and for this purpose the date of service of the order of assessment and demand notice shall be deemed to be amended accordingly.

(9) Where realisation of any tax remained stayed by order of any Court or authority and such order of stay is subsequently vacated, the interest referred to in sub-section (6) shall be payable also for any period during which such order remained in operation.

(10) Any tax or other dues *including late fee, if any* payable to the State Government under this Act, any amount of money which a person is required to pay to the assessing authority under sub-section (14) for which he is personally liable to the assessing authority under sub-section (17) shall, notwithstanding any thing contained in any other law for the time being in force and subject to any special or general order of the State Government be recoverable as arrears of Land Revenue, or in the prescribed manner by the assessing authority or any other officer authorised by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery-

(a) have all the powers which a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree;

(b) have the power to require the assessing authority or such authorised officer having jurisdiction in any other area to make such recovery if the defaulter is or has property within the area of such other assessing authority or officer and there upon such other assessing authority or officer shall proceed to make recovery in the prescribed manner.

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(11) Notwithstanding any thing contained in sub-section (4) and (5) and notwithstanding any judgment, decree or order of any Court, Tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act, is served upon the dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues then -

(a) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice in respect of the amount by which such tax or other dues are enhanced, and any proceeding in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal ;

(b) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced-

(i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realised;

(ii) if any recovery proceedings are pending before any officer or authority other than the assessing authority, the assessing authority shall intimate such reduction to such officer or authority;

(iii) any proceeding initiated on the basis of notice or notices served upon the dealer before the disposal of such appeal, revision or other proceeding, including any recovery proceeding may be continued in relation to amount so reduced from the stage at which it stood immediately before such disposal;

(c)no fresh notice shall be necessary in any case where amount of the tax or other dues is not enhanced ( with reference to the amount assessed by the assessing authority) as a result of such appeal, revision or other proceedings.

(12) In respect of any sum recoverable under this Act as arrears of Land Revenue, the assessing authority may, after 90 days of the service of the order of assessment and notice of demand, forward to the Collector a certificate for recovery under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability of this amount on the person who is liable and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

Provided that no such certificate for recovery shall be issued before giving a notice to the person/dealer to this effect;

Provided further that without prejudice to the powers conferred by this section the Collector shall, for the purpose of recovering the amount specified in the certificate shall have also all the powers which-

(a) a Collector has under the Revenue Recovery Act, 1890; and

(b) a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree.

Explanation: The expression Collector includes an Additional Collector or any other officer authorised to exercise the powers of Collector under the law relating to land revenue for the time being in force in the State.

(13) Where any amount of tax or penalty is recoverable under this Act from the owner of a vehicle and recovery certificate has been issued, the officer competent to execute the recovery certificate may take the assistance of police and other officer or officials of the State Government in locating such vehicle or other vehicles of the same owner. If so required by the recovery officer such other officer or officials shall be empowered to detain such vehicle. Whenever any such vehicle is detained by any officer or official he shall give the cause of detention in writing to the person in charge of the vehicle at the time of detention and shall immediately inform the officer executing the recovery certificate. Officer executing the recovery certificate shall proceed with according to law to realise arrears against such owner of vehicle:

Provided that if amount recoverable is paid after detention of vehicle, the vehicle shall be set free;

Provided further that if at the time of detention some goods are loaded on it and owner of such goods is a person other than the owner of the vehicle, the owner or the person in charge of the goods shall be allowed to remove such goods from such vehicle if he so desires.

(14) Notwithstanding any thing contained in any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing the copy of which shall be forwarded to the dealer at his last address known to the assessing authority, require-

(a) any person from whom any amount is due or may become due to the dealer, or

(b) any person who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing authority-

(a) forthwith upon the money becoming due or being held, or

(b) at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from the dealer in respect of arrears of tax or other dues under this Act, or the whole of the money when it is equal to or less than that amount.

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

(15) The assessing authority may at any time or from time to time amend or revoke such notice.

(16) Any person making any payment in compliance with notice under sub-section (14) shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing officer shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent the amount referred to in the receipt.

(17) Any person discharging any liability to the dealer after the receipt of notice referred to in sub-section (14) shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the amount mentioned in such notice, whichever is less.

(18) Where a person, to whom a notice under sub-section (14) is sent, proves to the satisfaction of the assessing authority that sum demanded or any part of thereof is not due by him to the dealer, or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, as the case may be, to the assessing authority.

(19) Notwithstanding any thing to the contrary contained in any law for the time being in force, any tax payable under the provisions of this Act together with interest or penalty, shall be due for payment immediately when it becomes payable or assessed in the manner provided in this Act or the rules made thereunder and any such amount payable by a dealer on account of tax, penalty or interest or any amount which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.

(20) Notwithstanding any thing contained in this Act, no tax, fee, interest or penalty under this Act shall be recovered and no refund shall be allowed if the amount involved for any assessment year is **less than 10 rupees**.

(21) The Assessing Authority shall have the powers to-

(a) withhold issuing of any Form or Certificate under the Act to a person, or a dealer or a casual dealer,

(b) order seizure of goods being transported by a person, or a dealer or a casual dealer, from whom any tax, penalty, interest or any other amount under the provision of the Act is due.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **35: Recovery of Tax by way of Tax Deduction at Source:**

(1) Notwithstanding anything contained in sub-section (1) of section 22, every person 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 any other form) in pursuance of a works contract, not being a building contract of such class or value as may be notified by the State Government in public interest in this behalf, shall, at the time of making such payment to the contractor, either in cash or in any other manner, deduct an amount equal to **six percent** *(four percent) (substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with notification no.- 1093/2012/181(120)/XXVII(8)/08 Dt.14-12-2012)* of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract:

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate,

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section.



(2) Where under an agreement of transfer of right to use any goods for any purpose (whether or not for a specified period) the lessee to whom the right to use any goods is transferred, is-

(a) a registered dealer, or

(b) the Central Government or any State Government; or

(c) any local authority, any corporation or undertaking constituted by or under a Central Act or a State Act; or

(d) any Co-operative society or any other society, club, firm or other association of persons or a company, whether incorporated or not,

the person responsible for making such payment to the lessor (who is transferring the right to use any goods) for discharge of liabilities under such agreement, shall at the time of making such payment to the lessor, either in cash or by credit or any other manner, deduct an amount at the rate of four percent of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such transfer of right to use any goods:

Provided that the assessing authority may, if satisfied that it is expedient in the public interest so to do and for reasons to be recorded in writing, order that in any case or class of cases no such deduction shall be made or, as the case may be, such deduction shall be made at a lesser rate;

Provided further that where any deduction has been made by a contractor from the payment made to his sub-contractor in accordance with sub-section (3), the amount of such payment shall be deducted from the amount on which deduction is to be made under this sub-section.

(3) Any contractor responsible for making any payment for discharge of any liability to any sub-contractor in pursuance of a contract with the sub-contractor for the transfer of property in goods (whether as goods or in any

other form) involved in the execution of a works contract or for transfer of right to use any goods for any purpose, whether wholly or in part, of the work undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or by any other mode, deduct an amount equal to four percent of such payment or discharge, purporting to be a part of full amount of tax payable under this Act on such transfer from the bills or invoices raised by the sub-contractor as payable by the contractor:

Provided that no deduction under this sub-section shall be made on the amount on which deduction has already been made under sub-section (1) or sub-section (2).

(4) The amount deducted under sub-section (1) or sub-section (2) or sub-section (3) shall be deposited into the Government Treasury by the person making such deduction **before the expiry of the month following** that in which deduction is made.

(5) The person making such deductions under sub-section(1) or sub-section(2) or sub-section(3) shall, at the time of payment or discharge furnish to the person from whose bills or invoices such deduction is made, a certificate in such form and manner and within such period as may be prescribed.

(6) The person responsible for making the payment to the contractor or sub-contractor shall submit such return of such payments at such intervals, within such period, and in such manner as may be prescribed, but the assessing authority may, in its discretion, for reasons to be recorded extend the date for the submission of the return by such person.

(7) Any deduction made in accordance with the provisions of this section and credited in the 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 credit shall be given to him for the amount so deducted on the production of the certificate referred to in sub-section (5), in the assessment made for the relevant assessment year.

(8) If any such person as is referred to in sub-section (1) or in sub-section (2) or in sub-section (3), fails to make the deduction or after deducting fails to deposit the amount so deducted as required in sub-section (4), the assessing authority may, after giving such person an opportunity of being heard, 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 but not so deducted and, if deducted, not so deposited into Government. Treasury.

(9) Without prejudice to the provisions of sub-section (8), if any such person fails to make the deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of fifteen percent per annum 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.

(10) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (9) shall be a charge upon all the assets of the person concerned.

(11) Payment by way of deduction in accordance with sub-section (1) or sub-section (2) or sub-section (3) shall be without prejudice to any other mode of recovery of tax due under this Act from the contractor or the sub-contractor, as the case may be.

Explanation: For the purpose of this section, "assessing authority " means the officer having jurisdiction over the place where the place of business or residence of the person is located.

(12) Nothing contained in this section shall prevent the assessing authority from making an assessment of tax payable by the dealer in accordance with other provisions of the Act and notwithstanding any thing contained in this section the dealer shall be liable to pay tax according to other relevant provisions of the Act.

*(13) (i) Every person responsible for making tax deduction at source in accordance with the provisions of this Section, if he is not registered dealer, shall submit an application in the prescribed form to the Assessing Authority for allotment of Tax Deduction Account Number. The application shall be disposed of by the Assessing Authority in such time and manner as may be prescribed;*

*(ii) If the application is in order and particulars given therein are correct, the Assessing Authority shall allot him a Tax Deduction Account Number;*

*(iii) Tax Deduction Account Number shall be mentioned in all the documents pertaining to deposit of tax and in all correspondence and returns filed. No person other than a registered dealer can make tax deduction at source unless he has applied for a Tax Deduction Account Number;*

*(iv) If any person referred to in clause (i) above fails to apply for Tax Deduction Account Number, he shall be liable for penalty as per the provisions of this Act.*

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 36: Refund:**

(1) Subject to other provisions of this Act and the rules made thereunder, the assessing authority 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:

Provided that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956, or the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and only the balance, if any, shall be refunded.

(2) Where any refund is due to any dealer according to the return furnished by him for any tax period, such refund may provisionally be adjusted as per the provisions under sub-section (10), sub-section (11) or sub-section (12) of section 6.

(3) If any amount is found to be refundable in accordance with sub-section (1) or sub-section (2), the refund *shall be made in the prescribed manner including electronic methods* within one month from the date of order of refund *or the date of receipt, of the order of refund by the assessing authority*, if such order is passed by any other competent authority or Court. If the refund is not *made* within sixty days of the date of such order or, as the case may be, the date of receipt of such order of refund by the assessing authority, the dealer shall be entitled to simple interest on such amount at the

rate of nine percent per annum from the date of expiry of such period to the date of refund.

*Provided that if any amount is found to be refundable in the cases deemed to have been self assessed in accordance with sub-section (3) of Section 25, the refund shall be made within one month of the expiry of one year from the last date prescribed for filing the annual return relating to the particular assessment year or the actual date, when the annual return is filed, whichever is later.*

*(substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

**(Prior to the substitution this sub section read as under)**

(3) If any amount is found to be refundable in accordance with sub-section (1) or sub-section (2), the refund voucher shall be sent along with the order of assessment passed by the assessing authority, or as the case may be, within one month from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or Court. If the refund voucher is not sent within sixty days of the date of such order or, as the case may be, the date of receipt of such order of refund by the assessing authority, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum from the date of expiry of such period to the date of refund.

*Provided that if any amount is found to be refundable in the cases deemed to have been self assessed in accordance with sub-section (3) of Section 25, the refund voucher, shall be sent within one month of the expiry of one year from the last date prescribed for filing the annual return relating to the particular assessment year or the actual date, when the annual return is filed, whichever is later*

*(proviso Added vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008 as above)*

(4) Notwithstanding any judgment, decree or order of any Court or authority no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act.

(5) Notwithstanding any thing contained contrary in this section any dealer to whom refund of any amount is allowed, may, before the date such refund is made, apply to the assessing authority for withholding the amount of refund for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956. If the dealer has presented his application for withholding amount of refund, the assessing authority shall withhold amount of refund. In such a case the dealer shall not be entitled for interest.

Explanation (1): The expression " Refund" includes any adjustment under the proviso to sub-section (1).

Explanation (2): *If the refund is made electronically the date of refund shall be deemed to be the date on which the refund is made, otherwise the date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in the manner prescribed.*

*(substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

*(Prior to the substitution this sub section read as under)*

*Explanation (2)- The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in the manner prescribed.*



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 37: Provisional Refund in case of Exporters:**

(1) If a registered dealer has filed returns as required by or under this Act, and the returns show any amount to be refundable to the dealer on account of sale in the course of export, then the dealer may after the end of every quarter, apply in the manner prescribed, to the assessing authority for grant of provisional refund, if any, pending assessment.

(2) The said dealer shall furnish a Bank Guarantee or other security or documentary evidence of export the assessing authority shall, subject to the provisions of this section and the rules, grant the dealer within thirty days a provisional refund that may be found as refundable. The dealer shall keep the bank guarantee or security furnished by him valid up to the date of recovery of excess amount, if any, after final assessment:

*(substitued vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008 as above )*

(2) The said dealer shall furnish a Bank Guarantee or other security to the satisfaction of the assessing authority, for an amount equal to the amount of the provisional refund. On receipt of such guarantee or other security, the assessing authority shall, subject to the provisions of this section and the rules, grant the dealer within thirty days a provisional refund that may be found as refundable. The dealer shall keep the bank guarantee or security furnished by him valid up to the date of recovery of excess amount, if any, after final assessment:

Provided that if the amount found refundable is not refunded to the dealer within the period prescribed, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum.

(3) The assessment under this Act of such dealer in respect of the year containing the period covered by the said return will be taken up as early as practicable and the provisional refund against tax due, if any, as a result of the assessment shall be adjusted.

(4) If, on assessment, the provisional refund granted under sub-section (2) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest as if it were tax admittedly due from the dealer under this Act.

(5) Interest will be charged at the rate of fifteen percent per annum from the date of grant of provisional refund, till the date of payment of such amount.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 38: Refund of Tax in case of sales to Embassies, International Organizations or to units established in Special Economic Zone:**

(1) Any person or a dealer or embassies, international organizations listed in Schedule V of this Act, shall be entitled to claim refund of tax paid by him on the purchase of goods and notwithstanding anything contained in section 36, the amount due for refund shall be refunded within 45 days of the presentation of the claim for refund.

(2) Any unit established in Special Economic Zone shall be entitled to claim refund of tax paid by it on the purchases from any unit established in Domestic Tariff Area and such dealer shall be eligible for refund of such amount as in case of exporters and the provisions of section 37 shall mutatis mutandis apply in such case

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 39: Power to Withhold Refund in certain cases:**

(1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the assessing authority is of the opinion that grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the assessing authority may, with the permission of the Commissioner or any officer authorized by him, withhold the refund till such time as he may determine.

(2) Where a refund is withheld under sub-section (1) and as a result of the appeal or further proceeding or any other proceeding, dealer becomes entitled to any refund, the dealer shall be entitled to interest as provided under sub-section (1) of section 41 on the refundable amount:

Provided that if any refund has been withheld under this section, and if any amount out of the refundable amount is adjusted towards any tax liability of the dealer, the dealer shall not be entitled for any amount of interest for the relevant period on the amount so adjusted.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 40: Disbursement of Amount Wrongly Realized by Dealer as Tax:**

(1) Where any amount is realized from any person by any dealer, purporting to do so by way of realization of tax on the sale or purchase of any goods, in contravention of the provisions of section 22, such dealer shall deposit the entire amount so realized in such manner and within such period as prescribed therein.

(2) Any amount deposited by any dealer under sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person from whom it was realized by the dealer, or for his legal representatives, and the deposit shall discharge such dealer of the liability in respect thereof to the extent of the deposit.

(3) Where any amount is deposited by any dealer under sub-section (1) such amount or any part thereof shall, on a claim being made in that behalf be refunded in the manner prescribed, to the person from whom such dealer had actually realized such amount or part thereof, or to his legal representative and to no other person:

Provided that no such claim shall be entertained after the expiry of three years from the date of order of assessment or one year from the date

of the final order in appeal or revision, if any in respect thereof , whichever is later.

(4) Where any amount has been deposited by any dealer in accordance with the provisions under sub-section (1), the dealer shall not be entitled to allow refund of such amount to the purchaser of goods.

Explanation: The expression "final order on appeal or revision" includes an order passed by the Supreme Court under Article 32, Article 132, Article 133, Article 136 or Article 137 or by the High Court under Article 226 or Article 227 of the Constitution.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 41: Interest:**

(1) Any dealer or a person entitled to refund in pursuance of any order under this Act (including assessment under section 24, section 25, or section 26) or in pursuance of any order by any court, shall subject to rules, be entitled to receive, in addition to the refund, a simple interest at the rate of nine percent per annum if the refund voucher/ *electronic intimation of refund* is not sent to him as per the provisions of section 36

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(2) The interest shall be calculated on the amount of refund due after deducting there from any tax, interest, penalty or any other dues under this Act or under the Central Sales Tax Act, 1956.

(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 of any amount of tax assessed under section 24, section 25 or section 26 in excess of tax admitted by the dealer, and the amount remains unpaid for three months after expiration of the period specified in the order of assessment and notice of demand, he shall be liable to pay simple interest

on such amount at the rate of nine percent per annum from the date of such default for so long as he continues to make default in the payment of the said tax beyond the time prescribed.

(5) Where as a result of any final order 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 modified, the interest due shall be calculated and refunded 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 thirty days from the date of the receipt of the notice of demand issued by the assessing authority if the amount remains unpaid for three months after the expiration of the period specified in the notice of demand.

