

**CHAPTER - III**  
**THE INCIDENCE AND LEVY OF TAX**

7. **Incidence of tax:** (1) Subject to other provisions of this Act, every dealer who has been liable immediately before the appointed day to pay tax under the Assam General Sales Tax Act, 1993, shall, with effect from the appointed day for the purpose of this section, be liable to pay tax in accordance with the provisions of this Act. (Assam Act XII of 1993)
- (2) Subject to other provisions of this Act, every dealer to whom sub-section (1) does not apply, and whose turnover of sales or purchases calculated from the commencement of any year after the appointed day first exceeds the taxable quantum within such year, shall, with effect from the date immediately following the day on which his turnover exceeds the taxable quantum, be liable to pay tax in accordance with the provisions of this Act.
- (3) A dealer registered under the Central Sales Tax Act, 1956, who is not liable to pay tax under sub-section (1) or subsection (2), shall nevertheless be liable to pay tax on his sale, made inside the State, of any goods in respect of which he has furnished a declaration under sub-section (4) of section 8 of the said Act, or on the sale of any goods in the manufacture of which such goods have been used and every such dealer who is liable to pay tax shall be deemed to be a registered dealer. (Central Act 74 of 1956)
- (4) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three years during which his gross turnover has failed to exceed the taxable quantum and on the expiry of this period his liability to pay tax under this Act shall cease.
- (5) Every dealer who has ceased to be liable to pay tax under sub-section (4) shall be again liable to pay tax with effect from the first day of April of the year during which his gross turnover again exceeds the taxable quantum.
- (6) For the purposes of this Act, "taxable quantum" means in relation to any dealer who,-
- (a) is an importer or a casual dealer or a contractor or a lessor or a non-resident dealer or an agent of non-resident dealer or is liable to pay tax at the point of purchase or has more than one place of business in the State- NIL;
- Amendment:** The words "or a manufacturer" has been omitted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.
- (b) is engaged in any business other than those specified in clause (a) Rs 2,00,000/-.  
Provided the Government may, by notification in the Official Gazette, vary the limit of the taxable quantum, from time to time.
- (7) For the purpose of calculating gross turnover to determine the liability to pay tax under this Act,-
- (a) except as otherwise expressly provided, the turnover of all the sales or the purchases, as the case may be, effected by a dealer shall be taken into account whether such sales or purchases are taxable under this Act or not, and

- (b) he turnover shall include all sales or purchases made by a dealer on his own account and also on behalf of principals whether disclosed or not.
- (8) Where, by any order passed under this Act, it is found that any person registered as a dealer ought not to have been so registered, then, notwithstanding anything contained in this Act, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, as if he were a dealer.

**8. Certain sales and purchase not liable to tax :** (1) Nothing 1 contained in this Act or the rules made thereunder shall be deemed to impose, or authorise the imposition of a tax on any sale or purchase of any goods when such sale or purchase takes place,-

- (a) in the course of inter-state trade or commerce or
- (b) outside the State, or
- (c) in the course of import of the goods into or export of the goods out of the territory of India.

*Explanation.-* For the purpose of this Act, for determining whether or not a particular sale or purchase takes place in the manner indicated in clause (a), clause (b) and clause (c) the provisions of section 3, 4 and 5 of the Central Sales Tax Act. 1956 respectively, shall apply. **(Central Act 74 of 1956)**

**9. Exemptions and zero rating :** (1) The sale of goods listed in the First Schedule shall be exempt from tax subject to conditions and exceptions, if any, set out therein.

- (2) The sales of goods in the course of export out of the territory of India failing within the scope of Section 5 of the Central Sales Tax Act. 1956 shall be zero-rated.
- (3) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to a unit located in a Special Economic Zone (SEZ) shall be zero-rated.
- (4) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to an Export Oriented Unit (EOU) shall be zero-rated.
- (5) Any sale of goods made by a unit located in a Special Economic Zone (SEZ) or an Export Oriented Unit (EOU) to another unit located in another Special Economic Zone (SEZ) or to another export oriented unit, shall be exempt from payment of tax.

*Explanation.-* For the purpose of sub-section (3), sub-section (4) and sub-section (5), the expressions "Domestic Tariff Area", "Special Economic Zone" and "Export Oriented Unit" shall have the meanings as assigned to them under the Central Excise Act, 1,944. (Central Act. 1 of 1944)

**10. Levy of tax on sales:** (1) Every dealer, who is liable to pay tax for any year under section 7, shall pay output tax on his taxable turnover for such year-

- (a) In respect of goods specified in the Second, Third and Fifth Schedule, at every point of sale of such goods within the State, all the rate or rates specified therein and.
- (b) in respect of goods specified in the Fourth Schedule, at the first point of sale of such goods within the State, at the rate or rates specified therein:

