

The

Kolkata



Gazette

सत्यमेव जयते

Extraordinary
Published by Authority

CAITRA 10]

THURSDAY, MARCH 31, 2005

[SAKA 1927

PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 480-L.—31st March, 2005.—The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:—

West Bengal Act IV of 2005

THE WEST BENGAL FINANCE ACT, 2005.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Kolkata Gazette*,
Extraordinary, of the 31st March, 2005.]

An Act to amend the Bengal Electricity Duty Act, 1935, the West Bengal Primary Education Act, 1973, the West Bengal Rural Employment and Production Act, 1976, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Taxation Tribunal Act, 1987, the West Bengal Sales Tax Act, 1994, the West Bengal State Tax on Consumption or Use of Goods Act, 2001 and the West Bengal Value Added Tax Act, 2003.

WHEREAS it is expedient to amend the Bengal Electricity Duty Act, 1935, the West Bengal Primary Education Act, 1973, the West Bengal Rural Employment and Production Act, 1976, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Taxation Tribunal Act, 1987, the West Bengal Sales Tax Act, 1994, the West Bengal State Tax on Consumption or Use of Goods Act, 2001 and the West Bengal Value Added Tax Act, 2003, for the purposes and in the manner hereinafter appearing;

Ben. Act X of
1935.
West Ben. Act
XLIII of 1973.
West Ben. Act
XIV of 1976.
West Ben. Act VI
of 1979.
West Ben. Act
VIII of 1987.
West Ben. Act
XLIX of 1994.
West Ben. Act
XV of 2001.
West Ben. Act
XXXVII of 2003.

*The West Bengal Finance Act, 2005.**(Sections 1-5.)*

It is hereby enacted in the Fifty-sixth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

Short title and commencement.

1. (1) This Act may be called the West Bengal Finance Act, 2005.
- (2) It shall come into force on the 1st day of April, 2005.

Amendment of Ben. Act X of 1935.

2. In the Bengal Electricity Duty Act, 1935, in the First Schedule, in Part A, for the figures and word “40 paise”, the figures and word “20 paise” shall be substituted.

Amendment of West Ben. Act XLIII of 1973.

3. In the West Bengal Primary Education Act, 1973, in section 78B,—
 - (a) in clause (ha), for the words “two per centum”, wherever they occur, the words “one per centum” shall be substituted;
 - (b) in clause (hb), for the words “two per centum”, the words “one per centum” shall be substituted;
 - (c) in clause (hc), for the words “two per centum”, the words “one per centum” shall be substituted;
 - (d) in clause (he), for the words “two per centum”, the words “one per centum” shall be substituted.

Amendment of West Ben. Act XIV of 1976.

4. In the West Bengal Rural Employment and Production Act, 1976, in section 4, in sub-section (3),—
 - (a) in clause (g1), for the words “two per centum”, wherever they occur, the words “one per centum” shall be substituted;
 - (b) in clause (g2), for the words “two per centum”, the words “one per centum” shall be substituted;
 - (c) in clause (g3), for the words “two per centum”, the words “one per centum” shall be substituted;
 - (d) in clause (g5), for the words “two per centum”, the words “one per centum” shall be substituted.

Amendment of West Ben. Act VI of 1979.

5. In the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979,—
 - (1) in section 9,—
 - (a) after sub-section (3), the following sub-section shall be inserted:—

“(3a) Where a person, other than a person referred to in sub-section (2) or sub-section (3), fails to obtain a certificate of enrolment and pay tax under the Act by the prescribed date, such person shall be liable to pay simple interest at the rate of one per centum of the amount of tax payable by him for any year or part thereof for each month or part thereof for the period for which the tax remains unpaid.”;
 - (b) in sub-section (4), after the words, figure and brackets “or sub-section (3)”, the words, figure, letter and brackets “or sub-section (3a)” shall be inserted;
 - (2) in the Schedule, in the entries in item (a) in column (2) against serial No. 9 in column (1),—
 - (a) for the words, figures and brackets “or the Central Sales Tax Act, 1956 (74 of 1956):—”, the words, figures, letters and brackets “or the Central Sales Tax Act, 1956 (74 of 1956) or the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003)” shall be substituted;

The West Bengal Finance Act, 2005.

(Sections 6-9.)

- (b) in the *Explanation* to sub-item (i), after the words, figures, letters and brackets "the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994)", the words, figures, letters and brackets "or the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003)" shall be inserted;
- (c) in sub-item (ii), after the words, figures, letters and brackets "the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994)", the words, figures, letters and brackets "or the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003)" shall be inserted.

Amendment of
West Ben. Act
VIII of 1987.

6. In the West Bengal Taxation Tribunal Act, 1987, in the Schedule, after the entry "2001 XV The West Bengal State Tax on Consumption or Use of Goods Act, 2001.", the following entry shall be added:—

"2003 XXXVII The West Bengal Value Added Tax Act, 2003."

West Ben. Act
XV of 2001.West Ben. Act
XXXVII of 2003.Amendment of
West Ben. Act
XLIX of 1994.

7. In the West Bengal Sales Tax Act, 1994, in section 79, in the first proviso to sub-section (2), for the words "before expiry of two years", the words, figures and letters "before the 31st day of December following the expiry of two years" shall be substituted.

Amendment of
West Ben. Act
XV of 2001.

8. In the West Bengal State Tax on Consumption or Use of Goods Act, 2001, in section 4, after the words, figures, letters and brackets "of the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994)", the words, letters, figures and brackets "or at the rates prescribed in clause (b) and clause (c) of sub-section (2) of section 16 of the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003)" shall be added.

Amendment of
West Ben. Act
XXXVII of 2003.

9. In the West Bengal Value Added Tax Act, 2003,—

(1) in section 2,—

(a) after clause (3), the following clause shall be inserted:—

'(3A) "appropriate Government Treasury" means—

(a) in the case of a dealer in Kolkata,—

(i) the Kolkata Branch of the Reserve Bank of India for payments under the Act exceeding five hundred rupees, and

(ii) such head office, main office, branch or branches of any bank in Kolkata as may be authorised in this behalf by the State Government for the purpose of accepting deposits for payments under the Act, and

(b) in other cases, the treasury or sub-treasury of the sub-division where the dealer's place of business is situated or, in the event of a dealer having more than one place of business, where the chief branch or head office of the business is situated;';

(b) for clause (6), the following clause shall be substituted:—

'(6) "Capital goods" means such goods meant for use in the manufacture or for execution of works contract, and such other goods required by a reseller to keep the goods in saleable condition or to effect the sale properly, as may be notified by the State Government in the *Official Gazette*;';

*The West Bengal Finance Act, 2005.**(Section 9.)*

(c) for clause (7), the following clause shall be substituted:—

‘(7) “casual dealer” means a person, other than a dealer who, whether as principal, agent or in any other capacity, has occasional transaction involving buying, selling, supplying or distributing goods in West Bengal, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, whether he has fixed place of business in West Bengal or not,—

(a) a transporter, carrier or transporting agent, as defined in clause (52) who, while carrying any goods in his goods vehicle as defined in clause (16), fails to disclose the name and address of the consignor or consignee in West Bengal or fails to furnish a copy of the invoice, challan, transport receipt 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 the Commissioner that such goods are for his personal use or consumption,

and such transporter, carrier or transporting agent, or owner or lessee or occupier of a warehouse, shall be deemed to have purchased such goods on his own account;’;

(d) for clause (10), the following clause shall be substituted:—

‘(10) “contractual transfer price” in relation to any period, means the aggregate of the amount received or receivable by a dealer in respect of transfer of property in goods (whether as goods or in some other form) in execution of any works contract, as defined in clause (57), whether executed fully or partly during such period.

Explanation.—For the purpose of this clause, the expression “partly during such period” means the year or part of the year for which assessment is made whether or not any tax invoice, invoice or bill has been raised in respect of such contract;’;

(e) in clause (11),—

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

“(ba) a person who has set up a business of selling or purchasing goods in West Bengal;”;

(ii) for sub-clause (c), the following sub-clause shall be substituted:—

“(c) a society including a co-operative society, club or any association which sells goods to its members or others for cash, or for deferred payment, or for commission, or for remuneration, or for other valuable consideration;”;

(f) in clause (13), for the words “postition of director”, the words “position of director” shall be substituted;

(g) for clause (14), the following clause shall be substituted:—

‘(14) “electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000, and includes micro film or computer generated micro film;’;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (h) for clause (15), the following clause shall be substituted:—
- ‘(15) “goods” includes all kinds of movable property other than—
- (a) newspaper, actionable claims, stocks, shares or securities,
 - (b) country liquor,
 - (c) foreign liquor, whether made in India or not, including *brandy, whisky, vodka, gin, rum, liqueur, cordials, bitters* and *wines* or a mixture thereof *beer, ale, porter, cider, perry*, and other similar potable fermented liquors,
 - (d) lottery tickets, and
 - (e) motor spirit of any kind;’;
- (i) after clause (17), the following clause shall be inserted:—
- ‘(17A) “import” means bringing goods in West Bengal from any place outside West Bengal or from any other country;’;
- (j) for clause (18), the following clause shall be substituted:—
- ‘(18) “input tax”, in relation to a tax period on or after coming into force of this Act, means the amount of tax,—
- (a) paid or payable under the Act, other than under section 11, by a registered dealer, other than those enjoying composition under sub-section (3) of section 16 or sub-section (4) of section 18, to a registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, at the time of purchasing taxable goods, other than such taxable goods as may be prescribed, during that period,
 - (b) payable under section 11 by a registered dealer on his turnover of purchases, referred to in sub-clause (a) of clause (54) of section 2, of raw jute during that period, and
 - (c) payable under section 12 by a registered dealer, other than those enjoying composition under sub-section (3) of section 16 or sub-section (4) of section 18, on his turnover of purchases referred to in sub-clause (c) of clause (54) of section 2, where such purchases made during that period, other than purchases of such taxable goods as may be prescribed;’;
- (k) after clause (20), the following clauses shall be inserted:—
- ‘(20A) “interest payable” means the amount of interest payable under section 33 or section 34 or section 34A;
- (20B) “jute” means the plant known botanically as belonging to the *genus corchorous*, and includes all the species of that *genus*, whether known commonly as *pat, kosta, nalia*, or by any other name, and also means the plant known botanically as *hibiscus cannabinus* or commonly known as *mesta*;’;
- (l) for clause (22), the following clause shall be substituted:—
- ‘(22) “manufacture”, with all its grammatical variations and cognate expressions, means producing, making, extracting or processing any goods and includes printing, rearing of seedlings or plants, and raising of man-made forest or other natural resources like minerals, coal etc. for sale;’;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(m) after clause (22), the following clauses shall be inserted:—

‘(22A) “maximum retail price”, in respect of goods taxable under the Act, means maximum price printed on the package of any goods at which such goods may be sold to the ultimate consumer, whether such price is inclusive of tax or not;

(22B) “motor spirit” means any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.

Explanation.—For the purpose of this clause, the expression “motor vehicle” shall include any means of carriage, conveyance or transport by land, air or water;’;

(n) for clause (23), the following clause shall be substituted:—

‘(23) “net tax”, in relation to any period, means—

(a) in case of a registered dealer, other than those referred to in sub-clause (c) and sub-clause (d), the amount of output tax in excess of the net tax credit, as referred to in sub-section (17) of section 22, claimed by such registered dealer in accordance with the provisions of this Act and the rules made thereunder,

(b) in case of any dealer other than a registered dealer, the amount of output tax,

(c) in case of a registered dealer who has been allowed to pay tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, the amount of output tax,

(d) in case of a registered dealer, other than those referred to in sub-clause (a) and sub-clause (c), enjoying deferment of payment of tax, or tax holiday, or remission of tax under clause (a), clause (b), or clause (c) respectively of section 118, the amount of output tax;’;

(o) for clause (26), the following clause shall be substituted:—

‘(26) “output tax”, in relation to any period, means the aggregate amount of tax payable by a dealer liable to pay tax under section 10, section 11, section 12, section 14, sub-section (3) of section 24, and section 27C, and includes tax payable at the compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, in respect of any sale, or purchase, of goods, or execution of works contract, made by him in West Bengal;’;

(p) for clause (28), the following clause shall be substituted:—

‘(28) “penalty due” means the penalty found to be unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or rules made thereunder;’;

(q) for clause (29), the following clause shall be substituted:—

‘(29) “place of business” means any place where a dealer has set up a business of selling or purchasing goods or a place from where a dealer sells any goods or where he keeps accounts,

*The West Bengal Finance Act, 2005.**(Section 9.)*

registers or documents, including those in the form of electronic records relating to sales or purchases of goods or execution of works contract and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business, and includes any place where the dealer processes, produces or manufactures goods or executes works contract and any warehouse of such dealer;';

21 of 2000.

- (r) for clause (31), the following clause shall be substituted:—
- '(31) "principal officer", in relation to a company, means the director or managing director of such company, or the secretary authorised to act as principal officer by the Board of Directors of such company;';
- (s) after clause (31), the following clause shall be inserted:—
- '(31A) "principal place of business" means any place of business where a dealer keeps all accounts, registers, documents, including those in the form of electronic records, and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business and, includes the chief branch or head office within West Bengal;';
- (t) clause (32) shall be omitted;
- (u) clause (33) shall be omitted;
- (v) for clause (35), the following clause shall be substituted:—
- '(35) "purchase price" means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed as cash discount, commission or commercial rebates granted at the time of delivery, or before delivery, of such goods but including cost of freight or delivery or distribution or installation or insurance, or any sum charged for anything done by the seller in respect of the goods at the time of delivery of such goods or before delivery thereof, other than interest if separately charged;';
- (w) after clause (36), the following clauses shall be inserted:—
- '(36A) "resale" means sale of any goods purchased within West Bengal in the same form in which such goods are purchased or without using such goods in such manner which amounts to or results in manufacture;
- (36B) "return period" means a period, as may be prescribed, for which a return is due under the Act;
- (36C) "reverse credit" means reversal or returning by a dealer, by way of deduction from the amount of input tax credit or input tax rebate for a period, the amount of input tax credit or input tax rebate availed by him during any period which he was not entitled to or became disentitled subsequent to the enjoyment of such input tax credit or input tax rebate;';
- (x) in clause (39), in the proviso to *Explanation I*, for the words "provisions, of this *Explanation*", the words "provisions of this *Explanation*" shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(y) for clause (41), the following clause shall be substituted:—

‘(41) “sale price” means the amount payable to a dealer or casual dealer as valuable consideration for the sale, other than the sale referred to in section 14, of any goods and includes—

- (a) any sum charged for anything done by the dealer or casual dealer in respect of such goods at the time of delivery, or before delivery, of such goods,
- (b) any sum charged for freight, delivery, distribution, installation or insurance, by such dealer at the time of delivery, or before delivery, of such goods,
- (c) any tax, duty or charges levied or leviable (other than the tax charged separately under this Act, subject to the provision as mentioned in the *Explanation* and cess levied under the West Bengal Transport Infrastructure Development Fund Act, 2002), in respect of such goods,

but does not include any sum allowed as cash discount, commission or other commercial rebate on the value of such goods at the time of delivery, or before delivery of such goods and interest if separately charged.

Explanation.—For the purpose of this clause, the expression “sale price” of a dealer, enjoying payment of tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, or selling to any person other than a dealer of goods upon which maximum retail price as referred to in clause (22A) is applicable and where such maximum retail price is inclusive of sales tax, shall include any tax payable under this Act, including the tax referred to in section 10, or section 12;’

(z) for clause (45), the following clause shall be substituted:—

‘(45) “tax” means the tax due as defined in clause (46) or tax payable as defined in clause (49) under this Act;’

(za) for clause (48), the following clause shall be substituted:—

‘(48) “tax invoice” means an invoice containing such particulars as may be prescribed;’

(zb) for clause (49), the following clause shall be substituted:—

‘(49) “tax payable” means the tax payable under this Act on sales or purchases effected or for execution of works contract by a dealer or casual dealer but does not include tax due as defined in clause (46);’

(zc) for clause (50), the following clause shall be substituted:—

‘(50) “tax period” means such period, as may be prescribed, for which tax is payable under the Act;’

(zd) in clause (52), for the *Explanation*, the following *Explanation* shall be substituted:—

Explanation.—For the purposes of this Act, the expression “transporting agent” shall also include a clearing, forwarding, shipping and handling agent;’

West Ben. Act
XXI of 2002.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(ze) for clause (54), the following clause shall be substituted:—

‘(54) “turnover of purchases”, in relation to any period, means,—

- (a) in case of an occupier of a jute-mill liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable by such occupier for the quantities of raw jute purchased by him during such period after deducting the amounts, if any, refunded to him by the seller during such period in respect of any quantity of raw jute returned to the seller within ninety days from the date of its purchase and such other amounts as may be prescribed,
- (b) in case of a shipper of jute liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable by such shipper of jute in respect of the quantities of raw jute purchased by him in West Bengal and despatched by him during such period to any place outside West Bengal by any means of transit,
- (c) in case of any dealer liable to pay tax under section 12, the aggregate of the purchase prices or parts of purchase prices payable by such dealer in respect of the goods purchased by him during such period for use of such goods in West Bengal, after deducting the amounts, if any, refunded to the seller during such period in respect of any such goods purchased but returned to the seller within six months of such purchase;’;

(zf) for clause (55), the following clause shall be substituted:—

‘(55) “turnover of sales”, in relation to any period, means the aggregate of the sale-prices or parts of sale-prices received or receivable by a dealer in respect of sales as defined in clause (39) of the Act and in clause (g) of section 2 of the Central Sales Tax Act, 1956, of goods made during such period after deducting therefrom—

74 of 1956.

- (a) the sale-prices or the parts of sale-prices, if any, in respect of sales of goods during such period, which are shown to the satisfaction of the Commissioner to have been purchased by the dealer in West Bengal, upon payment of tax on the maximum retail price of such goods or, where tax on maximum retail price of such goods were paid in West Bengal in an earlier occasion, and
- (b) the amounts, if any, refunded by the dealer in respect of any such goods returned or rejected by the purchaser within six months from the date of such sales;’;

(zg) for clause (56), the following clause shall be substituted:—

‘(56) “warehouse” means any enclosure, building or place where a dealer, casual dealer or any other person keeps stocks of goods, and includes a vessel, vehicle or godown;’;

(zh) in clause (57),—

- (a) in sub-clause (c), for item (i), the following item shall be substituted:—

‘(i) any motor vehicle;’;

- (b) in sub-clause (d), for the words “treating or adapting”, the words “treating, adapting or printing on,” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (zi) in clause (58), for the words “the last day of March.”, the words “the last day of March;” shall be substituted;
- (zj) after clause (58), the following clause shall be inserted:—
- ‘(59) “zero-rated sale” means a sale of any goods on which no tax is chargeable but credit for the input tax related to that sale is admissible.’;
- (2) in section 8,—
- (a) in sub-section (5), for the words “any accounts, register or documents”, the words “any accounts, register or documents including those in the form of electronic records” shall be substituted;
- (b) in sub-section (6), for the words “any accounts, register or documents”, the words “any accounts, register or documents including those in the form of electronic records” shall be substituted;
- (c) in sub-section (7), for the words “assess or re-assess tax”, the words “assess or re-assess net tax or any other tax” shall be substituted;
- (d) in sub-section (10), for the words “by an Additional Commissioner,”, the words “by a Special Commissioner or an Additional Commissioner, as the case may be,” shall be substituted;
- (3) for section 10, the following section shall be substituted:—
- “Incidence of tax. 10. (1) Every dealer, who is liable to pay tax immediately before the appointed day under any provision, other than section 15 of the West Bengal Sales Tax Act, 1994, and who would have continued to be so liable under the said Act on such appointed day had this Act not come into force, shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax under this Act on all his sales, other than those referred to in section 14, effected on and from such appointed day.
- (2) Every dealer to whom the provisions of sub-section (1) do not apply and whose gross turnover of sales calculated from the commencement of the year ending on the day immediately before the appointed day, exceeds the taxable quantum, as applicable to him under the West Bengal Sales Tax Act, 1994, on the last day of such year shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax under this Act on all his sales, other than those referred to in section 14, effected on and from such appointed day.
- (3) Every dealer to whom the provisions of sub-section (1) or sub-section (2) do not apply, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act, be liable to pay tax under this Act,—
- (a) on all his sales, other than those referred to in section 14, of goods which have been imported by him from any place outside West Bengal with effect from the day on which he effects first sale of such goods; or
- (b) on all his sales, other than those referred to in section 14, of goods effected on or after the date immediately following the date on which his turnover of sales calculated from the commencement of any year exceeds, at any time within such year, such taxable quantum as may be prescribed, and different taxable quantum may be prescribed for different classes of dealers:

West Ben. Act
XLIX of 1994.