(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 leviable under this Act due to the non-payment or late payment of tax shall not exceed the amount of tax on which such interest is charged.

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



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 42: Power to order Production of Accounts and Power of Entry and Inspection:**

(1) Any officer empowered by the State Government in this behalf may, for the purposes of this Act, require any dealer or any other person who carries on business of buying, selling or supplying goods for self or on behalf of other dealer, to produce before him any book, document or account relating to his business or relating to the business of other dealers, and may inspect, examine and copy the same and make such enquiries from the dealer or such person, relating to his business or business of other dealers, as he considers necessary:

Provided that books, documents and accounts of a period more than five years prior to the assessment year shall not be so required, unless in any special case for reasons to be recorded such officer considers necessary.

(2) All books, documents and accounts maintained by any dealer or a person in the ordinary course of business, the goods in his possession, and his place of business or vehicle shall be open to search and inspection at all reasonable time by such officers, as may be authorized by the State Government in this behalf. For the purpose of this section, the officer authorized thereunder may enter and search any place of business or vehicle or any other building or place where he has reason to believe that the dealer keeps or is for the time being keeping, any books, registers, documents, accounts or goods relating to his business and the officer may 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-

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

(b) to afford the necessary facility to check or verify the cash, stock or other valuable article or things which may be found therein, and

(c) 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:

(3) Notwithstanding any thing contained in this section, no business premises or residential accommodation shall be entered into, inspected or searched by such officer unless specially authorized by the Commissioner or such other officer not below the rank of a Joint Commissioner, as may be authorised in this behalf by the Commissioner.

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

(4) The officer authorised under sub-section (1) or sub-section (2) 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 article 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.

(5) If any officer authorised under sub-section (1) or sub-section (2) has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act and that any thing necessary for the purpose of an investigation into his liability may be found in any account, register or document he may seize such account, register or document as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person authenticates such copies and extracts, and gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or document.

Explanation: In calculating the period specified in this sub-section the period during which proceeding under this Act remain stayed under the order of any Court or authority shall be excluded

.

(6) Notwithstanding any thing contained in sub-section (5) the officer seizing any account, register or other document under that sub-section may for the reasons to be recorded by him in writing and with the prior approval

of the Commissioner, retain such account, register, or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the assessment years for which they are relevant as he deems necessary.

(7) An officer authorized to act under sub-section (1) or sub-section (2)-

(a) shall have the power to seal the place of the business, vehicle or any box, almirah or receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or the person in occupation or incharge of such office, shop, godown, vehicle or box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon do so;

(b) where the owner or other person in occupation or incharge of the office, shop,

godown, or vehicle or of the box, almirah or other receptacle found in the office, shop, godown, vessel or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such office, shop, godown, vehicle or box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.

(8) No person shall tamper with any seal put under sub-section (7).

(9) Any officer empowered under sub-section (1) or sub-section (2) may require any person,

(a) who transports or holds in custody, for delivery to or on behalf of any dealer, any goods, to give any information likely to be in his possession in respect of such goods or to permit inspection thereof;

(b) who maintains or has in his possession any account, book or document relating to the business of a dealer, to produce such account, book, or document for inspection.

(10) Where in the course of any search at the business place of a dealer any book of accounts, other documents, money or goods are found on the possession or control of any person, it shall be presumed, unless the contrary is proved, that such books of account, other documents, money or goods belong to such dealer.

(11) The officer who has made inspection or search or seizure of any books, accounts or documents or investigation or an officer who has made investigations under this section, on the basis of fact found, shall prepare a report in respect of such inspection or search or seizure or investigation and where the officer preparing the report is an officer different from the assessing authority, such officer shall forward a copy of such report to the assessing authority of the dealer.

(12) The assessing authority may require any dealer or a 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.

(13) The assessing authority may call for details and particulars from State or Central Government departments and financial institutions including banking companies, which, he is of the opinion, will be relevant and useful for the purposes of this Act.

(14) Notwithstanding the powers of the assessing authority to inspect books of account and enter and search any place of business of any dealer (both registered or unregistered) under this section, the Commissioner, with a view to identify dealers who are liable to pay tax under this Act, may from time to time cause a survey of unregistered dealers to be taken.

(15) The provisions of section 100 and section 165 of the Code of Criminal Procedure, 1973 shall, as far as may be, apply in relation to any entry, search or inspection under this section as they apply in relation to any inspection or search under the said Code.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 as below )*

### **42A. Documents to be carried and information to be given regarding goods in movement :**

The owner or a person duly **authorized** by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be, who **intends the movement of goods**, exceeding such quantity or measure or of such value as may be notified by the state Government in that behalf shall, before movement of goods prepare such documents containing such information in this regard as may be **prescribed** and submit such information to such authority in such form and manner within such time as may be **prescribed** and during the movement of goods shall carry with him such document and invoice/ challan (as applicable), and document of title to goods/ GR/ Bilty or like other such documents .

### **42B. Control on clearing, forwarding or booking agent and any person transporting goods:**

(1) Every clearing, forwarding or booking agent or broker or any other person transporting goods, who in the course of his business handles documents of title to goods **or transports goods or takes delivery of goods** for or on behalf of a dealer or a person **and having his place of business in the State** shall, furnish information about his place of business in the State and also about vehicles or carriers owned or hired

by him for transportation of goods to such authority in such form and manner and within such time as may be **prescribed**.

(2) Every such agent or person referred to in sub-section (1) shall maintain true and complete record of the goods transported, delivered, or received for transport, containing such information as may be **prescribed** and the copy of documents of title relating thereto and shall furnish true and complete particulars and information relating to the transaction of goods of any dealer or person to the officer who is **authorized** for this purpose by the commissioner in such form and manner within such time as may be **prescribed** and shall produce the said record and the documents before such officer as and when required.

(3) Any agent or person referred to in sub-section (1) who contravenes the provisions of the said sub-section (1) or sub-section (2), the authority referred to in sub section(1) or (2) may, after giving such agent or person an opportunity of being heard, direct him to pay by way of penalty an amount not exceeding one thousand rupees for the first contravention and if the contravention is continuing one with a penalty not exceeding two hundred rupees for everyday during which the offence continues.

(4) Any agent or person referred to in sub-section (1) does anything directly or indirectly, which results in evasion of tax or would have resulted in evasion of tax if such evasion was not detected and



prevented in time, the **prescribed** authority may, after giving him a reasonable opportunity of being heard, direct him to pay by way of penalty an amount not exceeding forty percent of the value of such goods involved in the transactions of a dealer or a person or three times the tax, leviable on such goods, which appears to have been evaded or so sought to be evaded, whichever is higher. In such case, the agent or person referred to in sub-section (1), notwithstanding anything contained in this Act, shall be deemed to be a dealer and he shall also be liable to pay the tax so evaded or so sought to be evaded. The penalty and tax so imposed shall be without prejudice to his liability under any other provision of this Act or under any other law for the time being in force.

**Explanation:**

(i) “Clearing, forwarding, booking agent or broker” shall include a person who renders his services for clearing, forwarding or booking of or taking delivery of consignment of goods at railway premises, air cargo complex, containers depot, booking agency, goods transport company office or any place of loading or unloading of goods or contrives, makes and concludes, bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise. and;

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

(5) Notwithstanding anything contained in Section 51, any person aggrieved by order of penalty passed under sub-section (3) or sub-section (4) of this section may, within 60 days from the date of service of the copy of the order, appeal to such authority as may be **prescribed**. Provided that such appeal shall lie only if the proof of deposit of 50% of the amount of penalty, imposed under sub-section (3) or 25% of the amount of penalty imposed under sub-section (4) of this section is submitted.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 43: Power to Seize Goods:**

(1) An officer authorised under sub-section (1) or sub-section (2) of section 42 shall have the power to seize any goods-

(a) which are found in the dealer's place of business or vehicle or any other building or place: or

(b) which, such officer has reason to believe to belong to the dealer and which are found in any place of business or vehicle or building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in the course of his business:

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by him, and a copy thereof shall be given to the dealer.

(2) Where any officer empowered by the State Government in this behalf has reason to believe that the goods found in any vehicle, building or place are not traced to any bona fide dealer or it is doubtful if such goods are properly accounted for by any dealer in his accounts , register or other documents, maintained in the course of his business, he shall have power to seize such goods and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.

(3) An officer seizing the goods under sub-section (1) shall take all the measures necessary for their safe custody and forward the list, referred to in

the proviso to sub-section(1), along with other documents relating to the seizure to the assessing officer concerned.

(4) The said assessing authority shall serve on dealer or, as the case may be, the person in charge of goods at the time of seizure (hereinafter in this section referred to as the person in charge) a notice in writing requiring him to show cause, why a penalty should not be imposed.

(5) If such officer, after taking into consideration the explanation, if any, of the dealer, or as the case may be, the person in-charge and giving him an opportunity of being heard, is satisfied that the said goods were willfully omitted from being shown in the accounts, registers and other documents referred to in sub-section (1), it shall pass an order imposing a penalty not exceeding *forty percent* of the value of such goods as he deems fit.

(6) A copy of the order imposing penalty under sub-section (5) shall be served on the dealer or, as the case may be, the person in-charge.

(7) The officer seizing the goods shall serve on the dealer or, as the case may be, the person in-charge an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on the deposit whereof in cash, the goods so seized shall be released in favour of the dealer or, as the case may be, the person in-charge.

(8)Notwithstanding any thing contained in sub-section (7),the Commissioner or such officer, not below the rank of Deputy Commissioner, as may be

authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that goods be released without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash, as he may deem fit.

(9) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (7) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the assessing authority shall cause the goods to be sold in such manner as may be prescribed and apply sale proceeds thereof toward the penalty and, subject to the provisions of section 36, refund the balance, if any, to the dealer or, as the case may be, to the person -in-charge.

(10) Where the officer seizing the goods, before forwarding the list and other documents referred in sub-section (2) or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in the prescribed manner. The sale proceeds of such goods shall be adjusted towards the expenses and tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person in-charge in accordance with the provisions of sub-section (9).

(11) If the amount deposited under sub-section (7) is more than the amount of penalty imposed under sub-section (5), the excess amount so deposited shall be refunded to the dealer or, as the case may be, the person in-charge, by the officer with whom it was so deposited in accordance with the provisions of section 36.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 as below )*

### **43A. Movement of goods within the State or from State to outside the State :**

(1) Notwithstanding any thing contained in section-43 the owner or a person duly **authorized** by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be (**hereinafter referred to as the transporter**), who intends the movement of goods exceeding such quantity or measure or of such value as may be notified by the state Government in that behalf, from any place in the state to any place outside state or from any place in the state to any other place in the State or from any place in the state to any other place in the State passing through any other State, **before movement of goods**, shall prepare information in this regard in the **prescribed** Form [hereinafter called the “Lorry Challan”] containing individual serialized number, the name and complete address of the consignor and consignee, quantity and description of goods, details of invoice/ challan (as applicable), and document of title to goods/ GR/ Bilty or like other such documents in respect of such goods and other information, in a manner, as may be **prescribed**.

Provided that the Govt., by a Notification, may provide for the submission of “Lorry Challan” to the **prescribed** authority before the

movement of goods, in such form and in such manner, including online manner, as may be **prescribed** in the Notification.

**(2)(a)** The **transporter** shall carry with him, the copy of such “Lorry Challan” duly signed by him and copy of other such documents and shall stop the vehicle, when so required by an officer authorised under sub-section (1) or sub-section (2) of section 42, at any place and take it along with the goods and documents to the nearest office of Commercial Tax department or to any other place as directed by such officer and keep it stationary for so long as may be considered necessary by such officer and allow him to search the vehicle and inspect the goods and the documents.

Provided that where the goods are transported from one place to another falling within the same local area of the state the commissioner may relax the condition of carrying “Lorry-Challan” or documents of title to goods with certain conditions and restrictions as it may deem fit. Here the “local area” means the local area as defined in section-2 of Uttarakhand Entry Tax Act, 2008.

**(b)** The **transporter** shall preserve the copy of such “Lorry Challan” for such period as may be **prescribed** and produce them whenever so required, **failing which he shall be liable to pay by way of penalty a sum of Rupees five hundred for each “Lorry Challan”**.

**(3)** Where the goods are for personal use or consumption and such goods are transported by any person in his personal vehicle, such person need not prepare or carry “Lorry Challan”



(4) The officer, referred to in preceding sub section, if after making search or inspection, is satisfied that;

(i) the transporter is transporting or attempting or abetting to transport any goods, to which this section applies, without preparing or submitting “Lorry-Challan” in the **prescribed** form and manner; or without carrying copy of such Lorry-Challan; or

(ii) the transporter is transporting or attempting or abetting to transport any goods, to which this section applies, without carrying invoice/ challan (as applicable), and document of title to goods/ GR/ Bilty or like other such documents in respect of such goods.

(iii) the weight/quantity or number of packages of goods being transported are uncovered by the Lorry-Challan; it may,

(a) direct the person referred to in above sub section not to part with the goods in any manner including re-transporting or re-booking till an enquiry is made, which shall not take more than seven days;

(b) order **detention** of such vehicle along with the goods.

(5) (a) if, at any stage, such officer is satisfied, after giving the transporter an opportunity of being heard, that the goods referred to in previous sub section were transported without submitting Lorry Challan in the **prescribed** Form and manner or without carrying Lorry Challan or other **prescribed** documents and that, such goods are;

(i) the goods other than the goods specified in schedule (1) referred to in clause (a) of sub-section (2) of Section-4; and

(ii) such goods were not meant for personal use or consumption;

it shall be deemed that such goods were so transported in an attempt to facilitate or assist to evade assessment or payment of tax due or likely to be due under the Act, and, in such case, the officer may seize such vehicle by an order in writing and notwithstanding anything contained in section-43 the **transporter** shall be liable to pay by way of **penalty** an amount which shall be quantified at the rate of rupees **five hundred for a quintal or part of a quintal** of such goods.

**(b) if, at any stage, such officer is satisfied, after giving the transporter an opportunity of being heard, that the goods referred to in previous sub section were transported alongwith the copy of the Lorry Challan in the prescribed Form and manner, but any of the goods found in the vehicle were not covered by the “Lorry-Challan” and that, such goods are**

**(i) the goods other than the goods specified in schedule (1) referred to in clause (a) of sub-section (2) of Section-4 ; and**

**(ii) such goods were not meant for personal use or consumption;**

**it shall be deemed that such goods were so transported in an attempt to facilitate or assist to evade assessment or payment of tax due or likely to be due under this Act, and, in such case, the officer may seize such vehicle**

**by an order in writing and notwithstanding anything contained in section-43, the transporter shall be liable to pay by way of penalty an amount which shall be quantified at the rate of rupees five hundred for a quintal or part of a quintal of such goods.**

*Provided that, Govt. may by a notification issue general instruction not to demand penalty under sub-section 5(b) from the transporter in the circumstances where in pursuance of Section 43(5) or Section 43(7) the penalty or an amount sufficient to cover such penalty likely to be imposed has been deposited by such transporter referred to in sub-section 5(b), regarding the same goods.*

*Provided further that the State Government may by Notification increase the amount of penalty **provided under this sub-section.***

**Explanation-**

for seizure and other actions regarding the goods referred to in this section, the provisions of section 43 shall mutatis- mutandis apply.

**(6)** The officer seizing the vehicle shall serve on the Transporter, an order in writing mentioning the facts of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the

penalty likely to be imposed, on the deposit whereof in cash, the vehicle so seized shall be released in favour of the person from whose possession or control the vehicle is seized.

(7) Notwithstanding anything contained in sub-section (6), the Commissioner or such officer, not below the rank of Deputy Commissioner, as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that vehicle be released without any deposit or on depositing such lesser amount, or furnishing security in form of irrevocable bank guarantee, as he may deem fit.

(8) Notwithstanding anything contained in section (51) or (53), no appeal against the order of penalty passed under sub section (5) or order for security passed under sub-section (7) shall lie, unless the proof of deposit of entire amount of penalty or security as the case may be, is submitted.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 44: Power to Acquire Goods in case of Under Valuation:**

(1) Where the assessing authority or an officer empowered under section 42, is satisfied that any dealer bringing, importing or otherwise receiving into the State from any place outside the State any goods has, with a view to evade payment of tax, shown the estimated sale value of such goods in the declaration form for import accompanying such goods less than fair price of such goods or has not shown the estimated sale value in such form and the presumed sale value of such goods is less than the fair price of such goods, such officer may acquire such goods on payment of 110 percent of such estimated sale value or presumed sale value, as the case may be, to the dealer.

(2) The power under in sub-section (1) shall not be exercised unless the dealer is afforded an opportunity of being heard.

(3) The notice printed on the declaration form shall be deemed to be a notice for the purpose of sub-section (2) and no fresh notice shall be required to be given for hearing to the dealer.

*(Repealed vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008)*

(4) The goods acquired under sub-section (1) shall be disposed of in such manner as may be specified by the Commissioner.

Explanation: For the purpose of this section-

- (a) "fair price" shall mean the value determined in such manner as may be specified by the Commissioner;
- (b) "presumed sale value" shall be equal to 110 percent of the purchase price shown in the declaration form.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 45: Power to seek Information, to summon Witness etc.:**

(1) Any officer under this Act, not being an officer below the rank of an officer appointed and posted by the Commissioner, may for any purpose related to the administration or enforcement of the provisions of this Act by notice, require any dealer or other person to furnish any information or any document including electronic records which may be in his knowledge or possession. Whenever so required, the dealer or such person shall furnish correct, complete and true information.

(2) All such officers under this Act shall have the same power as are vested in a Court under the Civil Procedure Code 1908, when trying a suit in respect of following matters, namely-

- (a) Enforcing the attendance of any person and examining him on oath or affirmation,
- (b) Compelling the production of documents, and
- (c) Issuing commission for examination of witness;

and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Code of Criminal Procedure and for the purpose of section 196 of the Indian Penal Code.

