

No. F. 14(15)/LA-2001-02/1327.— The following Act of Legislative Assembly of the National Capital Territory of Delhi received the assent of the Lieutenant Governor, Delhi on 23-7-2002 and is hereby published for general information :—

The Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act No. 13 of 2002).

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 15th April, 2002).

An

Act

TO LEVY AND COLLECT TAX ON THE TRANSFER OF THE RIGHT TO USE ANY GOODS FOR ANY PURPOSE (WHETHER OR NOT FOR A SPECIFIED PERIOD) FOR CASH, DEFERRED PAYMENT OF OTHER VALUABLE CONSIDERATION IN THE NATIONAL CAPITAL TERRITORY OF DELHI

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE NATIONAL CAPITAL TERRITORY OF DELHI IN THE FIFTY-THIRD YEAR OF THE REPUBLIC OF INDIA AS FOLLOWS :—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Delhi Sales Tax on Right to Use Goods Act, 2002.

(2) It extends to the whole of the National Capital Territory of Delhi.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.—(1) In this Act, unless the context otherwise requires :—

(a) "appointed day" means the date on which this Act comes into force;

(b) "Commissioner" means the Commissioner of Sales Tax appointed under sub-section (1) of section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975);

(c) "dealer" means any person who whether for commission, remuneration or otherwise transfers the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and includes the Government or the Central Government which so transfers the right to use such goods, any society, club or association of persons which so transfers the right to use such goods to its members; a manager, factor, broker, commission agent, del credere agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who so transfers the right to

use any goods belonging to any principal whether disclosed or not;

(d) "Delhi" means the National Capital Territory of Delhi;

(e) "Delhi Sales Tax Act" means the Delhi Sales Tax Act, 1975 (43 of 1975);

(f) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares, securities, money;

(g) "Government" means the Lieutenant Governor of the National Capital Territory of Delhi referred to in Article 239AA of the Constitution;

(h) "Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under Article 239A of the Constitution;

(i) "person" includes any company or an association of persons or body of individuals, whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a corporate body or an authority owned or set up by, or subject to administrative control of, the Government of India or the Government of any State or Union Territory and a cooperative society, whether registered or not;

(j) "prescribed" means prescribed by the rules made under this Act;

(k) "possession" includes legal or physical possession, whether as owner or transferee, agent on behalf of a transferor or principal, as the case may be, whether disclosed or not;

(l) "registered dealer" means a dealer registered under section 7 of this Act;

(m) "rule" means a rule made under this Act;

(n) "sale" with its grammatical variation and cognate expressions means any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or any other valuable consideration, and the words "sell" shall be construed accordingly;

(o) "sale price" means the amount of valuable consideration received or receivable for the transfer of the right to use any goods for any purpose (whether or not for a specified period);

(p) "tax" means the tax payable under this Act;

(q) "transferee" means the person to whom the right to use goods is transferred;

(r) "transferor" means the person who transfers the right to use goods;

(s) "turnover of sales" means the aggregate of the amounts of sale price received or receivable due

a year by a dealer in respect of the transfer of the right to use any goods:

(1) "year" means the financial year.

(2) All words and expressions used, but not defined in this Act but defined in the Delhi Sales Tax Act shall have the same meanings as assigned to them in that Act.

CHAPTER II INCIDENCE AND LEVY OF TAX

3. Incidence of tax.— Subject to the provisions contained in this Act and the rules made thereunder, a tax shall be leviable on the turnover of sales in respect of:—

- (a) the transfer of the right to use any goods agreed to before the appointed day but the right to use the goods is exercised on or after the appointed day;
- (b) the transfer of the right to use any goods agreed to prior to the appointed day, and wherein the right to use has been continued after the appointed day, to the extent of the sale price received or receivable in respect of such use on or after the appointed day; and
- (c) the transfer of the right to use any goods agreed to on or after the appointed day.

