

## CHAPTER VI

### ASSESSMENT, REFUND AND RECOVERY OF TAX

Self  
assess-  
ment.

39.(1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or tax periods during which the dealer is so liable.

(2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return.

Provis-  
ional  
assess-  
ment.

40.(1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the assessing authority, if he is satisfied that provisional assessment is necessary in that case, may proceed to assess the dealer provisionally for that period, notwithstanding anything contained in section 42.

(2) The provisional assessment under sub-section (1) shall be made 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 assessing authority and in every such case, the assessing authority shall direct the dealer to deposit the amount of tax so assessed in such manner and by such date as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of the tax due and the interest and penalty, payable, if any, under section 34 on or before the date specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the assessing authority from making assessment under section 42 and any tax, interest or penalty paid against the provisional assessment under this section shall be adjusted against tax, interest or penalty payable on such assessment.

Identifica-  
tion of tax  
payers for  
tax audit.

41.(1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.

(2) After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such

individual dealers or class of dealers be conducted in accordance with the audit programme approved by him:

Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

(3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.

(4) After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report", to the assessing authority in the prescribed form alongwith the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

Audit  
assess-  
ment.

42.(1) Where the tax audit conducted under sub-section (3) of section 41 results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit, evasion of tax or contravention of any provision of this Act affecting the tax liability of the dealer, the assessing authority may, notwithstanding the fact that the dealer may have been assessed under section 39 or section 40, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.

(2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(3) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (1), the assessing authority may proceed to complete the assessment to the best of his judgement basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

(4) Where the dealer to whom a notice is issued under sub-section (1), produces the books of account and other documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.

(6) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of receipt of the Audit Visit Report :

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.

(7) No order of assessment shall be made under sub-section (3) or sub-section (4) after the expiry of one year from the date of receipt of the Audit Visit Report.

Turnover  
escaping  
assessment.

43.(1) Where, after a dealer is assessed under section 39, 40 or 42 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has –

- (a) escaped assessment , or
- (b) been under-assessed , or
- (c) been assessed at a rate lower than the rate at which it is assessable,

or that the dealer has been allowed –

- (i) wrongly any deduction from his turnover , or
- (ii) input tax credit, to which he is not eligible,

the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceed to assess to the best of his judgement the amount of tax due from the dealer.

(2) If the assessing authority is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.

(3) No order of assessment shall be made under sub-section (1) after the expiry of five years from the end of the tax period or tax periods in respect of which the tax is assessable.

Assessment of dealer who being liable to pay tax fails to register.

44.(1) If the assessing authority, on the basis of any information in his possession, is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period, has failed to get himself registered, the assessing authority shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and, in making such assessment, shall give the dealer reasonable opportunity of being heard, and the assessing authority may, if he is satisfied that the default is without reasonable cause, direct the dealer to pay, in addition to the amount of tax so assessed, a penalty equal to the amount of tax so assessed.

(2) No assessment under sub-section (1) shall be made after the expiry of five years from the end of the tax period or tax periods to which the assessment relates.

Assessment of a casual dealer.

45.(1) Every casual dealer shall be liable to pay tax on all his –

(a) sales, within the State, of taxable goods purchased or received by him; and

(b) purchases of taxable goods within the State, which are liable to be taxed under section 12,

(2) A casual dealer shall furnish to the assessing authority including the officer-in-charge of any check-post or barrier referred to in section 74, voluntarily or immediately when called upon to do so by a notice in the prescribed form, a return of estimated turnover in the form prescribed.

(3) If a casual dealer does not furnish the return as required under sub-section (2) or if the return furnished by him appears to the assessing authority or the officer-in-charge of the check-post or barrier to be incorrect or incomplete, such authority or the officer-in-charge shall, after giving the casual dealer a reasonable opportunity of being heard, assess him to the best of his judgement.

(4) The assessing authority or the officer-in-charge of the check-post or barrier shall, if he is satisfied after making such scrutiny of the accounts of the casual dealer and such enquiry as he may consider necessary that the return furnished under sub-section (2) is correct and complete, provisionally assess the amount of tax due from him on the basis of such return.

(5) The provisional and the final assessment of a casual dealer shall be made in the manner prescribed.

(6) No order under sub-sections (3) or (4) shall be passed after the expiry of six months from the date the notice calling upon the casual dealer to furnish return is served on him or the date on which such return is voluntarily filed.

Period of limitation where proceeding for prosecution has been initiated, not to apply in certain cases.

