

Set Off Provisions Under MVAT Act

48. Set-off, refund, etc.:-

- (1) The State Government may, by rules, provide that,-
 - (a) in such circumstances and subject to such conditions and restrictions as may be specified in the rules, a set-off or refund of the whole or any part of the tax,-
 - (i) paid under any earlier law in respect of any earlier sales or purchases of goods treated as capital assets on the day immediately preceding the appointed day or of goods which are held in stock on the appointed day by a person who is a dealer liable to pay tax under this Act, be granted to such dealer; or
 - (ii) paid in respect of any earlier sale or purchase of goods under this Act be granted to the purchasing dealer; or
 - (iii) paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 (Mah. XLII of 1987), be granted to the dealer purchasing or importing motor vehicles;
 - (iv) paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002, be granted to the dealer;
 - (b) for the purpose of the levy of tax under any of the provisions of this Act, the sale price^{1[***]} may in the case of any class of sales ^{1[***]} be reduced to such extent, and in such manner, as may be specified in the rules.
- (2) No set-off or refund as provided by any rules made under this Act shall be granted to any dealer in respect of any purchase made from a registered dealer after the appointed day, unless the claimant dealer produces a tax invoice, containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax, if any, payable on the sale has been paid or shall be paid and unless such certificate is signed by the selling dealer or a person duly authorised by him.
- (3) Subject to the provisions contained in sub-section (4), where no tax has been charged separately under any earlier law, the rate of tax applicable for the purposes of calculating the amounts of set-off, or refund in respect of any earlier sale or purchase of goods, or for the purposes of reduction of sale or purchase price for levy of tax, shall

be the rate set-out against the goods in the relevant Schedule 2[under any earlier law].

- (4) Where, under any notification issued under this Act or as the case may be, any earlier law, any sale or purchase of goods has been exempted from the payment of whole of sales tax or purchase tax, then, for the purposes of sub-section (3), the rate of tax applicable shall be nil; and where it is exempted from payment of any part of sales tax (or purchase tax), the rate of tax applicable shall be the rate at which the payment of tax is to be made by virtue of such exemption.
- (5) For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him :

Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.

- (6) Where at any time after the appointed day, a dealer becomes entitled to a refund whether under any earlier law or under this Act, then such refund shall first be applied against the amount payable, if any, under any earlier law or this Act 1[***] and the balance amount, if any, shall be refunded to the dealer.

49. Refund of tax on declared goods sold in the course of inter-State trade or commerce:-

Where any declared goods are sold by a dealer in the course of inter-State trade or commerce and tax has been paid by him under the Central Sales Tax Act, 1956 (74 of 1956), in respect of the sale of such goods in the course of inter-State trade or commerce, and such dealer shows to the satisfaction of the Commissioner that tax under this Act, or any earlier law has been paid in respect of an earlier sale or purchase of such goods made in the State after the 1st day of October 1958, then an amount equal to the tax so paid shall be reimbursed to such dealer making such sale in the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed.

C Set-off Rules

52. Claim and grant of setoff in respect of purchases made during any period commencing on or after the appointed day.

- (1) In assessing the amount of tax payable in respect of any period starting on or after the appointed day, by a registered dealer (hereinafter, in this rule, referred to as "the claimant dealer")¹ [the Commissioner shall subject to the provisions of² rules 53, 54, 55 and 55B]] in respect of the purchases of goods made by the claimant dealer on or after the appointed day, grant him a set-off of the aggregate of the following sums, that is to say,"
 - (a) the sum collected separately from the claimant dealer by the other registered dealer by way of³ [tax] on the purchases made by the claimant dealer from the said registered dealer of goods being capital assets and⁴ [goods the purchases of which are debited to the profit and loss account, as the case may be, the trading account],
 - (b) tax paid in respect of any entry made after the appointed day under the Maharashtra Tax on the Entry of Motor Vehicles into Local Areas Act, 1987, and
 - (c) the tax paid in respect of any entry made after the appointed day under the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2003.
 - ⁵[(d) the purchase tax paid by the claimant dealer under this Act.]
- (2) The set-off under this rule shall not be granted in regard to any quantum of tax if set-off under rule 51 has been claimed in respect of the same quantum of tax or if set-off has been claimed in respect of the said quantum under any earlier law.
- ⁶[(3) The Commissioner shall, in respect of the purchases of drugs specified in sub-entry (a) of entry 29 of schedule "C"TM held in stock at the close of business on the 30th June 2007 by the claimant dealer, grant him a set-off as per the following formula, namely,"

Maximum Retail Price X 4/104

Provided that the claimant dealer shall not be entitled to claim set-off under this sub-rule unless he files a stock statement with the registering authority in the format appended hereto on or before the 31st August 2007.