4. Levy of tax.— There shall be levied a tax on the turnover of sales under this Act at the rate of four paise in the rupee:

Provided that no such tax shall be levied if the turnover of sales of a dealer is less than four lakh rupees during the year:

Provided further that no tax shall be levied under this Act on the turnover of sales made in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of interstate trade or commerce or outside the State/Union territory:

Provided also that: where in respect of any goods or class of goods the Government is of the opinion that it is expedient in the public interest so to do, it may, by notification in the official gazette, direct that the tax in respect of such goods or class of goods shall, subject to such conditions as may be specified, be levied at such modified rate not exceeding the rate applicable under this section, as may be specified in the notification:

Provided also that: where in respect of any goods or class of goods the Government is of the opinion that it is expedient in the public interest so to do, it may, by notification in the official gazette, direct that no tax shall be payable under this Act in respect of such goods or class of goods, subject to such restrictions and conditions

as may be specified in the notification.

5. Liability of dealer.—(1) Every dealer whose turnover of sales made during:—

- (a) the year ending on the 31st day of March, 2002
- (b) the year commencing on the 1st day of April, 2002 has exceeded or exceeds the limit of four lakh rupees shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act on the turnover of sales made by him on or after the appointed day:

Provided that a dealer to whom clause (b) above, applies and whose turnover of sales exceeds the limit of four lakh rupees after the appointed day shall not be liable to pay tax in respect of sales which take place upto the time when his turnover of sales as computed from the 1st day of April, 2002 first exceeds such limit.

(2) Every dealer whose turnover of sales during any year commencing on the 1st day of April, being a year subsequent to the years mentioned in sub-section (1) first exceeds the limit of four lakh rupees shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the said date:

Provided that a dealer shall not be liable to pay any tax in respect of such of the turnover of sales as takes place during the period commencing on the 1st day of April of the said year upto the time when his turnover of sales as computed from the 1st day of April of the said year first exceeds the limit of four lakh rupees.

(3) Every dealer who becomes liable to pay tax under this Act and every dealer who has been registered under section 7 shall continue to be so liable until the expiry of three consecutive years during each of which his turnover has failed to exceed the limit of four lakh rupees and such further period as may be prescribed or until his registration certificate is duly cancelled, as the case may be, and upon expiry of such period or upon such cancellation of his certificate of registration, as the case may be his liability to pay tax on other than the tax already levied or leviable shall cease until his turnover of sales again exceeds the limit of four lakh rupees:

Provided that where the dealer becomes liable to pay tax again in the same year in which he ceased to be liable as aforesaid, then in respect of sales which take place during the period commencing on the date of cessation of liability to tax and ending on the day on which his turnover of sales first exceeds such limit, no tax shall be payable.

6. Tax payable by dealer.—Subject to the provisions of this Act and the rules made thereunder, there shall be paid by every dealer who is liable to pay tax under this Act, the tax leviable in accordance with section 4 on the turnover

in respect of the transfer of the right to use any as effected by him.

CHAPTER III REGISTRATION, RETURNS, PAYMENT OF TAX AND ACCOUNTS

7. Certificate of registration.—No dealer who has become liable to pay tax under this Act shall sell any goods unless he possesses a valid certificate of registration as provided under this Act.

(2) Every dealer required to be registered under sub-section (1) shall apply to the Commissioner for the grant of registration within such time, in such manner and in such form, as may be prescribed.

(3) If the Commissioner, after such inquiry as he deems fit, is satisfied that the application for registration is in order, he shall register the applicant and grant him a certificate of registration within such time, in such manner and form, as may be prescribed:

Provided that if the Commissioner is of the opinion that the application is not in order or the particulars furnished therein have not been given correctly, he may, for reasons to be recorded in writing, by an order passed within the prescribed period, reject the application.

(4) The Commissioner may, after considering the information furnished or otherwise called for or received under any of the provisions of this Act, amend from time to time the certificate of registration in the manner and within such time as may be prescribed.

(5) If any person upon an application made by him in this behalf has been registered as a dealer under this section, and thereafter it is found that he ought not to have been so registered under the provisions of this section, he shall be liable to pay tax on his turnover of sales made from the date on which his registration certificate took effect until it is cancelled notwithstanding that he may not be liable to pay tax under section 5.