46. In case any offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified under sub-section (7) of section 42, sub-section (3) of section 43 and sub-section (2) of section 44 shall not apply.

Assessment where proceeding for prosecution has been initiated.

47. Any assessment made or penalty imposed under section 40, 42, 43 or 44 shall be without prejudice to any prosecution that may have been initiated for an offence under this Act.

Exclusion of time period for assessment.

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

Power of reassessment in certain cases.

49.(1) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgement or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgement or order, at any time within a period of three years from the date of the judgement or order.

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

Payment and recovery of tax, interest and penalty.

50.(1) Tax payable under this Act shall be paid in the manner hereinafter provided in this section at such intervals as may be prescribed.

(2) A registered dealer furnishing any return under sub-section (1) of section 33 shall pay into Government Treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the tax period covered under the return and, where he furnishes such return after the prescribed date, shall pay the tax so due along with the amount of interest, penalty, or both, as payable by him under section 34, and shall furnish a receipt from the Treasury showing the payment so made.

(3) A registered dealer furnishing a revised return in accordance with sub-section (4) or sub-section (5) of section 33, which shows that a higher amount of tax is due than that was paid or payable in accordance with the original return, shall furnish along with such return a receipt showing payment of the differential amount of tax payable along with the interest, penalty, or both, as payable under section 34, in the manner provided in sub-section (2).

(4) The amount of –

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

(b) tax assessed under sections 39,40,42,43,44, or 45 less the sum already paid in respect of any tax period, together with interest required to be paid and the penalty, if any, imposed under section 42, 43 or section 44;  
or

(c) penalty imposed under any provision of this Act not covered by clause (b); or

(d) any other dues under this Act,

shall be paid by the dealer in the manner provided under sub-section (2) within thirty days from the date of service of the notice issued by the assessing authority for the purpose.

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

Provided that where any appeal under section 77 or 78 or revision under section 79 has been filed, -

(i) such penalty shall be payable from the date so specified on the amount ultimately found due from the dealer; and

(ii) if the tax or penalty, if any, is enhanced in such appeal or revision, such penalty on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount.

(6) When a dealer is in default in making the payment of any amount payable by him under sub-section (4) and (5) he shall be liable to pay simple interest on such amount at the rate of two per centum per month with effect from the date of such default till the payment of the amount.

(7) All amounts that remain unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be recoverable as arrears of public demand or in accordance with the provisions contained in Schedule E.

(8) Where, in pursuance of sub-section (7), any proceedings for the recovery, as arrears of public demand or in accordance with the provisions of Schedule E, of any tax, interest or penalty or part thereof or any other amount remaining unpaid, have been commenced and the amount of tax, interest, penalty or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in appeal under section 77 or 78 or revision under section 79 or rectification under section 81, the assessing authority may, in such manner and within such period as may be prescribed, inform accordingly the dealer and the authority by whom or under whose order the recovery is to be made and, thereupon, such proceedings may be continued as if the amount of tax, interest, penalty or any other amount as enhanced or reduced, had been substituted for the tax, interest, penalty or any other amount, as the case may be, which was to be recovered under sub-section (7).

Special  
mode of  
recovery.

51.(1) Notwithstanding anything contained in section 50 or any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known, require-

(a) any person from whom any money is due or may become due to a dealer, who has failed to comply with a notice served under sub-section (4) or sub-section (5) of section 50 or has failed to pay any interest due from him under this Act; or

(b) any person who holds or may subsequently hold any money for or on account of such dealer, to pay into Government Treasury in the manner specified in the notice issued under this sub-section either forthwith or 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 of tax due from the dealer with the interest or penalty or both, as the case may be, as payable under this Act or the whole of the money when it is equal to or less than that amount.

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

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

(4) Any person discharging liability to the dealer after service on him of the notice issued under sub-section (1) shall, if the liability is discharged in any manner other than that required under the said notice, be personally liable to the Government to

the extent of the liability so discharged or to the extent of the liability of the dealer for the tax due under this Act alongwith the interest or penalty or both, as payable, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the assessing authority that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, or that the money demanded or any part thereof is not likely to become due to, or to be held for or on account of, the dealer, nothing contained in this section shall be deemed to require such person to pay into Government Treasury any such money or part thereof , as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable to the Government under sub-section (4) shall , if it remains unpaid, be recoverable in the same manner as provided under sub-section (7) of section 50 :

Provided that nothing in this section shall operate to affect any action taken or that may have been taken or prevent any action that may be or is being taken under section 50 for recovery from the dealer the amount due from him.