Explanation. - For the purposes of this sub-rule "maximum retail price" shall mean,"

- 1) the sum of maximum retail price and sales tax, where it is separately charged in the invoice; and
- 2) in any other case, the maximum retail price inclusive of sales tax.

152A. Set-off in respect of the goods manufactured by Mega Units.-

Notwithstanding anything contained in rules 52 and 53,-

(1) if the claimant dealer has purchased goods (other than the declared goods) which are originally manufactured by a Mega Unit holding valid Identification Certificate under the Act, then he shall be entitled to claim set-off in respect of the said goods only to the extent of aggregate of,-

(a) the taxes paid or payable under the Central Sales Tax Act, 1956 on the inter-state resale of the corresponding goods, and

(b) the taxes paid on the purchases of said goods, if are re-sold locally under the Act.

(2) the set-off as determined under sub-rule (1) above in respect of the said goods shall be claimed only in the month in which corresponding sales of such goods is effected by the claimant dealer:

Provided that, nothing in this rule shall apply to the purchases of such goods that are used within the State in the manufacturing of the goods.

53. Reduction in set-off.

The setoff available under any rule shall be reduced and shall accordingly be disallowed in part or full in the event of any of the contingencies specified below and to the extent specified.

(1) If the claimant dealer has used any taxable goods as fuel, then an amount equal to 1[three per cent] of the corresponding purchase price shall be reduced from the amount of set-off otherwise available in respect of the said purchase.

^{1a}[(1A) On the purchases of natural gas to which sub-rule (1) does not apply, unless the natural gas purchased is resold or sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or dispatched outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, an amount equal to three per cent. of the purchase price shall be reduced from the amount of set-off otherwise available in respect of the said purchases.]

Explanation.- For the purpose of this sub-rule, natural gas will be deemed to have been sold or resold if the sale is after conversion from one form of natural gas to another form.]

(2) (a) If the claimant dealer manufactures any tax free goods then an amount equal to ¹2[the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956]] of the purchase price of the corresponding taxable goods purchased by him (not being goods treated as capital assets or used as fuel^{2a}[and natural gas]) shall be reduced from the amount of set-off otherwise available in respect of the said purchases.

³[*Explanation.-* For the purpose of this clause manufactured tax free goods will not include, -

- (a) sarki pend, de-oiled cakes, and
- (b) any other goods covered by SCHEDULE A, if they are sold in the course of export out of the territory of India covered by section 5 of the Central Sales Tax Act, 1956.]

(b) If the claimant dealer resells any tax free goods and the tax-free goods are packed in any material, then an amount equal to 1[2[the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956]]. of the purchase price of the corresponding purchases of packing materials, if any, shall be reduced from the amount of set-

off otherwise available in respect of the said purchases of packing materials.

⁵[Provided that no reduction under this clause shall be made if the goods packed are sold in the course of export out of territory of India and the export is covered by section 5 of the Central Sales Tax Act, 1956]

(3) ^{5a}[(a)] If the claimant dealer dispatches any taxable goods outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to ^{5b}[four per cent.] of the purchase price of the corresponding taxable goods (not being goods treated as capital assets or used as fuel ^{2a}[and natural gas]) shall be deducted from the amount of set-off otherwise available in respect of the said purchases.

⁶[Provided that, if the taxable goods are dispatched outside the state and the rate of tax specified in the SCHEDULE against the corresponding taxable goods purchased is less than four per cent., then the reduction from set-off under this clause shall be calculated at such lower rate of tax specified in the SCHEDULE against the corresponding goods.]

⁷[Provided further that] the deduction provided in this sub-rule shall not apply if the goods dispatched are brought back to the State within six months of the date of dispatch whether after processing or otherwise.