(6) Where a registered dealer discontinues sales, or the turnover of sales of a registered dealer during any year does not exceed the limit of four lakh rupees and the dealer applies for cancellation of his registration certificate in the prescribed manner, the Commissioner shall cancel the registration certificate with effect from such date as he may fix in accordance with the rules.

(7) Where the Commissioner is satisfied that any registered dealer has discontinued sale and has failed to apply under sub-section (6) for the cancellation of his registration certificate, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date from which the registered dealer has discontinued sale:

Provided that the cancellation of certificate of registration on an application of the dealer or otherwise

shall not affect the liability of the dealer to pay tax (including any interest or penalty) due from him for any period the date of cancellation whether such tax (including interest and penalty) is assessed before or after the date of the cancellation.

(8) The provisions of section 18 of the Delhi Tax Act and the rules framed thereunder shall *mutatis mutandis* for prescribing of security or, in case may be, the additional security for registration under this Act.

8. Returns, payment of taxes and interest.—Every dealer registered under this Act and every dealer who may be required so to do by the Commissioner by notice served in the prescribed manner, shall furnish such returns of his turnover of sales by such dates and such authority and make payment of tax due and interest accrued on delayed payments in the manner and in such form as may be prescribed.

(2) Every registered dealer and every dealer required to furnish returns under sub-section (1) shall pay into Government Treasury or the Reserve Bank of India or in such other manner as may be prescribed, the full amount of tax due from him under this Act according to such returns and shall where such payment is made into a Government Treasury or the Reserve Bank of India furnish along with the returns a receipt from such Treasury or bank showing the payment of such amount.

(3) The interest, in addition to the tax due, shall be payable at two per cent per month if the dealer fails to pay the tax due or payable along with his returns under section (1) and also in case where the dealer defaults or is deemed to be in default in making the payment of tax assessed or re-assessed under this Act from the date of such default. Interest at the same rate shall also be payable for the period during which the realisation of any amount of tax remains stayed by the order of any court or authority and such order is subsequently vacated:

Provided that the Commissioner may allow payment of arrears of tax in installments as prescribed.

(4) The interest payable under this section shall be deemed to be tax due under this Act.

9. Assessment.—(1) Where all the returns due for the year have been furnished and tax due according to such returns paid within the prescribed period, the Commissioner shall make a summary assessment without requiring the presence of the dealer within a period of one year from the end of the financial year to which the returns pertain and in making such a summary assessment the Commissioner shall have the authority to make arithmetical adjustments as well as interest that might be due for belated payment of the tax.

(2) Notwithstanding anything contained in sub-section (1), whether or not a return has been furnished and the tax due according to such return paid within the period prescribed, the Commissioner, if he is not satisfied with

may be filed or considered necessary or expedient to ensure that the dealer has not understated his turnover of sales, the Commissioner may serve the dealer a notice requiring him, on a date to be specified therein to attend his office and to produce or cause to be produced there any evidence on which the dealer may rely in support of the return and to satisfy the Commissioner in regard thereto.

Provided that no notice under this sub-section shall be served on the dealer after the expiry of two years from the end of the financial year to which the returns pertain.

(3) On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering the evidence which may be produced, assess the amount of tax due from the dealer.

(4) If a dealer fails to comply with the terms of any notice issued under sub-section (2), the Commissioner may assess to the best of his judgment the amount of tax due from him.

(5) 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, has failed to get himself registered under section 10, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period in all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard, and the Commissioner may, if he is satisfied that the dealer was made without reasonable cause, direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding twice that amount.

(6) No assessment under the provision of sub-section (5) shall be made after the expiry of six years from the end of the year in respect of which or part of which the tax is assessed.