Unauthorised  
and excess  
collection of  
tax by dealer.

52.(1) Any person who, -

- (a) not being a registered dealer, collects any sum by way of tax ; or
- (b) being a registered dealer , collects any amount by way of tax in excess of the tax payable by him,

shall be liable to pay in addition to the tax for which he may be liable, a penalty equal to twice the sum so collected by way of tax.

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

(3) On receipt of the reply, if any, to the notice served under sub-section (2), the assessing authority shall, after such enquiry as he may consider necessary, make such order as he deems fit.

(4) (a) The amount of tax collected by any person or dealer in contravention of section 35 shall be forfeited to the Government by an order of the assessing authority :

Provided that no such order shall be made by the assessing authority without giving the person or, as the case may be, the dealer concerned an opportunity of being heard.

(b) When any such order of forfeiture is made, the assessing authority shall publish a notice in the prescribed manner specifying the names and addresses of the persons from whom tax was collected in contravention of section 35 and other details, if any, relating thereto as may be prescribed and giving such persons an opportunity to file their claims, accompanied by such documentary or other evidence as each such person may furnish to establish his claim, within sixty days from the date of publication of the notice, for refund of the amount collected from them.

(c) If, on receipt of any such claim, the assessing authority is satisfied that the whole or any part of the amount of such claim is refundable, he shall refund such amount to the person concerned within one month after the amount is collected or recovered from the person or dealer who collected the amount in contravention of section 35.

Consumer  
Welfare  
Fund.

53.(1) The Orissa Consumer Welfare Fund established under the Orissa Sales Tax Act, 1947 shall be deemed to have been established under this Act.

Orissa Act  
14 of 1947.

(2) There shall be credited to the Fund, in such manner as may be prescribed all amounts forfeited under sub-section (4) of section 52 and all amounts of penalty paid pursuant to that section, including interest recovered, if any, on such amounts (except any amount refunded under clause (c) of sub-section (4) of the said section) and excluding the expenses of collection and recovery as determined by the Government.

(3) The moneys credited to the Fund shall be utilised by the Government for the welfare of the consumers in accordance with such rules and the accounts and other relevant records in relation to the Fund shall be maintained in such manner, as may be prescribed.

Deduction of  
tax at source  
from payment  
to works  
contractor.

54.(1) Notwithstanding anything contained in section 50 or any other law or contract to the contrary, any person responsible for making payment of any sum to any contractor (hereinafter referred to in this section as deducting authority) for carrying out any works contract, which involves transfer of property in goods, in pursuance of a contract between the contractor and -

(a) the Central Government or any State Government, or

(b) any local authority, or

(c) any authority or corporation established by or under a statute, or

(d) any company incorporated under the Companies Act, 1956 includ 1 of  
any State or Central Government undertaking, or 1956.

(e) any co-operative society, or any other association registered under the Societies Registration Act, 1860, 21 of 1860.

shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct, subject to the certificate, if any, produced by the contractor in pursuance of sub-section (5), an amount towards tax equal to four per centum of such sum in respect of the works contract, if the value of works contract exceeds rupees fifty thousand.

(2) While making deduction as referred to in sub-section (1), the deducting authority shall grant a certificate to the contractor in the form prescribed and send a copy thereof to the assessing authority within whose jurisdiction the work contract is executed within a period of thirty days of such deduction:

Provided that where the tax is deducted from a registered dealer, the assessing authority who receives the certificate shall forward the same, alongwith the payment received, to the assessing authority under whose jurisdiction the dealer is registered in the manner prescribed.

(3) The amount deducted from the bills or invoices shall be deposited into a Government Treasury within one week from the date of deduction in such form or challan as may be prescribed.

(4) Such deposit into Government Treasury shall be adjusted by the concerned assessing authority towards the tax liability of the contractor and shall constitute a good and sufficient discharge of liability of the deducting authority to the contractor to the extent of the amount deposited.

(5) (a) Where, on an application being made by the contractor in this behalf, the assessing authority is satisfied that any works contract of the nature referred to in sub-section (1) involves both transfer of property in goods and labour or services, or involves only labour or services and, accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate, in the manner prescribed :

Provided that nothing in the said certificate shall affect the assessment of the tax liability of the contractor under this Act :

Provided further that where the assessing authority, in consideration of the facts and circumstances of the case, is of the opinion that such certificate of no deduction

or deduction of tax on a part of the sum as claimed is not justified he may, after allowing the dealer a reasonable opportunity of being heard, refuse to issue such certificate.