⁸^{8a}[Provided also that], the provisions of this clause shall not be applicable in respect of the contingencies specified in clause (b)]

^{8b}[(b)] If the claimant dealer manufactures the goods covered under entries 5, 6, 7, 8, 9 and 10 of Schedule D appended to the Act and dispatches the said goods not by reason of sale, outside the State to any place within India to his own place of business, or the place of business of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to ^{8c}[four per cent.] of the value of the goods so dispatched shall be reduced from the amount of the set-off otherwise available in respect of the aforesaid manufactured goods.]

(4) If the claimant dealer has made a sale by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract then, if the claimant deal

er has opted for composition of tax under sub-section (3) of section 42, 9[the corresponding amount of set-off other than the set-off pertaining to purchases of capital assets and set-off pertaining to goods in which property is not transferred shall be reduced and the set-off shall be allowed and calculated,

(a) by multiplying the said amount of set-off by the fraction $\frac{16}{25}$ where the dealer has opted to pay tax @ 8% on the total contract value, and

(b) in respect of periods starting on or after 10[20th June 2006] by reducing from the amount of set-off a sum equal to 4% of the purchase price on which such set-off is calculated where the dealer has opted to pay tax @ 5% on the total contract value in the case of construction contracts.],

11[Explanation For the purposes of this subrule, the expression claimant dealer shall also include a subcontractor if the principal contractor has awarded the contract or part of contract to a subcontractor and the principal contractor has opted in respect of the said contract for the composition of tax under sub-section(3) of section 42.]

(5) If the business in which the dealer is engaged is discontinued and is not transferred or otherwise disposed of and is not continued by any other person, then the set-off on purchases not being purchases treated as capital assets, corresponding to the goods held in stock at the time of discontinuance shall be disallowed and accordingly be reduced fully.

12[(6) If out of the gross receipts of a dealer in any year, receipts on account of sale are less than fifty per cent. of the total receipts,

(a) then to the extent that dealer is a hotel or club, not being covered under composition scheme, the dealer shall be entitled to claim set-off only,

(i) on the purchases corresponding to the food and drinks (whether alcoholic or not) which are served, supplied or, as the case may be, resold or sold, and

(ii) on the purchases of capital assets and consumables pertaining to the kitchens and sale, service or supply of the said food or drinks, and

(b) in so far as the dealer is not a hotel or restaurant, the dealer shall be entitled to claim set-off only on those purchases effected in that year where the corresponding goods are sold or resold within six months of the date of purchase or are consigned within the said period, not by way of sale to another State, to oneself or one's agent or purchases of packing materials used for packing of such goods sold, resold or consigned:

Provided that for the purposes of clause (b), the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work shall be entitled to claim set-off on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years¹³[from the] date of effect of the certificate of registration.]

¹⁴[Explanation. For the purposes of this sub-rule, the receipts means the receipts pertaining to all activities including business activities carried out in the State but does not include the amount representing the value of the goods consigned not by way of sales to another State to oneself or one's agent.]

¹⁵[(7) *****]

¹⁶[(7A) If the claimant dealer has purchased office equipment, furniture or fixtures and has treated them as capital assets and he is not engaged in the business of transferring the right to use these goods (whether or not for a specified period) for any purpose, then the corresponding amount of set-off to which he is otherwise entitled shall be reduced by an amount equal to ¹⁷[three per cent of the purchase price] on which such set-off is calculated and the balance shall be allowed.]

¹⁸[(7B) If the claimant dealer is holding a licence for transmission or as the case may be, distribution of electricity under the Electricity Act, 2003 or is a generating company as defined in the said Act, then in respect of the periods starting on or after the 1st April 2005, save as otherwise provided under ^{18a}[sub-rule (1) and (1A)], an amount equal to the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 of the purchase price of the goods purchased including goods treated as capital assets by him for use in the generation, transmission, or, as the case may be, distribution of electricity shall be reduced from the amount of set-off otherwise available in respect of the said purchases of goods including goods treated as capital assets.]

(8) The claimant dealer shall deduct the amount required to be reduced under this rule from the amount of set-off available in respect of the period in which the contingencies specified in this rule occur and claim only the balance amount of set-off and when the amount so required to be deducted exceeds the said amount of set-off available in respect of that period, he shall pay an amount equal to the excess at the time when he is required to pay the tax in respect of the said period.