10. Reassessment.—(1) Where after a dealer has been assessed under section (9) for any year or part thereof, the Commissioner has reason to believe that the whole or any part of turnover of a dealer in respect of any period has been assessed to tax or has been under assessed or has been assessed at a lower rate than the rate at which it is assessable, the Commissioner may—

- (a) within six years from the date of final order of assessment, in a case where the dealer has concealed, omitted or failed to disclose fully the particulars of such turnover; and
- (b) within four years from the date of final order of assessment, in any other case;

Serve a notice on the dealer and after giving the dealer an opportunity of being heard and making such inquiry as he considers necessary, proceed to determine to the best of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provision of this Act shall, so far as may be, apply accordingly.

(2) No order of assessment, reassessment or recomputation shall be made under sub-section (1) after—

- (a) the expiry of six years or, as the case may be, four years from the date of final order of assessment as specified in sub-section (1); or
- (b) the expiry of one year from the date of service of notice under sub-section (1), whichever is later.

11. Accounts.—Every dealer liable to pay tax under this Act shall keep at his place of business, a true account of purchase and sales in the manner and form as may be prescribed.

CHAPTER IV

TAX DEDUCTION AT SOURCE, TAX CLEARANCE CERTIFICATE AND INFORMATION TO BE FURNISHED

12. Deduction of tax at source.—(1) Notwithstanding anything contained in any other provisions of this Act, every person, other than an individual and Hindu undivided family, responsible for making any payment for discharge of any liability for the transfer of the right to use any goods shall, at the time of credit to the account or at the time of payment of such amount in cash, or by cheque, or by adjustment or in any other manner whatsoever, whichever is earlier, deduct an amount equal to two per cent from such sums.

Provided that no deduction shall be made where the consideration for right to use goods does not exceed four lakh rupees in a year.

(2) Any tax deducted under sub-section (1) shall be paid to the account of the Government in such manner and within such time as may be prescribed.

(3) The person making the deduction of tax under sub-section (1) and paying it to the account of the Government shall issue a certificate of tax deduction to the dealer within a period of fifteen days of such deduction in such manner and in such form as may be prescribed.

(4) Any tax deducted under sub-section (1) and paid to the account of the Government shall, on production of the certificate of deduction under sub-section (3) by the transferee be deemed to be the tax paid by the dealer for the relevant period and shall be given credit in his assessment accordingly.

(5) If any person fails to make a deduction or after making a deduction fails to deposit to the account of the Government the amount so deducted, the Commissioner may, after giving to such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible or deducted under this section besides the tax deductible but not so deducted and, if deducted, not so deposited into the Government Treasury.

(6) Without prejudice to the provisions of sub-section (5), if any person fails to make deduction or after making

duction, fails to deposit the amount so deducted, shall be liable to pay simple interest at the rate of two per cent per month on the amount deductible under this section but not so deducted and, if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited.

(7) Where an amount has not been deposited after deduction, such amount together with interest and penalty shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.

13. Tax clearance certificate.—(1) Notwithstanding anything contained in any other law for the time being in force, no person where the consideration for right to use goods exceeds four lakh rupees in a year, shall enter into a transaction with any other person for transfer of right to use goods after the appointed day and if entered earlier, shall not continue such transaction and shall not make payment to the dealer in respect of transfer of right to use goods, unless the Commissioner certifies in the prescribed manner that such dealer—

- (a) has no liability to pay tax, interest, penalty or any amount due or has not defaulted in furnishing any return or returns together with the receipted challan or challans showing payment of all tax payable under this Act;
- (b) has not defaulted in making payment of tax otherwise payable by or due from him under this Act;
- (c) has made satisfactory provision of securing the payment of tax by furnishing bank guarantee in favour of the Commissioner or otherwise, as the case may be;
- (d) has made an undertaking for getting himself registered as dealer observing and complying with the provisions of this Act, if the dealer has started the business of transfer of right to use goods for the first time in Delhi.

(2) Where on application made by a dealer in the prescribed form, if the Commissioner, after making such inquiry as he deems fit and proper, is satisfied and issues a certificate in the prescribed form to the effect that such dealer is not liable to pay tax under section 3 or that he has paid tax payable by, or due from him under that section, or has undertaken to register himself and to comply with the provisions of this Act and the rule framed thereunder, a sale agreement may be entered and payment may, notwithstanding anything contained in such section (1), be made to such dealer for transfer of right to use goods referred to in section 3 on production by him of such certificate of the Commissioner.