(b) Where such a certificate is produced by a contractor before the deducting authority, until such certificate is cancelled by the assessing authority, the deducting authority shall either make no deduction of tax or make the deduction of the tax, as the case may be, in accordance with the said certificate.

(6) If any person contravenes the provision of sub-section (1), (2) or (3) or of clause (b) of sub-section (5), the assessing authority shall, after giving him an opportunity of being heard, by an order in writing, impose on such person a penalty equal to twice the amount required to be deducted and deposited by him into Government Treasury.

Explanation.- Nothing in sub-section (5) or any other provision of this section shall be construed as to authorise deduction of any amount towards tax on the value of any property in goods transferred in the course of inter-State sales, sales outside the State or sales in the course of import.

(7) Where any certificate issued under sub-section (5) is found to have been obtained on incorrect or fraudulent representation of facts, the assessing authority shall cancel the certificate with direction to the deducting authority to recover the tax, not deducted on the strength of such certificate, from the subsequent payments due to the works contractor :

Provided that no such order of cancellation shall be issued without giving a reasonable opportunity of being heard to the works contractor.

Tax to be first charge on property.

55. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, including interest or penalty or both, if any, payable by a dealer or any other person under this Act, shall be a first charge on the property of the dealer or such person, as the case may be.

Period of limitation for recovery of tax.

56. Notwithstanding anything contained in any law for the time being in force, no proceedings for recovery of any amount under sub-section (7) of section 50 or under sub-section (6) of section 51 shall be initiated after the expiry of five years from the date the amount becomes due for payment :

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

Refund.

57.(1) Subject to other provisions of this Act and the rules, the assessing authority shall refund to a dealer, within a period of sixty days of the date of receipt of such order giving rise to such refund, the amount of tax, including interest or penalty or both, if any,

paid by such dealer in excess of the amount due from him, through refund adjustment or through refund voucher:

Provided that the assessing authority shall first adjust such excess amount towards the recovery of any amount due in respect of which a notice under sub-section (4) of section 50 has been issued , or any amount due for any period covered by a return but not paid and, thereafter, refund only the balance, if any.

(2) Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable, as per the returns filed under section 33, for any subsequent period :

Provided that the excess input tax credit for any tax period shall not be carried forward beyond a period of twenty four months from the close of the year to which that tax period relates for adjustment against the tax due for subsequent period or periods, except when the dealer exercises option in writing for further carry over :

Provided further that the amount of tax, including interest or penalty or both, if any, due from, and payable by, the dealer on the date of such adjustment shall first be deducted from the amount of such refund before adjustment.

(3) No claim for refund of any tax, including interest or penalty or both, if any, paid for any tax period or periods under this Act shall be allowed in any case where there is an order for reassessment for such period until such reassessment is completed.

58.(1) (a) Where any return filed under this Act shows any amount to be refundable to a dealer on account of sales referred to in clauses (b), (c) and (d) of section 18, the dealer may make an application to the assessing authority for refund of that amount in the manner and form as may be prescribed.

(b) As soon as may be, on receipt of the application for such refund, the assessing authority shall direct a tax audit under sub-section (2) of section 41 of the transactions pertaining to such refund as covered under the return referred to in clause (a) which shall be completed within a period of one month from the date of issue of such direction, to establish the correctness of such claim :

Provided that if there is any delay in completing the audit under this clause due to non-co-operation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation and such period shall not be reckoned for grant of interest, if any, admissible under section 59:

Refund  
of tax  
under  
special  
circumst-  
ances.

Provided further that if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after giving the dealer an opportunity of being heard.

(c) Where, on assessment based on tax audit under clause (b), the amount of refund claimed is found to be inadmissible or more than what is admissible, then, the claim of refund of excess amount shall be disallowed and if, in consequence thereof, any amount is found due from the dealer, he shall be liable to pay interest at the rate of two per centum per month on that amount from the date of filing of the return giving rise to the refund till the date of the assessment.

(d) The dealer may, by application made in this behalf, exercise option for grant of provisional refund pending audit, investigation and assessment.

(e) Subject to the provisions of clauses (b) and (c), the assessing authority may require a dealer exercising option under clause (d) to furnish Bank guarantee to the satisfaction of the assessing authority for an amount equal to the amount of refund claimed.

(f) On receipt of such Bank guarantee, the assessing authority shall, subject to the procedure prescribed, grant the dealer a provisional refund of such amount as may be determined to be refundable.