¹⁹[(9)(a) For the purposes of sub-rule (1), ²⁰[sub-rule (1A),] clause (a) of sub-rule (2) and sub-rule (3), any reference to the corresponding goods on the purchase of which set-off is claimed, shall be construed in relation to any period starting on or after the 1st April 2005, as a reference to the corresponding goods (not being consumable, stores, or goods treated as capital assets, parts, components and accessories of capital assets ²¹[* * * *]) which are resold or are so dispatched outside the State or are used in or relation to the manufacture of goods so sold or dispatched and are contained in the goods so sold, resold or dispatched and the packing material used along with the goods so sold, resold or dispatched. Any reference to the corresponding purchase price, corresponding taxable goods or corresponding purchases of packing material shall be construed accordingly.]

(b) While reducing set-off under,

(i) sub-

rule (2), for the purpose of determining the purchase price of the corresponding taxable goods, where it is not possible to ascertain the purchase price by reference to the books of account, the ratio of the sale price of the taxable goods and tax free goods or where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and

(ii) sub-

rule (3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of account of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

(10) If the dealer has executed a contract, at any time after the 1st April 2005, of processing of textiles, then set-off on the goods purchased on or after the said date, shall be allowed to the extent of tax paid on purchases in excess of the amount calculated at the rate notified from time to time, by the Central Government for the purposes of subsection (1) of section 8 of the Central Sales Tax Act, 1956 on the purchase price,

(a) as regards the goods in respect of which property is transferred during the said processing, and

(b) as regards packing materials used for packing of the said textiles, and

(c) as regards other purchases including purchases of capital assets shall be calculated as permissible under other rules.]

54 Non-admissibility of set-off.

No set-off under any rule shall be admissible in respect of,

- (a) purchases of motor vehicles ¹[(being passenger vehicles)] which are treated by the claimant dealer as capital assets and parts, components and accessories thereof ^{1a}[***] and the expressions on motor vehicles shall have the same meanings as respectively assigned to them in the Motor Vehicles Act, 1988;
- (b) ⁴purchases of the High Speed Diesel Oil, Aviation Turbine Fuel (Duty paid), Aviation Turbine Fuel (Bonded), Aviation Gasoline (Duty paid), Aviation Gasoline (Bonded) and Petrol unless such motor spirits] are resold or sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or are sent, not by reason of sale, outside the State to any place within India by the claimant dealer to his own place of business, or the place of business of an agent or where the claimant dealer is a commission agent, to the place of business of his principal;
- (c) purchase of crude oil as described in section 14 of the Central Sales Tax Act, 1956, when used by an oil refinery for refining;
- (d) any purchase of consumables or of goods treated as capital assets by the claimant dealer where the dealer is principally engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him and incidental to the business of job work or labour work any waste or scrap goods are obtained and are sold;
- (e) any purchase made by any dealer to whom an Entitlement Certificate ²[except the Entitlement Certificate under the New Package Scheme of Incentive for Tourism Projects³“1999] to claim incentives by way of exemption from tax or deferment of tax has been granted, being purchases of raw materials as defined in rule 80.
- ³(f) any purchase of goods of incorporeal or intangible nature other than,

- (i) 4[items covered by entries 3 and 4 of the Notification issued under entry 39 of SCHEDULE C appended to the Maharashtra Value Added Tax Act, 2002and] SIM cards;
 - (ii) software in the hands of a dealer who is trading in software;
 - (iii) Copyright which is resold within twelve months of the date of purchase;
- (g) purchases effected by the employer by way of works contract when the contract results in immovable property other than plant and machinery;
- (h) purchases of any goods by a dealer, the property in which is not transferred(whether as goods or in some other form) to any other person, which are used in the erection of immovable property other than plant and machinery;
- ^{4a}(i) purchase of liquor covered under entries 1, 2 and 3 of Schedule D appended to the Act except when the said goods are -
- (i) sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or are sent, not by reason of sale, outside the State to any place within India by the claimant dealer to his own place of business, or the place of business of an agent or where the claimant dealer is a commission agent, to the place of business of his principal; and
 - (ii) sold from customs bond to foreign going ships and aircrafts.]
- ⁵(j) purchases made ⁶[on or after the 20th June 2006] of mandap, tarpaulin, pandal, shamiana, decoration of such mandap, pandal or shamiana, and furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used along with a mandap, pandal or shamiana if the purchasing dealer has opted for composition of tax under sub-section (4) of section 42.
- (k) purchases made on or after 1st April 2005 by a hotelier, which are treated by him as capital assets and which do not pertain to the supply by way of or as part of service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is made or given for cash, deferred payment or other valuable consideration.]