Provided that the taxable quantum as may be prescribed under this clause shall not exceed five lakh rupees.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(4) Every dealer who has been registered under sub-section (2) of section 24 for his application under clause (b) of sub-section (1) of that section, on any date prior to the date on which his turnover of sales exceeds the taxable quantum referred to in clause (b) of sub-section (3), he shall be liable to pay tax on all his sales from the date of such registration.

(5) Every dealer who incurs liability to pay tax under sub-section (3) of section 27C, shall, notwithstanding that his turnover of sales does not exceed the taxable quantum referred to in clause (b) of sub-section (3), also be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on sales by him of goods from the date of transfer of business.

(6) Every dealer who incurs liability to pay tax under sub-section (2) or sub-section (3) or sub-section (4) of section 14, shall, notwithstanding that his turnover of sales does not exceed the taxable quantum referred to in clause (b) of sub-section (3), also be liable, in addition to the tax payable by him under section 14, to pay tax on sales of goods effected by him under this section on and from the day he incurs liability to pay tax under that section.

(7) Any dealer who is liable to pay tax under the Central Sales Tax Act, 1956, shall, notwithstanding that his turnover of sales under the Act does not exceed taxable quantum referred to in clause (b) of sub-section (3), also be liable to pay tax under this Act on all sales of goods effected by him on and from the date on which he becomes liable to pay tax under that Act.

74 of 1956.

(8) Every dealer who has become liable to pay tax under this section, shall continue to be so liable until the expiry of three consecutive years commencing on and from the appointed day and such further period after the date of such expiry as may be prescribed, during each of which,—

- (a) he has not effected any sale of goods imported by him from outside into West Bengal; or
- (b) his turnover of sales has failed to exceed the taxable quantum referred to in clause (b) of sub-section (3),

and on expiry of such three years or such further period, his liability to pay such tax shall cease:

Provided that where a dealer has become liable to pay tax under sub-section (6) or sub-section (7) and has not separately incurred liability to pay tax under sub-section (3), he shall continue to be so liable until his liability ceases under section 14 or under the Central Sales Tax Act, 1956, as the case may be.

(9) The provisions of sub-section (3), or sub-section (4), or sub-section (5), or sub-section (6), or sub-section (7), as the case may be, shall apply to every dealer whose liability to pay tax ceases under sub-section (8) as if such dealer has not ever become liable to pay tax under this section.

(10) The Commissioner shall, after making such enquiry as he may think necessary and after giving the dealer an opportunity of being heard, fix the date on and from which such dealer has become liable to pay tax under this section.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (4) for section 11, the following section shall be substituted:—

“Incidence of tax
on purchase of
raw jute.

11. (1) Every dealer who, as an occupier of a jute mill or a shipper of jute, has been liable immediately before the appointed day to pay tax under section 12 of the West Bengal Sales Tax Act, 1994 and who would have continued to be so liable on such appointed day under that Act had this Act not come into force, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act and subject to the provisions of sub-section (3), be liable to pay tax on all his purchases of raw jute in West Bengal with effect from the appointed day.

West Ben. Act
XLIX of 1994.

(2) Every dealer, being an occupier of a jute mill or a shipper of jute, to whom the provisions of sub-section (1) do not apply, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act and subject to the provisions of sub-section (3), be liable to pay tax on all his purchases of raw jute in West Bengal from the date of first purchase effected on or after the appointed day.

(3) The dealer referred to in sub-section (1) or sub-section (2), as the case may be, shall be liable to pay tax on all his purchases of raw jute in West Bengal after deducting therefrom such purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956 or in the course of import of goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act.

74 of 1956.

(4) Every dealer who incurs liability to pay tax under this section, shall continue to be so liable until the expiry of three consecutive years commencing on or after the appointed day and such further period after the date of such expiry as may be prescribed, during each of which, he has not effected any purchase of raw jute in West Bengal.

(5) The provisions of sub-section (2) shall apply to every dealer whose liability to pay tax ceases under sub-section (4) as if such dealer had not ever become liable to pay tax under this section.”;

- (5) for section 12, the following section shall be substituted:—

“Contingent
liability to pay tax
on purchase.

12. (1) Every dealer liable to pay tax under section 10 or section 14 or sub-section (3) of section 27C, and registered under section 24 shall, in addition to the tax payable under any other provisions of this Act, be liable to pay on all his purchases in West Bengal from any person, whether a dealer or not, after deducting therefrom—

- (a) purchases of goods, sales of which are declared tax-free under section 21;
- (b) purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956

*The West Bengal Finance Act, 2005.**(Section 9.)*

or in the course of import of goods into, or export of the goods out of the territory of India within the meaning of section 5 of that Act;

- (c) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a registered dealer in West Bengal;
- (d) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a dealer in West Bengal who has applied for registration within thirty days of his incurring liability to pay tax under sub-section (2) of section 23 and who has issued a tax invoice:

Provided that where the application for registration of the dealer has been rejected, no deduction shall be allowed on such purchases, from the date of order of rejection of the application;

- (e) such other purchases as may be prescribed.

(2) The burden of proving that any purchase effected by a dealer is not liable to tax under sub-section (1) shall lie on such dealer.”;

- (6) section 13 shall be omitted;
- (7) for section 14, the following section shall be substituted:—

“Liability to pay tax on transfer of property in goods involved in execution of works contract. 14. (1) Notwithstanding anything contained elsewhere in this Act, any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract in West Bengal shall be deemed to be a sale of those goods by the person making the transfer and a purchase of those goods by the person to whom such transfer is made.

(2) Every dealer, who is liable on the day immediately before the appointed day to pay tax under section 15 of the West Bengal Sales Tax Act, 1994, and who would have continued to be so liable under the said Act on such appointed day had this Act not come into force, shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1), from such appointed day, at the rate specified in section 18.

West Ben. Act
XLIX of 1994.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(3) Every dealer to whom the provisions of sub-section (2) do not apply and whose contractual transfer price calculated from the commencement of the year ending on the day immediately before the appointed day exceeds the amount prescribed under section 15 of the West Bengal Sales Tax Act, 1994, on the last day of such year shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1), from such appointed day, at the rate specified in section 18.

West Ben. Act
XLIX of 1994.

(4) Every dealer to whom the provisions of sub-section (2) or sub-section (3) do not apply, shall, if his contractual transfer price calculated from the commencement of any year, exceeds five lakh rupees at any time within such year, be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the day immediately following the day on which such contractual transfer price first exceeds five lakh rupees.

(5) Every dealer who has been registered under sub-section (2) of section 24 for his application under clause (b) of sub-section (1) of that section, on any date prior to the date on which his contractual transfer price exceeds five lakh rupees, shall be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the date of such registration.

(6) Every dealer who incurs liability to pay tax under sub-section (3) of section 27C, shall, notwithstanding that his contractual transfer price does not exceed five lakh rupees, also be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on transfer by him of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the date of transfer of business.

(7) Every dealer who incurs liability to pay tax under section 10 or section 11, shall, notwithstanding that his contractual transfer price does not exceed five lakh rupees, also be liable, in addition to the tax payable by him under any other provisions of this Act, to pay tax on transfer by him of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18 on and from the day he incurs liability to pay tax under that section.

(8) Every dealer who has become liable to pay tax under this section, shall continue to be so liable until the expiry of three consecutive years commencing on or after the appointed day, during each of which his contractual transfer price does not exceed five lakh rupees and such further period after the date of such expiry as may be prescribed, and on the expiry of such three years or further period, his liability to pay such tax shall cease:

Provided that where a dealer has become liable to pay tax under sub-section (7) and has not incurred liability to pay tax under sub-section (4), he shall continue to be so liable until his liability ceases under section 10 or section 11.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(9) The provisions of sub-section (4), or sub-section (5), or sub-section (6), as the case may be, shall apply to every dealer whose liability to pay tax ceases under sub-section (8) as if such dealer had not ever become liable to pay tax under this section.

(10) The Commissioner, after making such enquiry as he may think necessary and after giving the dealer an opportunity of being heard, shall fix the date on and from which such dealer shall become liable to pay tax under this section.”;

(8) in section 15, for clause (b), the following clause shall be substituted:—

“(b) on his every purchase of goods in West Bengal, after deducting therefrom—

(i) purchases of goods, sales of which are declared tax-free under section 21;

(ii) purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of goods into, or export of the goods out of the territory of India within the meaning of section 5 of that Act;

74 of 1956.

(iii) purchases of goods which are shown to the satisfaction of the Commissioner to have been made from a registered dealer in West Bengal:

Provided that the burden of proving that any purchase effected by a casual dealer is not liable to tax shall be on such casual dealer.”;

(9) in section 16,—

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

“(1) Subject to the provisions of sub-section (2), the tax payable by a dealer, who is liable to pay tax under section 10, or sub-section (3) of section 24, or sub-section (3) of section 27C on his turnover of sales, shall be levied on such part of his turnover of sales as remains after deducting therefrom—

(a) sales of goods declared tax-free under section 21;

(b) sales of goods which are shown to the satisfaction of the Commissioner not to have taken place within West Bengal, or to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act;

(c) such other sales on such conditions and restrictions as may be prescribed.”;

(b) in sub-section (2), after clause (b), the following clause shall be inserted:—

“(ba) at the rate of twelve decimal five zero *per centum* of such part of his turnover of sales as represents sales of any goods specified in Schedule CA;”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

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

“(2A) When taxable goods are sold together with containers or packing materials, notwithstanding anything contained in sub-section (2), the rate of tax applicable to such containers or packing materials, as the case may be, shall be the same as that applicable to the goods contained, or packed, and the sale price of the containers or packing materials, whether shown separately or not, shall be included in the sale price of the goods.

(2B) Where the sale of any goods, which is exempt from tax, is packed in any container or in any packing material, then notwithstanding anything contained in sub-section (2), the sale of such container or packing material shall also be exempt from tax.”;

(d) for sub-section (3), the following sub-section shall be substituted:—

“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any registered dealer having liability to pay tax under this Act, may, at his option,—

- (a) if his gross sales in the year ending on the day preceding the appointed day does not exceed fifty lakh rupees; or
- (b) if his turnover of sales in the preceding year commencing on or after the appointed day does not exceed fifty lakh rupees,

pay tax at such compounded rate not exceeding one *per centum* of the total turnover of sales of such dealer in the year for which such option is required to be exercised, and subject to such conditions and restrictions as may be prescribed, for each tax period of the year in lieu of tax payable under sub-section (2), on all his sales:

Provided that the registered dealer having liability to pay tax under this Act as stated in this sub-section shall not include—

- (a) an importer; or
- (b) a manufacturer; or
- (c) a dealer engaged in execution of works contract; or
- (d) a dealer who transfers goods otherwise than by way of sale within or outside the State; or
- (e) a dealer who sales goods within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (f) a dealer who sales goods in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956:

74 of 1956.

Provided further that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act:

Provided also that a registered dealer who, in addition to the purchase of goods in course of his business in a year, have also received goods from the supplier within or outside West Bengal, on branch transfer or on consignment basis, for which no price has been paid, shall not be entitled to opt for payment of tax under such compounded rate:

*The West Bengal Finance Act, 2005.**(Section 9.)*

Provided also that if during the period of enjoyment of payment of tax at compounded rate, turnover of sales of a dealer exceeds fifty lakh rupees, he shall become ineligible to pay tax under this sub-section from the commencement of the month immediately following the month during which his turnover of sales exceeded such sum.”;

- (e) for sub-section (4), the following sub-section shall be substituted:—

“(4) Notwithstanding anything contained in sub-section (2) and sub-section (2A), any registered dealer, who imports into or manufactures such goods in West Bengal as may be notified by the State Government, may, at his option, pay, in lieu of the tax payable by him on sale price of such goods under this section, tax at full rate on the maximum retail price of such goods in the manner as may be prescribed:

Provided that where a dealer has purchased any goods,—

- (a) from an importer or a manufacturer upon payment of tax on the maximum retail price of such goods: or
- (b) from another registered dealer where tax on the maximum retail price of such goods was paid in West Bengal in an earlier occasion,

the purchasing dealer, irrespective of whether he is registered or not, while making resale of such goods in West Bengal, shall, notwithstanding anything contained elsewhere in the Act, be entitled to recover from the buyer the amount of tax paid by him at the time of purchase of such goods under such conditions and restrictions, and in such manner, as may be prescribed.”;

- (f) for sub-section (5), the following sub-section shall be substituted:—

“(5) Any registered dealer, who intends to opt for payment under sub-section (3) of this section, shall exercise his option for a year, by making an application to the Commissioner in such manner, and within such time, as may be prescribed.”;

- (10) after section 16, the following section shall be inserted:—

“Levy of tax on sales by casual dealer.

from—

16A. (1) The tax payable by a casual dealer under clause (a) of section 15 shall be levied on such part of his sale price which remains after deducting there-

- (a) sales of goods declared tax-free under section 21;
- (b) sales of goods which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act.

(2) The tax payable by a casual dealer as referred to in sub-section (1), shall be levied at the rate of tax applicable to a sale of such goods under sub-section (2) of section 16.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(11) for section 17, the following section shall be substituted:—

“Levy of tax on turnover of purchases. 17. (1) The tax payable by a dealer, who is liable to pay tax on his turnover of purchases under section 11 or section 12, shall be levied—

- (a) at the rate of two *per centum* of such part of the turnover of purchases of raw jute under section 11 as defined in sub-clause (a) and sub-clause (b) of clause (54) of section 2; or
- (b) at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16 on such part of the turnover of purchases as represents purchases under section 12 as defined in sub-clause (c) of clause (54) of section 2:

Provided that in calculating the tax payable under the clause (a) by a dealer, who is the occupier of a jute mill, on his turnover of purchases of raw jute during the period, the purchase price in respect of any quantity of raw jute sold and despatched by him during such period subsequent to his purchase thereof to any place within West Bengal shall be deducted from such turnover of purchases.”;

(12) after section 17, the following section shall be inserted:—

“Levy of tax on purchases by casual dealers at contractual transfer price. 17A. The tax payable by a casual dealer shall be levied on his purchases, as referred to in clause (b) of section 15, at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16.”;

(13) for section 18, the following section shall be substituted:—

“Levy of tax on taxable contractual transfer price. 18. (1) Subject to the provision of sub-section (2), the tax payable by a dealer, who is liable to pay tax under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C for transfer of property in goods involved in the execution of works contract, shall be levied on his taxable contractual transfer price—

- (a) at the rate of four *per centum*, where goods represents those specified in section 14 of the Central Sales Tax Act, 1956; and
- (b) at the rate of twelve decimal five zero *per centum*, where goods represents other than those specified in clause (a).

(2) The expression “taxable contractual transfer price” as stated in sub-section (1), shall mean, in the case of a dealer who is liable to pay tax on transfer of property in goods involved in the execution of a works contract under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C, that part of his contractual transfer price during any period which remains after deducting therefrom—

- (a) contractual transfer of goods, sales of which are declared tax-free under section 21;
- (b) charges towards labour, service and other like charges as may be prescribed;
- (c) all amounts paid to the sub-contractors for execution of the works contract, whether wholly or in part; and

*The West Bengal Finance Act, 2005.**(Section 9.)*

(d) such other contractual transfers as may be prescribed:

Provided that no deduction under clause (c) shall be made unless the dealer claiming deduction, produces proof to the satisfaction of the Commissioner that—

- (a) the sub-contractor is a registered dealer liable to pay tax under this Act; and
- (b) such amount of deduction is included in his return referred to in section 32; and
- (c) tax under sub-section (1), in respect of such amount of deduction has been paid by him.

(3) Where in respect of contractual transfer price referred to in clause (10) of section 2, the works contractor does not maintain proper accounts, or the accounts maintained by him are not found by the assessing authority to be worthy of credence, and the amount actually incurred towards charges for labour and other services, or profit relating to supply of labour and services, or the taxable contractual transfer price for applying proper rate of tax, are not ascertainable, such charges for labour and services, or such profit, or such taxable contractual transfer price shall, for the purpose of deductions, notwithstanding anything contained elsewhere in this section, be determined on the basis of such percentage of the value of the works contract as may be prescribed and different percentages may be prescribed for different types of works contract.

(4) Notwithstanding anything contained elsewhere in this section, any registered dealer, who is liable to pay tax under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C, for transfer of property in goods involved in the execution of works contract, and who is not engaged in—

- (a) making sale as referred to in sub-clause (ii) of clause (g) of section 2 of the Central Sales Tax Act, 1956; or
- (b) making sale in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956; or
- (c) transferring goods otherwise than by way of sale for execution of works contract outside the State,

74 of 1956.

may, at his option, pay tax at such compounded rate not less than two *per centum* and not exceeding five *per centum* of the aggregate of the amount received or receivable by such dealer and subject to such conditions and restrictions as may be prescribed, for each month of the year in lieu of the amount of tax payable by him under sub-section (1):

Provided that such dealer shall not be entitled to issue tax invoice referred to in clause (48) of section 2 of the Act.”;

- (14) in section 20, for the words “any Schedule to this Act other than Schedule A.”, the words “any Schedule to this Act.” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(15) after section 21, the following section shall be inserted:—

“Zero-rated sale. 21A. (1) Notwithstanding anything contained in section 16 or section 16A, sale of goods between persons, whether dealer or not, or organisations as specified in column (2) of Schedule AA, shall be zero-rated as defined in clause (59) of section 2.

(2) Where any goods are sold in the course of export within the meaning of section 5 of the Central Sales Tax Act, 1956, such sales shall be zero-rated as defined in clause (59) of section 2.”;

74 of 1956.

(16) for section 22, the following section shall be substituted:—

“Input tax credit or input tax rebate by a registered dealer. 22. (1) Every registered dealer other than those specified elsewhere in the Act, shall be entitled to claim an input tax credit or input tax rebate, as defined in clause (19) of section 2, and in such manner, and subject to such conditions and restrictions, as may be prescribed.

(2) The input tax credit or input tax rebate, as referred to in sub-section (1), shall be allowed to the dealer who has purchased taxable goods (hereinafter referred to as the “purchasing dealer”) during the tax period subject to the provisions as laid down in sub-sections (3) to sub-section (20).

(3) Where a registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under this Act, without entering into a transaction of sale, issues to another dealer tax invoice with the intention to defraud the Government revenue, the Commissioner may, after making such inquiry as he thinks fit and after giving the dealers a reasonable opportunity of being heard, deny the benefit of input tax credit or input tax rebate to such dealers issuing or accepting such tax invoice, either prospectively or retrospectively, for the full tax period from such date as he may deem fit and proper.

(4) The input tax credit or input tax rebate shall be allowed to the extent of the amount of tax paid or payable by the purchasing dealer on his purchase of taxable goods, other than such taxable goods as specified in the negative list appended to this section, made in the State from a dealer when such goods are purchased for—

- (a) sale or resale by him in West Bengal; or
- (b) sale in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (c) use as containers or materials for packing of taxable goods intended for sale, in the State or in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (d) use as raw materials and consumable stores required for the purpose of manufacture of taxable goods intended for sale in the State or in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (e) use as containers or packing materials for use in the packing of goods so manufactured as referred to in clause (d) above; or
- (f) use in the execution of works contract; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (g) use as capital goods required, for the purpose of manufacture or resale of taxable goods or for execution of works contract, as the case may be, and purchases of such goods are capitalised in the books of account of such manufacturer, works contractor or reseller, as the case may be; or
- (h) use as raw materials, capital goods and consumable stores required for the purpose of manufacture of any goods to be sold in the course of export under section 5 of the Central Sales Tax Act, 1956, and containers or packing materials for use in the packing of goods so manufactured; or
- (i) making zero-rated sales other than those referred to in clause (h) above:

74 of 1956.

Provided that if purchases are used partially for the purposes specified in this sub-section, the input tax credit or input tax rebate shall be allowed to the extent they are used for the purposes specified in this subsection.

(5) The input tax credit or input tax rebate shall not be claimed by the purchasing dealer until he receives—

- (a) original tax invoice as referred to in sub-section (1) of section 64 issued in the prescribed manner evidencing the amount of tax, from the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, from whom he has purchased the goods:

Provided that if the original tax invoice issued to a registered dealer is lost from his custody, the purchasing dealer shall, on making an application to the Commissioner in such manner as may be prescribed, be entitled to claim input tax credit or input tax rebate on the strength of the order, if any, issued by the Commissioner under this sub-section; and

- (b) original invoice, cash memo. or bill, as referred to in sub-section (2) or sub-section (3) of section 64, as the case may be, issued in the prescribed manner, from the unregistered dealer from whom he has purchased the goods.

(6) If the input tax credit or input tax rebate available to a registered dealer for a year exceeds the output tax for that year, the excess input tax credit or input tax rebate shall be carried forward to the next year, in the manner as may be prescribed.