14. Information to be furnished for transfer of right to use goods by the transferee.—Any person entering into any contract for transfer of right to use goods shall furnish, within fifteen days from the signing of the contract, such

information as may be prescribed, to the Commissioner and failure to do so shall entail a penalty not exceeding hundred rupees per day of default after affording a person a reasonable opportunity of being heard.

CHAPTER V

POWER OF ENTRY, INSPECTION, SEARCH, SEIZURE, SEALING AND ANTI-EVASION PROVISIONS

15. Power of entry, inspection, search and seizure of accounts and goods.—(1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer or any other person :—

- (a) to produce before him such books of accounts, registers or documents,
- (b) to furnish such information relating to stock of goods, or purchases, sales or deliveries of goods by the dealer, or any other information relating to his business, as may be deemed necessary, for the purposes of this Act.

(2) Where the Commissioner, upon information in his possession or otherwise, has reasonable grounds to believe that :—

- (a) any person to whom a notice under this Act was issued to produce or cause to be produced any books of accounts or other documents has omitted or failed to produce or cause to be produced such books of accounts, or documents, as required by such notice, or
- (b) any person to whom a notice as aforesaid has been or might be issued, will not, or would not, produce or cause to be produced any books of accounts or other documents which will be useful for, or relevant to, any proceedings under this Act, or
- (c) books of accounts, registers or documents of any dealer may be destroyed, or mutilated, altered, falsified or secreted or any purchases or sales by that dealer have been or may be suppressed or any goods have not been or may not be accounted for in the books of accounts, registers or other documents maintained by the dealer, with a view to evade or attempt to evade payment of tax due under this Act, the Commissioner shall have power—
 - (i) to inspect or survey the place business of the dealer or any other person or any other place where it is believed by him that business is being done or accounts are being kept by the dealer or person;
 - (ii) to inspect the goods in the possession of the dealer or in the possession of any other person on behalf of such dealer, wherever the goods are kept;

- (iii) to enter and search any building or place where he has reason to suspect that such books of accounts or other documents or goods are kept by a dealer or by any other person on behalf of such dealer;
- (iv) to break open the locks of any door of any premises or to break open any almirah, safe, box, receptacle in which any goods, accounts, registers or documents of the dealer are suspected to be kept, if access to such premises, almirah, safe, box or receptacle is denied;
- (v) seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle if the owner or the person in occupation or in charge of such office, shop, godown, box, locker, safe, almirah, or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so, or cause or attempts to cause obstruction to the Commissioner in the discharge of his duties under this section;
- (vi) to record the statement of the dealer or his Manager, agent or servant or to take extract from any record and to put identification marks on accounts, registers or documents and on any door, almirah, safe, box or receptacle.

Explanation.—There shall be a presumption in respect of goods, accounts, registers or documents, which are found at any place of business of a dealer during any inspection or search that they relate to his business unless the contrary is proved by him.

(3) The power under clauses (iii) and (iv) of sub-section (2) shall be exercised by an officer not below the rank of an Assistant Sales Tax Officer.

(4) Where any accounts, registers, or documents are produced before the Commissioner in any proceedings under this Act, the Commissioner may, for reasons to be recorded in writing, impound and retain them in his custody for a period not exceeding six months, and shall give the dealer or any other person who has produced such accounts, registers or documents a receipt of the same.

(5) Where at the time of inspection, the Commissioner has reason to suspect that the dealer is attempting to evade or avoid tax or is concealing his tax liability in any manner, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer, as may be considered necessary and shall give the dealer, or any other person from whose custody such accounts, registers or documents are seized, a receipt for the same, and may retain the same in custody for examination, enquiry, prosecution or other legal action for a period not exceeding six months.

(6) The accounts, registers or documents impounded under sub-section (4) or seized under sub-section (5) may

be retained even beyond a period of six months from the date of impounding or seizure, as the case may be, by the commissioner for such further period as may be specified from time to time.