*Explanation1-* When an Oil Company, as may be specified in the rules, sells any petroleum product other than Crude oil mentioned in the Fourth Schedule to another oil company for the purpose for re-sale by the latter, such inter-se sale between the Oil Companies shall not be

deemed to be the first point of sale in the State but the sale by the purchasing oil company to another person not being an oil company, shall be deemed to be the first point of sale in the State for the purpose of levy of tax under this clause which shall be subject to such conditions as may be prescribed. The purchasing oil company shall pay tax on the sale of such goods under this Act or under the Central Sales Tax Act, 1956 as the case may be. (Central Act 74 of 1956) If, in any case, after purchase of such goods for resale within the State, the Purchasing Oil Company dispatches any portion of the goods to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, then notwithstanding anything contained in this Act, for that portion of the goods, the Purchasing Oil Company shall be deemed to be the last purchaser within the State and it shall be liable to pay tax on such portion of goods at the rate of four paise in the rupee on the gross turnover of purchases of such goods. The Government may, by notification in the Official Gazette, vary the above rate of tax, from time to time.

*Explanation 2 (i)* - In case of potable liquor mentioned in the Fourth Schedule, except country spirit, the licensee of the bonded warehouse who sells these items to a wholesale licence holder or to a retailer holding 'on' or 'off' licence, shall be deemed to be the first point seller, irrespective of whether he imports such items from outside the State or he purchases such items from a manufacturer or a bottling unit or another bonded warehouse within the State. The retail license holder while depositing the excise duty shall also deposit the tax payable under this Act into the Government Account in the prescribed manner by a separate challan and hand over one copy of the challan to the bonded warehouse;

**Amendment:** In section 10, in sub-section (1), in clause (b), In Explanation 2(i), the portion *“and he shall be liable to pay tax on the sale price of such items, as defined in clause (44) of section 2 including excise duty, countervailing duty, import fee, transport fee and any other duty or fee, by whatever name called, payable thereon, irrespective of whether such duty is payable by the licensee of the bonded warehouse or the wholesale license holder or the retail sale license holder.”* has been omitted by Assam Act No. XLVII of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/Pt/66Dtd. 23<sup>rd</sup> December, 2005.

- (ii) in case of country spirit mentioned in the Fourth Schedule, the Officer-in-charge of the country spirit warehouse who sells or supplies such items to a licensed retail vendor shall be deemed to be the first point seller who shall be liable to pay tax on the sale price of the item as defined in clause (44) of section 2 including excise duty, vend fee, bottling charges and any other duty or fee, by whatever name called, payable thereon. The retail vendor while depositing the cost price and excise duty shall also deposit the tax payable under this Act into the Government Account in the prescribed manner by a separate challan and handover one copy of the challan to the Officer-in-charge of such warehouse."

*Explanation 3-* A tax on sale of goods specified in the Fourth Schedule, shall be levied and collected on the Maximum Retail Price in respect of such goods for which the Maximum Retail Price has been made as the base of levy against such goods in the said Schedule. For this purpose, where the "Maximum Retail Price" printed on the package of such goods is "inclusive of all taxes", then the base of levy

of tax shall be such "Maximum Retail Price" as reduced by the tax element included therein which shall be calculated by applying tax fraction."

(1A) Notwithstanding anything contained in this Act, the retail 'on' license holder for potable liquor mentioned in the Fourth Schedule, except country spirit, shall pay output tax on sale made by him at the applicable rate specified therein and he shall be eligible for set-off of the amount of tax paid by him at the time of purchase of such potable liquor from bonded warehouse.

*Amendment : The new sub-section 1A has been inserted vide Notification No. LGL.6/2003/Pt./150 Dtd. 12<sup>th</sup> February, 2009 published in the Assam Gazette Extraordinary No. 52 Dtd. 12<sup>th</sup> February, 2009.*

(2) Notwithstanding anything contained in this section, where goods packed in any container or packing materials are sold, the containers or materials in which the goods are so packed shall be deemed to have been sold along with the goods and the tax shall be leviable on such sale of the container and packing materials at the rate of tax, if any, as applicable to the sales of the goods themselves;

Provided that where the goods contained in container or packed in packing materials are tax free, the sale of such container or packing materials shall also be exempt from tax.

(3) (i) Notwithstanding anything contained in this Act, a tax shall be payable at the rate of one paise in the rupee in respect of all teas sold in auction at Guwahati Tea Auction Centre or any other such Tea Auction Centre constituted by the Government and also in respect of all teas sold through a broker by private arrangement if such teas were lying in the warehouses recognised by such Tea Auction Centre and was for sale through auction :

Provided that no tax shall be payable in respect of sale of orthodox tea sold through auction or by private treaty sales as above:

Provided further that the Government may, by notification in the Official Gazette, vary such rate of tax, from time to time.

(ii) The tax under this sub-section shall be payable by the broker through whom the tea is sold in auction as if such broker were the dealer within

the meaning of this Act in respect of the tea so sold and the provisions of this Act applicable to a dealer shall, so far as may be, apply accordingly.