(3) Summons for the production of documents or the attendance of any person shall be issued in the prescribed form.



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 46: Power to seek Assistance from Police etc.:**

An officer exercising power under section 42, section 43 or section 48 may take the assistance of police or other officer or officers of the State.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Deleted vide notification no.- 178 /2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/18 1 (120 ) /XXVII(8)/08 Dt. 17-12-2012, w.e.f. 01-03-2013)*

### **~~47: Establishment of Check Posts and Barriers:~~**

~~The State Government if it is of the opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act in respect of the sale of goods within the State after their import into the State may, by notification in the Gazette, direct establishment of check posts or barriers at such places within the State as may be specified in the notification.~~

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Substituted vide The Uttarakhand Value Added Tax (Amendment) Act, 2012, published vide notification no. - 178/2012/XXXVI(3)/2008 Dt. 13-06-2012 w.e.f. 17/12/2012 Vide notification no.- 1099/2012/181 (120) / XXVII (8) / 08 Dt. 17-12-2012 as below )*

### **48: Import of Goods into the State against Declaration:**

(1) Any person or dealer (hereinafter in this Section referred to as importer) who intends to bring, import or otherwise receive, into the State from any place outside the State, any goods other than the goods specified in schedule (I) referred to in clause (a) of sub-section-(2) of section-4 exceeding such quantity or measure or of such value as may be notified by the state Government in that behalf, shall obtain the **prescribed** form of declaration or certificate from his assessing authority;

provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the **prescribed** form of certificate.

provided further that in case of the class of assesses, **authorized** by the commissioner Commercial Tax, may themselves download the declaration form of the series and serial no. as **prescribed** by the Commissioner, Commercial Tax and may use them in accordance with the Act and the rules made there under.

**(2) Where such goods are to be consigned by road:**

(a) The importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him, and the owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be, shall carry with him the copies of such declaration duly verified by the consignor in the prescribed manner together with such other documents as may be prescribed and shall produce the copies of such declaration and such documents if so required by an officer authorised under sub-section (1) or sub-section (2) of section-42 at any place.

(b) the importer shall preserve the copies of declaration and other documents delivered to him or his agent under clause (a) for such period as may be **prescribed** and produce them before the assessing authority in a manner and within a time as may be **prescribed** by the Commissioner.

**(3)** Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the **prescribed** form duly filled in and signed by the importer and the importer shall submit the same for endorsement by the officer authorised by the Commissioner in this behalf in a manner and within a time as may be prescribed by the Commissioner.

**(4)** Where any person intends to bring, import or otherwise receive in the State from any place outside the State, any goods referred to in sub-section (1) otherwise than in connection with business and obtains the

prescribed form of certificate, the provision of sub-section (2) and sub-section (3) shall, mutatis mutandis apply as if the word “certificate” is substituted for the word “declaration” used therein.

**(5)** The owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be, carrying any goods referred to in the preceding sub-sections shall stop the vehicle when so required by an officer authorised under sub-section (1) or sub-section (2) of section 42, at any place, and take it along with the goods and documents to the nearest office of Commercial Tax department or to any other place as directed by such officer and keep it stationary for so long as may be considered necessary by *such* officer and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-sections and shall, if so required, give his name address and the names and addresses of the owner or hirer of the vehicle and of the consigner and consignee of the goods.

**(6)** Where the officer making the search or inspection under this Section finds any person or dealer importing or attempting or abetting to Import any goods to which this section applies without being covered by proper and genuine documents referred to in the preceding sub-sections, it may;

(a) direct the person referred to in above sub section not to part the goods in any manner including re-transporting or re-booking till an enquiry is made, which shall not take more than seven days;

(b) order detention of such goods and if, for reasons to be recorded, is satisfied, after giving the owner or a person duly authorised by such

owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be, an opportunity of being heard, that such goods were being so Imported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order **seizure** of such goods.

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by him, and a copy thereof shall be given to the person from whom goods have been seized.

(7) The officers seizing the goods under sub section (6) shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso of sub section(6) along with other document relating to the seizure, to the assessing officer concerned.

(8) If such assessing officer, after taking into consideration the explanation, if any of the owner or a person duly **authorized** by such owner or the driver or person-in-charge of a vehicle or of goods in movement as the case may be and after giving an opportunity of being heard is satisfied that the goods were imported or abetted to import in contravention of the provisions of this section in an attempt to evade assessment or payment of tax due or likely to be due under this Act, it shall pass an order imposing penalty not exceeding forty percent of the value of such goods involved or three times the tax leviable on such goods under any of provisions of this Act, whichever is higher. The order of such penalty shall be properly served.

(9) The officer seizing the goods shall serve on the person referred to in the above sub section, an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on the deposit whereof in cash, the goods so seized shall be released.

(10) Notwithstanding anything contained in sub-section (9), the Commissioner or such officer, not below the rank of Deputy Commissioner, as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash, as he may deem fit.

(11) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (9) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the Assessing Authority shall cause the goods to be sold in such manner as may be prescribed and apply sale proceed thereof toward the penalty and, subject to the provisions of Section 36, refund the balance, if any.

(12) Where the officer seizing the goods, before forwarding the list and other documents referred in sub-section (7) to the Assessing Authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the Assessing Authority, as the case

may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in the prescribed manner. The sale proceeds of such goods shall be adjusted towards the expenses and tax assessed or penalty imposed. The balance, if any, shall be refunded.

(13) If the amount deposited under sub-section (9) is more than the amount of penalty imposed under sub-section (8), the excess amount so deposited shall be refunded in accordance with the provisions of Section 36

**Explanation -1**

For the purpose this chapter the person-in-charge of the vehicle shall include the owner of the vehicle and the hirer of the vehicle as the case may be.

**Explanation -2**

For the purpose of this chapter “goods in movement” means.

- (a) the goods which are in the possession or control of a transporting agency or person or other such bailee;
- (b) the goods which are being carried in a vehicle belonging to the owner of such goods; and
- (c) the goods which are being carried by a person.

*Prior to the substitution this section read as under :-*

**48. Import of Goods into the State against Declaration:**



*(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State, any goods other than the goods exempted under the provisions of this Act exceeding such quantity or measure or of such value as may be notified by the State Government in that behalf, shall obtain the prescribed form of declaration or certificate from his assessing authority:*

*Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.*

***Provided that the class of assessee authorised by the Commissioner, Commercial Tax may themselves download the Declaration Form for import of the series and serial no. prescribed by the Commissioner, Commercial Tax and may use them in accordance with the Act and the rule made thereunder.***

*( inserted vide notification no. 22 January 2010)*

*(2) Where such goods are to be consigned **by road-***

*(a)the importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him, and the driver or any other person incharge of any vehicle carrying any such goods shall carry with him the copies of such declaration duly verified by the consigner in the prescribed manner together with such other documents as may be prescribed and shall deliver one copy of such declaration-*

*(i)where such goods are brought by road on which check-post or barrier is established under section 47, to the officer incharge of such check-post or barrier before crossing the check-post or barrier, and*

*(ii)where such goods are brought by road on which no check- post or barrier is established, to the officer incharge of the*

*nearest check-post or barrier established under the said section, before transporting such goods further within the State and the other copy of declaration and the remaining documents along with the goods to the importer or his agent,*

*(b) the officer incharge of the check-post or barrier shall grant a receipt for the copy of declaration delivered to him and it shall not be necessary for the driver or the person incharge of the vehicle to deliver any copy of the declaration at any other check-post or barrier that he may cross if he shows such receipts to the officer incharge of such other check-post or barrier;*

*(c) the importer shall preserve the other copy of declaration and other documents delivered to him or his agent under clause (a) for such period as may be prescribed and produce them before the assessing authority whenever demanded by it within such period.*

*(3) Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer and the importer shall submit the same for endorsement by the officer authorised in this behalf by the next working day.*

*(4) Where any person intends to bring, import or otherwise receive in the State from any place without the State, any goods referred to in sub-section (1) otherwise than in connection with business and obtains the prescribed form of certificate, the provision of sub-section(2) and sub-section(3) shall, mutatis mutandis apply as if the word "certificate" is substituted for the word "declaration" used therein.*

*(5) The driver or other person incharge of any vehicle carrying any goods referred to in the preceding sub-sections shall stop the vehicle at every such check-post or barrier, or when so required by an officer authorised under sub-section (1) or sub-section (2) of section 42, at any place, and keep it stationary for so long as may be considered necessary by the*

*officer incharge of the check-post or barrier or the officer authorised under sub-section (1) or sub-section (2) of section 42, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-sections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consigner and consignee of the goods.*

*(6) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by proper and genuine documents referred to in the preceding sub-sections and if, for reasons to be recorded, he is satisfied, after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods.*

*(7) The provisions of sub-section (3), sub-section (6), **sub-section (7), sub-section (8), sub-section (9) and sub-section (10)** of section 43 shall mutatis mutandis apply to such detention as they apply to seizure under that section.*

***(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)***

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)*

### **48A. Transport of goods into the State against “Trip Sheet”**

- (1) Notwithstanding any thing contained in section-48 with a view to ensure that there is no evasion of tax payable under this Act the owner or a person duly authorized by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be, (hereinafter referred to as the **transporter**) who intends to transport into the State from any place outside the State, any goods exceeding such quantity or measure or of such value as may be notified by the state Government in that behalf, before entering into the state shall prepare and submit online information in a prescribed form (hereinafter called “Trip-Sheet”) in such manner and within such time as may be prescribed.

provided that in certain circumstances, online submission of “Trip-Sheet” may be relaxed by the Commissioner for a specified period.

### **(2) Where such goods are transported into the State by road;**

- (a) the transporter shall carry with him, the copy of such “Trip-Sheet” duly filled and signed by him and other documents as may be prescribed and shall stop the vehicle, when so required by an officer authorised under sub-section (1) or sub-section (2) of section 42, at any place and take it along with the goods and documents to the nearest office of Commercial Tax department or to any other place as directed by such officer and keep it stationary

for so long as may be considered necessary by such officer and allow him to search the vehicle and inspect the goods, **the** “Trip-Sheet” and **the** other documents.

- (b) The transporter shall preserve the copy of such “Trip-Sheet” for such period as may be prescribed and produce **it** whenever so required, failing which he shall be liable to pay by way of penalty a sum of Rupees five hundred for each “Trip-Sheet”.

*Explanation:-*

*In the circumstances where online submission of “Trip-Sheet” is relaxed, the provision of preparation of “Trip-Sheet” before entering into the State and provision of carrying it during transportation shall remain effective.*

- (3) Where such goods are brought into the State as personal luggage, the person bringing them need not submit “Trip-Sheet”.
- (4) The officer referred to in clause (a) of sub-section (2), if after making search or inspection is satisfied that;
  - (i)- the transporter is transporting or attempting or abetting to transport any goods to which this Section applies without submitting “Trip-Sheet” in the prescribed form and manner; or without carrying the copy of such “Trip-Sheet”; or

(ii) the weight/quantity or number of packages of goods being transported are uncovered by the “Trip-Sheet” it may,

(a) direct the person referred to in above sub section not to part with the goods in any manner including re-transporting or re-booking till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) order detention of such vehicle

along with the goods.

(5) (a) if, **at any stage**, such officer is satisfied, after giving the transporter an opportunity of being heard, that the goods referred to in previous sub section were transported without online submitting “Trip-Sheet” in the prescribed form and manner or without carrying copy of such “Trip-Sheet”, and that, such goods **are**;

(i) the goods other than the goods specified in schedule (1) referred to in clause (a) of sub-section (2) of Section-4; and

(ii) such goods were not meant for personal use or consumption;

it shall be deemed that such goods were so transported **by the transporter** in an attempt to facilitate or assist to evade assessment or payment of tax due or likely to be due under this Act, and, in

such case, the officer may seize such vehicle by an order in writing and notwithstanding anything contained in section-48 the

transporter shall be liable to pay by way of penalty an amount which shall be quantified at the rate of rupees five hundred for a quintal or part of a quintal of such goods.

**(b) if, at any stage, such officer is satisfied, after giving the transporter an opportunity of being heard, that the goods referred to in previous sub section were transported alongwith the copy of the Online submitted “Trip-Sheet”, but any of the goods found in the vehicle were not covered by the “Trip-Sheet” and that, such goods are**

**(i) the goods other than the goods specified in schedule (1) referred to in clause (a) of sub-section (2) of Section-4; and**

**(ii) such goods were not meant for personal use or consumption, it shall be deemed that such goods were so transported in an attempt to facilitate or assist to evade assessment or payment of tax due or likely to be due under this Act, and, in such case, the officer may seize such vehicle by an order in writing and notwithstanding anything contained in section-48 the transporter shall be liable to pay by way of penalty an amount which shall be quantified at the rate of**

**rupees five hundred for a quintal or part of a quintal of such goods.**

*Provided that, Govt. may by a notification issue general instruction not to demand penalty under sub-section 5(b) from the transporter in the circumstances where in pursuance of Section 48(8) or Section 48(9) the penalty or an amount sufficient to cover such penalty likely to be imposed has been deposited by such transporter referred to in sub-section 5(b), regarding the same goods.*

*Provided further that the State Government may by Notification increase the amount of penalty **provided under this sub-section.***

*Explanation-*

*for the seizure and other action, regarding the goods referred to in this section, the provisions of section (48) shall mutatis- mutandis apply*

- (6) The officer seizing the vehicle shall serve on the Transporter, an order in writing mentioning the facts of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed, on the deposit whereof in cash, the vehicle so seized shall be released in favour of the person from whose possession or control the vehicle is seized.
- (7) Notwithstanding anything contained in sub-section (6), the Commissioner or such officer, not below the rank of Deputy Commissioner, as may be authorised in this behalf by the



Commissioner, may, for sufficient reasons to be recorded in writing, direct that vehicle be released without any deposit or on depositing such lesser amount, or furnishing security in form of irrevocable bank guarantee, as he may deem fit.

- (8)- Notwithstanding anything contained in section(51) or (53), no appeal against the order of penalty passed under subsection(5) or order for security passed under subsection (7) shall lie, unless the proof of deposit of entire amount of penalty or security, as the case may be, is submitted.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)*

### **49. Import of Goods into the State by Rail, River, Air, or Post (Substituted):**

(1) Where any goods other than the goods specified in schedule (I) referred to in clause (a) of sub-section (2) of section 4 exceeding such quantity, measure or value as may be notified with reference to sub-section (1) of Section 48, are consigned by rail, river, air or post from any place outside the State, the importer shall not—

(a) obtain or cause to be obtained delivery thereof, unless he furnishes or causes to be furnished to such officer as may be authorised in this behalf by the Commissioner a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement by such officer; and

(b) after taking delivery, carry the goods away or cause the goods to be carried away from the railway station, steamer or boat station, air port or post office. as the case may be, unless a copy of declaration duly endorsed by such officer is carried with the goods.

Provided that if a registered dealer, before obtaining the delivery or causing to obtain delivery of the goods has online submitted the information, regarding the goods in a form prescribed by the Commissioner on the official website of the department and the to e-generated hard copy of such information is being carried during the

movement of goods the dealer shall be deemed to have complied with the requirement, of endorsement of declaration form, made above.

(2) The provisions of sub-section (5), (6) and sub-section (7),(8), (9),(10),(11),(12) and (13) of Section 48 shall mutatis mutandis apply in respect of goods consigned by rail, river or post as they apply to import of goods by road under that Section.

*Prior to the substitution this sub-section read as under :-*

**49. Import of Goods into the State by Rail, River, Air, or Post :**

*(1) Where any goods (other than the goods exempted under the provisions of this Act) exceeding such quantity, measure or value as may be notified with reference to sub-section (1) of section 48, are consigned by rail, river, air or post from any place out side the State, the importer shall not-*

*(a) obtain or cause to be obtained delivery thereof, unless he furnishes or causes to be furnished to such officer as may be authorised in this behalf by the State Government a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement by such officer; and*

*(b) after taking delivery, carry the goods away or cause the goods to be carried away from the railway station, steamer or boat station, air port or post office , as the case may be, unless a copy of declaration duly endorsed by such officer is carried with the goods.*

*(2) The provisions of sub-section (3), sub-section (4) and sub-section (6) of section 48 shall mutatis mutandis apply in respect of goods consigned by rail, river or post as they apply to import of goods by road under that section.*

*(3) Nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or post office or any officer of post office, or to empower any search, detention or seizure of any goods while on railway as defined in the*

*Indian Railways Act, 1890, or in a post office as defined in the Indian Post Office Act, 1898.*

*(4) The provisions of sub-section (3), sub-section (6) and sub-section (9), of section 43 shall mutatis mutandis apply to such detention as they apply to seizure under that section.*

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012  
read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 as below )*

### **50. Transit of Goods by Road through the State against “Transit-Pass”**

(1) Where a vehicle coming from any place outside the State and bound for any other place outside the State, carrying goods referred to in sub-section (1) of Section 48 passes through the State, the owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be before entering into the state shall prepare and submit online declaration containing all the information regarding the goods, the vehicle, the document of the title to the goods/ GR/ bilty and the movement of goods and other information as required in the Form (hereinafter called “Transit-Pass”) as may be prescribed by the Commissioner, complete in all respect in such manner and within such time as may be prescribed by the Commissioner. The owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be while carrying such goods shall carry with him two copies of such “Transit Pass” duly signed by him, the document of the title to the goods/GR/bilty and invoice/bill or challan/like document and after his exit from the state shall submit online declaration containing the description of the proof of crossing the state

or reaching the other state and other information in a form, manner and within such time as may be prescribed by the Commissioner, and shall also submit, the satisfactory proof of crossing the State or reaching the destination State to such officer as may be authorised for this purpose by the Commissioner whenever so required by such officer failing which it shall be presumed that the goods carried thereby have been sold within the State.