7[(1) purchases of office equipment, furniture, fixture and electrical installation by a claimant dealer during the period commencing from the 1st April 2005 and ending on the 7th September 2006 if such goods purchased are treated by the claimant dealer as capital assets and the claimant dealer is not engaged in the business of transferring the right to use the said goods (whether or not for a specified period) for any purpose.]

55 Condition for grant of setoff or refund and adjustment of drawback, set-off in certain circumstances

(1) No set-

off or refund under these rules shall be granted to a dealer in respect of any amount of tax recovered from him on the purchase of any goods or paid by him or in respect of entry of any goods,

1[(a) unless the goods are purchased or entry is effected on or after the 1st April of the year in which the dealer has obtained registration and,

(1) the goods are treated as capital assets by the dealer and have not been sold before the date of effect of registration, or

(2) the goods are not treated as capital assets and have not been sold or disposed of before the date of effect of registration, or

(3) the goods are not treated as capital assets and have been used or consumed in manufacture and the manufactured goods have not been sold before the date of effect of registration, or

(4) the dealer was a registered dealer at the time of such purchase or entry]

(b) unless such dealer has,

(i) maintained a true account in chronological order of all the purchases of goods made by him on or after the appointed day, showing the following details:â€”

(A) the date on which the goods were purchased;

(B) the name of the selling dealer and his

registration certificate number, if registered, from whom the goods are purchased, and the description of the goods;

(C) the number of the tax invoice under which they were purchased;

(D) the purchase price of the goods;

*(E) ²[the amount of tax], if any, recovered from him by the selling dealer;

(ii) in the case of goods in respect of the purchase of which tax has been [recovered from the claimant dealer or is payable by him as purchase tax under an earlier law, maintained a true account in chronological order of the goods so purchased and held by him on the appointed day, which shall show the particulars mentioned at (A) to (E) above, and the amount of tax recovered under each of the earlier laws separately.

(2) The claimant dealer shall, if so required, produce before the Commissioner the original bill/invoice/cash memorandum relating to each purchase in respect of which the claim for set-off has been made in respect of any purchase made before the appointed day, and a tax invoice in respect of any purchase made after the appointed day.

³(3)

(a) Where a dealer has filed a return in respect of any period contained in a year, then he may, subject to the other provisions of these rules, adjust the aggregate of

(i) any payment made in respect of the said period before filing of the said return,

(ii) the total value of the tax deduction certificates received by him in that period, ^{3a}***]

^{3b}[(iiA) the total value of the collection certificate received by him in that period, and]

(iii) the amount adjustable by way of refund adjustment order issued in respect of that period.

4[(iv) set-off or refund to which the dealer has become entitled in the said period.

(v) deposit paid towards voluntary registration.]

(A) against the tax payable according to the said return, or

(B) against the tax payable according to the return for the said period filed by him under the Central Sales Tax Act, 1956, or

(C) against the tax payable according to the return which may be due or may become due under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2003.

(b) If after making adjustment, if any, as provided in clause (a), there be any excess, then the dealer may claim refund of the excess or part of excess in accordance with the rules, or carry forward the same for adjustment towards the tax payable as per the returns to be filed for any subsequent period contained in the said year under the Maharashtra Value Added Tax Act, 2002, the Central Sales Tax Act, 1956 or the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2003.]

(4) Where a notice under sub-section (4) of section 32 or, as the case may be, a notice under the corresponding provisions of any earlier law has been issued for the payment of any sum by a dealer or the dealer has filed any return or revised return without full payment of tax and who is entitled to a refund under these rules or, as the case may be, under any earlier law, the amount so due by way of refund, shall first be applied towards the recovery of the amount in respect of which such notice has been issued or towards the payment of the said tax and the balance amount, if any, shall thereafter be claimed as refund.

(5) Where the claimant dealer is unable to identify the goods purchased with the goods resold or with the goods used in the manufacture of goods or in the packing of goods, it shall be presumed for the purpose of reduction or disallowance of set-off that the goods so purchased have been used or consumed.

d in the chronological order in which they were acquired whether before or after appointed day.

(6) Set-

off of the tax paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 and of the tax paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002 in respect of any goods shall be granted to a dealer as if such tax is a tax levied under this Act or, as the case may be, under any earlier law and all of the provisions of these rules including those relating to reduction in set-off and non-admissibility of set-off shall mutatis mutandis apply accordingly.