(7) Where the taxable goods purchased are—

- (a) despatched outside the State otherwise than by way of sale; or
- (b) used as raw materials, consumable stores in manufacture of taxable goods, or in the packing of goods so manufactured, and the goods so manufactured are despatched outside the State otherwise than by way of sale,

the registered dealer shall be entitled to input tax credit or input tax rebate of the amount of input tax paid or payable under clause (18) of section 2 calculated at the applicable rate which exceeds the amount calculated at the rate of four *per centum*:

*The West Bengal Finance Act, 2005.**(Section 9.)*

Provided that no input tax credit or input tax rebate shall be allowed to such dealer unless the amount of input tax calculated at the applicable rate exceeds the amount calculated at the rate of four *per centum*:

Provided further that where a registered dealer has already enjoyed input tax credit or input tax rebate at a rate which is more than the rate he is eligible under this sub-section, his input tax credit or input tax rebate shall be reversed to the extent to which he is not eligible.

(8) Notwithstanding anything contained elsewhere in the Act, when a dealer enjoying deferment of payment of tax under clause (a), or tax holiday under clause (b), or remission of payment of tax under clause (c), of sub-section (1) of section 118, as the case may be, purchases within West Bengal, taxable goods which are used as raw materials and consumable stores in the manufacture of taxable goods or in the packing of goods so manufactured, or which are used as capital goods required for the purpose of manufacture of taxable goods, such dealer shall not be entitled to input tax rebate during the period of such enjoyment which shall be accumulated and carried forward until the expiry of such period of deferment, or tax holiday, or remission, as the case may be:

Provided that such dealer shall be entitled to such accumulated input tax credit or input tax rebate after the expiry of such period of deferment, tax holiday or remission, as the case may be, in such manner and subject to such conditions and restrictions, as may be prescribed:

Provided further that where in certain circumstances the output tax on sale of such goods in West Bengal by such dealer is not deferred, exempted, remitted, as the case may be, such dealer shall be entitled to input tax credit or input tax rebate in respect of purchases of such taxable goods within West Bengal:

Provided also that where the goods manufactured by using such goods have been exported out of the territory of India, such dealer shall be entitled to refund of input tax credit or input tax rebate in respect of such purchases of taxable goods within West Bengal.

(9) Notwithstanding anything contrary contained elsewhere in this Act, a registered dealer as referred to in sub-section (1), shall be entitled to input tax credit or input tax rebate on taxable goods, other than capital goods, lying in stock of such dealer on the date on which he became liable to pay tax under this Act irrespective of the fact that such dealer has not paid input tax under this Act, in such manner and subject to such conditions and restrictions, as may be prescribed, when such goods are purchased for—

- (a) sale or resale by him in West Bengal; or
- (b) sale in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (c) use as containers or materials for packing of taxable goods intended for sale, in West Bengal or in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (d) use as raw materials and consumable stores required for the purpose of manufacture of taxable goods intended for sale in West Bengal or in the course of inter-State trade and commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (e) use as containers or packing materials for use in the packing of goods so manufactured as referred to in clause (d) above; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (f) use in the execution of works contract; or
- (g) use as raw materials and consumable stores required for the purpose of manufacture of any goods to be sold in the course of export under section 5 of the Central Sales Tax Act, 1956, and containers or packing materials for use in the packing of goods so manufactured; or
- (h) making zero-rated sales other than those referred to in clause (g) above:

74 of 1956.

Provided further that the burden of proof that such goods are meant for the purposes mentioned in clause (a) to clause (h), shall lie on such dealer.

- (10) The methods used by a registered dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied, shall be fair, reasonable and uniform throughout the year:

Provided that the Commissioner may, after giving a registered dealer an opportunity of being heard and for reasons to be recorded in writing, reject the method adopted by such dealer and redetermine the amount of input tax credit or input tax rebate.

- (11) Every registered dealer availing of the input tax credit or input tax rebate shall maintain such registers and books of accounts, and such accounts as referred to in section 63, in such manner, as may be prescribed.

- (12) Notwithstanding anything contained elsewhere in this section, no input tax credit or input tax rebate shall be allowed for purchases—

- (a) made from a registered dealer who has been allowed to pay tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18; or
- (b) made in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956; or
- (c) made in the course of import from outside the country within the meaning of sub-section (2) of section 5 of the Central Sales Tax Act, 1956; or
- (d) made for use in business as defined in sub-clause (a) of clause (5) of section 2, but are subsequently used for any other purposes; or
- (e) of such goods and under such circumstances, as are specified in the negative list appended to this section.

- (13) Where—

- (a) a registered dealer—
 - (i) purchases goods for the purposes specified in sub-section (4) and such goods are used fully or partly for purposes other than those specified in that sub-section; or
 - (ii) purchases goods and such goods are used fully or partly, for such purposes for which enjoyment of input tax credit or input tax rebate is not permissible; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

(iii) purchases goods and avails input tax credit or input tax rebate on such purchases on which he is not entitled to enjoy input tax credit or input tax rebate, or

(b) a registered dealer has enjoyed input tax credit or input tax rebate, in respect of goods other than the capital goods lying in stock on the appointed day, or under sub-section (9), but such goods, prior to such enjoyment or after, has been so damaged or destroyed that such goods are unsaleable,

the input tax credit or input tax rebate, if availed of, for such goods, shall be reversed to that extent to which he is not eligible in the tax period during which such use has taken place, in such manner as may be prescribed.

(14) Where a registered dealer has purchased any taxable goods from a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, and if the application for registration of the selling dealer is rejected subsequently, the purchasing registered dealer shall be entitled to input tax credit or input tax rebate against such purchases made till the date of order of rejection of such application.

(15) Where a transferee, lessee, or licensee is a dealer deemed to be registered under section 27B or where a transferee, lessee, or licensee is a dealer who has incurred liability to pay tax under section 27C and is registered under section 24, as the case may be, such transferee, lessee, or licensee shall after making adjustments by way of reverse credit, if any, arising out of such transfer, be entitled to the input tax credit or input tax rebate, lying unutilised in the account of transferor, lessor, or licensor, as the case may be, subject to the satisfaction of the Commissioner that such input tax credit or input tax rebate has not earlier been availed of by such transferor, lessor, or licensor.

(16) Where any purchaser being a registered dealer to whom a credit note or a debit note has been issued under section 44, as a consequence of which the input tax credit or input tax rebate availed of by him in any period in respect of which the purchase of goods relates, becomes either short or excess, such registered dealer shall compensate such short or excess by adjusting the amount of input tax credit or input tax rebate allowed to him in respect of the tax period in which the credit note or debit note, as the case may be, has been issued subject to such conditions as may be prescribed.

(17) The net tax credit shall be determined in the following manner, namely:—

$$\text{Net tax credit} = A + B - C$$

Where—

“A” represents the amount of input tax credit or input tax rebate, for the tax period, which the dealer is entitled to under sub-section (1) subject to other provisions of this section and including input tax credit or input tax rebate availed in short of the eligible amount as referred to in sub-section (16) during the preceding tax periods not exceeding twelve English calendar months;

*The West Bengal Finance Act, 2005.**(Section 9.)*

“B” represents outstanding input tax credit or input tax rebate brought forward as determined from the previous tax period;

“C” represents reverse tax credit as determined under the second proviso to sub-section (7) or sub-section (13) or proviso to sub-section 15 and includes the amount of input tax credit or input tax rebate availed in excess of the eligible amount as referred to in sub-section (16).

(18) The State Government may, by notification, specify any class of dealers that shall not be entitled to input tax credit or input tax rebate whether in full or in part.

(19) Where a registered dealer transfers any goods to an auctioneer or a broker or any other agent, such auctioneer or broker or any other agent shall not be entitled to get any input tax credit or input tax rebate.

(20) The burden of proof on the admissibility of the amount of input tax credit or input tax rebate, shall lie on the registered dealer.

NEGATIVE LIST

[See sub-section (4) and sub-section 12(e) of section 22.]

List of goods not eligible for input tax credit or input tax rebate

Serial No.	Description of goods	Exceptions
(1)	(2)	(3)
1.	Air-conditioning units, air-coolers, fans and air circulators.	When the registered dealer is in the business of dealing in such goods.
2.	All automobiles including commercial vehicles, and two and three wheelers, and spare parts for repair and maintenance thereof.	When the registered dealer is in the business of dealing in such automobiles or spare parts.
3.	Crude oil.	When the registered dealer is in the business of dealing in crude oil or of manufacturing any goods taxable under the Act using crude oil as a raw material.
4.	Food, beverages and tobacco products.	When the registered dealer is in the business of dealing in such goods.
5.	Building materials, namely, bricks, sand, cement, stone-chips, iron and steel as referred to in section 14 of the Central Sales Tax Act, 1956, marble, tiles, doors, windows, sanitary fittings, bathroom fittings, drain pipes and all other materials used in construction, reconstruction or repair of a civil structure or parts thereof.	When the registered dealer is a works contractor, or when the registered dealer is in the business of dealing in such goods.

The West Bengal Finance Act, 2005.

(Section 9.)

Serial No.	Description of goods	Exceptions
(1)	(2)	(3)
6.	Office equipments.	When the registered dealer is in the business of dealing in such goods.
7.	Furniture, fixture including electrical fixtures and fittings.	When the registered dealer is in the business of dealing in such goods.
8.	Taxable goods which are used as capital goods, raw materials, consumable stores required in the manufacture of goods specified in Schedule A or used in the packing of goods so manufactured and not sold in the course of export.	
9.	Goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees including any residential accommodation.	
10.	Goods used for personal consumption or received as gifts.	
11.	Taxable goods purchased for use in business other than that as defined in sub-clause (a) of clause (5) of section 2.;	

*The West Bengal Finance Act, 2005.**(Section 9.)*

(17) for Chapter IV, the following Chapter shall be substituted:—

“CHAPTER IV

Registration of a dealer, enrolment of a transporter, carrier or transporting agent, demand of security, amendment or cancellation of registration of a dealer or enrolment of a transporter, carrier or transporting agent, information to be furnished by a casual dealer, dealer in certain cases.

PART I

Registration of a dealer, enrolment of a transporter, carrier or transporting agent, demand of security, amendment or cancellation of registration either *suo motu* or on the basis of information by a dealer and amendment or cancellation of enrolment of a transporter, carrier or transporting agent.

Bar to carry on business as a dealer without being registered. 23. (1) No dealer who has become liable to pay tax under section 10, or section 11, or section 14, or sub-section (3) of section 27C, shall carry on business as a dealer unless he gets himself registered:

Provided that the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed time as specified in sub-section (2), for such registration, is engaged in such business, and where such application has not been disposed of.

(2) A dealer referred to in sub-section (1) shall, within thirty days from the date from which he has become liable to pay tax under section 10, or section 11, or section 14, or sub-section (3) of section 27C, make an application for registration to the Commissioner as provided in sub-section (1) of section 24.

(3) Notwithstanding anything contained in sub-section (1), where a dealer has become liable to pay tax under sub-section (1) of section 10, or sub-section (1) of section 11, or sub-section (2) of section 14 and is registered under the West Bengal Sales Tax Act, 1994, on the day immediately preceding the appointed day, he shall be deemed to have been registered under the Act:

West Ben. Act
XLIX of 1994.

Provided that no such dealer shall be deemed to have been registered under the Act, if he has applied for cancellation of his certificate of registration under any of the provisions of the West Bengal Sales Tax Act, 1994, and such application is pending before the appropriate authority on the appointed day:

Provided further that where a registration number has been allotted under the Act to a dealer referred to in the first proviso anytime before the appointed day, such registration number shall be deemed to have been cancelled on the appointed day as if no such number had ever been allotted to such dealer.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(4) If a dealer who is required by sub-section (1) to get himself registered, fails, without any reasonable cause, to make an application for registration within the time allowed under sub-section (2), the Commissioner may, by an order in writing, after giving the dealer an opportunity of being heard, impose upon such dealer by way of penalty a sum not less than five hundred rupees and not exceeding one thousand rupees for each month of default, in such manner as may be prescribed.

Registration of a dealer.

24. (1) Every dealer—

- (a) who is required by section 23 to be registered, shall, or
- (b) who is not required by section 23 to be registered but intends to be registered at any time, may,

make an application for registration in the prescribed manner to the prescribed authority, and such application shall be accompanied by a declaration in the prescribed form duly filled up and signed by the dealer making the application.

(1A) A dealer who is deemed to have been registered under sub-section (3) of section 23 shall, within sixty days from the appointed day, submit such information, to such authority and in such manner, as may be prescribed.

(2) If such prescribed authority is satisfied that the application for registration referred to in sub-section (1) is in order, he shall register the applicant and grant him a certificate of registration in such form, within such period, in such manner, and subject to such conditions and restrictions, as may be prescribed.

(2A) If the prescribed authority is satisfied that the information provided by the dealer as referred to in sub-section (1A) is in order, he shall, in such manner as may be prescribed and within thirty days from the date of furnishing such information, issue a certificate of registration under the Act to such dealer in the prescribed form which shall be effective from the appointed day:

Provided that where a dealer fails to submit such information within the time referred to in sub-section (1A) without showing any reasonable cause, his registration number, if any, allotted under the Act, or his certificate of registration granted under clause (f) of section 119, shall be deemed to have been cancelled on the expiry of such time and the dealer shall, for all purposes of the Act, be deemed not to have been registered.

(3) Any dealer who has been registered under sub-section (2) shall, on an application made under clause (b) of sub-section (1), be liable to pay tax on all sales of goods or on execution of works contract effected by him from the date from which his certificate of registration is granted.

Enrolment of transporters, carriers or transporting agents.

25. (1) For carrying out the purposes of section 73, section 80, section 81, every transporter, carrier or transporting agent operating his transporting business in West Bengal for transporting any consignment of goods into, or outside, or within, West Bengal shall apply and obtain from the Commissioner a certificate of enrolment in such manner, and within such time, as may be prescribed.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(2) If a transporter, carrier or transporting agent, who is required by sub-section (1) to get himself enrolled, fails, without any reasonable cause, to make an application for enrolment within the prescribed time, the Commissioner may, by an order in writing and after giving such transporter, carrier or transporting agent an opportunity of being heard, impose upon such transporter, carrier or transporting agent a penalty of a sum not exceeding one thousand rupees for each month of default, in the manner as may be prescribed.

Security to be furnished by dealer, casual dealer or any other person including transporter, carrier or transporting agents.

26. The Commissioner may, by an order in writing, for good and sufficient reason to be recorded therein, demand from any dealer, casual dealer or any other person including transporter, carrier or transporting agent, a security in such circumstances and in such manner as may be prescribed.

Amendment of certificate of registration.

27. The prescribed authority may from time to time amend any certificate of registration in accordance with the information furnished under sections 27A, 27B, 27C or otherwise received, after due notice to the dealer, and such amendment may be made with retrospective effect in such circumstances, and subject to such restrictions and conditions, as may be prescribed.

Information to be furnished by a registered dealer regarding change of business.

27A. If any registered dealer—

- (a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any change in the ownership of his business, or discontinues his business or changes his place of business or opens a new place of his business; or
- (b) discontinues or changes his factory or warehouse or opens a new factory or warehouse; or
- (c) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration; or
- (d) in the case of a company, effects any change in the constitution of its board of directors; or
- (e) accepts digital signature certificate issued under the Information Technology Act, 2000, or
- (f) opens a new bank account or closes an existing bank account relating to the business,

21 of 2000.

he shall, within the prescribed time and in the prescribed manner, inform the prescribed authority accordingly and if any such dealer dies, his legal representative shall, in the like manner, inform the said authority.

Transfer of business by a registered dealer.

27B. Where the ownership of the business of a registered dealer is transferred absolutely by sale, gift, bequest, inheritance or otherwise, or transferred by way of lease,

*The West Bengal Finance Act, 2005.**(Section 9.)*

and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall, for all the purposes of the Act (except for the liabilities under this Act already discharged by such dealer), be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the certificate of registration of such dealer had initially been granted to the transferee or the lessee, and the transferee or the lessee shall, on application to the Commissioner, be entitled to have the certificate of registration amended accordingly.

Partial transfer of business by a registered dealer.

27C. (1) Where the ownership of a part, division or unit of the business of a registered dealer is transferred by sale, gift, bequest, inheritance or otherwise, or transferred by way of a lease or licence, and if the transferee, lessee or licensee, as the case may be, carries on such business as a part of his existing business or a new business in some other name, he shall, for the purposes of this Act (except for the liabilities under this Act already discharged by the transferor or lessor or licensor, as the case may be) be deemed to be a dealer in default in the matter of payment of any tax, penalty or interest payable by or due from the transferor or lessor or licensor, as the case may be, in respect of all the periods immediately preceding the date of such transfer in relation to such part, division or unit.

(2) If the transferee, lessee or licensee is a registered dealer and carries on the business referred to in sub-section (1), he shall, by an application under section 27, get his certificate of registration duly amended.

(3) If the transferee, lessee or licensee is not a dealer registered under this Act and if he carries on business from such part, division or unit, he shall, notwithstanding anything contained in section 10, section 11, or section 14, be liable to pay tax under this Act, and be liable for registration under section 24, from the date of such transfer.

(4) Where the transferee, lessee or licensee is deemed to be a dealer in default under sub-section (1) for any amount of tax, penalty or interest payable by, or due from, the transferor or lessor or licensor, as the case may be, such amount of tax, penalty or interest shall be recoverable from such transferee, lessee or licensee under section 55.

Declaration in respect of the manager or other officers of a registered dealer.

27D. Every registered dealer shall send a declaration to such authority, within such period and in such manner, as may be prescribed, stating the names of the manager and all officers of other designations who are responsible for ensuring compliance with any requirement made of such dealer under this Act, and in the event of any change of such manager or other officers, the dealer shall send a revised declaration in the like manner to the said authority within such time as may be prescribed.

Penalty for contravention of the provisions of sections 27A, 27B, 27C, or 27D.

27E. Where a dealer fails to furnish the information as referred to in section 27A, section 27B, section 27C, or section 27D within such time as may be prescribed, the Commissioner may, after giving the dealer an opportunity of being heard, by an order in writing, impose upon such dealer by way of penalty a sum not exceeding five thousand rupees in such manner as may be prescribed.

*The West Bengal Finance Act, 2005.**(Section 9.)*

Amendment of certificate of enrolment. 28. The Commissioner may amend any certificate of enrolment granted under sub-section (2) of section 25, in accordance with the information furnished by a transporter, carrier or transporting agent, as the case may be, or otherwise received, after due notice to such transporter, carrier or transporting agent, as the case may be, and such amendment may be made with retrospective effect in such circumstances and in such manner, and subject to such restrictions and conditions, as may be prescribed.

Cancellation of certificate of enrolment. 28A. (1) A certificate of enrolment granted to a transporter, carrier or transporting agent under sub-section (2) of section 25, shall be cancelled by the Commissioner where he, after giving a reasonable opportunity of being heard, is satisfied that the business of transporting goods of such transporter, carrier or transporting agent, as the case may be, has discontinued his business or has ceased to exist, and such cancellation shall take effect from the date of such order.

(2) The cancellation of the certificate of enrolment may be made on an application of the dealer or *suo motu* on the satisfaction of the appropriate authority.

Cancellation of certificate of registration. 29. (1) A certificate of registration granted to a dealer under sub-section (2) of section 24, shall be cancelled by the appropriate authority where such authority, after giving a reasonable opportunity to such dealer of being heard, is satisfied that—

- (a) the dealer has ceased to carry on business or has ceased to exist at his place of business; or
- (b) the dealer has ceased to be liable to pay tax under sub-section (8) of section 10, section 11, sub-section (8) of section 14.

(2) The cancellation of registration may be made on an application of the dealer or *suo motu* on the satisfaction of the appropriate authority.

(3) The cancellation of registration shall take effect from the date of order for such cancellation.

Option for cancellation of registration under specified circumstances. 30. (1) Notwithstanding anything contained in section 29 a registered dealer who does not manufacture goods in West Bengal for sale, may apply in the prescribed manner, to the prescribed authority, for cancellation of his registration under this Act, if, during the year in which such application is made and during the year immediately preceding such year, he has dealt exclusively in tax-free goods specified in Schedule A.

(2) If the prescribed authority is satisfied that the application made under sub-section (1) is in order, he shall cancel the registration.

(3) A registered dealer whose registration has been cancelled under sub-section (2), shall continue to be liable to pay tax in accordance with the provisions of sub-section (9) of section 10 in the event of making any sale of goods taxable under this Act subsequent to such cancellation of

*The West Bengal Finance Act, 2005.**(Section 9.)*

registration, but during the period of such liability to pay tax, he shall, within thirty days from the date of incurring such liability, apply for registration under section 24 and such application shall be disposed of in accordance with the provisions of that section.

PART II

**Other information to be furnished by a casual dealer,
a dealer, etc.**

Statement to be furnished by persons, dealing in transporting, carrying, shipping, or clearing, forwarding or warehousing etc.