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 onus of proving that the goods have actually moved outside the State shall be on the person-in-charge of the vehicle for which transit pass was prepared and submitted.

provided further that in certain circumstances, online submission of “Transit-Pass” and of information regarding exit from the state may be relaxed by the Commissioner for a specified period.

provided further that with a view to ensure that there is no evasion of tax the vehicle, referred to in this section shall enter into and exit from the State only from such places as notified by the Commissioner.

**Explanation:-**

In the circumstances where online submission of Transit Pass is relaxed, the provision of preparation of Transit Pass before entering into the State and the provision of carrying it during transportation shall remain effective. In such case before exit from the State the vehicle along with the goods shall be stopped at a place notified by the

Commissioner and the copy of Transit Pass be submitted to the officer so authorised for this purpose by the Commissioner at a place notified by the commissioner, failing which it shall be presumed that the goods carried thereby have been sold within the State.

**(2)** In such a case as referred to in the above sub section the owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement, as the case may be shall jointly and severally be liable to pay tax on such presumed sale of goods and also for payment of amount of penalty that may be imposed under the provisions of this Act.

**(3)** Every person for whom a presumption under sub-section (1) exists that the goods have been sold within the State, such person/s, shall be assessed to tax on the goods covered by each Transit-Pass separately by the officer authorised for this purpose by the commissioner.

provided that this provision shall apply only to the cases of assessment arising after the date of commencement of this provision.

provided further that no order of assessment or penalty under this section shall be passed until a reasonable opportunity of being heard is given.

*Prior to the substitution this sub-section read as under :-*

*(1) When a vehicle coming from any place outside the State and bound for any other place outside the State, and carrying goods referred to in sub-section (1) of section 48 passes through the State, the driver or the person in-charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer in charge of the 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:*

*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 onus of proving that goods have actually moved outside the State shall be on the owner or the person in charge of the vehicle.*

*(2) In such a case the owner of the vehicle, the transporter, the person-in-charge and the hirer of the vehicle, shall jointly and severally be liable to pay tax on such presumed sale of goods and also for payment of amount of penalty that may be imposed under the provisions of this Act.*

*(3) Every person for whom a presumption under sub-section (1) exists that the goods have been sold within the State by such person, shall be assessed to tax at the check post on the goods covered by each authorization for the transit of goods separately.*

*(4) The provisions of sub-section (3) shall apply to all the cases of assessment whether arising before or after the date of commencement of this Act.*

*(5) No order of assessment under this section shall be passed until the owner or, as the case may be, the person in charge of the vehicle is given a reasonable opportunity of being heard.*

*Explanation: For the purpose of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle.*



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(Added vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)*

### **50A. Erection of barrier for certain period :**

With a view to prevent or check evasion of tax payable under this Act or to ensure the compliance of the provisions of this chapter, Commissioner may, in certain circumstances, by an administrative order setup check posts or erect barriers at such place or places which it deems fit by issuing an administrative order and the owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement as the case may be, before crossing such check-post or barrier shall stop the vehicle and produce before the officer authorised by the commissioner for this purpose, the documents which are required to be carried with the goods in accordance with the provisions of this chapter, and allow the officer to search the vehicle and inspect the goods and the documents.

provided that, notwithstanding anything contained in sec-50, where the check post or barrier has been setup under this section at a place near the place of exit of the vehicle from the State, the two copies of the “Transit Pass” shall be produced before the check post officer, out of which one copy shall be returned by the officer as a proof of exit of the vehicle from the State, failing which it shall be presumed that the goods carried by such vehicle have been sold within the State.

provided further that the Commissioner shall not setup any check post or erect barriers for more than three month at a time.

Provided further that the commissioner shall get such an administrative order issued for setting up of such check post or erecting barriers, ratified by the Government

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **51: First Appeal:**

(1) Any dealer or other person aggrieved by an order made by the Assessing authority or by an officer in charge of tax audit or any order passed under sub section(3) or sub-section(4) of section 42(B ) other than,

(i) an order mentioned in section 56, or

(ii) an order passed under sub-section (8) of section 43, or

(iii) an order passed under sub-section (7) of section 43(A), or

(iv) an order passed under or sub-section (10) of Section 48; or

(v) an order of seizure passed under sub- section (5) of section 48(A); or

(vi) an order passed under sub-section (6) or sub-section (7) of section 48(A) may; within sixty days from the date of the service of the copy of the order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.

*(Substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012, w.e.f. 01-03-2013 as above)*

*Prior to the substitution this sub-section read as under :-*

*(1) Any dealer or other person aggrieved by an order made by the Assessing authority or by an officer incharge of tax audit, other than an order mentioned in section 56 or sub-section (7) and sub-section (8) of section 43, may, within sixty days (thirty days) (substituted vide notification no.-1314/XXXVI(4)/2008 Dt. 31.03.2008) from the date of the service of the copy of the order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.*

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(2)(a) Notwithstanding any thing contained in sub-section (1), where the disputed amount of tax, fee or penalty in an appeal does not exceed one thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the Appellate Authority may decide the appeal accordingly.

(b) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

(c) No appeal or revision shall lie against an order passed in appeal which has been disposed of summarily.

(3) Where an appeal under this section has been filed by any dealer or any person against an order referred to in sub-section (1) and where due to filing of such appeal the Commissioner can not revise such order passed by the assessing authority on the point of legality or propriety of such order under section 52, the Commissioner may move an application to the appellate

authority to examine the legality and propriety of such order on such point or points as may be mentioned in the application. A copy of such application shall be served on the dealer or such other person, as the case may be:

Provided that-

- (a) No application under this sub-section shall be entertained after the expiration of four years from the date of the order in question,
- (b) No application for examination of legality and propriety under this sub-section shall be entertained after the disposal of appeal filed by the dealer or other person, as the case may be,
- (c) Where the Commissioner has filed an application under this section and the dealer or other person withdraws the appeal filed by him or any other application for disposal of appeal summarily under sub-section (2), it shall be deemed for the purpose of section 52, as if no appeal has been filed, and in such a case the period commencing from the date of filing application by the Commissioner and the date of the appellate authority's order on the application of the dealer, shall be excluded in computing the period of limitation provided in section 52, and
- (d) If after computing, the period of limitation comes to less than six months, the revision under section 52 may be made within six months from the date of receipt by the Commissioner of the relevant order of the appellate authority.

Explanation: For the purpose of this sub-section, the Commissioner shall include an officer authorized to file an appeal on behalf of the Commissioner before the Tribunal under section 53 of this Act.

(4) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be admitted by the appellant in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater.

(5) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(6) The appellate authority:

(a) shall in a case where the appellant makes a request under sub-section(2) and

(b) may, in any other case on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard, stay the realization of the amount of the tax, fee or penalty payable by the appellant till the disposal of the appeal:

(7) No application under clause (b) of sub-section (6) shall be entertained unless it is filed along with the memorandum of appeal under sub-section (1) and no stay order shall remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of receipt of stay order or the time allowed in the order of the assessing authority under appeal which ever is later and before the expiry of the said period, furnished

security to the satisfaction of the assessing authority for payment of the amount, the realization whereof has been stayed:

Provided that where the amount stayed is less than rupees twenty five thousand, the dealer shall not be required to furnish the security in respect of such amount;

Provided further that where an order under appeal does not involve any dispute about tax, fee or penalty, the appellate authority may stay the operation of such order till the disposal of appeal subject to such conditions as he may deem fit.

Explanation: Rejection of similar application for stay by any authority for want of jurisdiction shall not by itself preclude the Appellate Authority from entertaining such application.

(8) The appellate authority may, after calling for and examining the relevant records and after giving the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, after following the procedure under sub-section (2), -

(a) confirm or annul such order; or

(b) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or

(c) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or

(d) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on

the expiration of such time the Appellate Authority may, whether the report has been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clauses:

Provided that nothing in this sub-section shall preclude the Appellate Authority from dismissing the appeal at any stage with such observation as it deems fit where the appellant applies for withdrawal of the same and no request for enhancement of the assessment or penalty has been made by the Commissioner,

Provided further that before making an enhancement the appellant shall be given an opportunity of being heard on the proposal of enhancement;

Provided also that the appeal shall be disposed off within such time as may be prescribed.

(9) An order passed under this section shall, subject to the provisions of this Act, be final.

(10) If the amount of the tax assessed, fee levied or penalty imposed is reduced by the appellate authority under sub-section (6) he shall order the excess amount of tax, fee or penalty, if realized, to be refunded.

(11) section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

(12) The appellate authority shall be under the superintendence and control of the Commissioner:



Provided that in the exercise of such superintendence and control of the Commissioner, no order, instructions and directions shall be given by the Commissioner so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

(13) Appeal filed by the dealer and the application filed by the Commissioner arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one of such appeal or application has been heard and decided earlier, and if the Appellate Authority hearing the remaining appeal or application considers that such decision may be legal impediment in giving relief in such remaining appeal and application, he may recall such earlier decision and proceed to decide the appeal and the application together, after giving a fresh hearing.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 52: Revision by Commissioner:**

(1) The Commissioner or such other officer not below the rank of Joint Commissioner as may be authorized in this behalf by the State Government by notification may call for and examine the record relating to any order, (other than an order mentioned in section 56) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect there to as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall, subject to the provisions of sub-section (3) of section 51, be passed-

(a) to revise an order, which is or has been the subject matter of an appeal under section 51, or an order passed by the Appellate Authority under that section,

(b) before the expiration of sixty days from the date of the order in question;

(c) after the expiration of four years from the date of the order in question. Explanation: Where the appeal against any order is withdrawn or is dismissed for non payment of fee specified in section

74, or for non compliance of sub-section(1) of section 51, the order shall not be deemed to have been a subject matter of an appeal under section 51.

(4) No dealer or any other person shall be entitled to file an application under this section.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **53: Appeal to the Appellate Tribunal:**

*(substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)*

(1) Any person aggrieved by an order passed under section 51 (other than an order referred to under sub-section (2) of that section), under section 52, or under section 76, or a decision under section 57; or a direction under sub-section (8) of section 43; or an order passed under sub-section (7) of section 43(A); or an order passed under sub-section (10) of section 48; or an order passed under sub-section (7) of section 48(A) may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:

#### **Explanation:**

For the purpose of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government.

*Prior to the substitution this sub-section read as under :-*

*(1) Any person aggrieved by an order passed under section 51 (other than an order referred to under sub-section (2) of that section), under section 52, or under section 76, or a decision under section 57, or a direction*

*under sub-section (8) of section 43, may within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:*

*Explanation: For the purpose of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government.*

(2)(a) Notwithstanding any thing contained in sub-section (1), where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request to the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly;

(b) The manner and procedure of summary disposal of appeal shall be such as may be prescribed;

(c) No revision shall lie against an order passed in appeal which has been disposed of summarily.

(3) section 5 of the Limitation Act, 1963 shall apply to appeal or other applications under this section.

(4) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.

(5) The Tribunal may, if it has not already dismissed the appeal under sub-section (4), after calling for and examining the relevant records and after

giving the party a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (2):

(a) confirm, cancel or vary such order, or

(b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified,

(6) If any amount of tax, fee or penalty is reduced by the Tribunal under sub-section (5), he shall order that any money as may have been realized in excess of the due amount, be refunded according to the provisions of this Act:

Explanation: The power to vary an order referred to in clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty. However before increasing the tax or other amount the dealer shall be given an opportunity of being heard on the proposal of increasing the liability.

(7) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceedings for reassessment under the order appealed against till the disposal of the appeal:

(8) No application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in addition to the amount required to be deposited under sub-section (4) of section 51:

Provided that where the amount in dispute in appeal is less than rupees twenty five thousand the dealer shall not be required to deposit the one third of such disputed amount:

Provided further that the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirements of this sub-section regarding payment of the one third of such disputed amount

(9) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of the receipt of the stay order and has furnished security to the satisfaction of the assessing authority concerned for the payment of the amount, the realisation whereof has been stayed:

Provided that where the amount stayed is less than rupees twenty five thousand, the dealer shall not be required to furnish the security in respect of such amount;

(10)(a) An appeal against an order of the Appellate Authority under section 51 shall be heard and disposed of-

(i) by a bench of two members, when such order is passed by an Additional Commissioner (Appeals), or the amount of tax, fee or penalty in dispute exceeds two lakh rupees;

(ii) by a single member bench, in other case.

(b) An appeal against an order passed under section 52, or against direction given under sub-section (8) of section 43 shall be heard and disposed of by a bench of two members;

(c) An appeal against an order under sub-section (13) or sub-section (16) of section 76 or a decision given under section 57 shall be filed before the President and shall be heard and disposed of by a bench of three members.

(d) The President may, if he so thinks fit-

(i) direct an appeal to be heard and decided by a larger bench:

(ii) transfer an appeal from one member to another member.

(e) In a case before a bench consisting of two or more members, any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench.

(11) Any member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case.

(12) All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one or more of such appeals have been heard and decided earlier, and if the bench hearing the remaining appeals considers



that such decision may be legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

(a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;

(b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.

(13) The decision of a case heard by a bench shall be in accordance with the opinion of the majority. Where the members are equally divided the President of the Tribunal may-

(a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinion: or

(b) form a larger bench.

(14) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or the members of the Tribunal are disqualified under sub-section(10) to hear the case or there are for the time being only two members including the President, the Government may appoint a person qualified to be appointed as a member of Tribunal, as an additional member to the Tribunal and the point shall be decided in accordance with the opinion of majority of the members of the Tribunal who have heard the case ( including those who first heard it).

(15) The Tribunal shall serve the appellant with notice, in writing, of the appeal decision setting forth the reasons for the decision.

# **THE UTTARANCHAL VALUE ADDED TAX ACT, 2005**

## **Sec. 54: Constitution of Appellate Tribunal:**

(1) The Government shall appoint a Tribunal consisting of a President and such members as it think fit to perform the functions assigned to the Tribunal by or under this Act.

(2) The President and the members shall be appointed from amongst-

(a) the persons belonging to Uttaranchal Higher Judicial service who hold or have held a post not below the rank of Additional District judge; and

(b) the persons belonging to the Uttaranchal Trade Tax Service who hold or have held a post not below the rank of Additional Commissioner:

(3) The State Government may prescribe such other qualifications or conditions for the appointment of the President and other members of the Tribunal as it may deem fit.

(4) The appointments to the Tribunal shall be made by the State Government-

(a) in case of persons who have been or are members of the Uttaranchal Higher Judicial Service, in consultation with the High Court; and

(b) in case of persons belonging to the Uttaranchal Trade Tax Service, by selection on the principle of merit from amongst persons who hold or have held the post not below the rank of Additional Commissioner of Trade Tax.

(5) The provisions of Rule 56 of the U.P. Fundamental Rules as applicable in Uttaranchal, shall apply to every member of the Tribunal including the President as they apply to any other Government servant.

(6) The head quarter of the President of the Tribunal shall be at Dehradun, and he shall exercise the concurrent jurisdiction over all the Benches in Uttaranchal.

(7) The head quarters and jurisdiction of other single member benches, referred to in subclause (ii) of clause (a) of sub-section (10) of section 53, shall be such as the Government may, from time to time, in consultation with the President of the Tribunal, notify.

(8) The President may, from time to time, constitute benches of two or more members, and specify the jurisdiction and place of sitting of such benches as he may consider necessary.

(9) The members of the Tribunal shall be under the administrative control and supervision of the President.

(10) The Tribunal shall, with the previous sanction of the Government make regulations consistent with the provisions of this Act and the rules made thereunder for regulating its procedure and the disposal of its business.

(11) The regulations made under sub-section (10) shall be published in the official Gazette.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 55: Revision by High Court:**

(1) Any person aggrieved by an order under sub-section (4) or sub-section(5) of section 53, other than an order under sub-section (2) of that section summarily disposing of the appeal or by an order passed under section 30, by the Tribunal may, within ninety days from the date of service of such order, apply to the High Court for revision of such order.

(2) A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law by the Tribunal.

(3) The application for revision under sub-section(1) shall precisely state the question of law involved in the case and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.

(4) The Commissioner shall also be made a party to the proceedings before the High Court where appeal is filed by the dealer or other person.

(5) Where an application under this section is pending, the High Court may, on an application in this behalf stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised:

Provided that no order for stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the assessing authority concerned.

(6) The High Court shall after hearing the parties to revision decide the question of law involved therein, and where as a result of such decision the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(7) All applications for revision of orders passed under section 53 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together.

(8) The provisions of section 5 of the Limitation Act,1963, shall mutatis mutandis apply to every application, for revision under this section.

Explanation: For the purpose of this section, the expression "any person" includes the Commissioner and the State Government.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)*

### **56. Orders against which No Appeal or Revision shall lie:**

No appeal and no application for revision shall lie against-

- (a) an order or notice under section 24, section 25, section 26 and section 29 initiating an enquiry for assessment or reassessment;
- (b) an order or action under section 42 or sub-section (1), sub-section (2), sub-section(4), sub-section (7) of Section 43;
- (c) an order or direction passed under sub-section 2(a) or sub-section (4) of Section 43-A; or
- (d) an order of seizure passed or a notice for penalty issued under sub-section (5) of Section 43-A; or
- (e) an order passed under sub-section (6) of Section 43A
- (f) an order under sub-section (4) of Section 25 or clause (c) of sub-section (9) of Section 25.
- (g) an order or direction passed under sub-section (5), sub-section (6) and sub-section (9) of section 48; or
- (h) an order or direction passed under sub-section 2(a) or sub-section (4) of Section 48-A; or
- (i) a notice for penalty under sub-section (5) of section 48A; or
- (j) an order of seizure of vehicle passed under sub-section(6) of section 48A.