(7) The Commissioner may seize any goods liable to tax, which are found in the possession of a dealer or in the possession of any other person on behalf of such dealer or with any transferee and which are not accounted for in his accounts, registers or documents maintained in the course of his business; and a list of goods so seized shall be prepared by the Commissioner and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.

(8) Where it is not feasible to seize the accounts, registers or documents under sub-section (5) or the goods under sub-section (7), the Commissioner may serve on the owner or the person who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the previous permission of the Commissioner.

(9) The Commissioner may, after having held such further enquiry as he may consider fit, and after having given the dealer an opportunity of being heard, impose on him, for the possession of goods not accounted for, whether seized or not under sub-section (7), by way of penalty a sum not exceeding three and a half times of the tax leviable on such goods and the commissioner may release the goods, if seized, on payment of the penalty imposed or on furnishing such security for the payment thereof as he may consider necessary.

(10) The Commissioner may require any person:—

- (a) who transports or holds in custody any goods of a dealer, to give any information in his possession in respect of such goods or to allow inspection thereof, as the case may be; and
- (b) who maintains or has in his possession any accounts, registers or documents relating to the business of a dealer, to produce such accounts, registers or documents for inspection.

(11) If any person commits default under clause (b) of sub-section (10), the commissioner may, without prejudice to any other action which may be taken against such persons under any other provision of this Act, direct, after giving an opportunity of being heard to such person that such person shall pay by way of penalty a sum not exceeding fifty thousand rupees.

(12) If the commissioner is satisfied that any person on being required by him so to do, has failed to furnish the information in respect of the goods in his custody for delivery to or on behalf of any dealer or to permit inspection thereof under clause (a) of sub-section (10), the Commissioner may, by order in writing and after giving opportunity of being heard to such persons, impose by way of penalty, a sum not exceeding three and a half times the amount of tax leviable under this Act on goods in respect of which the default was committed.

(13) If any person, who transports or holds in custody for delivery to, or on behalf of, any dealer any goods, on being required by the commissioner or under clause (n) of sub-section (10) so to do, fails to give the information likely to be in his possession in respect of such goods or fails to permit inspection thereof, as the case may be, the Commissioner may pass an order of detention or seizure of goods in his custody or possession in respect of which the default is committed.

(14) The order of detention or seizure passed under sub-section (13) shall remain in force so long as the person concerned does not furnish information required under clause (n) of sub-section (10) or make proper arrangement for inspection of the goods under the said sub-section.

(15) If any person, who transports or holds in custody for delivery to, or on behalf of, any dealer any goods, on being required by the Commissioner, under clause (a) of sub-section (10) so to do, fails to give any information likely to be in his possession in respect of such goods or fails to permit inspection thereof, as the case may be, without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, were meant for sale by him and he is a dealer liable to pay tax under this Act and the provisions of this Act shall apply accordingly.

(16) Where any premises including the office, shop, godown, box, locker, safe, almirah or other receptacle have been sealed under Sub-section (2), the Commissioner, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, may order descaling thereof on such terms and conditions including furnishing of security for such sum in such form and manners as may be prescribed.

(17) Where an order of detention or seizure of goods is made under this section and no claim is lodged by any person with respect to such goods within a period of three months from the date of such order, the Commissioner may, by order in writing, direct the auction of such goods:

Provided that if the goods, in respect of which an order of detention or seizure is made, are of a perishable nature or subject to speedy and natural decay or when the expenses of keeping them in custody are likely to exceed their value, the same may be ordered to be auctioned by the Commissioner as soon as it is practicable: after an order of detention or seizure of such goods is made and the amount so realised by the auction of goods shall be remitted in the Government Treasury immediately.

(18) Where an order imposing penalty is passed under sub-section (9) or under sub-section (12) and the person liable fails to pay the penalty within the prescribed period, the goods detained or seized may be sold by public auction and the sale proceeds deposited in Government Treasury.