30A. If, in the opinion of the State Government, there is appreciable evasion of tax in respect of any goods, the State Government may, by notification, specify such goods, and thereupon every person dealing in transporting, carrying, shipping or clearing, forwarding or warehousing such goods, whether as owner or lessee or occupier of a warehouse, shall furnish a statement or declaration in such form, within such time, in such manner, and for such period and to such authority, as may be specified in the notification.

Information to be furnished by dealers in respect of transfer of goods otherwise than by way of sale.

30B. If, in the opinion of the State Government, it is necessary to obtain information relating to transfer of goods otherwise than by way of sale in West Bengal, it may, by notification, call upon dealers or such class or classes of dealers as may be specified in the notification to furnish such information relating to such goods in such manner, at such intervals, for such period and to such authority, as may be specified in the notification.

Penalty for non-furnishing or furnishing of incorrect information under section 30B.

30C. (1) Where—

- (a) a dealer has failed to furnish information as required under section 30B, or
- (b) upon verification of the information in the statement furnished under section 30B by a dealer relating to transfer of goods otherwise than by way of sale in West Bengal, it comes to the knowledge of the Commissioner that—
- (i) any of the particulars furnished in such statement is not correct or complete; or
 - (ii) the goods transferred by such dealer otherwise than by way of sale in West Bengal have not been accounted for by the dealer's head office, or branch office, or agent, as the case may be; or
 - (iii) the agent of such dealer is not traceable or is not in existence at the address furnished in such statement; or
 - (iv) the agent of the dealer to whom the transfer of goods has been made otherwise than by way of sale denies to have any knowledge of the goods claimed to have been transferred to him by the dealer; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (v) the goods have not been transported by the transporter named in such statement under any consignment note or railway receipt referred to in the said statement,

the Commissioner may, in such manner as may be prescribed, impose on such dealer, by way of penalty, a sum, not less than fifteen *per centum* but not exceeding twenty-five *per centum* of the value of the goods so claimed to have been transferred by him.

(2) If any penalty is imposed under sub-section (1) for concealment of any sale with an intent to evade payment of tax thereon in respect of any period, such sale shall be excluded in determining the turnover of sales in respect of such period for the purpose of imposition of penalty, if any, under sub-section (1) of section 96.

Compounding of penalty that may be imposed under section 30C.

30D. (1) Subject to such conditions as may be prescribed, any dealer to whom a notice has been issued proposing imposition of penalty under sub-section (1) of section 30C, may, before the date fixed in such notice for hearing, at his option, compound the penalty proposed to be imposed, as mentioned in such notice, and the Commissioner may, at his discretion, accept from such dealer, by way of composition of penalty proposed to be imposed under sub-section (1) of that section, an amount equal to ten *per centum* of the value of goods claimed by the dealer to have transferred by him otherwise than by way of sale in West Bengal in the statement furnished by him under section 30B.

(2) On payment in full of the amount referred to in sub-section (1), the proceedings commenced against the dealer under sub-section (1) of section 30C shall not be proceeded with further.

Statements, accounts or declarations to be furnished by registered dealers and penalty for non-furnishing the same.

30E. (1) Every registered dealer shall, in the manner as may be prescribed, submit before the prescribed authority such statements, accounts or declarations within such time as may be prescribed and shall verify that such statements, accounts or declarations are true to the best of his knowledge and belief.

Statements to be furnished by casual dealers.

30F. A casual dealer liable to pay tax under section 15, shall in the prescribed manner, submit a statement in writing giving his permanent residential address and particulars of such sale or purchase along with receipted copy of challan as proof of payment of tax for such sale or purchase to the Commissioner.”;

- (18) in Chapter V, for the existing heading, the following heading shall be substituted:—

“*Payment of net tax or any other tax, interest, penalty, furnishing of returns, and deduction of amount at source towards payment of tax, etc.*”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(19) for section 31, the following section shall be substituted:—

“Payment of net tax or any other tax, interest, penalty.

31. Any amount—

- (a) of net tax or any other tax payable or due, for a tax period or payable according to a return referred to in sub-section (1) of section 32, or
- (b) of the interest payable under section 33 or section 34 or section 34A, or
- (c) of tax payable after assessment under section 45, or section 46, or section 48, or
- (d) of penalty imposed under any provisions of this Act, or
- (e) other than those referred to in clause (a), clause (b), clause (c), or clause (d), payable or due under this Act,

shall be paid into an appropriate Government Treasury, in such manner, at such interval, and within such time, as may be prescribed.”;

(20) after section 31, the following section shall be inserted:—

“Adjustment of reverse credit.

31A. Any amount of reverse credit as referred to in clause (36B) of section 2 arising in a tax period shall be adjusted within the said tax period in such manner and subject to such conditions and restrictions, as may be prescribed.”;

(21) for section 32, the following section shall be substituted:—

“Furnishing of return by dealer.

32. (1) Every dealer liable to pay tax under the Act or every other dealer, if so, required by the Commissioner by a notice served in the prescribed manner, shall furnish such returns by such dates and to such authority, as may be prescribed.

(2) Every dealer required by sub-section (1) to furnish a return shall, before furnishing such return, pay the full amount of the net tax and interest if any, payable according to such return, in the manner as provided in section 31 and shall furnish alongwith such return, a receipt from the appropriate Government Treasury referred to in that section showing the payment of such amount:

Provided that where a dealer is required by sub-section (1) to furnish return for any return period is unable to make payment of the full amount of the net tax or interest payable according to such return, such dealer shall furnish the return without making payment of the full amount of the net tax or interest payable according to such return along with an application adducing reasons to the Commissioner for extension of time for making payment of the unpaid amount of net tax or interest payable up to the extended date of payment:

Provided further that the Commissioner may, if he is satisfied on the reasons adduced by the dealer in the application referred to in the first proviso, extend, by an order in writing, the time for making payment of such unpaid amount of the net tax and interest if any, payable thereon on such terms and conditions as he may deem fit and proper.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(3) If any dealer who has furnished a return under sub-section (1), discovers any omission or error in any return furnished by him, he may, at any time before the date prescribed for furnishing of the next return by him, furnish a revised return; and if the revised return shows a greater amount of net tax or interest to be payable than what was shown in the original return, it shall be accompanied by a receipt showing payment of the extra amount or the amount of net tax and interest if any, payable thereon in the manner as provided in section 31.

(4) Where a deduction of an amount is made under sub-section (1) of section 40 from the payment of any sum to a dealer for execution of a works contract, and such amount is deposited under sub-section (2) of that section, the deduction of such amount shall be deemed to be a payment of tax by such dealer on the date of such deduction, and he shall furnish along with his return required under sub-section (1) of this section, in respect of such amount a copy of the certificate of deduction referred to in sub-section (3) of section 40, duly certified by such dealer, as a proof of such payment of tax:

Provided that where a dealer does not receive a certificate of deduction under sub-section (3) of section 40 on or before the prescribed date of furnishing of return for a return period, he shall furnish the return stating the fact in writing, and shall undertake to furnish the copy of such certificate of deduction within fifteen days from issue of such certificate to him under sub-section (3) of section 40.

(5) A dealer liable to pay tax under sub-section (1) or sub-section (2), as the case may be, of section 10 but not yet registered, shall furnish return in respect of the return period starting on or from such appointed day and pay tax in accordance with the provisions of this Act.”;

(22) for section 33, the following section shall be substituted:—

“Interest for non-payment or delayed payment of net tax payable or for non-reversal of input tax credit or input tax rebate.

33. (1) Where a dealer required to furnish return under sub-section (1) of section 32, furnishes the return in respect of any return period by the prescribed date or thereafter but fails to make full payment of net tax payable, under sub-section (2) of section 32, in respect of any tax period within such return period by the prescribed date, he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of net tax and up to the date prior to the date of payment of such net tax or, upto the date of commencement of proceeding under section 55 or, upto the date prior to the date of provisional assessment under section 45 or assessment under section 46 or section 47 or section 48, as the case may be, whichever is earlier, in respect of such return period upon so much of the amount of net tax payable by him according to such return as remains unpaid:

Provided that where such dealer admits in writing that the amount of net tax payable in respect of any such tax period within the return period is an amount which is either more or less than what has been originally shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of net tax payable for such tax period according to such admission as remains unpaid.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(2) Where a dealer required to furnish return under sub-section (1) of section 32, fails to furnish such return by the prescribed date or thereafter in respect of any return period before the provisional assessment under section 45 of the assessment under section 46 or section 48, as the case may be, and on such provisional or other assessments full amount of net tax payable for such period is found not to have been paid by him by the prescribed date, he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date of payment of such net tax in respect of each tax period and upto the prior to the date of provisional assessment under section 45 or assessment under section 46 or section 48, as the case may be, in respect of such return period upon so much of the amount of net tax payable by him according to such assessment as remains unpaid:

Provided that where a provisional assessment under section 45 or an assessment under section 46 or section 48 is made for more than one return period and such assessment does not show separately the net tax payable for the tax periods within such return periods in respect of which interest is payable under this sub-section, the Commissioner shall apportion the net tax payable for the tax periods within such return periods on the basis of such assessment.

(3) Where a dealer is required to reverse any amount of input tax credit or input tax rebate as referred to in section 31A in respect of a particular tax period, fails to do so, he shall pay a simple interest upon such amount at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of net tax for such tax period and upto the date prior to the date of payment of such net tax or, upto the date of commencement of proceeding under section 55 or, upto the date prior to the date of provisional assessment under section 45 or assessment under section 46 or section 47, as the case may be, whichever is earlier.”;

(23) in section 34,—

- (a) for the words “tax payable after assessment”, the words “tax due after provisional or other assessments” shall be substituted;
- (b) for the words and figures “or section 47”, the words and figures “or section 48” shall be substituted;

(24) after section 34, the following section shall be inserted:—

“Interest for failure to make payment of tax as referred to in clause (a) of section 118.

34A. Where a registered dealer fails to make payment of tax as referred to in clause (a) of sub-section (1) of section 118 in the prescribed manner and by the prescribed date he shall pay a simple interest at the rate of twelve *per centum per annum* for the period commencing on the date immediately following the prescribed date for payment of tax and ending on the date prior to the date of payment of such tax or upto the date of commencement of proceedings under section 55, whichever is earlier, upon so much of the amount of tax payable by him according to such return as remains unpaid.”;

(25) in section 35, after the words and figures “or section 34”, the words, figures and letter “or section 34A” shall be inserted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (26) for section 37, the following section shall be substituted:—
- “Rounding off of net tax or any other tax payable for calculation of interest. 37. In calculating the interest payable under section 33, section 34, section 34A or section 36, the amount of net tax or any other tax payable or due in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and if such part is less than fifty rupees, it shall be ignored.”;
- (27) in section 38,—
- (a) in the marginal note, for the words “tax or penalty”, the words “net tax or any other tax, or penalty” shall be substituted;
- (b) for the words “tax or penalty”, the words “net tax or any other tax, or penalty” shall be substituted;
- (28) in section 39,—
- (a) in sub-section (1), the proviso shall be omitted;
- (b) in sub-section (2), for the words “a Government Treasury or the Reserve Bank of India”, the words “an appropriate Government Treasury” shall be substituted;
- (29) in section 40,—
- (a) in sub-section (1),—
- (i) in the first proviso, in paragraph (iii), for the words and figures “under section 99”, the words, figures and brackets “under sub-section (2) of section 99” shall be substituted;
- (ii) in the second proviso, for the words, figures and brackets “sub-section (1) of section 18”, the words, figures and brackets “sub-section (2) of section 18” shall be substituted;
- (b) in clause (a) of sub-section (2), for the words “a Government Treasury or Reserve Bank of India”, the words “an appropriate Government Treasury” shall be substituted;
- (c) in sub-section (5), for the words “the Government Treasury or the Reserve Bank of India.”, the words “the appropriate Government Treasury.” shall be substituted;
- (30) for Chapter VI, the following Chapter shall be substituted:—

“CHAPTER VI**Scrutiny and verification of returns and statements and documents furnished by a dealer, casual dealer, and audit of accounts and other documents maintained by a dealer.****PART I****Scrutiny and verification of returns furnished by, and audit of accounts and other documents maintained by, a dealer.**

Scrutiny of returns.

41. (1) Every return, furnished under sub-section (1) of section 32, shall be scrutinised by the Commissioner to ascertain the correctness of calculation of input tax credit or input tax rebate and net tax, including application of proper rate of tax, payable according to such return, and the payment of interest payable under sub-section (1) of section 33, if any.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(2) If any mistake is detected upon the scrutiny made under sub-section (1), the Commissioner shall, in the prescribed manner, serve upon the dealer who has filed such return, a notice requiring him to rectify the mistake or to pay the amount of net tax payable in deficit along with the interest payable under sub-section (1) of section 33, if any, within the date specified in such notice.

(3) The notice referred to in sub-section (2) shall not be issued to any dealer after the expiry of four months from the day on which a return has been furnished, under sub-section (1) of section 32.

(4) If upon scrutiny made under sub-section (1), a dealer is found to have paid net tax, or interest, in excess of the amount payable as per such return, the Commissioner shall inform the same to the dealer within one month from the date of completion of such scrutiny.

Verification of returns.

42. (1) Where the Commissioner, for reasons to be recorded in writing, has reason to believe that a dealer has furnished incorrect statement of his turnover of purchases or turnover of sales or contractual transfer price or incorrect particulars of his purchases or sales or contractual transfer price or has claimed excess amount of input tax credit or input tax rebate in any return furnished under sub-section (1) of section 32, he may verify the statement and particulars furnished in such return with reference to the accounts, registers or documents, including those in the form of electronic records, maintained or kept by such dealer.

(2) If upon verification of return made under sub-section (1), the Commissioner is not satisfied that the return furnished by the dealer is correct and complete, he shall proceed to make assessment of the dealer as referred to in section 46 or section 48, as the case may be.

(3) No verification shall be made under sub-section (1) after the assessment of the dealer is initiated under section 46 or section 48.

Audit of accounts.

43. (1) Notwithstanding anything contained in section 47 and section 49 and subject to such conditions, restrictions and in such manner, as may be prescribed, the Commissioner shall, from among registered dealers, select on a random basis, or upon information or otherwise, such percentage, or such class or classes of dealers, as may be prescribed, for audit of the accounts, registers or documents, including those in the form of electronic records, maintained or kept by such dealer for any year or part thereof, not being a period which has ended five years previous to the day of selection.

(2) After a selection made under sub-section (1), the Commissioner shall, with due notice to the dealer so selected, proceed to audit the accounts, registers and documents, including those in the form of electronic records, maintained or kept by the dealer to verify the correctness of returns furnished and the admissibility of various claims including the input tax credit or input tax rebate or refund, for the year or part thereof referred to in sub-section (1).

(3) The Commissioner shall, after considering all the evidence produced in course of the proceedings or collected by him, or to the best of his judgement where the dealer has failed to comply with the notice issued under sub-section (1) prepare a report stating his observation therein regarding the correctness of returns, admissibility of various claims of the dealer for the period for which such audit is made.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(4) Any audit under this section shall be completed within six months from the date on which the selection is made by the Commissioner:

Provided that where the Commissioner is satisfied that audit in respect of such dealer cannot be completed within six months from the date of selection, he may, upon giving the dealer an opportunity of being heard and for the reasons to be recorded in writing, extend the period for another six months:

Provided further that the order of such extension shall be made within six months from the date of selection for audit and such order shall be immediately communicated to the dealer.

Credit and debit notes. 44. (1) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax chargeable under this Act in respect of that sale, the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, making the sale shall provide the purchaser with a credit note and the purchaser shall provide such dealer making the sale, with a debit note containing such requisite particulars as may be prescribed.

(2) Where the tax invoice has been issued and the tax chargeable under this Act in respect of the sale exceeds the amount of tax charged in that tax invoice, the registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, making the sale shall provide the purchaser with a debit note and the purchaser shall provide such dealer making the sale, with a credit note containing such requisite particulars as may be prescribed.

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the dealer making the sale to the purchaser, and a debit note will be issued by the purchaser to the dealer making the sale, containing such requisite particulars as may be prescribed:

Provided that where the goods sold or purchased in a year is returned or rejected in a subsequent year, within a period of six months from the date of sale or purchase, the credit note issued by the seller or the debit note issued by the purchaser shall be adjusted with the turnover of sales or turnover of purchases, as the case may be, in the year in which such goods are returned or rejected.

PART II

Scrutiny and verification of statements and documents furnished by a casual dealer.

Scrutiny and verification of statements and documents furnished by a casual dealer.

44A. (1) Every statement and document, furnished under section 30F shall be scrutinised by the Commissioner to ascertain the correctness of calculation of tax payable, including application of proper rate of tax, according to such statement submitted in writing.

(2) If any mistake is detected upon the scrutiny made under sub-section (1), the Commissioner shall, in the prescribed manner, serve upon the casual dealer who has filed such statement, a notice in such form as may be prescribed, requiring him to pay the amount of tax in deficit, if any, within the date specified in such notice.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(3) If upon scrutiny made under sub-section (1), a casual dealer is found to have paid tax in excess of the amount payable as per such statement, the Commissioner shall inform the same to the casual dealer within one month from the date of completion of such scrutiny.

(4) Where the Commissioner, for reasons to be recorded in writing, has reason to believe that a casual dealer has furnished incorrect statement of his sale or purchase in the statement furnished under section 30F, he may verify such statement.

(5) If upon verification of the statement referred to in sub-section (4), the Commissioner is not satisfied that the statement furnished by such casual dealer are correct and complete, he shall proceed to make assessment of the casual dealer as referred to in sub-section (2) of section 48.”;

(31) for section 45, the following section shall be substituted:—

“Provisional
assessment.

45. (1) Where a dealer required to furnish return for a period under sub-section (1) of section 32,—

- (a) fails to furnish such return; or
- (b) furnishes such return but fails to make an application to the Commissioner for extension of date of payment, of the unpaid amount of net tax and interest if any, as referred to in the first proviso to sub-section (2) of section 32; or
- (c) furnishes such return but fails to make payment of net tax or interest thereon in accordance with the terms and conditions and within such time as may be specified by the Commissioner as referred to in the first proviso to sub-section (2) of section 32; or
- (d) furnishes such return but fails to make payment of the unpaid amount of net tax or interest and where the Commissioner has rejected his application for extension of date of payment as referred to in the first proviso to sub-section (2) of section 32,

the Commissioner or any other person appointed under sub-section (1) of section 6 to assist him, may, notwithstanding anything contained in section 46, proceed to assess the dealer provisionally for that period:

Provided that no provisional assessment under this section in respect of a return period shall be made following the expiry of six months from, the prescribed date for furnishing such return or the extended date for making payment of net tax, as the case may be:

Provided further that in computing the time limit as specified in the first proviso for making any provisional assessment under this section, the period during which the Commissioner is restrained from commencing or continuing any proceedings from such provisional assessment by an order of a tribunal or any court, shall be excluded.

*The West Bengal Finance Act, 2005.**(Section 9.)*

(2) The Commissioner or other authority as referred to in sub-section (1), shall assess the dealer on the basis of past returns, or past records, and where no such returns or records are available, on the basis of information received by the Commissioner and where the dealer fails to pay the net tax for any tax period within the date extended by the Commissioner, shall impose a penalty not exceeding twice the amount of tax so assessed and direct the dealer by a notice to pay the amount of tax assessed, interest determined and penalty imposed in such manner and within such date as may be prescribed.

(3) Notwithstanding anything contained elsewhere in this section, if the dealer produces documentary evidence for furnishing return and receipted copy of challan showing full payment of net tax and interest, if any, on or before the date fixed under sub-section (2) for such purpose, the said authority shall close the proceeding initiated under this section.

(4) If the dealer furnishes receipted challans showing full payment of net tax and interest payable according to such demand notice and fifty *per centum* of penalty demanded in such notice served under sub-section (2), on or before the date of payment mentioned in such notice, the provisional assessment shall stand revoked to the extent of demand of net tax, interest and balance fifty *per centum* of penalty.

(5) Nothing contained in this section shall prevent the Commissioner from making assessment under section 46 and any net tax or interest paid, and penalty paid in excess of the fifty *per centum* of the amount of penalty imposed against provisional assessment or assessments, as the case may be, shall be adjusted against net tax and interest payable on assessment made under that section.”;

(32) for section 46, the following section shall be substituted:—

“Assessment
after giving
notice to the
registered
dealer.