*Prior to the substitution this sub-section read as under :-*

***56: Orders against which No Appeal or Revision shall lie:***

*No appeal and no application for revision shall lie against-*

*(a) an order or notice under section 24, section 25, section 26 and section 29 initiating an enquiry for assessment or reassessment;*

*(b) any order or action under section 42 or sub-section (1), sub-section (2), sub-section(4), sub-section (7) and sub-section (8) of section 43 or sub-section (6) of section 48.*

*(c) any order under sub-section (4) of Section 25 or clause (c) of sub-section (9) of Section 25.*

***(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)***



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 57: Determination of Disputed Questions:**

(1) If any question arises, otherwise than in a proceeding pending before a court or before an assessing authority under section 25, section 26 or section 29, whether, for the purpose of this Act-

(a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer; or

(b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term; or

(c) any transaction is a sale or purchase and, if so, the sale or, as the case may be, the purchase price therefore ; or

(d) any particular dealer is required to obtain registration; or

(e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof, the person or the dealer concerned may, after depositing the fee specified in section 74 submit an application to the Commissioner along with such documents as may be prescribed.

(2) The Commissioner shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising:

Provided that before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such enquiries as he considers necessary for the decision of the question.

(3) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing officer, appellate authority, revising authority or the Tribunal.

(4) No question which arises from an order already passed, in the case of applicant, by any authority under this Act or the Tribunal, shall be entertained to be determined under this section.

(5) Except as provided in sub-section (3), a decision given by the Commissioner under this section shall, subject to the provisions of section 53 and section 55 be final and binding on the applicant, the assessing authority and the Appellate authority.

(6) A copy of the decision given under this section shall be sent to the applicant and the assessing authority concerned.

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **58: Offences and Penalties:**

*(substituted vide notification no.- 1314/XXXI(4)/2008 Dt. 31-03-2008 as under)*

“(1) If the assessing authority is satisfied that any dealer or other person has committed the offence mentioned in any clause of column (1) of the following chart it may, after such enquiry as deemed necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him the amount mentioned in the related column (2), namely-

<b>Column-1</b>	<b>Column-2</b>
<b>Offences</b>	<b>Penalties</b>
(i)being liable for registration under this Act carries on or continues to carry on business as a dealer beyond thirty days from the date on which he becomes liable to obtain registration, without obtaining registration under and in accordance with the provisions of Section 15 or Section 16 or with out	(i)a sum of rupees two hundred for each month or part thereof for the default during the first three months and rupees five hundred for every month or part thereof after the first three months during which the default continues;

furnishing the security demanded under Section 20;	
(ii)not being a registered dealer falsely represents that he is or was a registered dealer at the time when he sells or buys goods;	(ii)a sum not exceeding five thousand rupees,
(iii)knowingly uses a false registration number including the registration number of another person, with a view to evade or avoid or shift the liability to pay the tax;	(iii)a sum not exceeding ten thousand rupees,
(iv)has, without reasonable cause failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed;	(iv) a sum not less than ten percent, but not exceeding twenty five percent of the tax due if the tax due is up to ten thousand rupees and fifty percent if the tax due is above ten thousand rupees.  <i>Provided where the time for extension has been obtained and late fee deposited the said penalty shall not be imposed.</i>  <i>Provided further in cases where the tax liability is nil and the extension of the time with late fee has not been</i>

	<p><i>obtained, a sum not exceeding Rs. 2000/- for each month or part thereof shall be imposed as penalty.</i></p> <p><i>(Added vide notification no.- 331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)</i></p>
(v)has submitted a false return of his turnover under this Act,	(v)a sum not exceeding ten thousand rupees, or the amount of tax involved, whichever is higher,
(vi)has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover;	(vi)a sum not less than fifty percent but not exceeding two hundred percent of the amount of tax which would thereby have been avoided,
(vii)has, without any reasonable cause failed-  (a)to deposit the tax due under the Act, before furnishing the return or along with the return;	(vii)  (a)a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is up to ten thousand rupees and fifty percent if the amount due is above ten thousand rupees,

<p>(b)to pay within the time allowed the tax due under the provision of the Act;</p> <p>(c)to deposit with the return, the amount realized as tax in excess of the amount due under the Act or any amount in lieu of such tax by giving it any name or colour;</p>	<p>(b)a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is up to ten thousand rupees and fifty percent if the amount due is above ten thousand rupees,</p> <p>(c)a sum not less than the amount of tax realized or realized in excess but not more than three times the said amount.</p>
<p>(viii)fails to pay the amount in respect to which moratorium has been granted under the provisions of Section 76, within the time specified therein;</p>	<p>(viii)a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is up to ten thousand rupees and fifty percent if the amount due is above ten thousand rupees,</p>
<p>(ix)demands or charges on the sale or purchase of any goods tax not due under the provisions of this Act;</p>	<p>(ix)a sum not exceeding ten thousand, rupees,</p>

(x)realizes any amount as tax on sale or purchase of goods or any amount in lieu of such tax by giving it a different name or colour in contravention of the provisions of sub-section (1) or sub-section (2) of section 22;	(x)a sum not less than the amount of tax realized or realized in excess but not exceeding three times of the said amount,
(xi>wrongly claims an amount as input tax credit or claims an input tax credit on the basis of false Sale Invoice;	(xi)a sum of rupees five thousand or three times of the amount claimed whichever is higher,
(xii)produces a false proof of deposit of any amount of tax or fee or penalty or any sum due under this Act;	(xii)a sum of rupees five thousand or three times of the amount claimed whichever is higher,
(xiii)does not maintain books, accounts, documents in the prescribed manner; or	(xiii)a sum not exceeding five thousand rupees,
(xiv)has maintained or produced false accounts, registers or documents;	(xiv)a sum not less than fifty percent but not exceeding two hundred percent of the amount of tax which would thereby have been avoided,
(xv)refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnish	(xv)a sum not exceeding rupees two thousand for each default,

information which is false in any material particulars;	
(xvi)fails to furnish the audit report in contravention of the provision of section 62;	(xvi)a sum not exceeding five thousand rupees,
(xvii)refuses to permit or refuses or neglects to produce for inspection or examination any book, document or account or display materials in a computer or in a computer floppy or refuses to allow copies or print out to be taken in accordance with the provisions of section 42;	(xvii)a sum not exceeding ten thousand rupees,
(xviii)closes or leaves the place of his business with a view to prevent inspection under this Act or the rules made there under;	(xviii)a sum not exceeding five thousand rupees,
<i>(Deleted vide notification no.- 178 /2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/18 I (120 ) /XXVII(8)/08 Dt. 17-12-2012, w.e.f. 01-03-2013)</i>	<i>(Deleted vide notification no.- 178 /2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/18 I (120 ) /XXVII(8)/08 Dt. 17-12-2012, w.e.f. 01-03-2013)</i>
<del>(xix) imports or transports, or attempts to import or transport, abets the import or transport any goods in contravention of the provisions of <b>Section 48</b> or <b>Section 49</b>;</del>	<del>(xix)a sum not exceeding <b>forty percent</b> of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,</del>



<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xx) Fails or refuses to stop or keep stationary his vehicle for checking at a check post or barrier u/s 50-A or at any other place when so required to do so by an officer empowered u/s 42,43,43-A, 48 or 48-A</p> <p><u><i>Prior to the substitution this sub-section read as under :-</i></u></p> <p><i>(xx)fails or refuses to stop or keep stationary his vehicle when asked to do so by the officer-in-charge of a check-post or barrier established under section 47 or by an officer empowered under section 42;</i></p>	<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xx) A sum not exceeding ten thousand rupees.</p> <p><u><i>Prior to the substitution this sub-section read as under :-</i></u></p> <p><i>(xx)a sum not exceeding ten thousand rupees</i></p>
<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xxi) Fails to prepare, submit or carry the “Transit Pass” as per provision of section-50 or to deliver the same as provided in section 50A</p> <p><u><i>Prior to the substitution this sub-section read as under :-</i></u></p> <p><i>(xxi)fails to obtain authorization for transit of</i></p>	<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xxi) A sum not exceeding forty percent of the value of goods involved or three times of the tax livable on such goods under any of the provisions of this Act, whichever is higher.</p>

<p>goods or to deliver the same, as provided in section 50;</p>	<p><u>Prior to the substitution this sub-section read as under :-</u></p> <p>(xxi)a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,</p>
<p>(xxii)being a transporter or forwarding agent who receives any goods from the driver or person-in-charge of a vehicle coming from out side the State for carrying them out side the State but fails to prove that goods have been carried outside the State;</p>	<p>(xxii)a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,</p>
<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xxiii) the owner or a person duly authorised by such owner or the driver or person-in-charge of a vehicle or of goods in movement , as the case may be, after preparing or submitting “Transit Pass” for transit of goods through the State, fails to produce copies of the “Transit Pass” along with goods before the officer in-charge of the check-post</p>	<p><i>(Substituted vide notification no.-178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012 w.e.f. 01-03-2013 as below)</i></p> <p>(xxiii) A sum not exceeding forty percent of the value of goods involved or three times of the tax livable on such goods under any of the provisions of this Act, whichever is higher.</p> <p><u>Prior to the substitution this sub-section read as under :-</u></p>

<p>setup u/s 50-A or before the officer empowered u/s 42 or 43 or fails to prove that the goods have been carried outside the State as per provisions of Section 50;</p> <p><u>Prior to the substitution this sub-section read as under :-</u></p> <p><i>(xxiii)being transporter or hirer or driver or person-in-charge of a vehicle has prepared documents showing the destination of goods to a place out side the State, fails to produce copies of authorization for transit of goods along with goods before the officer-in-charge of the exit check-post and/ or fails to prove that after obtaining authorization for transit from officer-in-charge of the entry check-post, goods have been carried out side the State;</i></p>	<p><i>(xxiii)a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,</i></p>
<p>(xxiv)tampers with seal put under sub-section (7) of section 42; or</p>	<p>(xxiv)a sum not exceeding twenty five thousand rupees,</p>
<p>(xxv)fails to issue a Sale Invoice in accordance with the provisions of Section 60, or has issued a Sale Invoice with incomplete or incorrect particulars or having issued such invoice he has failed to account for it correctly in his books of accounts;</p>	<p>(xxv)a sum of rupees one hundred or double the amount of tax involved, whichever is higher for the first default, or two hundred rupees or four times of the tax involved whichever is higher, for the</p>

	second and each subsequent default,
(xxvi)issues a false Sale Invoice, voucher or other documents which he knows or has reasons to believe, to be false;	(xxvi)a sum not exceeding ten thousand rupees,
(xxvii)fails to issue a challan or transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act;	(xxvii)a sum of rupees one hundred or double the amount of tax involved, whichever is higher for the first default, or two hundred rupees or four times of the tax involved whichever is higher, for the second and each subsequent default,
(xxviii)issues or receives a false Sale Invoice without sale or purchase of goods shown in such false Sale Invoice;	(xxviii)a sum not exceeding five thousand rupees,
(xxix)issues or furnishes a false or a wrong form of declaration or certificate by reason of which a tax on sale or purchase ceases to be leviable under This Act or the rules made there under;	(xxix)a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,
(xxx)makes use of or furnishes a prescribed form of declaration or	(xxx)a sum not exceeding forty percent of the value of goods

certificate which has not been obtained by him or his principal or agent in accordance with the provisions of this Act or the rules made thereunder;	involved or three times of tax leviable on such goods under any of provisions of this Act, whichever is higher,
(xxxix)transfers a prescribed form of declaration or certificate to any other person except for lawful purposes under the provisions of this Act or the rules made there under;	(xxxix)a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of the goods mentioned on it whichever is higher, and if the form of declaration or certificate is blank, a sum not exceeding ten thousand rupees,
(xxxixi)receives or possesses or uses or furnishes with an intention to cause loss to the revenue, any prescribed form of declaration or certificate which has not been obtained by him or his principal or agent in accordance with the provision of this Act or the rules made thereunder;	(xxxixi)a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of the goods mentioned on it whichever is higher, and if the form of declaration or certificate is blank, a sum not exceeding ten thousand rupees,
(xxxixii)obstructs or prevents any officer from performing any of his functions or	(xxxixii)a sum not exceeding ten thousand rupees,

discharging his duties under this Act or abuses or threatens any officer;	
(xxxiv)provokes or invites other person or persons with a view to prevent any officer from performing his functions or discharging his duties under the Act or participates in an unlawful assembly with a view to prevent an officer from performing his functions or discharging his duties under this Act, or abuses or threatens any officer;	(xxxiv)a sum not exceeding ten thousand rupees,
(xxxv)makes false verifications or declaration on an application for registration or in connection with any other proceeding under this Act;	(xxxv)a sum not exceeding ten thousand rupees,
(xxxvi) otherwise acts in contravention of the provisions of this Act or the rules made there under;	(xxxvi)a sum not exceeding five thousand rupees,
<i>(xxxvii) being liable for obtaining Tax Deduction Account Number under sub-section (13) of Section 35, fails to apply for Tax Deduction Account Number.</i>	<i>(xxxvii) a sum of rupees 500/- for each month or part thereof for the default during the first three months and rupees one thousand for every month or part thereof after the first three months during which the default continues.</i>

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

Explanation- For the purpose of this section, the Assessing Authority includes an officer not below the rank of Commercial Tax Officer, posted at the check-post or also an officer authorized to exercise powers under Section 42 or Section 43 or both, as the case may be.

- (a) in a case referred to in clause (i), a sum of rupees two hundred for each month or part thereof for the default during the first three months and rupees five hundred for every month or part thereof after the first three months during which the default continues;
- (b) in a case referred to in clause (vii) and clause (viii), a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is upto ten thousand rupees and fifty percent if the amount due is above ten thousand rupees;
- (c) in a case referred to in clause (x) a sum not less than the amount of tax realised in excess but not exceeding three times of the amount of tax realised in excess;
- (d) in a case referred to in clause (ii), clause (iv), clause (xiii), clause (xv), clause (xvi), clause (xviii), clause (xxviii) and clause (xxxvi) sum not exceeding five thousand rupees;

- (e) in a case referred to in clause (iii), clause (vi), clause (ix), clause (xiv), clause (xvii), clause (xx), clause (xxvi), clause (xxxiii), clause (xxxiv) and clause (xxxv) a sum not exceeding ten thousand rupees;
- (f) in a case referred to in clause(xi) and clause (xii) a sum of rupees five thousand or three times of the amount claimed whichever is higher;
- (g) in a case referred to in clause (xix), clause (xxi) clause (xxii), clause (xxiii), clause (xxix) and clause (xxx) a sum not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, which ever is higher;
- (h) in a case referred to in clause (xxv) and clause (xxvii) a sum of rupees one hundred or double the amount of tax involved, which ever is higher for the first default, or two hundred rupees or four times of the tax involved which ever is higher, for the second and each subsequent default;
- (i) in a case referred to in clause (xxxi) and clause (xxxii) a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of the goods mentioned on it which ever is higher, and if the



form of declaration or certificate is blank, a sum not exceeding ten thousand rupees;

(j) in a case referred to in clause (v) a sum not exceeding Rs. 10000/- or the amount of tax involved, whichever is higher;

(k) in a case referred to in clause (xxiv) a sum not exceeding Rs. 25000/-

Explanation: The assessing authority includes an officer not below the rank of Commercial Tax Officer Grade II posted at the checkpost or an officer authorised to exercise powers under section 42 or section 43 or both, as the case may be.

(2) A copy of the order passed under sub-section (1) shall be served on a dealer or the person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person in the prescribed manner within thirty days of such service failing which it may be recovered as if it were an arrear of land revenue.

(3) No order shall be made under sub-section (1), unless the dealer or the other person concerned has been heard or has been given a reasonable opportunity of being heard.

(4) The provisions of this section shall mutatis mutandis be applicable to the executor, administrator and the legal representative of the deceased person.