5[(7) Where a registered dealer liable to pay tax under this Act, (i) dies and the business in which the dealer was engaged is continued after his death, by any person or persons,

(ii) transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he has succeeded in the business or part thereof, by any other person,

then the person succeeding shall be entitled to take credit of any set-off that is carried forward, if any, at the time of the said death, transfer, disposal or change]

55A Conditions and restrictions for grant of refund.-

(1) Where

a claimant dealer has filed an application for refund under subsection (1) of section 51, in FORM 501 and if it is noticed by the Commissioner that,-

- (a) the tax has not been paid on the earlier sales in respect of the transactions on which the dealer has claimed set-off or, as the case may be, refund, or
- (b) the claimant dealer has not received the declarations or certificates in support of the sales or the dispatches otherwise than by way of sales as covered under the Central Sales Tax Act, 1956,

then the Commissioner may, reduce the quantum of refund and grant only the balance amount of refund.

- (2) The said reduction shall be equal to the aggregate of the quantum of set-off or, as the case may be, refund claimed on the purchase of the goods in respect of which tax has not been paid on the earlier sales and additional tax liability, if any, under the Central Sales Tax Act, 1956 on account of non-production of the said declarations or certificates.]
- ²[(3) For the purposes of *Explanation* to sub-clause (i) of clause (a) of sub-section (3) of section 51, the dealer shall be deemed to be an exporter only if, the turnover of export either during the previous year or during the period under refund application is not less than ³[twenty five] per cent. of his total turnover of sales ⁴[or rupees hundred crore, whichever is less].]

56 Reimbursement in respect of declared goods purchased on or after the appointed day.

Where a dealer is liable to pay tax under the Act then in assessing the amount of tax under this Act in respect of any period payable by such dealer (hereinafter referred to in this rule as "the claimant dealer"), the Commissioner shall grant him in respect of declared goods purchased by him on or after the appointed day and resold by him in the course of inter-State trade or commerce and on which resale, tax under the Central Sales Tax Act, 1956 (LXXIV of 1956), has been paid by him, reimbursement of the tax paid by him on his purchases of the said goods.

D Provisions of Interest and Penalty

Section 30. Interest payable by a dealer or person:-

- (1) A dealer who is liable to pay tax in respect of any year, and who has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, shall be liable to pay by way of simple interest, in respect of each of such years, in addition to the amount of tax payable in respect of such year, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof for the period commencing on the 1st April of the respective year to the date of the payment of tax. The amount of such interest shall be calculated by taking into consideration the amount of, and the date of, such payment, when the payment is made on different

dates or in parts or is not made. When, as a result of any order passed under this Act, the said amount of tax is reduced, the interest shall be reduced accordingly and where the said amount is enhanced,¹[the interest on the enhanced amount shall be calculated *mutatis-mutandis* upto the date of such order]:

Provided that, in respect of any of such years, ²[the amount of interest payable] under this sub-section shall not exceed the amount of tax found payable for the respective year.

- (2) A registered dealer who has failed to pay the tax within the time specified by or under this Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax:

Provided that, in relation to the tax payable according to ³[the return, fresh return or as the case may be], ⁴[fresh return or revised return], the said dealer shall, notwithstanding anything contained in any other provision of this Act, be deemed not to have paid the amount of such tax within the time he is required by or under the provisions of this Act to pay it if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return and accordingly, if he has not paid the full amount of such tax or has paid only the part of the amount of such tax by such date, he shall be liable under this clause for payment of interest after such date on the full or part, as the case may be, of the amount of tax which has not been paid by such date and where a dealer has furnished a ⁴[fresh return or revised return] and the amount of tax payable as per the ⁴[fresh return or revised return] exceeds the amount of tax payable as per the original return, then for the purposes of this sub-section, the dealer shall be deemed to have been required to pay the excess amount of tax at the time he was required to pay the tax as per the original return and accordingly he shall be liable to pay interest under this sub-section on the said excess amount of tax.