46. (1) Where—

- (a) no return has been furnished by a registered dealer for any return period of a year; or
- (aa) return has been furnished by a registered dealer without paying net tax or interest for any of the tax period within the prescribed date, or within such date, as may be extended by the Commissioner; or
- (b) a registered dealer fails to make payment of the amount of net tax or interest, in deficit within the date specified in a notice issued under sub-section (2) of section 41; or
- (c) upon verification of return under sub-section (1) of section 42, or upon any enquiry, or upon report received under section 43, or otherwise, the Commissioner is not satisfied that the return furnished by a registered dealer is correct and complete; or
- (d) upon search or seizure of accounts, registers or documents, or of goods of a registered dealer, the Commissioner has reasons to believe that the registered dealer has not accounted for any turnover of sales or turnover of purchases in the return furnished by such dealer or in the accounts, registers or documents referred to in section 63; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (e) a refund has been made to a registered dealer under clause (a) of section 61; or
- (f) a registered dealer brings to the notice of the Commissioner, in writing, within six months from the end of any year that due to error in fact or in law, an amount of net tax or interest has been paid by him in excess of what was actually payable by him for any return period of that year and the Commissioner is satisfied on the grounds adduced by such registered dealer; or
- (g) a registered dealer other than a dealer enjoying deferment, exemption or remission of tax under clause (a), or clause (b), or clause (c) of sub-section (1) of section 118, as the case may be, brings to the notice of the Commissioner, in writing, within three months from the end of the following year that he wants refund of the excess amount of input tax credit or input tax rebate which has accumulated during that year and which has remained unadjusted at the end of the said following year; or
- (h) a registered dealer has closed his business; or
- (i) the Commissioner deems it fit and proper for any other reason,

the Commissioner shall, after giving a notice to such dealer, proceed in such manner as may be prescribed to assess to the best of his judgement the amount of net tax payable by such dealer in respect of such year or in respect of any return period of such year, as he may deem fit and proper:

Provided that where the assessment is initiated upon receipt of a report under section 43, the Commissioner shall arrive at an independent decision on the discrepancies, anomalies or evasion or any other matter recorded in such report:

Provided further that no assessment shall be made under this section for the period for which an assessment made under sub-section (2) of section 45 has not been revoked under sub-section (3) of said section, and action has been taken under section 55, or appeal is pending under section 84 or application for revision is pending under section 87 in respect of such assessment:

Provided also that if on appeal or revision, the provisional assessment order passed under section 45 is either annulled or set aside with a direction to make fresh assessment, no further action shall be taken under section 45 and assessment for that period shall be made afresh under this section and such assessment shall be completed within two years from the date of order made in appeal or revision.

(2) While making an assessment under sub-section (1), the Commissioner may, if he is satisfied—

- (a) that the dealer has defaulted in furnishing any return as required under section 32 without any reasonable cause; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (b) the dealer has furnished such return but has failed to pay the full amount of net tax for any tax period within the prescribed date or within such date as extended by the Commissioner,

direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding fifty *per centum* of the amount so assessed.

(3) The Commissioner shall—

- (a) in making the assessment under sub-section (1) and imposing the penalty under sub-section (2), give the dealer a reasonable opportunity of being heard; and
- (b) after making such assessment or imposing such penalty, issue to the dealer a notice directing him to pay the net tax payable, interest determined and penalty imposed upon such assessment in such manner as may be prescribed.”;

(33) for section 47, the following section shall be substituted:—

“Assessment as per return.

47. (1) Where the Commissioner does not proceed to assess any registered dealer under sub-section (1) of section 46 for any year or any return period of such year and where the provisional assessment made against such dealer in respect of such year or return period has been revoked under sub-section (3) of section 45, the Commissioner shall accept the returns furnished by the dealer for such year or any return period of such year as correct and complete and assessment in respect of such year or such period shall be deemed to have been made by him.

(2) Upon making of an assessment under sub-section (1), the Commissioner shall inform the dealer who is assessed under that sub-section in such manner and within such time as may be prescribed.

(3) Where an assessment is deemed to have been made under sub-section (1) in respect of a registered dealer relating to any year or part of a year and where it appears to the Commissioner on information or otherwise that in a return furnished by such registered dealer under section 32 in respect of any period of such year or part of a year,—

- (a) certain sale price or part thereof, contractual transfer price or part thereof, has not been disclosed in such return, or has escaped levy of tax thereon at the appropriate rate, erroneously or otherwise, or
- (b) the deductions from the turnover of sales were claimed under sub-section (1) of section 16 in such return, erroneously or otherwise, in excess of what is admissible under sub-section (1) of that section, or the deductions so claimed in such return are not supported by evidence referred to in sub-section (1) of that section, or
- (c) excess amount of input tax credit or input tax rebate has been enjoyed by the dealer for that period, and no reverse credit for such excess amount has been made by such dealer,

*The West Bengal Finance Act, 2005.**(Section 9.)*

which has resulted in reduction of the amount of net tax payable by such registered dealer or the State Government has suffered loss of revenue on any of the grounds referred to in clause (a), or clause (b), or clause (c), of this sub-section on account of such registered dealer in respect of such year or part of such year, the Commissioner shall, within a period of four years from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1), after giving such registered dealer a reasonable opportunity of being heard, reopen such assessment by an order in writing in the prescribed manner for making a fresh assessment of tax under sub-section (1) of section 46:

Provided that the fresh assessment under sub-section (1) of section 46 for such year shall be made, notwithstanding the provisions of section 49, on any date within two years from the date of passing the order in writing for reopening the assessment in respect of such year, which is deemed to have been made in accordance with the provisions of sub-section (1) of this section.

(4) Where a registered dealer brings to the notice of the Commissioner by making an application to him within six months from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1) in respect of any year that due to his error in fact or in law, an amount of net tax or interest has been paid by him in excess of what was payable in respect of any return period falling within such year, and the Commissioner may, if he is *prima facie* satisfied about such error in fact or in law, within one year from the date of receipt of such application, reopen such assessment, by an order in writing, for making a fresh assessment of tax for such year under sub-section (1) of section 46.”;

(34) for section 48, the following section shall be substituted:—

“Assessment of tax payable by dealers other than registered dealer.

48. (1) If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered or has not been registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of net tax payable by the dealer in respect of such period and, in making such assessment, shall give the dealer a reasonable opportunity of being heard and after making such assessment, the Commissioner shall issue to the dealer a notice in the prescribed form directing him to pay the amount of net tax found to be payable upon such assessment in such manner as may be prescribed.

(2) Where—

(a) the Commissioner upon verification as referred to in sub-section (5) of section 44A is not satisfied that the statement and documents submitted under section 30F by a casual dealer provide correct and complete information, or

*The West Bengal Finance Act, 2005.**(Section 9.)*

(b) the casual dealer has failed to submit the statement and documents referred to in section 30F within the time specified therein,

the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement, the amount of tax due from such casual dealer in respect of purchases or sales made by him and in making such assessment, shall give the casual dealer a reasonable opportunity of being heard and after making such assessment, the Commissioner shall issue to the casual dealer a notice in the prescribed form directing him to pay the amount of tax found to be due upon such assessment in such manner as may be prescribed.”;

(35) for section 49, the following section shall be substituted:—

“Limitation for assessment.

49. (1) No assessment under section 46 or section 47 shall be made after the 30th day of June next following the expiry of two years from the end of the year in respect of which or part of which the assessment is made.

(2) (a) No assessment under sub-section (1) of section 48 shall be made after the 30th day of June next following the expiry of six years from the end of the year in respect of which or part of which the assessment is made.

(b) No assessment under sub-section (2) of section 48 shall be made after the 30th day of June next following the expiry of six years from the end of the year during which sales or purchases as referred to in clause (a) and clause (b) of section 15 were made for which the assessment is required to be made.

(3) Notwithstanding anything contained in sub-section (1), or sub-section (2), when a fresh assessment is required to be made in pursuance of an order under section 84, section 85, section 86 or section 87, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within two years from the date of such order.

(4) In computing the time limited by sub-section (1), sub-section (2), or sub-section (3), for making any assessment under section 46, or section 47, or section 48, the period during which the Commissioner is restrained from commencing or continuing any proceedings from such assessment by an order of an authority under the Act, or a Tribunal or any court shall be excluded.”;

(36) in section 50,—

(a) in sub-section (1), for the words and figures “under section 33 or section 34,” the words, figures and letter “section 33, section 34 or section 34A,” shall be substituted;

(b) in sub-section (3), for the words and figures “assessment under section 46”, the words and figures “assessment under section 46 or section 48, as the case may be,” shall be substituted;

(37) in section 51, in sub-section (1), for the words “within six months”, the words “within twenty-four months” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(38) for section 53, the following section shall be substituted:—

“Assessment after partition or disruption or dissolution of Hindu Undivided Family, firm, or other association of persons and net tax, penalty or interest payable by a sole proprietor.

53. (1) Where a dealer is a Hindu Undivided Family, firm or other association of persons, and such family, firm or association is partitioned, disrupted or dissolved, as the case may be,—

- (a) the net tax, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution shall be assessed, imposed or determined as if no such partition, disruption or dissolution had taken place and all the provisions of this Act, shall apply accordingly; and
- (b) every person who was, at the time of such partition, disruption or dissolution, a member of the Hindu Undivided Family, partner of a firm or member of an association of persons, and the legal representative of any such person, who is deceased, shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment,

of the net tax, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution, whether assessment of such tax, imposition of such penalty or determination of such interest is made prior to, or after, such partition, disruption or dissolution.

(2) Where a dealer carrying on a business as the sole proprietor dies and the business is partitioned, disrupted or discontinued upon his death, the executor or administrator of, or the legal heir to, the estate of such deceased dealer shall pay net tax or any other tax, penalty or interest payable by, or due from, such deceased dealer out of such estate, and such executor, administrator or legal heir shall, notwithstanding the provisions of clause (11) of section 2, be deemed to be a dealer under this Act for the purposes of assessment of tax, determination of interest, and imposition of penalty and payment, recovery and refund of tax, penalty or interest, and all the provisions of this Act relating to appeal, revision or review in respect of the tax assessed, or penalty imposed or interest determined, shall apply accordingly.”;

(39) in section 54, for sub-section (1), the following sub-section shall be substituted:—

“(1) Where during the period commencing on the date of service of a notice of demand under sub-section (2) of section 45, or clause (b) of sub-section (4) of section 46, or section 48, or sub-section (2) of section 50, or sub-section (1) of section 51 or any other provisions of the Act and ending on the date of service of notice by the authority competent, to issue such notice, under clause (a) or clause (b) of sub-section (1) of section 55, as the case may be, any dealer without having made full payment of net tax or any other tax, interest, or penalty payable or due,

*The West Bengal Finance Act, 2005.**(Section 9.)*

as the case may be, under this Act, specified in such notice of demand as aforesaid, creates a charge on, or transfers or delivers possession (by way of sale, mortgage, gift, exchange or any other mode of transfer of right, title or interest) of, any of his immovable properties in favour of other person, such charge, transfer or delivery of possession shall be void as against any claim in respect of the amount of net tax or the other tax, interest, or penalty payable or due from such dealer:

Provided that the provisions of this section shall not apply to a dealer unless—

- (a) the amount or the aggregate of the amounts specified in the notice as aforesaid, payable or due from him, for payment of net tax or any other tax, interest, or penalty exceeds one lakh rupees; or
- (b) the value of the immovable property on which a charge is created, or which is transferred, or the possession of which is delivered, by him exceeds five lakh rupees.”;

(40) in section 55,—

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

“(1) Any amount of net tax or any other tax, interest or penalty due, under this Act from a dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person, which remains unpaid after the date specified in a notice of demand issued in this behalf under this Act or the rules made thereunder, directing payment of such amount of net tax or other tax, interest, or penalty, shall be recoverable—

- (a) as an arrear of land revenue as if it were payable to the Collector, or
- (b) by the Tax Recovery Officer in accordance with the provisions of sub-section (2) of this section, section 56, section 57, section 58, or section 59 and the rules regulating the procedure for recovery of net tax or any other tax, interest, or penalty as may be prescribed, where the State Government directs by general or special order so to do in respect of such class or classes of dealers having their places of business in such area or areas as may be specified in such order.”;

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

“(2) Where any amount of net tax or any other tax, interest, or penalty is recoverable in accordance with the provisions of clause (b) of sub-section (1), the Commissioner may send to the Tax Recovery Officer a certificate under his signature specifying the amount of such net tax or other tax, interest, or penalty due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person (hereinafter referred to as the certificate-debtor), and the Tax Recovery Officer shall, on receipt of such certificate,

*The West Bengal Finance Act, 2005.**(Section 9.)*

proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules as may be prescribed:—

- (a) attachment and sale of the movable property of the certificate-debtor;
 - (b) attachment and sale of the immovable property of the certificate-debtor;
 - (c) arrest of the certificate-debtor and his detention in prison;
 - (d) appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.”;
- (c) for sub-section (3), the following sub-section shall be substituted:—
- “(3) The Commissioner may send a certificate under sub-section (2), notwithstanding that proceeding for recovery of such net tax or other tax, interest, or penalty have been initiated or are continuing by any other mode.”;
- (d) for sub-section (4), the following sub-section shall be substituted:—
- “(4) For the purposes of this section, section 56, section 57, section 58 or section 59 and the rules as may be prescribed for the purpose, the State Government may, by notification, appoint such number of Tax Recovery Officers as it may deem fit, and specify in the notification the area or areas over which they shall exercise jurisdiction.”;
- (e) in sub-section (9), for the words “amount of tax, penalty or interest”, occurring in four places, the words “net tax or other tax, interest or penalty” shall be substituted;
- (41) in section 56, in sub-section (1), in clause (b), for the words “within such certificate-debtor”, the words “within whose jurisdiction such certificate-debtor” shall be substituted;
- (42) in section 58,—
- (a) in sub-section (1), for the words “the assessment of tax, imposition of penalty or determination of interest”, the words “the assessment of net tax or any other tax, determination of interest or imposition of penalty” shall be substituted;
 - (b) in sub-section (2), for the words “any amount of tax, penalty or interest”, occurring in two places, the words “any amount of net tax or other tax, penalty or interest” shall be substituted;
- (43) in section 59, for the words “amount of tax, penalty or interest”, occurring in two places, the words “amount of net tax or other tax, penalty or interest” shall be substituted;
- (44) in section 60,—
- (a) for sub-section (1), the following sub-section shall be substituted:—
- “(1) Notwithstanding the forwarding of a certificate under section 55 for recovery of any amount of net tax or any other tax, interest, or penalty, the Commissioner may, at any time or from time to time, by notice in the prescribed form, require any person from whom money is due or may become due to a dealer or any person

*The West Bengal Finance Act, 2005.**(Section 9.)*

who holds or may subsequently hold money for, or on account of, such dealer, to deposit into an appropriate Government Treasury under the appropriate head of account, either forthwith upon the money becoming due or being held or 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 such dealer in respect of the arrears of such net tax or other tax, interest, or penalty or the whole of the money when such money is equal to or less than that amount.”;

(b) in sub-section (8), for the words “The Government Treasury or the Reserve Bank of India”, the words “The appropriate Government Treasury” shall be substituted;

(c) in sub-section (11),—

(i) for the words “the amount of tax, penalty or interest”, occurring in two places, the words “net tax or any other tax, interest, or penalty” shall be substituted;

(ii) for the *Explanation*, the following *Explanation* shall be substituted:—

“*Explanation.*—For the purposes of this section, “dealer” shall include a casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person, for whom or on whose account money is demanded for payment of net tax or any other tax, interest, or penalty under this section.”;

(45) after section 60, the following section shall be inserted:—

“Recovery of admitted amount of net tax or any other tax, interest or penalty from a dealer other than registered dealer.

60A. When a dealer furnishes a return under section 32 indicating therein, or otherwise admits in writing, his liability to pay any net tax or any other tax, interest, or penalty in respect of a certain period, notwithstanding anything contained elsewhere in this Act, such amount of net tax or other tax, interest or penalty shall be deemed to have been quantified on the date of filing such return or making such admission, as the case may be, and all the provisions of section 55, section 56, section 57, section 58, section 59, section 60, shall be applicable *mutatis mutandis* on such quantified net tax or other tax, interest or penalty.”;

(46) in section 61, in clause (a),—

(a) the words “Falta Special Economic Zone, or” shall be omitted;

(b) for the words “outside the Falta Special Economic Zone”, the words “a Special Economic Zone” shall be substituted;

(c) sub-clause (ii) shall be omitted;

(47) in section 62, for the words “input tax credit”, the words “net tax credit” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(48) for section 63, the following section shall be substituted:—

“Maintenance of
accounts, records
etc. 63. (1) Every dealer required to furnish return,
under sub-section (1) of section 32, shall maintain and
keep a true and up-to-date account of the quantity and
value of the goods purchased or manufactured or sold by him or used
in execution of works contract or held by him in stock and shall maintain
and keep such registers or accounts, in such form as may be prescribed,
in addition to the books of accounts that a dealer maintains or keeps for
the purposes of his business:

Provided that—

- (a) a registered dealer, or a dealer who has applied for registration within thirty days from the date of his incurring liability to pay tax under sub-section (2) of section 23, other than those required to pay tax at compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18 or any other dealer as may be prescribed, shall maintain a true and up-to-date account of his input tax, input tax credit and output tax;
- (b) in case of any other dealer, such dealer shall maintain a true and up-to-date account of his output tax only.

(2) Every dealer referred to in sub-section (1) shall keep at his principal place of business all accounts, registers, documents including those in electronic form and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, which may be required by the Commissioner for the purpose of inspection under sub-section (2) of section 66, and shall not keep or remove elsewhere such accounts, registers, documents and certificate except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner.”;

21 of 2000.

(49) for section 64, the following section shall be substituted:—

“Compulsory
issue of tax
invoice, invoice,
cash memo. or
bill. 64. (1) Subject to the first proviso to sub-
section (3) of section 16 and first proviso to sub-
section (4) of section 18, if a registered dealer, or a
dealer who has made an application under sub-
section (1) of section 24 within thirty days from the date of incurring
liability to pay tax under the Act, sells any goods to any person, he shall
issue in the prescribed manner, to the purchaser a serially numbered tax
invoice as referred to in clause (48) of section 2, signed and dated by
him or his regular employee, showing such particulars as may be prescribed,
and he shall also keep a counterfoil or duplicate of such tax invoice, duly
signed and dated:

Provided that where the registration certificate of a registered dealer has been cancelled by the appropriate authority from a particular date, or where the application for registration of a dealer as referred to above is rejected from a particular date, any tax invoice issued by such dealer shall be treated as an invoice instead of a tax invoice from that date.

(2) If a dealer to whom sub-section (1) does not apply and who has become liable to pay tax under any provision of this Act sells any goods to any person, he shall issue in the prescribed manner to the purchaser a serially numbered invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing

*The West Bengal Finance Act, 2005.**(Section 9.)*

such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such invoice, cash memorandum or bill, duly signed and dated.

(3) If a dealer to whom sub-section (1) or sub-section (2) does not apply, sells any goods exceeding one hundred rupees in value in any one transaction to any person, he shall issue to the purchaser a serially numbered invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such invoice, cash memorandum or bill, duly signed and dated:

Provided that if the State Government is of the opinion that the requirement under this section shall cause hardship to a certain class or classes of dealers included in sub-section (3), and that such requirement should, subject to fulfilment by any class or classes of dealers of certain conditions and restrictions to be imposed to ensure that there is no evasion of tax, be dispensed with, it may prescribe by rules such class or classes of dealers, and such conditions and restrictions subject to which the requirement of this section in respect of such class or classes of dealers shall be dispensed with.

(4) (a) Notwithstanding anything contained elsewhere in the Act, if the Commissioner, on an application made in the prescribed manner, by a registered dealer and after making such enquiries as he may consider necessary, is satisfied that a dealer is not in a position to furnish a tax invoice referred to in sub-section (1) of section 64 on account of the loss of such tax invoice for reasons beyond his control, the Commissioner may, by an order in writing exempt such dealer from furnishing such tax invoice, subject to such conditions as may be prescribed and to such further conditions, if any, as may be specified by the Commissioner in the order.

(b) Any order passed by the Commissioner under clause (a) shall be final.”;

(50) for section 65, the following section shall be substituted:—

“Imposition of penalty for non-issue or improper issue of tax invoice, invoice, cash memo. or bill.

65. If a registered dealer or any other dealer contravenes the provisions of section 64, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, direct that he shall pay, in the manner as may be prescribed, by way of penalty, a sum equal to double the amount of tax or five thousand rupees, whichever is greater, which could have been levied under this Act in respect of the sales referred to in that section where—

- (a) no tax invoice or invoice or cash memorandum or bill, as the case may be, as referred to in section 64, has at all been issued, or
- (b) tax invoice or invoice or cash memorandum or bill, as the case may be, has been issued not in accordance with the provisions of section 64:

Provided that if such registered dealer or dealer proves to the satisfaction of the Commissioner that he deals exclusively in goods specified in Schedule A, sales of which are declared tax-free under section 21, the Commissioner may exempt such registered dealer or dealer from payment of penalty or impose such lesser amount of penalty as he deems fit and proper.”;

The West Bengal Finance Act, 2005.

(Section 9.)

(51) for Chapter X, the following Chapter shall be substituted:—

“CHAPTER X

Furnishing of information, production, inspection, search and seizure of accounts, registers and documents of a dealer, casual dealer or any other person and sealing of any place, room and *almirah*, etc.