***Before amendments the Section 58 was as follows:-***

***58: Offences and Penalties:***

*(1) If the assessing authority is satisfied that any dealer or other person-*

- (i) *being liable for registration under this Act carries on or continues to carry on business as a dealer beyond thirty days from the date on which he becomes liable to obtain registration, without obtaining registration under and in accordance with the provisions of section 15 or section 16 or without furnishing the security demanded under section 20; or*
- (ii) *not being a registered dealer falsely represents that he is or was a registered dealer at the time when he sells or buys goods: or*
- (iii) *knowingly uses a false registration number including the registration number of another person, with a view to evade or avoid or shift the liability to pay the tax; or*
- (iv) *has, without reasonable cause failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed; or*
- (v) *has submitted a false return of his turnover under this Act; or*
- (vi) *has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or*
- (vii) *has, without any reasonable cause failed-*
  - (a) *to deposit the tax due under the Act, before furnishing the return or along with the return, or*
  - (b) *to pay within the time allowed the tax due under the provisions of the Act; or*
  - (c) *to deposit with the return , the amount realized as tax in excess of the amount due under the Act or any amount in lieu of such tax by giving it any name or color; or*

- (viii) fails to pay the amount in respect to which moratorium has been granted under the provisions of section 76, within the time specified therein; or*
- (ix) demands or charges on the sale or purchase of any goods tax not due under the provisions of this Act; or*
- (x) realizes any amount as tax on sale or purchase of goods or any amount in lieu of such tax by giving it a different name or color in contravention of the provisions of sub-section (1) or sub-section (2) of section 22; or*
- (xi) wrongly claims an amount as input tax credit or claims an input tax credit on the basis of false Sale Invoice; or*
- (xii) produces a false proof of deposit of any amount of tax or fee or penalty or any sum due under this Act; or*
- (xiii) does not maintain books, accounts, documents in the prescribed manner; or*
- (xiv) has maintained or produced false accounts, registers or documents; or*
- (xv) refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purposes of this Act, or furnishes information which is false in any material particulars; or*
- (xvi) fails to furnish the audit report in contravention of the provisions of section 62; or*
- (xvii) refuses to permit or refuses or neglects to produce for inspection or examination any book, document or account or display materials in a computer or in a computer floppy or refuses to allow copies or printout to be taken in accordance with the provisions of section 42; or*
- (xviii) closes or leaves the place of his business with a view to prevent inspection under this Act or the rules made thereunder; or*

- (xix) *imports or transports, or attempts to import or transport, abets the import or transport any goods in contravention of the provisions of section 48 or section 49; or*
- (xx) *fails or refuses to stop or keep stationary his vehicle when asked to do so by the officer-in-charge of a checkpoint or barrier established under section 47 or by an officer empowered under section 42; or*
- (xxi) *fails to obtain authorization for transit of goods or to deliver the same, as provided in section 50; or*
- (xxii) *being a transporter or forwarding agent who receives any goods from the driver or person in charge of a vehicle coming from outside the State for carrying them outside the State but fails to prove that goods have been carried outside the State; or*
- (xxiii) *being a transporter or hirer or driver or person in charge of a vehicle has prepared documents showing the destination of goods to a place outside the State, fails to produce copies of authorisation for transit of goods along with goods before the officer-in-charge of the exit checkpoint and/or fails to prove that after obtaining authorisation for transit from officer-in-charge of the entry checkpoint, goods have been carried outside the State; or*
- (xxiv) *tampers with any seal put under sub-section (7) of section 42; or*
- (xxv) *fails to issue a Sale Invoice in accordance with the provisions of section 60, or has issued a Sale Invoice with incomplete or incorrect particulars or having issued such invoice he has failed to account for it correctly in his books of accounts; or*
- (xxvi) *issues a false Sale Invoice, voucher or other documents which he knows or has reasons to believe, to be false; or*

- (xxvii) *fails to issue a challan or transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act; or*
- (xxviii) *issues or receives a false Sale Invoice without sale or purchase of goods shown in such false Sale Invoice; or*
- (xxix) *issues or furnishes a false or a wrong form of declaration or certificate by reason of which a tax on sale or purchase ceases to be leviable under this Act or the rules made thereunder; or*
- (xxx) *makes use of or furnishes a prescribed form of declaration or certificate which has not been obtained by him or his principal or agent in accordance with the provisions of this Act or the rules made thereunder; or*
- (xxxi) *transfers a prescribed form of declaration or certificate to any other person except for lawful purposes under the provisions of this Act or the rules made thereunder ; or*
- (xxxii) *receives or possesses or uses or furnishes with an intention to cause loss to the revenue, any prescribed form of declaration or certificate which has not been obtained by him or his principal or agent in accordance with the provisions of this Act or the rules made thereunder; or*
- (xxxiii) *obstructs or prevents any officer from performing any of his functions or discharging his duties under this Act or abuses or threatens any officer; or*
- (xxxiv) *provokes or invites other person or persons with a view to prevent any officer from performing his functions or discharging his duties under the Act or participates in an unlawful assembly with a view to prevent an officer from performing his functions or discharging his duties under this Act, or abuses or threatens any officer; or makes a false verification or declaration on an application for registration or in connection with any other proceedings under this Act; or*

*(xxxv) otherwise acts in contravention of the provisions of this Act or the rules made thereunder, it may, after such inquiry as deemed necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him,-*

*(l) in a case referred to in clause (i), a sum of rupees two hundred for each month or part thereof for the default during the first three months and rupees five hundred for every month or part thereof after the first three months during which the default continues;*

*(m) in a case referred to in clause (vii) and clause (viii), a sum not less than ten percent, but not exceeding twenty five percent of the amount due if the amount due is upto ten thousand rupees and fifty percent if the amount due is above ten thousand rupees;*

*(n) in a case referred to in clause (x) a sum not less than the amount of tax realised in excess but not exceeding three times of the amount of tax realised in excess;*

*(o) in a case referred to in clause (ii), clause (iv), clause (xiii), clause (xv), clause (xvi), clause (xviii), clause (xxviii) and clause (xxxvi) sum not exceeding five thousand rupees;*

*(p) in a case referred to in clause (iii), clause (vi), clause (ix), clause (xiv), clause (xvii), clause (xx), clause (xxvi), clause (xxxiii), clause (xxxiv) and clause (xxxv) a sum not exceeding ten thousand rupees;*

*(q) in a case referred to in clause (xi) and clause (xii) a sum of rupees five thousand or three times of the amount claimed whichever is higher;*

*(r) in a case referred to in clause (xix), clause (xxi) clause (xxii), clause (xxiii), clause (xxix) and clause (xxx) a sum*

- not exceeding forty percent of the value of goods involved or three times of tax leviable on such goods under any of provisions of this Act, which ever is higher;*
- (s) in a case referred to in clause (xxv) and clause (xxvii) a sum of rupees one hundred or double the amount of tax involved, which ever is higher for the first default, or two hundred rupees or four times of the tax involved which ever is higher, for the second and each subsequent default;*
- (t) in a case referred to in clause (xxxi) and clause (xxxii) a sum equal to three times of the amount of tax treating the turnover of the goods liable to tax or forty percent of value of the goods mentioned on it which ever is higher, and if the form of declaration or certificate is blank, a sum not exceeding ten thousand rupees;*
- (u) in a case referred to in clause (v) a sum not exceeding Rs. 10000/- or the amount of tax involved, whichever is higher;*
- (v) in a case referred to in clause (xxiv) a sum not exceeding Rs. 25000/-*

*Explanation: The assessing authority includes an officer not below the rank of Commercial Tax Officer Grade II posted at the checkpoint or an officer authorised to exercise powers under section 42 or section 43 or both, as the case may be.*

*(2) A copy of the order passed under sub-section (1) shall be served on a dealer or the person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person in the prescribed manner within thirty days of such service failing which it may be recovered as if it were an arrear of land revenue.*

*(3) No order shall be made under sub-section (1), unless the dealer or the other person concerned has been heard or has been given a reasonable opportunity of being heard.*

*(4) The provisions of this section shall mutatis mutandis be applicable to the executor, administrator and the legal representative of the deceased person.*

## THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

### **Sec. 59: Maintenance of Accounts:**

(1) Every dealer or a person registered or liable to be registered under this Act, or liable to pay tax under this Act, including a dealer covered under sub-section (1) and (2) of section 7 of this Act, shall keep and maintain a true and correct account showing the value of goods purchased, manufactured or sold or supplied by him and such other records as may be prescribed under this Act or the Rules made or Notifications issued thereunder:

Provided that this sub-section shall not apply to such dealers as are not liable to taxation under this Act.

(2) A **manufacturer** liable to pay tax under this Act shall in addition to the accounts referred to in sub-section (1), maintain **stock books** in respect of raw materials as well as products obtained:

(3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, direct any dealer or any class of dealers generally to keep such accounts and records, including records of purchases, sales or delivery of goods in such form and in such manner as may be specified.



(4) Every registered dealer or a dealer referred to in sub-section (1) or sub-section (2) shall keep **at his place of business** all accounts, registers and documents maintained in the course of business.

(5) Where a dealer as referred to in sub-section (1) or sub-section (2) has established branch offices of his business in the State other than the principal place of business, the relevant accounts, registers and documents in respect of each such branch shall be kept by him at such branch.

(6) A dealer who maintains or keeps books or accounts in a computer shall prepare floppies of such books or accounts or documents and shall maintain them as part of accounts. He shall also maintain day-to-day print out of all such books, accounts and documents.

(7) Any dealer who claims input tax credit under section 6 shall maintain a register in respect of computation of input tax credit tax period wise.

(8) Where a dealer purchases or receives or disposes of manufactured goods in more than one of the following ways:

(a) makes sale of taxable goods inside the State; or

(b) dispatches taxable goods to other dealers for sale inside the State;

or

(c) makes sale of taxable goods in the course of inter-state trade or commerce; or

(d) makes sale of goods in the course of export out side the territory of India; or

(e) dispatches taxable goods out side the State otherwise than by way of sale, shall keep separate account of sales or dispatches and also purchases and receipts of goods for such purposes separately as far as possible.

(9) Every dealer liable to pay tax shall prepare an inventory of goods purchased from in side the State or imported from out side the State along with their purchase value as given below:

(a) goods held in the opening stock on the date on which the dealer becomes liable to pay tax;

(b) goods held in the closing stock on the last date of each financial year;

(c) goods held in opening stock on the first date of the assessment year in which the dealer applies for cancellation of registration under sub-section (1) of section 18;

(d) goods held in stock at the time of discontinuance of business:

Provided that if the dealer manufactures any goods and holds any manufactured or semi-manufactured goods in stock, he shall also prepare inventory of goods and record estimated purchase value of goods used in manufactured or semi-manufactured goods as constituent and estimated purchase value of goods used in the manufacture of such goods as fuel or consumable stores or lubricants or packing material.

(10) Where a registered dealer or a dealer liable to pay tax, consigns any taxable goods to another dealer whether as a result of sale or other wise:

(a) such dealer shall issue a sale invoice or a challan in case of consignment of goods otherwise than way of sale which shall contain the name, address and registration certificate no.(which effective date) of the

consignor and consignee and the description, quantity, volume of goods and amount of tax charged in case of sale and also estimated value of goods in case of consignment and value of goods in case of sale.

(b) such dealer shall issue a sale invoice or as the case may be the challan in original to the purchaser or the consignee person and the first copy of the invoice in case of sale and the original copy of the challan in case of consignment shall accompany the goods during the journey of goods and the second copy of invoice in case of sale and duplicate of the challan in case of consignment shall be preserved by the dealer as part of his accounts ;

(c) person transporting the goods for delivery to consignment shall record the registration number of the vehicles on the sale invoice or the challan and shall deliver such documents to the consignee along with the goods.

(d) the consignee dealer of goods shall not transfer any such document to any other person and preserve the same for the period prescribed under section 61.

*(substituted vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008 as above )*

(10) Where a registered dealer or a dealer liable to pay tax, consigns any taxable goods to another dealer whether as a result of sale or other wise:

(a) such dealer shall issue in the prescribed manner a challan or a transfer memo in original containing prescribed particulars, to the purchaser or the consignee person and the same shall accompany the goods during the journey of goods and the duplicate copy shall be preserved by the dealer as part of his accounts;

(b) person transporting the goods for delivery to consignee shall fill in the particulars in the relevant columns in the transfer memo or challan and shall deliver such documents to the consignee along with the goods;

(c) consignee dealer of goods shall not transfer any such document to any other person and preserve the same for the period prescribed under section 61.

(11) Where a dealer receives any certificate or any form of declaration prescribed under this Act or Rules made or notifications issued thereunder:

(a) he shall use them in the prescribed manner and keep an account of such used or unused certificates or forms of declarations in the prescribed manner;

(b) he shall not transfer to any person and no person shall receive from any person any certificate or any form of declaration except for lawful purposes;

(c) any dealer who receives any prescribed form including duplicate copy thereof and other connected documents, shall preserve them for a period prescribed under section 61.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 60: Sale Invoice:**

(1) Every registered dealer making a sale to any person or a dealer, whether registered or not, shall provide that purchaser for every sale with a Sale Invoice containing such particulars as specified in sub-section (2), and retain a copy thereof. The amount of tax charged on sales of goods shall be shown separately:

Provided that if an invoice has been issued under the provisions of Central Excise Tariff Act, 1985, it shall be deemed to be a Sale invoice if it contains the particulars specified in sub-section (2).

(2) The Sale Invoice issued under sub-section (1) shall contain the following particulars on the original as well as copies thereof-

(a) the name, address and registration certificate number *i.e. Taxpayer's Identification Number(TIN)* of the selling registered dealer and the date from which the registration is effective;

(b) the name, address and registration certificate number *i.e. Taxpayer's Identification Number(TIN)* with effective date, of the purchasing dealer;

*(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

(c) an individual serialised number and the date on which the Sale invoice is issued;

(d)description, quantity, volume and value of goods sold and amount of tax charged thereon indicated separately;

(e)signature of the selling dealer or his manager, agent or **employee** (servant) (*substituted vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008*) duly authorised by him;

(3) Every registered dealer shall, in respect of every sale of goods on which tax is charged, issue to the purchaser a Sale Invoice and in case of sale of goods exempt from tax, exceeding such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a Sale invoice:

Provided that in a case in which a purchaser demands a sale invoice in respect of such sale, the dealer shall issue to the purchaser a sale invoice, irrespective of the amount of sale.

(4) Every Sale Invoice shall, before being issued, be authenticated by the dealer or his authorised signatory.

(5) The Sale Invoice shall be issued in triplicate. The original shall be issued to the purchaser and the first copy shall be issued to the dealer or any other person, as the case may be, taking delivery of the goods and the second copy shall be retained by the selling dealer.

(6) Not more than one Sale Invoice shall be issued for each sale.

(7) An original Sale Invoice shall not be provided to a person in any circumstances other than those specified in this section, but a copy marked as Duplicate may be provided in the prescribed manner, if the person

receiving the original invoice so requests for the reason that the original has been lost.

(8) The particulars of Sale Invoice shall be recorded in the form and in the manner as may be prescribed.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 61: Period for which Accounts to be retained:**

(1) Every dealer shall preserve all accounts required to be maintained by him in the course of his business, including Sale invoices, debit credit memos and vouchers relating to productions, stocks, purchases, deliveries and sales, for a period of **six years** after the close of the assessment year to which they relate or till the assessment or reassessment or any other proceedings under the Act for such assessment year is completed, whichever is later.

(2) Every dealer who maintains the records electronically shall retain them in electronically readable format for the period specified in sub-section (1).



## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 62: Audit of Accounts:**

(1) Where in any particular year gross turnover of a dealer exceeds one crore rupees or such other amount as the State Government may, by notification in the Official Gazette, specify, then such dealer shall get his accounts, in respect of that year, audited by an accountant (*before 31st Decenber in the following year*) (*Deleted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010*) and obtain a report of such audit duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) A true copy of such report shall be furnished by such dealer to the assessing authority *along with the annual return as prescribed in section 25.*

*(substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)*

**(Before substitution this sub-section read as under)**

(2) A true copy of such report shall be furnished by such dealer to the assessing authority within two months after the expiry of the period during which the audit is required to be completed as per sub-section (1)

*Provided that the dealers dealing exclusively in purchase and sale of goods exempted from tax under the Act or the dealers making*

***subsequent sale of Special Category Goods need not submit audit report provided under sub-section (1).***

*(inserted vide notification no. 22/XXXVI(3)/2010/76(1)/2009 Dated 07.01.2010 as above)*

(3) where in any particular year gross turnover of a dealer exceeds forty lakh rupees but does not exceed one crore rupees, then such dealer shall furnish a true copy of the audit report of his accounts duly signed and verified by a Chartered Accountant, or a Cost Accountant or an Auditor. This report shall be submitted to the Assessing Authority along with the annual return as prescribed in the Sec 25.(by 31<sup>st</sup> December of the following Year). ***(substituted vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)***

Explanation: For the purpose of this section, "Accountant" means a Chartered Accountant as defined in the Chartered Accountant' Act 1949, a Cost Accountant as defined in the Cost and Works Account's Act,1959, and includes a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of Companies registered under the said Act.

*(prior to the above substitution this section read as under which was substituted vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008)*

(1) Where in any particular year gross turnover of a dealer exceeds one crore rupees or such other amount as the State Government may, by notification in the Official Gazette, specify, then such dealer shall get his accounts, in respect of that year, audited by an accountant before 31st December in the following year and obtain a report of such audit duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) A true copy of such report shall be furnished by such dealer to the assessing authority within two months after the expiry of the period during which the audit is required to be completed as per sub-section (1).

(3) where in any particular year gross turnover of a dealer exceeds forty lakh rupees but does not exceed one crore rupees, then such dealer shall furnish a true copy of the audit report of his accounts duly signed and verified by a Chartered Accountant, or a Cost Accountant or an Auditor. This report shall be submitted to the Assessing Authority by 31<sup>st</sup> December of the following Year.

Explanation: For the purpose of this section, "Accountant" means a Chartered Accountant as defined in the Chartered Accountant' Act 1949, a Cost Accountant as defined in the Cost and Works Account's Act,1959, and includes a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of Companies registered under the said Act.

**prior to the substitution this section read as under-**

(1) Where in any particular year gross turnover of a dealer exceeds forty lakh rupees or such other amount as the Commissioner may, by notification in the Official Gazette, specify, then such dealer shall get his accounts, in respect of that year, audited by an accountant before 31st December in the following year and obtain a report of such audit duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) A true copy of such report shall be furnished by such dealer to the assessing authority *along with the annual return as prescribed in section 25.*

(3) where in any particular year gross turnover of a dealer exceeds forty lakh rupees but does not exceed one crore rupees, then such dealer shall furnish a true copy of the audit report of his accounts duly signed and verified by a Chartered Accountant, or a Cost Accountant or an Auditor. This report shall be submitted to the Assessing Authority along with the annual return as prescribed in the Sec 25.

Explanation: For the purpose of this section, "Accountant" means a Chartered Accountant as defined in the Chartered Accountant' Act 1949, a Cost Accountant as defined in the Cost and Works Account's Act,1959, and includes a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of Companies registered under the said Act.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 63: Liability on Issuing False Certificate etc.:**

Notwithstanding any thing to the contrary contained elsewhere in this Act, and without prejudice to section 58 a person who issues a false or wrong certificate or declaration prescribed under any provision of this Act or the Rules framed thereunder, to another person by reason of which a tax leviable under this Act on the transaction of purchase or sale made to or by such other person ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued:

Provided that before taking any action under this section, the person concerned shall be given an opportunity of being heard.

Explanation: where a person issuing a certificate or declaration discloses therein his intention to use goods purchased by him for such purpose as will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 64: Objection to Jurisdiction:**

(1) No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal unless such objection was taken up before the assessing authority at the earliest possible opportunity and unless, in the opinion of the appellate or revising authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby.