(19) Auction of goods to be made under sub-section (17) or sub-section (18) shall be carried in the manner pre-

scribed for disposal of goods under sub-section (6) of section 64 of the Delhi Sales Tax Act.

(20) Any person entitled to the sale proceeds of goods auctioned under the provisions of this section on application made to the Commissioner and upon sufficient proof, be paid the sale proceeds of the goods auctioned, after deducting the expenses of the sale, other incidental charges, the amount of tax and the penalty levied under this Act.

(21) No action shall lie for damages or for any claim by any person against the Commissioner or any officer authorised in this behalf for anything done in faith in discharge of their duties under this section.

(22) Save as otherwise provided in this section every search and seizure made under this section shall, far as may be, carried on in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

16. Power to exempt. The Government shall be empowered to exempt tax on right to use any goods by notification in the official Gazette.

17. Furnishing of information by owners of cold stores, warehouses, godowns, etc. (1) Notwithstanding anything to the contrary contained in any law for the time being in force, every owner or any other person having control of a cold store, warehouse, godown or any other place, who stores goods for hire or reward shall maintain and cause to be maintained a correct and complete account indicating the full particulars of the person whose goods are stored and the quantity, value, date of receipt and delivery of such goods.

(2) Such accounts shall, on demand, be produced before the Commissioner or any officer authorized by him in this behalf who may take or cause to be taken extracts there from or require such extracts to be furnished as he may consider necessary.

(3) If any owner or any other person having control of a cold store, warehouse, godown or any other place, who stores goods for hire or reward, contravenes any of the provisions of sub-section (1) or sub-section (2) in a manner likely to lead to evasion of any tax payable under this Act, the Commissioner may, without prejudice to any other action which may be taken against such owner or the person having control of a cold store, warehouse, godown or any other such place under any other provision of this Act, direct, after giving an opportunity of being heard, that such owner or the person having control of a cold store, warehouse, godown or any other such place shall pay by way of penalty a sum not exceeding three or a half times the tax, leviable on the goods in respect of which default is committed under sub-section (1) or sub-section (2).

CHAPTER VI

OFFENCES AND PENALTIES

18. Offences. (1) Where any person-

(a) liable to be registered under this Act fails to register himself.

- (b) liable to file the return, fails to file return or pay the tax due according to such return within the time stipulated together with interest accrued thereon. If any, knowingly prepares or produces false accounts, registers or documents, or furnishes false returns in relation to his business, or makes a false disclosure or averment in any statement required to be recorded or in any declaration required to be filed under this Act or the rules framed thereunder;
- (c) intentionally avoids or evades or conceals tax or deliberately conceals his turnover or tax liability in any manner;
- (d) deliberately disregards a notice of demand or fails to pay the amount in terms of any notice of demand and a period of six months has lapsed since the receipt of the notice of demand by him;
- (e) prevents or obstructs in any manner the Commissioner or any officer authorized by him in this behalf under this Act, to enter, inspect and search the place of business or any other place where the goods or the accounts, registers and documents are believed to be kept, or prevents or obstructs the Commissioner or such officer to seize the goods or the accounts, registers and documents;
- (f) fails to make deduction of tax at source or, after deducting fails to deposit amount so deducted as required under section 12 of this Act;
- (g) enters into a transaction with any other person without obtaining from him a tax clearance certificate under section 13 of this Act;
- (h) fails to maintain accounts in the manner as required under section 11 of this Act;
- (i) aids or abets any person in the commission of any such offence as aforesaid;

He shall be punishable with simple imprisonment for term which may extend to six months or with fine which may extend to twenty thousand rupees, or with both.

Explanation. - An offence under clause (d) of this section shall be deemed to be a continuing offence till full payment is made.

(2) Where an offence under this section is committed with regard to a business, every person, who was responsible for the conduct of the business at the time when the offence was committed or who was answerable for a lapse in any manner by his action or omission, shall be liable to be proceeded against and punished under this section.

(3) Without prejudice to the provisions contained in section (2), where an offence under this section is

committed by a firm or a company and it is found that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any partner of the firm or Chairman, Managing Director or Director of the company, such partner, Chairman, Managing Director or Director shall be personally liable to be proceeded against and punished under this section.