(g) Where a provisional refund has been granted, the assessing authority may, after an audit under section 41 and assessment under section 42 when so required as a result of such audit, grant final refund, and the excess amount, if any, allowed by provisional refund may be recovered as if it is a tax payable under this Act and, thereafter, release the Bank guarantee furnished by the dealer at the time of grant of provisional refund, in the manner prescribed:

Provided that the Bank guarantee shall be forfeited, if -

(i) the dealer is found to have made an incorrect claim of refund against which payment has already been made; or

(ii) the dealer fails to produce evidence in support of the claim of refund; or

(iii) the refund claim is reduced by any reason whatsoever and the dealer fails to pay the excess amount of refund provisionally allowed, to such extent and in such manner as may be prescribed, and, where the refund claim is reduced, the dealer shall be liable to pay interest at the rate of two per centum on the excess amount of refund so granted from the date of such grant to the date of its recovery.

(h) Where any refund claimed is found to be admissible under this sub-section, it shall be granted within a period of ninety days from the date of application for such refund.

(2) (a) Any foreign diplomatic mission or consulate in India or the United Nations or any other similar international body, as may be notified by the Government, shall be entitled to refund of tax paid for goods purchased in the State and all such refunds shall be subject to the conditions and restrictions as may be prescribed.

(b) Any person, who is authorised by the body referred in clause (a), entitled to refund thereunder, may apply to the assessing authority for such refund in the manner and within the time as may be prescribed.

(3) (a) Subject to the provisions of section 31, where a registered dealer closes down or discontinues his business and the net tax payable as a result of such closure or discontinuance of business, after taking into account the closing stock, is a negative value, the dealer shall make an application for refund to the assessing authority in such form and within such time as may be prescribed.

(b) Any refund covered under clause (a) shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.

(4) (a) Where any excess input tax credit for a tax period is carried forward for adjustment against the tax due for subsequent tax period or periods and such credit or part thereof remains unadjusted even after a period of twenty four months from the close of the year to which the tax period for which the return showing the excess input tax credit relates, the dealer may opt to further carry forward the credit till final adjustment or may claim refund of the amount of such excess credit remaining unadjusted.

(b) Where a dealer opts for refund under clause (a), he shall make an application to that effect to the assessing authority within such time and in such manner as may be prescribed.

(c) Any refund covered under this sub-section shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.

Interest  
on  
amount  
refunded.

59.(1) (a) A registered dealer entitled to refund in pursuance of any order under this Act including an order of assessment under sections 40, 42 and 43 or in pursuance of any order of a Court shall, in addition to the refund, be paid in the prescribed manner simple interest at the rate of eight per centum per annum for the period commencing immediately after the expiry of sixty days of receipt of the order till the date on which the refund is granted:

Provided that interest as applicable under this section shall be admissible after the expiry of the period of ninety days from the date of receipt of the application for grant of refund under sub-section (1) of section 58 till the date of its sanction.

(b) The interest payable under clause (a) shall be calculated on the amount of refund as due after deducting therefrom any tax, interest, penalty or any other dues payable by the dealer under this Act.

(c) If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, such interest shall be enhanced or reduced accordingly, and where the interest is reduced, the excess amount of interest granted, if any, shall be recovered as if it is an arrear of tax under this Act.

(2) Where, as a result of any final order, the amount of tax including penalty, if any, is –

(a) found to be not due or not defaulted, the interest paid, if any, on that account shall be refunded; or

(b) reduced, the interest payable on that account shall be calculated accordingly and the excess amount of interest paid, if any, shall be refunded :

Provided that where any amount of tax payable is enhanced by any such final order, interest shall be payable on the amount by which the tax is enhanced after the expiry of a period of three months from the date of the order :

Provided further that where the realisation of any amount remains stayed by the order of any Court or authority competent under this Act and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.

(3) If, as a result of an appeal or revision, any change becomes necessary in the assessment order, and the appellate authority or the revisional authority directs the assessing authority to amend the assessment order accordingly and, thereupon, the amount paid in excess, if any, shall be refunded to him without interest.

Power to withhold refund in certain cases.

60.(1) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the Commissioner is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding.

(2) Where a refund is withheld under sub-section (1), the dealer shall be entitled to interest as provided under sub-section (1) of section 59, if he becomes entitled to the refund as a result of the appeal or further proceeding or, as the case may be, any other proceeding, under this Act.