(2) Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the assessing authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him, shall not be refundable to him, in consequence of the assessment being so set aside or quashed.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 65: Certain Presumptions in Affixing Tax Liability:**

(1) Where any goods relating to business are-

(a) traced to a dealer and are found in a building or place but the dealer has not accounted for such goods in his books of account; or

(b) traced to a dealer and are found in a vehicle, whether belonging to the dealer or not, such goods are not accompanied with the documents prescribed under any provision of this Act.; or

(c) found in the custody of any person who claims to carry on any profession other than business but fails to prove that such goods belong to some other person or dealer, it shall be presumed that such goods have been imported or purchased within the State by such dealer or person with a view to evade payment of tax on sale of such goods or if the goods found are for use in manufacture, the tax on the sale of goods to be manufactured by using such goods.

(2) Where at a check post or any other place inside the State it is found that any taxable goods for the purpose of business, are being imported without a form of declaration prescribed under section 48, unless otherwise proved after furnishing proper and sufficient evidence, it shall be presumed that-

(a) such goods are being imported with a view to evade payment of tax under this Act; and

(b) such goods are being imported with a view to evade payment of tax on sales of such goods under this Act:

Provided that if goods are meant for use in manufacture of any goods, it shall be presumed that goods are being imported with a view to evade payment of tax on sale of goods to be manufactured by using such goods.

(3) Where any books or accounts or documents are found in any place or building or vehicle, unless the person in charge of such place or building or vehicle, after furnishing proper and sufficient evidence, proves that the same belong to some other person or dealer, such books, accounts or documents shall be deemed to belong to such person, and such person shall be deemed to be a dealer in respect of such transactions relating to business of purchase and sale of goods, as may be found in such books, accounts or documents.

(4) Where any transactions of sale and/ or purchase of any goods relating to a dealer are found recorded in any books or accounts or documents of any other dealer and if such transactions are not found recorded in the books or accounts or documents maintained by the former dealer in the ordinary course of business, it shall be presumed that the transaction related to such former dealer and that such goods have been imported or purchased within the State with a view to evade payment of tax on sale of such goods or if the goods recorded in such books, accounts or documents are for use in manufacture, the tax on sale of goods to be manufactured by using such goods.

(5) Where in respect of purchase or sale of any goods within the State, the challan or transport invoice referred to in sub-section (10) of section 59 is required to be issued or obtained or to accompany the goods during transit



and if such provisions have not been complied with or the goods in whole or part are not covered by such documents, it shall be presumed that such goods have been sold, or as the case may be, purchased with a view to evade payment of tax on purchase or sale of such goods or, if the goods are for use in the manufacture, the tax on the sale of goods to be manufactured by using such goods.

(6) Where a dealer obtains any Sale invoice from a registered dealer without making purchase of goods shown in such Sale invoice, it shall be presumed that the dealer obtaining such documents has purchased goods shown in such document from other person with a view to evade payment of tax on purchase of such goods in the circumstances in which tax can not be levied on the person selling such goods and tax shall be payable under the provisions of this Act on such purchases by the dealer purchasing the goods.

(7) Where the Assessing Authority is satisfied that a "scheme" has been entered into or carried out such that a person, in connection with the scheme, has obtained the tax benefit resulting in-

(a) a reduction in the liability of any person to pay tax ; or

(b) an increase in the entitlement of a person to an input tax credit or refund; or

(c) any other avoidance or postponement of liability for the payment of tax, it shall be presumed that such person or persons who carried out or entered into the scheme did so for the sole and dominant purpose to enable such person to obtain the tax benefit, and the assessing authority may determine the liability of such person who has obtained

the benefit as if the scheme had not been entered into or carried out.  
Explanation: The "scheme" includes any agreement, arrangement, promise, or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings, and any plan, proposal, course of action, or course of conduct.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 66: Burden of Proof:**

(1) In any assessment proceeding, when any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of circumstances bringing the case within any of the exceptions, exemptions or relief under any provisions of this Act, or that he is eligible for input tax credit under section 6, shall lie upon him and the assessing authority shall presume the absence of such circumstances.

(2) Where any dealer claims that he is not liable to pay tax in respect of any transaction of sales or purchases, the burden of proving the existence of facts and circumstances on the basis of which he claims such exemptions from liability shall lie upon him.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 67: Additional Evidence in Appeal:**

The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the appellate authority or the Tribunal except where the evidence sought to be adduced in evidence, which the assessing authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the assessing authority.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 68: Indemnity:**

No Suit, prosecution or other legal proceedings shall lie against any servant of the Government for any thing which is in good faith done or intended to be done under this Act or rules made thereunder.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 69: Bar to Certain Proceedings:**

No assessment made and no order passed under this Act or the rules made thereunder by any authority shall be called in question in any Court, and save as is provided in this Act, no appeal or application for revision shall lie against any such assessment or order.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 70: Certain Information to be Confidential:**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or the rules made thereunder, or in any evidence given or affidavit or deposition made in the course of any proceedings under the Act or the rules made thereunder, or in any record of any proceedings relating to the recovery of a demand prepared for the purpose of the Act or the rules made thereunder shall be treated as confidential.

(2) Nothing in sub-section (1) shall apply to the disclosure of any such particulars:-

(a) for the purpose of any investigation of, or prosecution for any offence under this Act or under the Indian Penal Code, 1860, or under any other enactment for the time being in force; or

(b) to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the rules made thereunder; or

(c) occasioned by lawful employment under the Act or the rules made thereunder of any process for recovery of any demand; or

(d) to a Civil Court in any suit to which the Government is a party which relate to any matters arising out of any proceedings under this Act or the rules made thereunder; or

- (e) occasioned by a lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document; or
- (f) to an officer of Central Government or the Government of any State for the purpose of enabling that Government to levy or realise any tax imposed by it; or
- (g) to an officer of the Central or the State Government for the purpose of making an enquiry against any Government servant; or
- (h) or purpose of audit of public accounts; or
- (i) for any other lawful purpose under this Act or the rules made there under.

(3) Nothing in this section will apply to publication of any information relating to a class of dealer or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

(4) Notwithstanding any thing contained in this section, 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 of the particulars relating to any proceeding 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.

(5) 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 with out 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.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 71: Powers to make Rules:**

(1) The State Government may make Rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such Rules may provide for-

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the registration of persons engaged in the sale or purchase of goods and the imposing of conditions in respect of the same for the purpose of enforcing the provisions of this Act and fees for registration;

(c) the determination of turnover for the purpose of assessment of tax under this Act;

(d) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation ;

(e) the appointment, duties and powers of officers appointed for the purposes of enforcing the provisions of this Act;

(f) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;

(g) refunds of amounts deposited under sub-section (1) of section 40, the procedure for such refunds and the period within which they may be made;

(h) the manner of putting seals under sub-section (7) of section 42 and the manner in which and by whom the same shall be removed and for custody of sealed property and other goods and documents referred to in that sub-section;

(i) the custody of goods seized under section 43; and

(j) the matters which are to be or may be prescribed.

(3) The powers to makes Rules conferred by this section shall be subject to the condition of the Rules being made effective after previous publication for a period of not less than four weeks:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, it may make any Rule without such previous publication.

(4) All Rules made under this section shall be published in the Gazette and upon such publication shall have effect immediately as if enacted in this Act.

(5) Every Rule made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly while it is in session, for a total period of fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the State Legislative Assembly may during said period make. However any such modification or annulment shall be without prejudice to the validity of any thing previously done or omitted to be done under that rule.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 72: Power to issue Notifications with Retrospective effect:**

Where the State Government is satisfied that it is necessary so to do in public interest, it may issue a notification where ever required under the provisions of this Act, so as to make it effective from a date not earlier than six months from the date of issuance of such notification:

Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 73: Transfer to Defraud Revenue void:**

Where, during the pendency of any proceeding under this Act, any person liable to pay any tax or other dues creates a charge on or transfers, any movable or immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings:

Provided that nothing in this section shall impair the rights of a transferee in good faith and consideration.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 74: Fees in certain Cases:**

(1) Subject to the provisions of sub-section (3), the fee payable on a memorandum of appeal or other applications under this Act filed or moved shall be as follows:-

(a) On a memorandum of appeal under section 51 Two percent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of one thousand rupees.

(b) on a memorandum of appeal under section 53 Seven and a half percent of the amount of tax, fee or penalty in dispute subject to a minimum of five hundred rupees and a maximum of two thousand rupees.

(c) On an application under section 57 One hundred rupees

(d) On any other application-

(i) when addressed to the

commissioner or the revising  
authority or the Tribunal                      Twenty rupees

(ii) when addressed to any other  
officer or authority                              Ten rupees

(2) The fee referred to in this section and any provisions of this Act shall be payable in the manner prescribed, and proof of deposit shall be attached to the memorandum, or application as the case may be:

Provided that where the amount of fee payable does not exceed *fifty rupees*, the same may be paid in Court fee stamp.

(3) No fee shall be payable in respect of :-

(a) an application or a memorandum of appeal presented by the Commissioner or any other officer or authority appointed under this Act or the rules made thereunder;

(b) an application in which only information is sought and in which no specific relief is prayed for;

(c) an application under section 57, seeking a decision only as to rate of tax applicable or the point at which the tax is payable.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

*(substituted vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008 as below)*

### **Sec. 75: Power of Remission of arrears and granting Installments:**

(1) Subject to such conditions and restrictions as may be deemed fit the State Government may remit the arrears of tax, penalty, interest or other dues against any dealer or person.

(2) Subject to such conditions and restrictions as may be deemed fit-

(a) the State Government may permit any dealer or other person, against whom any amount of tax penalty or other dues is outstanding to pay the amount in such number of monthly installments, not exceeding twenty four, as it may consider proper in the circumstances of the case; and

(b) the Commissioner may likewise permit any dealer or other person, against whom any amount of tax, penalty or other dues aggregating not more than *two* lakh rupees is outstanding, to deposit the same in such number of monthly installments, not exceeding twenty, as he may consider proper in the circumstances of the case.

(3) Where such dealer or other person fails to furnish, within thirty days of the receipt of the order referred to in sub-section (2), adequate security to the satisfaction of the assessing authority concerned for payment of outstanding



amount, or fails to comply with the conditions and restriction imposed in such order, the amount due shall be recoverable at once.

**prior to the substitution this section read as under:-**

**75: Power to Grant Installment:**

(1) Subject to such conditions and restrictions, including the conditions regarding furnishing security to the satisfaction of the assessing authority, as may be deemed fit to be imposed-

(a) the State Government may permit any dealer or other person, against whom any amount of tax penalty or other dues is out standing to pay the amount in such number of monthly installments, not exceeding twenty four, as it may consider proper in the circumstances of the case; and

(b) the Commissioner may likewise permit any dealer or other person, against whom any amount of tax, penalty or other dues aggregating not more than one lak rupees is outstanding, to deposit the same in such number of monthly installments, not exceeding twelve, as he may consider proper in the circumstances of the case.

(2) Where such dealer or other person fails to furnish, within thirty days of the receipt of the order referred to in sub-section (1), adequate security to the satisfaction of the assessing authority concerned for payment of outstanding amount, or fails to comply with the conditions and restriction imposed in such order, the amount due shall be recoverable at once.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 76: Moratorium for Payment of Tax:**

(1) Notwithstanding any thing contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing production of any goods or for promoting the development of any industry in the State generally or in any district or part of a district in particular, it may on application or otherwise in any particular case or generally, by notification declare that to the dealers running new units whose date of starting production falls on a date prior to the date of commencement of this Act and dealers owning manufacturing units which have undertaken expansion, diversification or modernization or backward integration prior to the date of commencement of this Act and if such dealers hold an eligibility certificate issued under the provisions of section 4-A of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002, rules made or notifications issued thereunder, moratorium for payment of admitted tax in lieu of exemption from tax on sale of goods whether wholly or partly or at reduced rate, will be allowed subject to the conditions given in this section and such other conditions as may be prescribed or as the State Government may, by notification in the Gazette, specify:

(2) Dealers who have been granted facility of moratorium for payment of admitted tax before the commencement of this Act, such facility shall continue and shall be deemed to have been granted under this Act, and to that extent the provisions of Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 shall be deemed to be part

of this Act. The facility granted under this section shall be subject to such conditions as given in this section and such other conditions as may be prescribed or as the State Government may, by notification in the Gazette, specify.

(3) Any application pending at the time of commencement of this Act, before the Commissioner of Trade Tax, for issue of orders for moratorium for payment of admitted tax under the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 shall be deemed to be pending under the provisions of this Act before the Commissioner and the same shall be disposed of according to the provisions of that Act as it was in force on the date on which the application was presented before the Commissioner.

(4) Notwithstanding any thing contained contrary to the provisions of this Act and in particular to the provisions of section 4-A or sub-section (2-A) of section 8 of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002, rules made or notifications issued thereunder

(a) application for grant of eligibility certificate presented on a date prior to the date of commencement of this Act before the competent authority under that Act shall be deemed pending before the prescribed authority under this Act,

(b) dealers owning new units whose date of starting production falls before the date of commencement of this Act and dealers owning such units as have under taken expansion or diversification or modernization or backward integration before the date of

commencement of this Act, may apply for grant of eligibility certificate under the provisions of section 4-A of the Uttaranchal(the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 within the time prescribed under that Act before the prescribed authority under this Act.

(5) Applications for grant of eligibility certificate under sub-section (4) shall be disposed of by the prescribed authority according to the provisions of the Uttaranchal(the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002, the rules made and notifications issued thereunder, as applicable on the date of commencement of this Act, and the dealer, if found eligible, shall be granted eligibility certificate, and such dealer shall be entitled to moratorium for payment of admitted tax to the extent and for the period provided in sub-section(6).

(6) Subject to other provisions of this section, the dealers holding eligibility certificate either granted under the provisions of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 before the date of the commencement of this Act or who may be granted eligibility certificate under sub-section (5), shall be eligible to tax concessions or, as the case may be, for the facility of moratorium for payment of tax in lieu of exemption from tax, as per provisions of section 4-A of the repealed Act and the Rules made or relevant Notifications issued thereunder, subject to the following conditions and restrictions, namely:-

(a) the dealers who had opted for moratorium for payment of tax in lieu of exemption from tax, shall be eligible for the facility of moratorium to the extent of aggregate amount of hundred percent of the amount of

exemption from tax mentioned in the eligibility certificate and fifty percent of the amount of fixed capital investment mentioned in the eligibility certificate less aggregate of such amount in respect of which facility of moratorium for payment of tax has been availed during the period before the commencement of this Act, for the period remaining on that date out of the maximum period mentioned in the order of moratorium.

(b) the dealers who were enjoying exemption from tax for any period before the commencement of the Ordinance, may, either

(i) continue to do so for the period remaining on that date out of the maximum period mentioned in eligibility certificate, and to the extent of remaining balance amount (amount of exemption from tax mentioned in the eligibility certificate less the aggregate of amount of exemption from tax as has been availed before the date of commencement of this Ordinance); or

(ii) opt, in the prescribed manner, for benefit of moratorium for payment of tax in lieu of exemption from tax and such units shall be eligible for facility of moratorium to the extent of aggregate amount of hundred percent of the amount of exemption from tax mentioned in the eligibility certificate and fifty percent of the amount of fixed capital investment mentioned in the eligibility certificate less the aggregate of amount of exemption from of tax as has been availed before the date of commencement of the Ordinance, for the period remaining on that date out of the maximum period mentioned in the eligibility certificate:

Provided that if the dealer does not choose either of the two options, within 30 days of the commencement of this Act, it shall be presumed that the dealer desires to continue as per provision (i) above.

(c) any taxable dealer purchasing goods from such dealer holding eligibility certificate and who is exempted from tax, whether wholly or partially, shall be entitled to Input Tax Credit of the amount of tax charged in the sale invoice of the selling dealer and for this purpose the selling dealer shall append the following certificate in the sale invoice regarding.

#### **Certificate**

"Certified that the dealer is entitled to exemption from tax @ -----% as per Eligibility Certificate No-----dated----- according to which the exemption amount in this Invoice comes to Rs.-----."

*(substituted vide notification no.- 1314/XXXVI(4)/2008 Dt. 31-03-2008 as above)*

#### **prior to the substitution this sub-section read as under:-**

(c) any taxable dealer purchasing goods from such dealer holding eligibility certificate and who is exempt from tax, whether wholly or partially, shall be entitled to Input Tax Credit of the aggregate amount of tax charged in the sale invoice of the selling dealer and the amount of exemption from tax as per eligibility certificate, and for this purpose the selling dealer shall append a certificate in the sale invoice in the following Proforma-

#### **Certificate**

"Certified that the dealer is entitled to exemption from tax @ -----% as per Eligibility Certificate No-----dated----- and the amount of exemption from tax in this Sale Invoice comes to Rs.-----."

(7) Under moratorium for payment of admitted tax under this section, the amount of tax for each assessment year, which a dealer would have been liable to pay as admitted tax payable on sale of goods if exemption had not been granted, less any amount of admitted tax payable according to the conditions of eligibility certificate for the assessment year, shall be deferred for a period of seven years. Such period of seven years shall be computed from 1<sup>st</sup> May of the assessment year subsequent to assessment year to which such amount of tax relates. The amount of tax for each assessment year for which moratorium is granted shall be paid by the dealer in lump sum within one month of the expiry of the period of moratorium:

Provided that the total amount payable shall be paid in lump sum within three months of its becoming payable when the moratorium ceases as per the provisions under sub-section (14) of this section.

(8) Moratorium shall be allowed only to those manufacturers who hold eligibility certificate and who obtain certificate of moratorium from the prescribed authority.

(9) Moratorium shall be admissible in respect of tax on sale of goods mentioned in the eligibility certificate and shall not be available in respect of tax payable on purchases of goods, if any, and in respect of sales of goods for which eligibility certificate is not applicable.

(10) Moratorium shall not be admissible in respect of amount of tax assessed in excess of tax admittedly payable and shall be limited to the amount of tax and for the period mentioned in sub-section (6).

(11) Moratorium shall be available to only such manufacturers who create first charge on their property in favour of the State Government sufficient to cover the amount of tax for which moratorium has been granted.

(12) Moratorium shall be subject to such conditions as the State Government may, by notification in the gazette prescribe.