(4) Any proceeding under this Act including the proceeding of assessment, reassessment, rectification or recovery other than the proceeding for imposition of penalty, shall be carried on without prejudice to any prosecution under this section.

(5) If a dealer fails without reasonable cause to comply with any of the provisions of this Act or the rules framed thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of penalty, not less than five thousand rupees and not exceeding fifteen per cent of the value of goods and where such contravention or failure is continuing one, to a further penalty not exceeding five hundred rupees for each day of default during the period of the continuance of the contravention or failure:

Provided that no such penalty shall be imposed without affording the dealer an opportunity of being heard.

(6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences defined in Sub-section (1) shall be cognizable and bailable.

(7) No court shall take cognizance of any offence punishable under this Act or the rules framed thereunder, except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.

19. Investigation of offences.—(1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases, any officer not below the rank of an Assistant Sales Tax Officer to investigate all or any of the offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation, exercise all powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer-in-charge of a police station for the investigation of a cognizable offence.

CHAPTER VII

CERTAIN PROVISIONS OF THE DELHI SALES TAX ACT APPLICABLE

20. Authorities under the Delhi Sales Tax Act empowered to assess, reassess, etc. tax under this Act.—Subject to the other provisions of this Act and the rules framed thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax, interest and penalty under the Delhi Sales Tax Act, shall assess, re-assess, collect and enforce payment

of tax, including any interest or penalty payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax, interest or penalty payable under the Delhi Sales Tax Act and for this purpose they may exercise all or any of the powers they have under the Delhi Sales Tax Act and the rules framed thereunder and the provisions of the Delhi Sales Tax Act and the rules framed thereunder relating to returns, assessment, notice, rectification, collection, registration, liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, special mode of recovery of tax, appeals, revision, references, refunds, fines, penalties, charging of payment of interest, and the treatment of documents furnished by a dealer as confidential, reassessment of escaped turnover of sales, recovery of tax, maintenance of accounts, inspection, search and seizure, liability in representative character, references of cases to the High Court of Delhi, compounding of offenses and other miscellaneous matter shall *mutatis mutandis* apply accordingly.

Explanation.—All the provisions of the Delhi Sales Tax Act regarding proceedings under the said Act, in so far as the same are not inconsistent with the provisions of this Act shall apply *mutatis mutandis* to the proceedings under this Act.

CHAPTER VIII

MISCELLANEOUS AND RULES

21. Officers and servants appointed under this Act to be public servants.—All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

22. Bar of suits in Civil courts.—No suit shall be brought in any civil court to set aside or modify any assessment made or any order passed under this Act or the rules framed thereunder and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act or the rules framed thereunder.

23. Delegation of Commissioner's power.—Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers, functions and duties under this Act except that under Sub-section (7) of section 18 to any officer not below the rank of an Assistant Sales Tax Officer.

24. Power to make rules.—(1) The Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Provided that if the Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with previous publication of any rules to be made under this section.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) procedure for registration of dealers;
- (c) compelling the submission of returns, production of documents, enforcing the attendance of persons and examining them on oath;
- (d) generally, regulating the procedure to be followed, and the forms to be adopted in proceedings under this Act;
- (e) any other matter including levy of fees which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to the purposes of this Act.

(3) In making any rules, the Government may provide that for a breach thereof, the Commissioner may, in prescribed manner, impose a penalty not exceeding five thousand rupees, and when the breach is continuing, a penalty not exceeding five hundred rupees may be imposed for every day of default during the continuance of such breach.

(4) Every rule made under this Act shall be laid before the Legislative Assembly of Delhi as soon as may be after it is made, before the Legislative Assembly of Delhi while it is in session for a total period of thirty days which may be comprised in one session, two or more successive sessions, and if, before the expiry of the session immediately following the session or sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule or the rule shall thereupon have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

25. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly of Delhi.

R. K. PARBHAKAR, Dy.