Furnishing of information, production, explanation and inspection of accounts, registers and documents.

66. (1) The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner may, subject to such conditions as may be prescribed, require any dealer, casual dealer or any

other person—

- (a) to produce before him any accounts, registers or documents, whether in the form of electronic record or not, or
- (b) to produce before him digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, or
- (c) to furnish any information relating to—
 - (i) stock of goods held by such dealer, casual dealer or person, or
 - (ii) purchases or sales of goods made by such dealer, casual dealer or person, or
 - (iii) purchases and uses of goods in execution of works contract by such dealer, casual dealer or person, or
 - (iv) receipts or deliveries of goods made by such dealer, casual dealer or person, or
 - (v) any receipts or payments, including loans, made by such dealer, casual dealer or person, or
 - (vi) any other matter,
- (d) to explain to him any account, register or document, including those in the form of electronic record, produced by such dealer, casual dealer or person, as may be deemed necessary for the purposes of this Act.

(2) All accounts, registers, documents, whether in the form of electronic record or not, referred to in sub-section (1), and all goods kept in any place of business of any dealer, casual dealer or any other person, shall, at all reasonable time, be open to inspection by the Commissioner, Special Commissioner, Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner.

(3) Any dealer, casual dealer or any other person, who is found to be in possession or control of such account, register or documents, whether maintained in the form of electronic record or not, shall provide, the Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner, with the necessary facility to inspect such accounts, registers or other documents.

*The West Bengal Finance Act, 2005.**(Section 9.)*

Furnishing of information or statement by a bank, post office, railway, website holder, transporter etc.

66A. (1) The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner, may require, by notice, any bank, post office, railway, Controller and certifying authority as defined in the Information Technology Act, 2000, website

21 of 2000.

holder, owner or occupier or lessee of a warehouse, shipper, transporter, carrier, or transporting agent to furnish to him any information or statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts, registers, documents, including those in the form of electronic records, or other records in the possession of such bank, post office, railway, Controller or certifying authority, website holder, owner or occupier or lessee of a warehouse, shipper, transporter, carrier, or transporting agent for examination for the purposes of this Act.

Seizure of accounts of a dealer or casual dealer or any other person.

67. If the Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner, has reason to suspect, upon information or otherwise, that any dealer, casual dealer, or any other person, is evading any tax, or is attempting to evade payment of any tax, or has failed to deposit any tax, as the case may be, he may, for reasons to be recorded in writing, seize such accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media of such dealer or casual dealer or person, as may be necessary, and shall grant to such dealer or casual dealer or person, a receipt for such accounts, registers or documents seized by him and shall retain all or any of them only for such period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act:

Provided that—

- (a) the Commissioner or the Special Commissioner or the Additional Commissioner shall not retain any of the accounts, registers or documents, including those in the form of electronic record, seized by him under this section for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefor, and
- (b) any person appointed under sub-section (1) of section 6 to assist the Commissioner shall not retain any of the accounts, registers or documents, including those in the form of electronic record, seized by him under this section for a period exceeding one year from the date of the seizure unless he states the reason in writing therefor and obtains sanction of the Commissioner in writing in respect thereof.

Entry and search of place of business or any other place.

68. (1) For the purposes of section 66 or section 67, the Commissioner, a Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the

Commissioner, may enter and search—

- (a) any place of business of any dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse or any other person, or
- (b) any other place,

*The West Bengal Finance Act, 2005.**(Section 9.)*

where the Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, has, upon information received or otherwise, reason to believe that, such dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or person keeps or is, for the time being, keeping any accounts, registers or documents, whether in the form of electronic record or not, or any stock of goods, for the purpose of business.

(2) The Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, may, before, or after, or while, entering or searching any place, referred to in clause (a) or clause (b) of sub-section (1),—

- (a) break open any door or window of a house, room or warehouse where, or
- (b) break open any *almirah*, cabinet, safe, locker, drawer, box or receptacle in which, or
- (c) open any electronic media in which,

the Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, has reason to believe, such or any other dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or person, keeps or is, for the time being, keeping any account, register or document, whether in the form of electronic record or not, or any stock of goods, for the purpose of his business.

Sealing of any place or *almirah*, cabinet safe, locker, drawer etc.

69. The Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 6 to assist the Commissioner, may, subject to such conditions and restrictions as may be prescribed, seal any house, room, warehouse, *almirah*, cabinet, safe, locker, drawer, box, or receptacle in which, he has reason to believe, a dealer, casual dealer, transporter, carrier or transporting agent, owner or occupier or lessee of a warehouse, or any other person, keeps or is, for the time being, keeping any account, register or document, whether in the form of electronic record or not, or any stock of goods, for the purpose of business.”;

(52) for section 71, the following section shall be substituted:—

“Entry into the place of, and search and seizure of accounts of, a transporter, carrier or transporting agent.

71. Where any transporter, carrier or transporting agent fails to maintain proper account in the prescribed form, or fails to furnish information to the Commissioner, as required by sub-section (1) of section 70, or the Commissioner has reason to believe that the account referred to in sub-section (1) of section 70 is relevant for the purpose of carrying out any investigation or holding any inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith, the Commissioner may—

- (a) enter and search any place of transporting business or any other place where such transporter, carrier or transporting agent, for the time being, keeps any accounts, registers or documents, including those in the form of electronic records, in relation to transport of goods; and
- (b) for reasons to be recorded in writing, seize such accounts, registers or documents.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(53) for section 72, the following section shall be substituted:—

“Power of the Commissioner to stop delivery of goods and seizure of such goods.

72. (1) Where any transporter, carrier or transporting agent has—

- (a) received any consignment of taxable goods from a dealer, casual dealer, or any other person in West Bengal for transport of such consignment to any place outside, or within West Bengal, or
- (b) transported into West Bengal any consignment of taxable goods on account of a dealer, casual dealer, or any other person, and

the Commissioner has information that such dealer, casual dealer, or person is not in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, or consignment note or any document of like nature in respect of any consignment of goods referred to in clause (a), or clause (b), the Commissioner may direct such transporter, carrier or transporting agent, by an order in writing, that—

- (i) the consignment of goods referred to in clause (a) shall not be transported outside, or within, West Bengal, or
- (ii) the consignment of taxable goods referred to in clause (b) shall not be delivered,

till the matter is investigated into by the Commissioner or till a period of fifteen days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881) expires from the date of communication of such direction to the transporter, carrier or transporting agent, whichever is earlier.

26 of 1881.

(2) Where the Commissioner after causing an enquiry about the existence of such dealer, casual dealer, person, is satisfied that such dealer, casual dealer, person—

- (a) is in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, consignment note or any document of like nature, he shall, forthwith withdraw, by an order in writing, his direction issued under sub-section (1) to such transporter, carrier or transporting agent; or
- (b) is not in existence at the address given in the way bill, tax invoice, invoice, cash memo, bill, consignment note or any document of like nature, the transport of the consignment of taxable goods by such transporter, carrier or transporting agent, to any place into, or within, or outside, West Bengal, shall be deemed to be in contravention of the provisions of section 73 or section 81, as the case may be, and the Commissioner shall, after giving such transporter, carrier or transporting agent, a reasonable opportunity of being heard, seize such consignment of goods under section 76.”;

(54) in section 74,—

- (a) for the marginal note, the following marginal note shall be substituted:—

“Interception, detention and search of goods vehicles, load carried by a person and search of warehouse etc.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (b) in clause (a), for the words “a road vehicle or river craft or any load carried by a person,” the words “any goods vehicle or any load carried by a person,” shall be substituted;
- (c) in clause (c), for the words “any goods vehicle.”, the words “any goods vehicle or any load carried by a person.” shall be substituted;

(55) in section 75,—

(a) in sub-section (1),—

(i) for the words, letter, figures and brackets “information under clause (b) of section 102”, the words, letters, figures and brackets “information under clause (b) of section 27A” shall be substituted;

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

“(a) explains to the satisfaction of the Commissioner, the reasons for not disclosing the warehouse or furnishing the information under clause (b) of section 27A.”;

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

“(b) produces on demand by the Commissioner and explains to his satisfaction that the stock register or any account of stock showing entry of such goods therein and purchase bill, tax invoice, invoice or cash memo, challan or any document of like nature within twenty-four hours or within such time as may be granted to him upon an application made in writing by such dealer.”;

(56) in section 76,—

(a) in sub-section (1), after the proviso, the following provisos shall be added:—

“Provided further that the Commissioner may, at the option of the transporter, carrier or transporting agent from whom the goods are seized, in writing, give custody of such seized goods to him in the manner prescribed, and allow him to transport such seized goods up to the warehouse, of such transporter, carrier or transporting agent, in West Bengal as declared by him, on the express conditions that such transporter, carrier or transporting agent, shall keep such seized goods in the said warehouse and that he shall not deliver such seized goods to any person including the consignee or owner of such seized goods so transported by him before the proceedings, if any, initiated against the consignee or owner of such seized goods under section 77 is concluded:

Provided also that the Commissioner may take physical possession of such seized goods from the custody of such transporter, carrier or transporting agent, even before the conclusion of the proceedings under section 77 where such transporter, carrier or transporting agent, communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody after the expiry of sixty days from the date of storing of such seized goods in his warehouse.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

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

“(3) If the dealer fails to produce before the Commissioner, the documents referred to in clause (b) of sub-section (1) of section 75 and fails to satisfy him that the goods found in such warehouse have not been transported in contravention of section 73, the Commissioner shall, for reasons to be recorded in writing, seize the goods and grant a receipt specifying the items of goods so seized.”;

(c) sub-section (4) shall be omitted;

(57) in section 77,—

(a) for the marginal note, the following marginal note shall be substituted:—

“Penalty for transporting goods in contravention of section 73 or section 81.”;

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

“(1) If any goods are seized under section 76, the Commissioner may, by an order in writing, impose upon the transporter, carrier or transporting agent or any other person from whom such goods are seized to the owner of such goods, where particulars of the owner of such goods are available, or where there is no claimant for such goods at the time of such seizure, any person who subsequently establishes his claim of ownership or possession of such goods, after giving such transporter, carrier or transporting agent or person or owner, as the case may be, a reasonable opportunity of being heard, a penalty of a sum not exceeding fifty *per centum* of the value of such goods as may be determined by him in accordance with the rules made under this Act:

Provided that the sum of penalty that may be imposed under this sub-section shall not exceed—

(a) fifteen *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods does not exceed four *per centum*;

(b) thirty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods exceeds four *per centum* but does not exceed twelve decimal five zero *per centum*;

(c) fifty *per centum* of the value of goods if the rate of tax leviable under sub-section (2) of section 16 in respect of such goods exceeds twelve decimal five zero *per centum*.”;

(c) for sub-section (2), the following sub-section shall be substituted:—

“(2) A penalty imposed under sub-section (1) shall be paid by the transporter, carrier or transporting agent or the person or the owner of goods, as the case may be, into an appropriate Government Treasury, by such date as may be specified by the Commissioner in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of the notice:

Provided that the Commissioner may, upon application made by that transporter, carrier or transporting agent or the person or the owner of goods, as the case may be, for reasons to be recorded in writing, extend the date of payment of the penalty for such period as he may think fit.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(d) in sub-section (5), in clause (b), for the words and figures “application for revision under section 85,” the words and figures “application for revision under section 86,” shall be substituted;

(58) for section 78, the following section shall be substituted:—

“Penalty for contravention of the provisions of second proviso to sub-section (1), or first proviso to sub-section (2), of section 76.

78. Where—

- (a) a transporter, carrier or transporting agent, referred to in the second proviso to sub-section (1) of section 76, at his option, takes custody of any goods seized under sub-section (1) of that section and thereafter contravenes the provisions of the second proviso to sub-section (1) of section 76 by delivering such seized goods to any person including the consignee or owner of such seized goods, or
- (b) a person, referred to in the first proviso to sub-section (2) of section 76, at his option, takes custody of any goods seized under sub-section (2) of that section and thereafter contravenes the provisions of the first proviso to sub-section (2) of section 76 by disposing of such seized goods,

without prior permission, in writing, of the Commissioner, the Commissioner shall, after giving such transporter, carrier or transporting agent or the person, as the case may be, a reasonable opportunity of being heard, impose upon him a penalty, in the prescribed manner, not exceeding twenty-five *per centum* of the market value of such seized goods in West Bengal.”;

(59) for section 79, the following section shall be substituted:—

“Penalty for contravention of the provisions of section 73 when goods transported are not available.

79. Where the goods are, or have been, transported by a dealer, casual dealer, transporter, carrier or transporting agent or any other person in contravention of restrictions or conditions prescribed under section 73 and such goods are not available for seizure under sub-section (1) of section 76, the Commissioner shall, after giving such transporter, carrier or transporting agent or the person a reasonable opportunity of being heard, impose a penalty of a sum not exceeding twenty-five *per centum* of the market value of such goods in such manner as may be prescribed.”;

(60) in section 80,—

(a) in sub-section (1),—

- (i) for the words “the transporter of such goods shall have to make,” the words “the transporter, carrier or transporting agent or any other person transporting such goods, shall have to make,” shall be substituted;

(ii) for the first proviso, the following proviso shall be substituted:—

“Provided that if there is any possibility of transshipment in West Bengal of the goods so carried by such transporter, carrier or transporting agent or any other person, he shall also declare the same on the body of the consignment note or on the document of like nature while making the declaration and shall, thereafter, note therein the particulars of the new vehicle when such transshipment is actually made even when, after leaving the first checkpoint, any transshipment of such goods is made by such transporter, carrier or transporting agent or any other person, under any compelling circumstances.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (iii) for the second proviso, the following proviso shall be substituted:—

“Provided further that the provisions of this sub-section shall not apply where the transporter, carrier or transporting agent or any other person transporting such goods proves to the satisfaction of the Commissioner or such other authority as may be prescribed, that the transport of such goods in such vehicle is in the course of export within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956, to such country as the State Government may by notification specify.”;

74 of 1956.

- (b) in sub-section (2),—

- (i) for the words “produced before the Commissioner”, the words “produced before the Commissioner or such other authority as may be prescribed,” shall be substituted;
- (ii) for the words “the transporter”, the words “the transporter, carrier or transporting agent or any other person” shall be substituted;

- (c) in sub-section (3),—

- (i) for the words “returned to the transporter” the words “returned to the transporter, carrier or transporting agent or any other person” shall be substituted, and
- (ii) the following provisos shall be added:—

“Provided that the Commissioner, or the authority referred to in sub-section (2), may, before countersigning the consignment note or a document of like nature containing the declaration produced, demand from such transporter, carrier or transporting agent or any other person, by an order in writing, a reasonable amount of security, if he is satisfied that the transporter, carrier or transporting agent or any other person, has failed to produce before the Commissioner or such authority, at the last checkpost, as specified in sub-section (4), any consignment note or a document of like nature containing the declaration made by him in respect of any goods transported in a goods vehicle by him on any previous occasion:

Provided further that the security furnished shall be released to such transporter, carrier or transporting agent or the person, if the Commissioner or the authority demanding the security under the first proviso is satisfied that the vehicle carrying the goods, for which the consignment note or the document of like nature containing the declaration had been countersigned on furnishing of security has exited from West Bengal:

Provided also that if the transporter, carrier or transporting agent or any other person, fails to produce before the Commissioner or the authority referred to in sub-section (2), the evidence of exit from West Bengal of the vehicle carrying the goods, referred to in the second proviso, within a reasonable time from such exit, the security shall be adjusted against the penalty which may be imposed upon the transporter, carrier or transporting agent or the person, under sub-section (6) or under section 79.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (d) in sub-section (4),—
- (i) for the words “The transporter”, the words “The transporter, carrier or transporting agent or any other person” shall be substituted;
 - (ii) for the words “the Commissioner”, occurring in two places, the words, figure and brackets “the Commissioner or the authority referred to in sub-section (2),” shall be substituted;
 - (iii) for the words “return the same to the transporter:”, the words “return the same to the transporter, carrier or transporting agent or any other person:” shall be substituted;
 - (iv) in the proviso,—
 - (A) for the words “by the transporter”, the words “by the transporter, carrier or transporting agent or any other person” shall be substituted;
 - (B) for the words “the Commissioner”, occurring in two places, the words, figure and brackets “the Commissioner or the authority referred to in sub-section (2),” shall be substituted;
 - (C) for the words “by such transporter”, the words “by such transporter, carrier or transporting agent or any other person” shall be substituted;
 - (D) for the words “return the same to the transporter”, the words “return the same to the transporter, carrier or transporting agent or any other person” shall be substituted;
- (e) in sub-section (5), for the words “the transporter”, occurring in two places, the words “the transporter, carrier or transporting agent or any other person” shall be substituted;
- (f) in sub-section (6),—
- (i) for the words “the transporter”, occurring in two places, the words “the transporter, carrier or transporting agent or any other person” shall be substituted;
 - (ii) for the words “the value of the goods”, occurring in two places, the words “the market value of the goods” shall be substituted;
- (g) in sub-section (7), for the words “by the transporter”, the words “by the transporter, carrier or transporting agent or person” shall be substituted;
- (h) in sub-section (9), for the word “transporter”, the words “the transporter carrier or transporting agent or person,” shall be substituted;
- (i) to sub-section (10), the following proviso shall be added:—
- “Provided that where the goods are not available for detention and the penalty imposed under sub-section (6) is not paid, realisation of such penalty shall be made under section 55.”;
- (j) in sub-section (11), for the words “the Commissioner”, the words, figures and brackets “the Commissioner or the authority referred to in sub-section (2),” shall be substituted;
- (k) for sub-section (14), the following sub-section shall be substituted:—
- “(14) Subject to the provisions of sub-section (10) and sub-section (12), if such transporter, carrier or transporting agent or person fails to produce the consignment note or the document of like

*The West Bengal Finance Act, 2005.**(Section 9.)*

nature containing the declaration countersigned under sub-section (3) or sub-section (9) before the Commissioner or the authority referred to in sub-section (2), as required under sub-section (4) within such time as may be specified in the consignment note or the document of like nature containing the declaration, it shall be presumed that the goods so transported have been sold in West Bengal by such transporter, carrier or transporting agent or person, and he shall be deemed to be a dealer under this Act.”;

- (1) in sub-section (15), for the words “to the transporter”, the words “to transporter, carrier or transporting agent or person,” shall be substituted;

(61) in section 81,—

(a) in sub-section (1),—

- (i) for the words “a transporter”, the words “a transporter, carrier or transporting agent or any other person,” shall be substituted;
- (ii) for the words “in a goods vehicle any consignment of goods”, the words “, in a goods vehicle, any consignment of goods, or any load is carried by a person” shall be substituted;
- (iii) for clause (a), the following clause shall be substituted:—

“(a) where carriage is caused by sales of such goods,—

- (i) the tax invoice or invoice or bill or cash memorandum issued by the seller of such goods, and a way bill in the prescribed form and obtainable from such authority in such manner, as may be prescribed; or
- (ii) two copies of the tax invoice or invoice or bill or cash memorandum issued by the seller of such goods, and such document, containing description, quantity or weight and value of the goods and such other particulars as may be prescribed, or”;

(iv) in clause (b),—

(A) for the words “and such other documents as may be prescribed:”, the words, letter and brackets “and a way bill and such other documents as referred to in clause (a) above:” shall be substituted;

(B) in the proviso, for the words “the transporter”, the words “the transporter, carrier or transporting agent or any other person” shall be substituted;

(b) in sub-section (2),—

- (i) for the words “The transporter”, the words “The transporter, carrier or transporting agent or any other person” shall be substituted;
- (ii) for the words “the Commissioner shall, after verification,”, the words “the Commissioner shall, wherever necessary after verification,” shall be substituted;

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

“(2a) Where it appears to the Commissioner that—

- (a) due to failure of any dealer, casual dealer or any other person, no way bill in the prescribed form or such document as mentioned in clause (a) of sub-section (1), could be produced by such transporter, carrier or transporting agent or person before him, or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (b) the way bill in the prescribed form or such document, as mentioned in clause (a) of sub-section (1), produced is fake, false or incorrect in respect of description, quantity, weight and value of the goods transported, or
- (c) the consignor of the goods, does not exist at the address declared in the way bill in the prescribed form or such document as mentioned in clause (a) of sub-section (1), or
- (d) the consignor of the goods does not exist at the address declared in the documents as mentioned in clause (b) of sub-section (1),
- he shall, for reasons to be recorded in writing, seize such goods under section 76 at any checkpost, or at any place, referred to in sub-section (2).”;
- (d) in sub-section (3), for the words “any class or classes of transporter”, the words “any class of classes of transporter, carrier or transporting agent or person” shall be substituted;
- (62) in section 82, after clause (d), the following clauses shall be added:—
- “(e) An official on transfer as personal effects;
- (f) Such other person or organisation, and in such circumstances, as may be prescribed.”;
- (63) in section 83,—
- (a) for the words “in respect of sale or purchase of goods”, the words “in respect of sale or purchase of goods or execution of works contract in West Bengal,” shall be substituted;
- (b) for the word and figures “section 74”, the word and figures “section 73” shall be substituted;
- (64) for section 84, the following section shall be substituted:—
- “Appeal against provisional or other assessment. 84. (1) Any casual dealer or dealer may, in the prescribed manner, appeal to the prescribed authority against a provisional assessment or any other assessment, within forty-five days or such further period as may be allowed by the said authority for cause shown to his satisfaction from the receipt of a notice of demand in respect thereof:
- Provided that no appeal shall be entertained by the said authority unless he is satisfied that the amount of tax, penalty or interest, as the case may be, as the appellant may admit to be due from him has been paid:
- Provided further that where the payment of tax due from a registered dealer stands deferred under section 116, an appeal shall, notwithstanding that the tax admitted to be due from him has not been paid, be entertained.
- (2) Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may, for reasons to be recorded in writing,—
- (a) confirm, reduce, enhance or annul the provisional assessment or any other assessment, or
- (b) when such authority is satisfied that it is not practicable or desirable to act in accordance with the provisions of clause (a), set aside the provisional assessment or any other assessment and direct the assessing authority to make fresh assessment after such further inquiry as may be directed:

*The West Bengal Finance Act, 2005.**(Section 9.)*

Provided that any appeal, which is entertained under sub-section (1), shall, if not disposed of before the 31st December next following the expiry of two years from the date of its presentation, be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full:

Provided further that the appropriate appellate authority may, before expiry of the period mentioned in the first proviso, obtain from the Commissioner an extension of time mentioned in that proviso and where the Commissioner, for reasons to be recorded in writing, extends the time, such appeal may be disposed of during the period of one year immediately following the period mentioned in the first proviso.