(13) The Commissioner may, by order in writing, before or after the expiration of the period of exemption or reduction, amend or cancel the certificate of eligibility in the following circumstances-

(a) where there is any legal or factual error in issuing such eligibility certificate; or

(b) where the unit is not entitled to such facility or is entitled to such facility for a lesser period or from a different date; or

(c) where the dealer has misused the certificate of eligibility in any manner; or

(d) where the dealer has acted in contravention of any conditions of eligibility certificate; or

(e) where the dealer has not paid any amount of tax or penalty due from him either under this Act or under the Central Sale Tax Act, 1956; or

(f) where the dealer is involved in the evasion of tax under this Act or under the Central Sales Tax Act, 1956; or

(g) where the dealer has discontinued business,



and in any such case the facility of moratorium shall be withdrawn with effect from the date specified in the order and such date may be prior to the date of such order, so however, that in cases of misuse or breach, the cancellation of eligibility certificate shall have effect not before the date of such misuse or breach;

Provided that no order under this section shall be passed without giving the dealer a reasonable opportunity of being heard.

(14) The moratorium shall cease and the total amount shall become payable-

(a) on the date on which the dealer discontinues business; or

(b) on the date on which the dealer violates any of the conditions subject to which eligibility certificate has been granted; or

(c) on the date on which the order of cancellation of certificate of eligibility under sub-section (13) is served on the dealer, and the

amount shall be paid in lump sum within three months of its becoming payable.

(15) When any dealer fails to pay the amount due under the provisions of sub-section (7) or sub-section (14) of this section within the time specified therein, he shall, notwithstanding his liability under section 58 be liable to pay interest at the rate of fifteen percent per annum for the period of default:

Provided that no penalty under this sub-section shall be levied without giving the dealer an opportunity of being heard.

(16) If there is discontinuation of business, within the meaning of clause (e) of sub-section (7) of section 3, of the manufacturer who was eligible for

exemption from or reduction in rate of tax under this section, and if he is succeeded by another manufacture by means of sale, license, contract, lease, managing agency or in any other manner, such successor manufacturer may, subject to the provisions of sub-section (13), apply to the officer competent to grant eligibility certificate, within sixty days of such succession, for the grant of facility under this section for the un expired portion of the period for which the facility was or could be granted to the former manufacture:

Provided that the aforesaid officer may, in its discretion and for adequate and sufficient reasons to be recorded in writing, entertain an application moved within six months of the date of the expiration of the period specified in this sub-section;

Provided further that such manufacture and successor manufacturer for the purpose of liability of tax shall be treated as the transferor and transferee under sub-section (4) of section 9;

Provided also that in computing the un-expired portion of the period, the period during which the production of successor manufacturer remains closed on account of an order passed by any Court or Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction shall be excluded.

(17) The State Government may, by notification in the gazette, withdraw this facility of moratorium for payment of tax under this section, where it is of the opinion that it is no longer in public interest:

Provided that this facility shall not be withdrawn retrospectively.

Explanation: The expression "new unit" and "unit which has undertaken expansion, diversification, modernization or backward integration" and "eligibility certificate" shall have the same meanings as are assigned to them under section 4-A of the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 77: Facility for Sick Industrial Units:**

(1) Notwithstanding anything contained in section 34 and section 75, but subject to such conditions as may be deemed fit to be imposed, the State Government may allow the deferment of payment of any existing or future dues payable by an industrial unit under the provisions of this Act or allow payment of such dues in such number of installments as may be specified, if such industrial unit is declared a sick unit in accordance with the guidelines specified in this behalf by an authorized body constituted by the Central Government or the State Government in connection with rehabilitation of sick industrial units and is approved for rehabilitation by an approved agency, appointed by the Central Government or the State Government.

(2) Notwithstanding anything contained in section 31, the State Government may set aside an order of assessment or penalty passed ex party against a sick unit and direct fresh disposal of the case in accordance with law.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 78: Power to collect Statistics:**

(1) If the Commissioner considers that for the purpose of better administration of this Act it is necessary so to do, it may, by issuing a circular and or by publication in the news paper or by notification in the Gazette, direct that statistics be collected relating to any matter dealt with, by or under this Act.

(2) Upon such direction being made, the Commissioner or any person authorised by it in this behalf, call upon all dealers or class of dealers or a particular dealer to furnish such information or returns or statements as may be stated therein relating to any matter in respect of which statistics are to be collected.

(3) Dealer or dealers shall be liable to furnish such information within the time allowed.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 79: Power to remove difficulties:**

(1) Where any difficulty arises in giving effect to the provision of this Act, the State Government may, by notification in the Gazette, make such orders not inconsistent with this Act, as may appear to be necessary or expedient for removing the difficulty.

(2) No order under sub-section (1) shall be made after the expiration of three years from the date of commencement of this Act.

(3) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before the State Legislative Assembly while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the State Legislative Assembly may during said period make. However any such modification or annulment shall be without prejudice to the validity of any thing previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said notification or annulment.

## **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

### **Sec. 80: Transitional Provisions:**

In particular and without prejudice to the generality of the provisions of Repeal and Saving under section 81 of this Act, the transitional provisions under this section shall include-

(1) Any person appointed as the Commissioner, Additional Commissioner, Additional Commissioner Grade-I, Additional Commissioner Grade-II, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Trade Tax Officer Grade-II, or any person appointed to assist the Commissioner, under the Uttaranchal (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 (referred to as the Repealed Act) or, as the case may be, under the Uttaranchal Value Added Tax Ordinance, 2005 (referred to as the Repealed Ordinance) and continuing in office immediately before the date of commencement of this Act shall, on and from such date, be deemed to have been appointed under this Act and shall continue in office as such till such person holds such office in the Commercial Tax Department and such officer shall exercise the powers vested in and perform the duties cast under this Act, rules made or notifications issued thereunder;

(2) Any person appointed as President or Member of Appeal Tribunal under the Repealed Act or, as the case may be, the Repealed Ordinance, and continuing in office immediately before commencement of this Act shall, on and from such date, be deemed to have been appointed under this Act and

shall continue in office as such till such person holds such office in Appeal Tribunal and such officer shall exercise the powers vested in him and perform the duties cast under this Act, Rules made or Notifications issued thereunder;

(3) All rules, regulations, notifications or orders made or directions issued by the State Government or any orders or directions issued by the Commissioner under any provisions of the Repealed Act or, as the case may be, the Repealed Ordinance, or rules made thereunder, and continuing to be in force on the day immediately before the date of commencement of this Act shall continue to be in force on or after such date in so far as they are not inconsistent with the provisions of this Act and the rules made thereunder until they are repealed or amended;

(4) Any order by the Commissioner delegating any power under the Repealed Act or, as the case may be, the Repealed Ordinance, or the rules made thereunder, to any person appointed, by any designation, to assist him before the date of commencement of this Act shall, on and from such date, continue to be in force after the commencement of this Act;

(5) With effect from the date of commencement of this Act liability of payment of tax on sale or purchase of any goods made on or after such date under the provisions of the Repealed Act or, as the case may be, the Repealed Ordinance, shall cease;

(6) Any tax assessed or penalty imposed under the Repealed Act or, as the case may be, the Repealed Ordinance, in respect of sales or purchases made



thereunder before the date of commencement of this Act, shall be payable or recoverable in accordance with the provisions of this Act. The amount of interest payable for the period before the date of commencement of this Act shall be paid and recovered according to the provisions of the Repealed Act or, as the case may be, the Repealed Ordinance, and for the period starting on or after such date shall be paid and be recovered in accordance with the provisions of this Act;

(7) Where period of any return relates partly to the period before the date of commencement of this Act, separate returns for period before such date and the period commencing from such date shall be submitted separately;

(8) Any dealer, whose accounts, registers or documents have been seized under the Repealed Act or, as the case may be, the Repealed Ordinance, shall continue to be retained in accordance with the provisions of this Act on or after the date of commencement of this Act;

(9) All forms of declarations or certificates under the Repealed Act or, as the case may be, the Repealed Ordinance, or the rules made thereunder and continuing to be in force on the day immediately before the date of commencement of this Act, as are in conformity with any provisions of this Act, shall, with effect from such date, continue to be in force and may be used by the dealer or other person for the purpose for which they were being used before such date until the State Government directs, by notification, the discontinuance of the use of such forms or certificates;

(10) Any form of declaration or certificate prescribed under the Repealed Act or, as the case may be, the Repealed Ordinance, or the Rules made or notifications issued there under, as are not in conformity with any provisions of this Act and remaining unused with any dealer or any person, shall be returned, if not already done under the provisions of the Repealed Ordinance, to the assessing authority from whom the same were received within a period of sixty days from the date of commencement of this Act;

(11) Any application for the form of declaration or certificate for the transport of goods into the State, pending on the day immediately before the date of commencement of this Act, shall be deemed to have been made under this Act and shall be disposed of in accordance with the provisions of this Act;

(12) The following proceedings under the provisions of the Repealed Act or, as the case may be, the Repealed Ordinance, pending on the date of commencement of this Act or those which may arise as a result of any proceeding under the provisions of Repealed Act or, as the case may be, the Repealed Ordinance, shall be disposed of in accordance with the provisions under the Repealed Act or, as the case may be, the Repealed Ordinance, within the time prescribed in this Act-

- (a) any application for grant of registration or grant of recognition certificate or for grant of eligibility certificate,
- (b) any case of assessment or reassessment,
- (c) any case of appeal, revision, reference or review,
- (d) any case in which any officer or authority has been directed by any Court or authority to make fresh order,

- (e) any case pending before Commissioner under sub-section (3) of section 4-A of the Repealed Act or, as the case may be, the relevant provisions of the Repealed Ordinance,
- (f) any case of rectification of mistakes on records in any order,
- (g) any case of penalty or prosecution against offences,
- (h) any case of seizure,
- (i) any application to set aside any assessment order passed ex-parte,
- (j) any other case,
- (k) any other application;

(13) Subject to the provisions of sub-section (14) and sub-section (15) of this section, any exemption from payment of tax or any concession in payment of tax or concession or reduction in rate of tax or any rebate or reimbursement in respect of any sale or purchase of any goods granted under any provisions of the Repealed Act or, as the case may be, the Repealed Ordinance or Rules made or notifications issued thereunder, shall not be admissible in respect of purchase or sale of any goods on or after the date of commencement of this Act unless the State Government has already allowed such facility to continue under the relevant provisions of the Repealed Ordinance, and in such case the facility shall continue until repealed or amended by the State Government;

(14) Where any industrial unit has been granted moratorium for payment of tax under sub-section (2-A) of section 8 of the Repealed Act or, as the case may be, under the relevant provisions of the Repealed Ordinance, before the date of commencement of this Act or who may be granted moratorium subsequently under the provisions of section 76 of this Act and who would

have been so eligible on such date under that Act if this Act would not have come into force, the Commissioner may, subject to the provisions of this Act, allow moratorium for payment of tax payable by him under this Act. for the remaining un-expired period as per provisions of section 76 of this Act and subject to such conditions and restrictions as the State Government may specify;

(15) Any exemption from or any concession in payment of tax or concession or reduction of tax in respect of any sale or purchase of any goods granted to any industrial unit under provisions of section 4-A of the Repealed Act or, such facility allowed under the relevant provisions of Repealed Ordinance, shall continue for the remaining unexpired period as per provisions of section 76 of this Act and subject to such conditions and restrictions as the State Government may specify;

(16) Where any recovery proceedings in respect of realization of any amount due from a dealer or any other person under the Repealed Act or, as the case may be, the Repealed Ordinance, have been initiated before the date of commencement of this Act, they shall, on commencement of this Act, continue from the stage at which the same were pending;

(17) In respect of defaults made or offences committed before the date of commencement of this Act by a dealer or any other person, proceedings for penalty or prosecution shall be made in accordance with the provisions under the Repealed Act or, as the case may be, the Repealed Ordinance, and in respect of defaults made or offences committed on or after the date of commencement of this Act, proceedings for penalty or prosecution shall be

made in accordance with the provisions of this Act. Where default is of continuing nature and continues on or after such date proceedings for penalty or prosecution shall be made in accordance with the provisions of this Act;

(18) If any amount of tax or penalty or fee deposited by or recovered from the dealer or any other person under the provisions of the Repealed Act or, as the case may be, Repealed Ordinance is found in excess of the amount of tax or penalty or fee payable, it shall first be adjusted towards any amount outstanding against such dealer or person either under the Repealed Act or under the Repealed Ordinance or under this Act or under the Central Sales Tax Act, 1956, and remaining amount if any, shall be refunded to such dealer or person in accordance with the provisions of this Act. Interest, if payable, shall be paid in accordance with the provisions of this Act;

(19) Any dealer who was a registered dealer under the Repealed Act but has not remained liable to obtain registration under the provisions of this Act and if he does not desire to remain registered voluntarily, he shall, if not already done under the provisions of Repealed Ordinance, surrender registration certificate granted to him under the Repealed Act within a period of one month from the date of commencement of this Act along with all forms of declarations or certificates, if any, remaining unused with him;

(20) Where a part of the period under any scheme of payment of lump sum in lieu of tax under the provisions of section 7-D of the Repealed Act or, as the case may be, the relevant provisions of Repealed Ordinance, expires on or after the date of commencement of this Act, it shall be deemed to be

valid under this Act upto the end of the financial year in which the date of commencement of this Act falls, unless the State Government makes an order otherwise;

(21) Any security or additional security furnished under the provisions of the Repealed Act or, as the case may be, the Repealed Ordinance, shall be deemed valid for the purposes under this Act as well as for the purposes of the Repealed Act or, as the case may be, the Repealed Ordinance:

Provided that nothing contained in this sub-section shall preclude the assessing authority from demanding any security or additional security from the dealer registered under this Act;

(22) Every dealer who has been registered under the Repealed Act or, as the case may be, the Repealed Ordinance and continues to be liable to registration under the provisions of this Act and the same is valid on the date of commencement of this Act, shall be deemed to be a registered dealer under this Act;

(23) Every dealer who has been a registered dealer under the Repealed Act, and is not liable to registration in view of the turnover limits under this Act, and has not already applied for and/or granted voluntry registration, but he desires to retain registration and makes an application for this purpose, he may be granted voluntary registration under this Act and shall be deemed to be a registered dealer under this Act;

(24) Every dealer who has been granted Recognition Certificate under the Repealed Act or, as the case may be, the Repealed Ordinance, and the same

is valid on the date of commencement of this Act, shall be deemed to be a Recognised dealer under this Act;

(25) In case of any stock in hand on the date of commencement of this Act which has suffered tax at the stage of its purchases, input tax credit shall be allowed in respect of such goods subject to such restrictions and conditions as are prescribed under the provisions of this Act;

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 81: Repeal and Savings:**

(1) The Uttaranchal(the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 and the Uttaranchal Value Added Tax Ordinance,2005 are hereby repealed :

Provided that such repeal shall not affect the previous operation of the Repealed Act or, as the case may be, the Repealed Ordinance, any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, any thing done or any action taken including any appointment, notification, notice, order, rule, form, regulation, certificate, license or permit in exercise of any power conferred by or under the said Act or, as the case may be, the relevant provision of the said Ordinance, shall be valid and always be deemed to have been valid during the period that was in force notwithstanding the repeal of the Act.

(2) The repeal shall not-

- (a)revive anything not in force or existing at the time the repeal takes effect,
- (b)affect the previous operation of Repealed Act or, as the case may be, the Repealed Ordinance or any thing done or suffered hereunder,
- (c)affect any right, privilege, obligation, or liability acquired, accrued or incurred under the Repealed Act or, as the case may be, the Repealed Ordinance,



(d) affect any penalty, forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the Repealed Act or, as the case may be, the Repealed Ordinance,

(e) affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy instituted, continued or enforced under the Repealed Act or, as the case may be, the Repealed Ordinance, and any such penalty, forfeiture or punishment as aforesaid or any proceeding or remedy instituted, continued, or enforced under the Repealed Act or, as the case may be, the Repealed Ordinance, shall be deemed to be instituted, continued or enforced under the corresponding provisions of this Act.

(3) All rules made and notifications issued under the provisions of Repealed Act or, as the case may be, the Repealed Ordinance, and /or the Rules made thereunder and in force on the date of the commencement of this Act, shall remain in force unless such rules and notifications are superseded in express terms or by necessary implication by the provisions of this Act or the rules made and notifications issued thereunder.

(4) Any reference to any section of the Repealed Act or, as the case may be, the Repealed Ordinance, in any rule, notification, regulation or circular shall be deemed to refer to the relevant corresponding section of this Act, until necessary amendments are made in such rule, notification, regulation or circular.

(5) The limitations provided in this Act shall apply prospectively, and all events occurred and all issues arisen prior to the commencement of this Act,

shall be governed by the limitations provided or the provisions contained in the Repealed Act or, as the case may be, the Repealed Ordinance.

(6) Notwithstanding the repeal of the Repealed Act or, as the case may be, the Repealed Ordinance-

(a) any action or proceedings relating to the period prior to the commencement of this Act already initiated under the Repealed Act or, as the case may be, the Repealed Ordinance, shall validly be continued under the provisions of this Act;

(b) any tax, fee, penalty, interest or other amount payable by any person under the Repealed Act or, as the case may be, the Repealed Ordinance, for any period before the commencement of this Act, shall be paid and collected in the manner prescribed under the provisions of this Act as if this Act was in force during that period.

(7) All arrears of tax, interest, penalty, fee or other amount due at the commencement of this Act, whether assessed or levied before such commencement or assessed or levied after such commencement, may be recovered as if such tax, penalty, interest, fee or other amount were assessed or levied under the provisions of this Act and all methods of recovery including levy of interest, penalty or prosecution provided under this Act, shall apply to such arrears as if such amount were assessed, levied and demanded under this Act.

(8) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceeding made or preferred to any authority

under the Repealed Act or, as the case may be, the Repealed Ordinance, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.