- (3) In the case of a registered dealer, in whose case, any tax other than the tax on which interest is leviable under sub-section (2) has remained unpaid upto one month after the end of the period of assessment, such dealer shall be liable to pay by way of simple interest,⁵[a sum calculated at the prescribed rate on the amount of such tax] for each month or part thereof from the date next following the last date of the period covered by an order of assessment till the date of the order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of the order of assessment, the amount of such interest shall be calculated

by taking into consideration the amount and the date of such payment. If, as a result of any order passed under this Act, the said amount of tax is reduced, then the interest shall be reduced accordingly and where the said amount is enhanced, then interest on the enhanced amount shall be calculated *mutatis mutandis* up to the date of such order from the said date next.

6[(4)If,-

(a) after the commencement of,-

(i) audit of the business of the dealer in respect of any period, or

(ii) inspection of the accounts, registers and documents pertaining to any period, kept at any place of business of the dealer, or

(iii) entry and search of any place of business or any other place where the dealer has kept his accounts, registers, documents pertaining to any period or stock of goods,

(b) in consequence of any intimation issued under sub-section (7) of section 63,

the dealer files one or more returns or, as the case may be, revised returns in respect of the said period, then he shall be liable to pay by way of interest, in addition to the amount of tax, if any, payable as per the return or, as the case may be, revised return, a sum equal to 25 per cent. of the additional tax payable as per the return or, as the case may be, revised return.]

29. Imposition of penalty in certain instances:-

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^{1a}[(2A) While or after passing any order in respect of any dealer under any provisions of this Act, it appears to the Commissioner that, the dealer has failed to apply for registration as required under this Act or has carried on business as a dealer without being registered in contravention of the provisions of this Act, then the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose upon him, by way of penalty, a sum equal to the amount of tax payable by the dealer for the period during which he has carried on business as a dealer without being registered in contravention of the provisions of this Act.]

(3) ²[While or after passing any order] under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice, that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly misclassified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due

from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

(4) Where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum, voucher, declaration or certificate by reason of which any transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the Commissioner may, after giving, the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

3[(5) Where a dealer has sold any goods and the sale is exempt, fully or partly, from payment of tax by virtue of any provision contained in sub-section (3), (3A), (3B) or (5) of section 8, and the purchaser fails to comply with the conditions or restrictions subject to which the exemption is granted, then the Commissioner may, after giving the said purchaser a reasonable opportunity of being heard, impose penalty on him equal to one and a half times the tax which would have become payable on the sale if the said exemption was not available on the said sale.]

(6) Where, any person or dealer contravenes the provision of section 86, so as to have the quantum of tax payable by him to be under-assessed, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him a penalty equal to half the amount of tax which would have been under-assessed or 4[one thousand rupees], whichever is more.

(7) Where, any person or dealer has failed without reasonable cause to comply with any notice in respect of any proceedings, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him, a penalty equal to 5[five thousand rupees].

6[(8) * * *]

(9) 7[(a) * * *]

7[(b) * * *]

(c) Where a dealer has filed a return 8[***] and such return is found to be not 9[complete and self-consistent], then the Commissioner

may, after giving the dealer a reasonable opportunity of being heard, impose on him, by order in writing, a penalty of rupees one thousand. The levy of penalty shall be without prejudice to any other penalty which may be imposed under this Act.

10[(10) Where a person or dealer has collected any sum by way of tax in contravention of the provisions of section 60,â€”

(a) he shall be liable to pay a penalty not exceeding two thousand rupees, and

(b) in addition, any sum collected by the person or dealer in contravention of section 60 shall be forfeited to the State Government.

If the Commissioner, in the course of any proceeding under this Act or otherwise, has reasons to believe that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under this sub-section, he may serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in this sub-section should not be imposed on him. The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit. When any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.]

11[(11) No order levying penalty under the foregoing provisions of this section shall be passed in respect of any period after 12[eight years] from the end of the year containing the said period.]

(12) No order imposing a penalty under any of the foregoing sub-sections shall be made,-

(a) by a Sales Tax Officer or an Assistant Commissioner where the penalty exceeds rupees¹³[five lakh] except with the prior approval of the Deputy Commissioner;

(b) by a Deputy Commissioner ¹⁴[or a Senior Deputy Commissioner], where the penalty exceeds rupees ¹⁵[ten lakh] except with the prior approval of the Joint Commissioner:

Provided that, nothing in this sub-section shall apply to any penalty which may be imposed by an appellate authority.

(13) For the purposes of this section, Commissioner includes any appellate authority appointed or constituted under this Act.