(3) While acting in accordance with the provisions of clause (b) of sub-section (2), the appellate authority may set aside any part of a provisional assessment or any other assessment and, if he does so, the assessing authority shall make a fresh assessment in respect of such part or parts only, and the remaining part or parts of the previous assessment shall remain unaltered and valid.

(4) Pending disposal of an appeal referred to in sub-section (2), the appellate authority may, on application, at his discretion and subject to such conditions and restrictions as may be prescribed, stay realisation of the amount of tax, interest or penalty in dispute wholly or in part.

Explanation.—For the purposes of this section, section 85, section 86 or section 87,—

- (a) the expression “provisional assessment” means—
 - (i) provisional assessment for tax and imposition of penalty under section 45,
 - (ii) determination of interest under section 50, or
 - (iii) rectification of mistake in determination of interest under section 51;
- (b) the expression “any other assessment” means—
 - (i) assessment of tax and imposition of penalty under section 46 and section 48,
 - (ii) determination of interest under section 50, or
 - (iii) rectification of mistake in determination of interest under section 51.
- (c) “notice of demand” means any notice served in accordance with the provisions of this Act for realisation of the tax, interest or penalty referred to in clause (a) and clause (b).”;

(65) for section 85, the following section shall be substituted:—

Suo motu 85. (1) Subject to such rules as may be made and
revision by for reasons to be recorded in writing, the Commissioner
Commissioner. may, on his own motion, revise a provisional assessment under section 46, or section 48, or deemed to have been made under sub-section (1) of section 47 or order passed by a person appointed under sub-section (1) of section 6 to assist him.

(2) Notwithstanding anything contained elsewhere in the Act, where an assessment in respect of the dealer for any period is taken up under clause (c) or clause (d) of sub-section (1) of section 46, the Commissioner may, or his own motion, revise the orders of assessments under section 45, or section 46, or section 47 or section 48 for the previous five years also.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(66) for section 86, the following section shall be substituted:—

“Revision by
Commissioner
upon application. 86. Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner or the prescribed authority may, upon application, revise any order other than an order referred to in section 87 and an order of provisional assessment or any other assessment against which an appeal lies under section 84, passed by a person appointed under sub-section (1) of section 6 to assist him:

Provided that any revision filed against the observations made in the audit report as referred to in sub-section (3) of section 43, shall, if not disposed of before the expiry of ninety days from the date of its presentation, be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have allowed in full:

Provided further that the appropriate revisional authority may, before the expiry of the period mentioned in the first proviso, obtain from the Commissioner an extension of time mentioned in that proviso and where the Commissioner, for reasons to be recorded in writing extend the time, such revision may be disposed of during the period of three months immediately following the period of ninety days as referred to in the first proviso.

Explanation.—For the purposes of this section, the expression “any order” also includes the following,—

- (a) an order of seizure of accounts of a dealer or casual dealer or any other person, made under section 67;
- (b) an order of sealing any house, room, warehouse, *almirah*, cabinet, safe, locker, drawer, box, or any receptacle, made under section 69;
- (c) an order of seizure of account of a transporter, carrier or transporting agent made under section 71;
- (d) an order of seizure of goods of any person, made under section 76.”;

(67) for section 87, the following section shall be substituted:—

“Revision by
Appellate and
Revisional Board. 87. (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Appellate and Revisional Board may, upon application, revise a final appellate or revisional order from an order of provisional assessment or any other assessment:

Provided that where an applicant fails to appear in person or through an authorised agent on the date and at the time and place fixed for hearing on the application for revision preferred to him, the Appellate and Revisional Board may, in its discretion, dismiss such application for such default of the applicant:

Provided further that the Appellate and Revisional Board may, upon application filed by an applicant within forty-five days from the date of order of dismissal of an application for revision for default passed by it under the first proviso or within such further time as it may allow for cause shown to its satisfaction, restore the application for revision so dismissed.

(2) Where during the pendency of an application for revision preferred by a casual dealer or dealer under sub-section (1) before the Appellate and Revisional Board, the Commissioner, having discovered—

- (a) any error or omission, whether in fact or law, in the final appellate or revisional order referred to in sub-section (1), or

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (b) any concealment, by a casual dealer of his sales or purchases or, by a dealer of his turnover of sales or purchases or contractual transfer price or incorrect statement of particulars of his sales or purchases or contractual transfer price by such dealer or claim for deduction of any part of turnover of sales or purchases or contractual transfer price or claim for lower rate of tax payable under this Act,
- (c) any claim by a dealer of excess amount of input tax credit or input tax rebate, or
- (d) any non-reversal by a dealer of input tax credit or input tax rebate to the extent of his disentitlement,

is of the opinion that the amount of tax assessed is liable to be enhanced from what has been made in the order of a provisional assessment or any other assessment or in the final appellate or revisional order in the matter of the amount of tax so assessed, as the case may be, he may, subject to such rules as may be made, file, at any time before the application for revision is finally heard by the Appellate and Revisional Board, a memorandum bringing to its notice the error or omission referred to in clause (a) or the concealment by, the casual dealer of his sales or purchases or, the dealer of his turnover of sales or purchases or contractual transfer price or incorrect statement by him of the particulars referred to in clause (b) or claim by a dealer of any excess amount of input tax credit or input tax rebate referred to in clause (c) or any non-reversal by a dealer of input tax credit or input tax rebate referred to in clause (d).

(3) The Appellate and Revisional Board shall, while proceeding to revise under sub-section (1) any final appellate or revisional order from order of a provisional assessment or any other assessment, entertain the memorandum filed under sub-section (2) as an application by the Commissioner for revision and pass such revisional order as it deems fit.

(4) Where the Commissioner, after revision made by the Appellate and Revisional Board under sub-section (1), discovers any concealment by, a casual dealer of his sales or purchases or a dealer of his turnover of sales or purchases or contractual transfer price or incorrect statement by a dealer of particulars of sales or purchases or contractual transfer price or claim for deduction of any part of turnover of sales or purchases or contractual transfer price or claim for lower rate of tax or any claim by a dealer of excess amount of input tax credit or input tax rebate or any non-reversal of input tax credit or input tax rebate to the extent of his disentitlement, he may, subject to such rules as may be made, make, within four years from the date of order of the Appellate and Revisional Board, an application to the Appellate and Revisional Board, and the Appellate and Revisional Board, may thereupon, after giving the Commissioner and the casual dealer or the dealer a reasonable opportunity of being heard, review its order passed under sub-section (1) and pass such order as it deems fit.”;

- (68) in section 88,—
 - (a) for the words “any assessment”, the words “any provisional assessment or any other assessment” shall be substituted;
 - (b) for the words and figures “or section 5”, the words, figures and brackets “section 5 or sub-section (1) of section 6” shall be substituted;
- (69) in section 89, for the words “in the manner as may be prescribed”, the words “in the manner, and to the authority, as may be prescribed” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(70) in section 92,—

(a) in sub-section (1),—

- (i) for the words “liability of any dealer”, the words “liability of any casual dealer or any dealer” shall be substituted;
- (ii) for the words “such dealer”, the words “such casual dealer or dealer” shall be substituted;

(b) in sub-section (7), for the word and figures “section 61”, the word and figures “section 62” shall be substituted;

(71) in section 93,—

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

“(1) Whoever—

- (a) fails to reverse input tax credit or input tax rebate as required by section 22; or
- (b) carries on business as a dealer without furnishing the security demanded under section 26; or
- (c) neglects or refuses or furnishes incorrect information as required by section 27A; or
- (d) neglects or refuses or furnishes incorrect information as required by section 30B; or
- (e) fails to pay full amount of net tax or any other tax payable for any tax period or in accordance with the provisions of sub-section (2) of section 32; or
- (f) fails to make payment of interest payable under section 33 or section 34 or section 34A; or
- (g) fails to comply with the provisions of section 63; or
- (h) neglects or refuses or furnishes incorrect information as required by section 65A; or
- (i) contravenes the provisions of section 73; or
- (j) fails to make full payment of penalty imposed under section 79; or
- (k) fails to comply with any requirement under section 81;

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both and, a court having jurisdiction may, in addition to any fine as aforesaid, order confiscation of any goods seized under section 76 for the offence of contravention of section 73.”;

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

“(3) Whoever, being a transporter, carrier or transporting agent, operates in contravention of section 25, his transport business in West Bengal of transporting any consignment or taxable goods into, or outside, or within, West Bengal without obtaining a certificate of enrolment or contravenes the provisions of the second proviso to sub-section (1) of section 76, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(c) after sub-section (3), the following sub-sections shall be inserted:—

“(3A) Whoever, being a transporter, carrier or transporting agent, fails or neglects to comply with—

- (a) the provisions of section 70, or
- (b) the direction of the Commissioner under sub-section (1) of section 72,

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(3B) Whoever contravenes the provisions of the first proviso to sub-section (2) of section 76, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.”;

(d) for sub-section (4), the following sub-section shall be substituted:—

“(4) Whoever—

- (a) issues or produces a fake or fabricated tax invoice referred to in clause (48) of section 2;
- (b) fails to submit before the prescribed authority statements, accounts or declarations under section 30E, within prescribed time;
- (c) furnishes a false return referred to in section 32; or
- (d) fails without reasonable cause to furnish a return under section 32;
- (e) refuses to comply with any requirement under section 66;

shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years and with fine not exceeding ten thousand rupees or with both, and when the offence is a continuing one, with a daily fine, not exceeding fifty rupees, during the period of the continuance of the offence.”;

(e) in sub-section (5), for the words and figures “referred to in section 73”, the words, figures and brackets “referred to in sub-section (2) of section 73 or sub-section (1) of section 81” shall be substituted;

(f) in sub-section (8), for the words and figures “section 75 or section 76”, the words and figures “section 72, section 74 or section 76, section 80 or section 81” shall be substituted;

(g) sub-section (9) shall be omitted;

(h) in sub-section (10), after the words, figure and brackets “sub-section (3),”, the word, figure, letter and brackets “sub-section (3A),” shall be inserted;

(i) in sub-section (11),—

(i) for the words, figure and brackets “or sub-section (4)”, the words, figures and brackets “sub-section (4), or sub-section (10),” shall be substituted;

(ii) for the words, figure and brackets “under sub-section (5),”, the words, figures, letter and brackets “under sub-section (3A), sub-section (5),” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (j) to sub-section (12), in the *Explanation II*, for the words, figures and brackets "sub-section (3), or sub-section (4)", the words, letter, figure and brackets "or clause (d) of sub-section (4)" shall be substituted;
- (k) after sub-section (13), the following sub-section shall be added:—
 "(14) Notwithstanding anything contained elsewhere, in the Act, no prosecution for any offence enumerated hereinbefore shall be instituted in respect of the same fact for which a penalty has been imposed under any other provisions of the Act and subsequently paid by the dealer and no such penalty shall be imposed *vice versa*.";
- (72) in section 95, in sub-section (1), for the words, letters, figures and brackets "under clause (b), clause (c), clause (d), clause (e), clause (f) or clause (g) of sub-section (1), sub-section (2), sub-section (3), sub-section (4),", the words, letters, figures and brackets "under clause (b), clause (c) clause (d), clause (e), clause (f) or clause (h) or clause (j) of sub-section (1), sub-section (2), sub-section (3), sub-section (3A), clause (c) or clause (d) of sub-section (4)," shall be substituted;
- (73) in section 96,—
- (a) for the marginal note, the following marginal note shall be substituted:—
 "Penalty for concealment of sales, purchases, contractual transfer price or for furnishing of incorrect particulars of sales or purchases or contractual transfer price or for claiming input tax credit or input tax rebate.";
- (b) for sub-section (1) and sub-section (2), the following sub-sections shall be substituted:—
 "(1) Where—
- (a) a dealer or casual dealer has concealed any sales or purchases or contractual transfer price, as the case may be, or any particulars thereof, or
- (b) a dealer, required to furnish return under sub-section (1) of section 32 has furnished incorrect statement of his turnover of sales or purchases or of contractual transfer price or incorrect particulars of such sales or purchases or contractual transfer price in the return furnished by him under sub-section (2) of that section or otherwise, or
- (c) any registered dealer has claimed excess amount of input tax credit or input tax rebate but has not reversed the same to the extent of his disentitlement,

with intent to reduce the amount of net tax or any other tax payable by him, the Commissioner may, by way of a separate proceeding independent of any assessment, appeal, revision or review and after giving in the prescribed manner, such dealer a reasonable opportunity of being heard, by an order in writing direct that he shall, in addition to any tax levied or penalty imposed under this Act, pay, by way of penalty, a sum not exceeding twice the amount of tax which would have been avoided by him if such concealed sales or purchases or contractual transfer price or particulars thereof or incorrect statement of turnover of sales or purchases or contractual transfer price or incorrect particulars of such sales or purchases or contractual transfer price or claim of excess input tax credit or input tax rebate were not detected and taken into account or if turnover of sales or purchases or contractual transfer price or particulars of sales or purchases or contractual transfer price or input tax credit or input tax rebate

*The West Bengal Finance Act, 2005.**(Section 9.)*

furnished in returns or shown in his books of account were accepted as correct, as the case may be, in making an assessment or passing any order upon appeal, revision or review under the Act.

Explanation.—In this sub-section, the expression “tax levied” shall include the amount of tax determined afresh by an order passed upon appeal, revision, review, or by any order of assessment consequent upon such appeal, revision, review, under this Act.

(2) Any penalty imposed under sub-section (1) shall be paid by the dealer by such date as may be specified by the Commissioner in a notice issued for the purpose, and the date to be so specified shall not be less than fifteen days from the date of issue of such notice:

Provided that the Commissioner may, for reasons to be recorded in writing, extend the date of such payment or allow the dealer to pay the penalty imposed in such number of instalments as the Commissioner may determine.”;

(74) in section 98,—

(a) in sub-section (1),—

(i) for the words “accounts or documents produced in accordance with this Act,” the words “accounts, registers or documents including those in the form of electronic records produced in accordance with this Act,” shall be substituted;

(ii) for the words “accounts, documents,” the words “accounts, registers or documents including those in the form of electronic records,” shall be substituted;

(b) in sub-section (3), in clause (g), for the words “on behalf of a dealer or person”, the words “on behalf of a dealer, casual dealer or any other person” shall be substituted.

(75) in section 99, in sub-section (1), for the words “any works contract or”, the words “any works contract with any dealer for execution by him of such works contract and shall make payment to such dealer for execution of such works contract, or shall” shall be substituted;

(76) for section 100, the following section shall be substituted:—

“Permit for exhibition-cum-sale. 100. To ensure that there is no evasion of tax, every person intending to organise an exhibition-cum-sale of goods, shall obtain from the prescribed authority a permit in such form, and in such manner, as may be prescribed.”;

(77) for section 101, the following section shall be substituted:—

“Penalty for organising exhibition-cum-sale in contravention of section 100. 101. (1) Where any person contravenes the provision of section 100 by organising any exhibition-cum-sale without obtaining permit, the Commissioner, the Special Commissioner or the Additional Commissioner may, after giving such person an opportunity of being heard, impose upon him a penalty not exceeding fifty thousand rupees.

(2) A penalty imposed under sub-section (1), shall be paid by the person upon whom it is imposed by such date as may be specified by the authority referred to in sub-section (1), in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of issue of such notice:

Provided that the authority may, for reasons to be recorded in writing, extend the date of payment of the penalty for such period, as he may think fit.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(78) for section 102, the following section shall be substituted:—

“Determination of certain disputed questions. 102. (1) If any question arises, otherwise than in a proceeding before a court or, Tribunal or before a notice initiating assessment proceeding under section 46, is served upon the registered dealer, whether—

- (a) any tax is at all payable in respect of any particular sale or purchase of goods, or if tax, is payable, the rate thereof; or
- (b) any goods shall be treated as capital goods within the meaning of sub-section (6) of section 2 or not,

the Commissioner may, upon application, in prescribed manner and with prescribed fees, determine such question by an order passed in writing after giving such dealer an opportunity of being heard.

(2) If any question, referred to in sub-section (1), arises from any order passed under any other provision of this Act, such question shall not be determined under this section.”;

(79) section 103 shall be omitted;

(80) section 104 shall be omitted;

(81) section 105 shall be omitted;

(82) section 106 shall be omitted;

(83) section 107 shall be omitted;

(84) section 108 shall be omitted;

(85) in section 110, for the words “a Government Treasury or the Reserve Bank of India”, the words “an appropriate Government Treasury” shall be substituted;

(86) in section 113,—

(a) for the words “godown or warehouse”, occurring in two places, the word “warehouse” shall be substituted;

(b) for the words “or transporters” the words “or transporter, carrier or transporting agent,” shall be substituted;

(87) in section 115, for the words “tax on the sale or purchase of goods where such sale or purchase”, the words “tax on the sale or purchase of goods or on the execution of works contract where such sale or purchase or execution of works contract”, shall be substituted;

(88) for section 116, the following section shall be substituted:—

“Payment of tax in respect of industrial units enjoying Deferment, Remission and Tax Holiday. 116. (1) Notwithstanding anything contained in sub-section (2) of section 32, or sub-section (2) of section 45, or clause (b) of sub-section (4) of section 46 but subject to sub-section (2) of this section and section 118, the Commissioner may, in the prescribed manner and subject to such restrictions and conditions as may be prescribed, permit the output tax payable under this Act by a registered dealer or a class or classes of dealers as may be prescribed, according to his returns referred to in sub-section (1) of section 32 or the tax payable by him according to a notice issued under sub-section (2) of section 45, or clause (b) of sub-section (4) of section 46,—

- (a) to be deferred in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such deferment under clause (a) of sub-section (1) of section 118; or
- (b) to be exempt in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such exemption under clause (b) of sub-section (1) of section 118; or

*The West Bengal Finance Act, 2005.**(Section 9.)*

(c) to be remitted in the prescribed manner and under such restrictions and conditions as may be prescribed where such registered dealer is entitled to continue to enjoy such remission under clause (c) of the sub-section (1) of section 118.

(2) Where the State Government considers it necessary so to do in the public interest, it may, after due consideration of certain factors as may be prescribed, relax the ceiling to such extent as may be prescribed.”;

(89) in section 118, in sub-section (1),—

(a) in clause (a), for the words “net tax”, the words “output tax” shall be substituted;

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

“(b) where a registered dealer was enjoying benefit of tax holiday under section 39 of the West Bengal Sales Tax Act, 1994, for a specified period, immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed such tax holiday in a restricted manner by way of exemption from payment of ninety-five *per centum* of output tax payable by him under this Act by the Commissioner for the balance unexpired period or until the aggregate of the benefit of exemption from payment of tax enjoyed by such dealer under section 39 of the West Bengal Sales Tax Act, 1994, computed from first day of April, 2003, exceeds the limit of two hundred *per centum* of gross value of the fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.”;

West Ben. Act
XLIX of 1994.

(c) for clause (c), the following clause shall be substituted:—

“(c) where a registered dealer was enjoying benefit of remission of tax under section 41 of the West Bengal Sales Tax Act, 1994, for a specified period or a specified amount determined with respect to gross value of the fixed capital assets, immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed remission of tax under this Act by the Commissioner for the balance unexpired period, or balance eligible amount with respect to gross value of fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.”;

(90) in section 119, after clause (e), the following clause shall be inserted:—

“(f) Notwithstanding anything contained elsewhere in this Act and the West Bengal Sales Tax Act, 1994, where a dealer registered under the West Bengal Sales Tax Act, 1994, is in possession of a certificate of registration thereunder on the day immediately before the appointed day and who is deemed to have been registered under sub-section (3) of section 23 of this Act, such certificate of registration shall be deemed to have been granted under this Act and shall continue to have effect till new registration certificate is issued under this Act, unless cancelled otherwise before such time as aforesaid, or within such time as the State Government prescribes by notification.”;

(91) in section 120, for the words, letters, figures and brackets “clause (a), clause (b) or clause (c) of section 118”, the words, letter, figures and brackets “clause (a) of sub-section (1) of section 118” shall be substituted;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(92) in Schedule A,—

- (a) after serial No. 5 in column (1) and the entry relating thereto in column (2), the following entry in column (1) and entry relating thereto in column (2) shall be inserted:—

“5A. Bread except pizza bread containing any type of fruit or vegetable.”;

- (b) after serial No. 8 in column (1) and the entry relating thereto in column (2), the following entry in column (1) and entry relating thereto in column (2) shall be inserted:—

“8A. Coconut fibre.”;

- (c) after serial No. 21 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and entry relating thereto in column (2) shall be inserted:—

“21A. Idols, toy and doll made of clay.”;

- (d) after serial No. 23 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—

“23A. *Lac* and *shellac*.

23B. *Mat* locally known as *madur* made wholly or principally of *Cyperus Corymbosus* known locally as *gola methi*, *madhur kathi*, *mutha*, or *Cyperus Malaccensis* known locally as *Chimati pati*.

23C. *Matsticks* and *reed* obtainable from *Cyperus Corymbosus* known locally as *gola methi*, *madur kathi*, *mutha*, or *Cyperus Malaccensis* known locally as *Chimati pati*.”;

- (e) for serial No. 27 in column (1) and the entry relating thereto in column (2), the following entries in column (1) and the entries relating thereto in column (2) shall be substituted:—

“27. Paddy, rice, wheat, pulses, flour, *atta*, *maida*, *suji* and *besan*.

27A. Puffed rice, commonly known as *Muri*, flattened or beaten rice, commonly known as *Chira*, parched rice, commonly known as *Khoi*, parched paddy or rice coated with sugar or *gur*, commonly known as *Murki*.”;

- (f) after serial No. 32 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—

“32A. Salt.

32B. Salted cooked food made wholly or principally of flour, *atta*, *suji* or *besan*, that is to say, *singara*, *Nimki*, *kachuri*, *khasta kachuri*, *luchi*, *radhaballavi*, and *dalpuri*.”;

- (g) after serial No. 35 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—

“35A. Sugar manufactured or made in India and *khandasari*.

35B. Seeds of all varieties other than those specified elsewhere in any other Schedule.”;

- (h) for the entry in column (2) against serial No. 36 in column (1), the following entry in column (2) shall be substituted:—

“Sweetmeat other than cake and pastry but including curd”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (i) after serial No. 37 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—
- “37A. Textile fabrics made wholly or partly of cotton, rayon, artificial silk or wool manufactured or made in India, other than those specified elsewhere in any other Schedule.
- 37B. Tobacco, as referred to in the First Schedule to the Central Excise and Salt Act, 1944, including cigarette, cigar, cheroot, smoking mixture for pipe and cigarette, *biri*, chewing tobacco, snuff and tobacco for hookah, that is to say, tobacco paste, ready for use in *hookah*, when all such items are manufactured or made in India.”;
- (g) for the entry in column (2) against serial No. 39 in column (1), the following entry in column (2) shall be substituted:—
- “Unprocessed green leaves of tea.”;
- (k) the entry in column (2) against serial No. 40 shall be omitted;
- (93) after Schedule A, the following Schedule shall be inserted:—

“SCHEDULE AA

[See sub-section (1) of section 21A.]

Sales of goods which shall be zero-rated

Serial No.	Sale of goods
(1)	(2)
1.	Between dealers located in Special Economic Zone (SEZ).
2.	Between dealers whose units are referred to as Export Oriented Units (EOU).
3.	Between dealers referred to in serial No. 1 and serial No. 2 above.
4.	By a dealer, to a dealer located in a Special Economic Zone (SEZ).”;

- (94) in Schedule B,—
- (a) for the entry in column (2) against serial No. 1 in column (1), the following entry in column (2) shall be substituted:—
- “Bullion that is to say, gold, silver and platinum in mass and uncoined, pure or alloy.”;
- (b) for the entry in column (2) against serial No. 2 in column (1), the following entry in column (2) shall be substituted:—
- “Gold, silver and platinum ornaments, whether set with stone or other materials or not, including gold, silver and platinum filigree and other gold, silver and platinum articles.”;
- (c) entry in column (2) against serial No. 4 in column (1) shall be omitted;
- (95) in Schedule C,—
- (a) in Part I,—
- (i) for the entry in column (2) against serial No. 7 in column (1), the following entry in column (2) shall be substituted:—
- “Aluminium utensils and enamelled utensils.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (ii) after the serial No. 7 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 “7A. Aluminium conductor steel reinforced (ACSR).”;
- (iii) after the serial No. 8 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 “8A. Articles made of rolled gold and imitation gold.”;
- (iv) after the serial No. 9 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—
 “9A. Bagasse.
 9B. Basic chromium sulphate, sodium bi-carbonate and Bleach liquid.”;
- (v) after the serial No. 13 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 “13A. Biomass briquettes.”;
- (vi) after the serial No. 14 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 “14A. Boiler, furnace and parts thereof.”;
- (vii) entry in column (2) against serial No. 16 in column (1) shall be omitted;
- (viii) after serial No. 19 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—
 “19A. Castor oil.
 19B. Caustic soda, caustic potash and soda ash.”;
- (ix) for serial No. 21 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be substituted:—
 “21. Cigar or cigarette, other than those manufactured or made in India.”;
- (x) after serial No. 22 in column (1) and the entries relating thereto in column (2), the following serial No. in column (1) and the entries relating thereto in column (2) shall be inserted:—
 “22A. Clay including fireclay.
 22B. Coal tar.
 22C. Coffee beans, cocoa pod, and chicory.”;

The West Bengal Finance Act, 2005.

(Section 9.)

- (xi) after serial No. 23 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“23A. Conch shell and conch shell products.”;
- (xii) after serial No. 25 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“25A. Drugs and Medicines”;
- (xiii) for the entry in column (2) against serial No. 26, the following entry in column (2) shall be substituted:—
“Edible oils other than coconut oil, oil cake and de-oiled cake.”;
- (xiv) after serial No. 27 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“27A. Embroidery or *zari* articles, that is to say,—
(i) *imi*,
(ii) *zari*,
(iii) *kasab*,
(iv) *salma*,
(v) *dabka*,
(vi) *chumki*,
(vii) *gota*,
(viii) *sitara*,
(ix) *naqsi*,
(x) *kora*,
(xi) glass bead,
(xii) *badla* and
(xiii) *gizai*.”;
- (xv) entry in column (2) against serial No. 30 in column (1) shall be omitted;
- (xvi) after serial No. 30 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“30A. Fried grams and roasted grams.”;
- (xvii) after serial No. 31 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“31A. Gas chimney other than chimney for use in gas light and petroleum light.”;
- (xviii) after serial No. 33 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“33A. Gypsum of all forms and descriptions.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (xix) after serial No. 35 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“35A. Hollow polyester fibre.”;
- (xx) after serial No. 37 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“37A. Hurricane lantern, kerosene lamp and accessories and components thereof.”;
- (xxi) after serial No. 42 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“42A. Jute batching oil.”;
- (xxii) for the entry in column (2) against serial No. 43 in column (1), the following entry in column (2) shall be substituted:—
“Kerosene oil when sold through Public Distribution System (PDS).”;
- (xxiii) after serial No. 43 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“43A. Knitting wool.”;
- (xxiv) after serial No. 44 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entries relating thereto in column (2) shall be inserted:—
“44A. Lignite.
44B. Lime, limestone, clinker and dolomite.
44C. Linear alkyl benzene.”;
- (xxv) entry in column (2) against serial No. 46 in column (1) shall be omitted;
- (xxvi) after serial No. 46 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entries relating thereto in column (2) shall be inserted:—
“46A. Maize starch, glucose, maize gluten, maize germ and oil.
46B. Mixed PVC stabiliser.”;
- (xxvii) entry in column (2) against serial No. 48 of column (1) shall be omitted;
- (xxviii) after serial No. 49 in column (1), and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
“49A. Naptha.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(xxix) for the entry relating thereto in column (2) against serial No. 51 in column (1), the following entry in column (2) shall be substituted:—

“Non-ferrous metals and alloys of ferrous and non-ferrous metals.”;

(xxx) for the entry relating thereto in column (2) against serial No. 53 in column (1), the following entry in column (2) shall be substituted:—

“Paper, coated paper, carbon paper, paperboard, paper used for computer printing and newsprint.”;

(xxxi) after serial No. 53 in column (1), and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“53A. Paraffin wax of all grade standards other than food grade standard including standard wax and slack wax.”;

(xxxii) after serial No. 54 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—

“54A. *Pizza*-bread, bun or bread containing any type of fruit or vegetable.

54B. Plant and machinery, that is to say,—

- (i) Machinery for tea industry;
- (ii) Machinery for food and food processing industries including flour mill;
- (iii) Machinery for sugar mill;
- (iv) Machinery for beverages, tobacco and tobacco products industries;
- (v) Machinery for jute, hemp, mesta textiles industries;
- (vi) Machinery for textile industries including hosiery other than jute;
- (vii) Machinery for engineering industries;
- (viii) Machinery for print industry;
- (ix) Machinery for furniture and wood products industries;
- (x) Machinery for paper and paper products and printing, publishing and allied industries;
- (xi) Machinery for leather and fur product industries;
- (xii) Rubber, plastic, petroleum and coal product industry machinery;
- (xiii) Machinery for chemical and chemical products;
- (xiv) Machinery for basic metal and alloys industries;
- (xv) Machinery for non-metallic mineral product and industries;
- (xvi) Machinery for construction works;
- (xvii) Transport equipment and motor parts manufacturing machinery;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (xviii) Mining machinery;
 - (xix) Packaging machinery;
 - (xx) Foundry machinery;
 - (xxi) Agricultural machinery other than those mentioned elsewhere in any other Schedule;
 - (xxii) Waste treatment plant and pollution control equipment manufacturing machinery;
 - (xxiii) Machinery for printing industry;
 - (xxiv) Machinery for iron and steel industry;
 - (xxv) Machinery for refrigeration and cooling towers including air-conditioners;
 - (xxvi) Cooling towers;
 - (xxvii) Earth moving machinery;
 - (xxviii) All other machinery not specified in items (i) to (xxvii);
 - (xxix) Spare parts, accessories and components of the plant and machinery specified in items (i) to (xxviii).”;
- (xxxiii) after serial No. 55 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—
- “55A. Plastic granules and plastic powder.
 - 55B. Poppy seeds.
 - 55C. Pre-used motor car.”;
- (xxxiv) entry in column (2) against serial No. 58 in column (1) shall be omitted;
- (xxxv) after serial No. 58 in column (1), and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be inserted:—
- “58A. Processed meat, poultry and fish.
 - 58B. Processed or preserved vegetables and fruits.”;
- (xxxvi) for the entry relating thereto in column (2) against serial No. 64 in column (1), the following entry in column (2) shall be substituted:—
- “Residual liquefied hydrogen gas and other gases used as fuel other than liquefied petroleum gas (L.P.G.).”;
- (xxxvii) entry in column (2) against serial No. 65 in column (1) shall be omitted;
- (xxxviii) entry in column (2) against serial No. 66 in column (1) shall be omitted;
- (xxxix) after serial No. 67 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
- “67A. Rusk that is hardened bread.”;
- (xl) entry in column (2) against serial No. 69 in column (1) shall be omitted;

The West Bengal Finance Act, 2005.

(Section 9.)

- (xli) after serial No. 73 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“73A. Sodium Silicate.”;

- (xlii) after serial No. 75 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“75A. Sponge wood or *shola* and all handicrafts made thereof.”;

- (xliii) after serial No. 76 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“76A. Stainless steel sheets.”;

- (xliv) for the entry in column (2) against serial No. 78 in column (1), the following entry in column (2) shall be substituted:—

“Sugar, other than those manufactured in India.”;

- (xlv) for the entry in column (2) against serial No. 80 in column (1), the following entry in column (2) shall be substituted:—

“Tamarind including tamarind seed powder.”;

- (xlvi) after serial No. 80 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“80A. Tea.”;

- (xlvii) for the entry in column (2) against serial No. 81 in column (1), the following entry in column (2) shall be substituted:—

“Textile fabrics of all varieties, other than those manufactured or made in India including wire cloth and felt, endless or fitted with linking devices of a kind used in paper making machine or any other machines.”;

- (xlviii) entry in column (2) against serial No. 82 in column (1) shall be omitted;

- (xlix) after serial No. 84 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“84A. Transformers.”;

- (1) after serial No. 88 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“88A. Waste paper.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (1i) after serial No. 89 in column (1) and the entry relating thereto in column (2), the following serial Nos. in column (1) and the entries relating thereto in column (2) shall be added:—

“90. X-Ray film and other diagnostic films.

91. Zipper or zip fasteners.”;

(b) in Part III,—

- (i) for the entry in column (4) against serial No. 5 in column (1), the following entry in column (4) shall be substituted:—

“Liquid glucose (non-medicinal).”;

- (ii) the entries in column (3), and column (4), against serial No. 7 in column (1) shall be omitted;

- (iii) for the entry in column (4) against serial No. 21 in column (1), the following entry in column (4) shall be substituted:—

“Niobium, Tantalum, Vanadium or Zirconium ores and concentrates.”;

- (iv) after serial No. 30 in column (1) and the entry relating thereto in column (4), the following serial Nos. in column (1) and the entries relating thereto in column (4) shall be inserted:—

“30A. Normal Paraffin.

30B. Butadine.”;

- (v) for the entry in column (4) against serial No. 31 in column (1), the following entry in column (4) shall be substituted:—

“Fluorine, Chlorine, Bromine and Iodine.”;

- (vi) for the entry in column (4) against serial No. 34 in column (1), the following entry in column (4) shall be substituted:—

“Hydrogen, rare gases excluding oxygen (medicinal grade).”;

- (vii) the entries in column (2), and column (4), against serial No. 46 in column (1) shall be omitted;

- (viii) for the entry in column (4) against serial No. 54 in column (1), the following entry in column (4) shall be substituted:—

“Fluorides, fluorosilicates, fluoroaluminates and other complex fluorine salts.”;

- (ix) for the entry in column (4) against serial No. 56 in column (1), the following entry in column (4) shall be substituted:—

“Chlorates and perchlorates; Bromates and perbromates; Iodates and periodates.”;

- (x) after the entries in column (2), and column (4), against serial No. 65 in column (1), the following serial No. and entries relating thereto in column (2) and column (4) respectively shall be inserted:—

“65A. 28.39 Sodium silicate.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (xi) the entries in column (2), and column (4), against serial No. 74 in column (1) shall be omitted;
- (xii) in column (4) against serial No. 74 in column (1), the following entry in column (4) shall be inserted:—
“Ethylene, Propylene.”;
- (xiii) the entries in column (2), and column (4), against serial No. 78 in column (1) shall be omitted;
- (xiv) in column (3), and column (4), against serial No. 78 in column (1), the following entries in column (3) and column (4) respectively shall be inserted:—
“2905.10 Methanol.”;
- (xv) the entries in column (2), and column (4), against serial No. 79 in column (1) shall be omitted;
- (xvi) in column (3), and column (4) against serial No. 79 in column (1), the following entries in column (3) and column (4) respectively shall be inserted:—
“2905.90 Diethylene Glycol, Monoethylene Glycol, Triethylene Glycol, Ethylene Glycol, Heavy Ethylene Glycol.”;
- (xvii) for the entry in column (4) against serial No. 81 in column (1), the following entry in column (4) shall be substituted:—
“Ethers, ether-alcohols peroxides, ether peroxides, ketone peroxides (whether or not chemically defined) and their halogenated, sulphonated, nitrated or nitrosated derivatives.”;
- (xviii) after serial No. 83 in column (1) and the entries relating thereto in column (2) and column (4), the following serial No. in column (1) and the entries relating thereto in column (3) and column (4) respectively shall be inserted:—
“83A. 2910.00 Ethylene oxide.”;
- (xix) the entries in column (3), and column (4), against serial No. 87 in column (1) shall be omitted;
- (xx) for the entry in column (4) against serial No. 111 in column (1), the following entry in column (4) shall be substituted:—
“Tanning extracts of vegetable origin; tannins and their salts, ethers, esters and other derivatives.”;
- (xxi) for the entry in column (4) against serial No. 112 in column (1), the following entry in column (4) shall be substituted:—
“Synthetic organic tanning substances; inorganic tanning substances; tanning preparations, whether or not containing natural tanning substances; enzymatic preparations for pretanning.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

- (xxii) for the entry in column (4) against serial No. 113 in column (1), the following entry in column (4) shall be substituted:—

“Colouring matter of vegetable or animal origin (including dyeing extracts but excluding animal black), whether or not chemically defined; preparations based on colouring matter of vegetable or animal origin as specified in Note 3 as appended at the end of this Part.”;

- (xxiii) for the entry in column (4) against serial No. 114 in column (1), the following entry in column (4) shall be substituted:—

“Synthetic organic colouring matter, whether or not chemically defined; preparations based on synthetic organic colouring matters specified in Note 3 as appended at the end of this Part; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined.”;

- (xxiv) for the entry in column (4) against serial No. 115 in column (1), the following entry in column (4) shall be substituted:—

“Colour lakes, preparations based on colour lakes as specified in Note 3 as appended at the end of this Part.”;

- (xxv) the entries in column (3), and column (4), against serial No. 116 in column (1) shall be omitted;
- (xxvi) the entries in column (3), and column (4), against serial No. 117 in column (1) shall be omitted;
- (xxvii) the entries in column (3), and column (4), against serial No. 119 in column (1) shall be omitted;
- (xxviii) the entries in column (3), and column (4), against serial No. 124 in column (1) shall be omitted;
- (xxix) the entries in column (3), and column (4), against serial No. 130 in column (1) shall be omitted;
- (xxx) after serial No. 138 in column (1) and the entries relating thereto in column (3) and column (4), the following serial Nos. in column (1) and the entries relating thereto in column (3) and column (4) respectively shall be inserted:—

“138A.	3901.10	LLDPE/LDPE.
138B.	3901.20	HDPE.”;

- (xxxi) the entries in column (2), and column (4), against serial No. 141 in column (1) shall be omitted;
- (xxxii) the entries in column (2), and column (4), against serial No. 142 in column (1) shall be omitted;
- (xxxiii) for the entries in column (2), and column (4), against serial No. 143 in column (1), the following entries in column (3) and column (4) respectively shall be substituted:—

“3904.10 PVC.”;

*The West Bengal Finance Act, 2005.**(Section 9.)*

(xxxiv) after serial No. 145 in column (1) and the entries relating thereto in column (2) and column (4), the following serial Nos. in column (1) and the entries relating thereto in column (3) and column (4) respectively shall be inserted:—

“145A. 3907.60 Polyethylene Terephthalate Chips.”;

(xxxv) for the entries in column (4) against serial No. 152 in column (1), the following entries in column (4) shall be substituted:—

“Ion-exchangers based on polymers of heading Nos. 39.01 to 4.13 in primary forms.”;

(xxxvi) after serial No. 154 in column (1) and the entries relating thereto in column (2) and column (4), the following serial Nos. in column (1) and the entries relating thereto in column (3) and column (4) respectively shall be inserted:—

“154A. 3920.32 Flexible plain films.”;

(xxxvii) for the entries in column (4) against serial No. 155 in column (1), the following entries in column (4) shall be substituted:—

“Articles for the packing of plastics, namely, boxes, cases, crates, containers, carboys, bottles, jerry canes and their stoppers, lids, caps of plastics (but not including insulated wares).”;

(96) after Schedule C, the following Schedule shall be inserted:—

“SCHEDULE CA

[See clause (ba) of sub-section (20) of section 16]

List of goods taxable at 12.5%.

Serial No.	Description of goods
(1)	(2)

1. All other goods not specified in Schedule A, Schedule B, Schedule C or Schedule D.”;

(97) in Schedule D, the entry in column (2) against serial No. 1 in column (1) shall be omitted;

(98) in Schedule E,—

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

(b) for Schedule IV, the following Schedule shall be substituted:—