(iii) A dealer, who purchases tea through such tea auction centre and then sells such tea inside the State, shall be deemed to be the first point seller and he shall be entitled to get set off of the amount of tax paid on purchase, from the amount of tax payable by him on sale under this Act.

**Amendment:** In section 10, in sub-section (3) in clause (iii) the words "shall be deemed to be the first point seller and he" has been inserted after the words and punctuation mark "inside the State" by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

*Explanation I - "Auction" means auction held under the auspices of the committee constituted by the Government by means of notification and re-*

constituted from time to time.

*Explanation 2-* "Broker" means a Broker, registered or recognized by the Guwahati Tea Auction Committee or any other such Tea Auction Committee constituted by the Government and registered under this Act.

*Explanation 3.-* For the removal of any doubt, it is clarified that the dealer purchasing tea from such broker shall be entitled to claim input tax credit in accordance with the provisions of this Act, for the tax so paid to the broker."

**11. Taxable Turnover :** For the purpose of this Act, "taxable turnover" in relation to a dealer liable to pay tax on sale of goods means that part of the dealer's gross turnover during the prescribed period which remains after deducting therefrom.-

- (a) the turnover of sales of goods specified to be exempt from tax in the First Schedule;
- (b) the turnover of sales of goods which are shown to the satisfaction of the Prescribed Authority to have taken place.-
  - (i) in the course of inter-state trade or commerce; or
  - (ii) outside the State; or
  - (iii) in the course of import of goods into or export of the goods out of the territory of India.

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

- (c) the charges towards labour, services and other like charges, subject to such conditions as may be prescribed, in case of turnover of sales in relation to works contract, in addition to the deductions available under clause (b):

Provided that where the contractor does not maintain proper accounts or the amount actually incurred towards charges for labour and other services and profit relating to supply of labour and services are not ascertainable from the accounts maintained by him, the amount of such charges for labour and services and such profit may, for the purposes of deductions, be determined on the basis of such percentage of the value of the works contract as specified in the Sixth Schedule.

- (d) the turnover of such other or such other amount, as may be prescribed.

**12. Levy of tax on purchases:** Every dealer who in the course of his business purchases any taxable goods from any person, in the circumstances in which no tax under section 10 is leviable on the sale price of such goods, shall be liable to pay tax on the gross turnover of purchase of such goods, if after such purchase, the goods are,-

- (i) used or disposed of in any manner other than by way of sale in the State, or
- (ii) consumed or used in the manufacture of tax free goods specified in the First Schedule, or
- (iii) consumed or used in the manufacture of taxable goods, and such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-state trade and commerce or export out of the territory of India, or
- (iv) despatched to a place outside the State other than as a result of sale in the course of inter-state trade or commerce or export out of the territory of India.

and such tax shall be levied at the same rate at which tax under section 10 would have been levied on the sale of such goods within the state on the date of such purchase.

- 13. Adjustments in output tax :** (1) Adjustments as provided under this section shall be made where, in relation to a sale of taxable goods by any registered dealer,-
- (a) the sale has been cancelled; or
  - (b) the nature of that sale has been fundamentally varied or altered, resulting in a change in the rate of tax applicable to that sale; or
  - (c) the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
  - (d) the goods or part of the goods sold have been returned to the seller within six months from the date of sale, and as a result of the occurrence of any one or more of the above-mentioned events, if-
    - (i) the amount of tax shown as charged in the tax invoice issued by a seller in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale; or
    - (ii) the amount of output tax as accounted for and disclosed in the return filed by the dealer in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale.
- (2) Where a seller has accounted for either in the tax invoice or in the return an incorrect amount of output tax as contemplated in sub-section (1). such seller shall make an adjustment in calculating the tax payable by him in the return for the tax period during which it has become apparent that the output tax is incorrect. Such adjustment shall be made in the following manner, namely;-
- (a) if the output tax properly chargeable in relation to that sale exceeds the output tax actually accounted for by the seller, the amount of that excess shall be deemed to be tax charged by such seller in relation to a taxable sale attributable to the tax period in which the event referred to in sub-section (1) occurred, and shall not be attributable to any prior tax period; or
  - (b) if the output tax actually accounted for exceeds the output tax properly chargeable in relation to that sale, such seller shall reduce the amount of output tax, attributable to the tax period in which the event referred to in sub-section (1) occurred, in terms of section 10 by that excess amount of tax:
- Provided that the said deduction shall not be made where the excess tax has been borne by a purchaser of goods, and unless the amount of the excess tax has been repaid by the seller to the purchaser, whether in cash or by way of a credit against any amount owing to the seller by the purchaser.
- 14. Input tax Credit:** (1) Subject to the other provisions of this section, any registered dealer who makes purchases from another registered dealer of taxable goods other than the goods specified in the Fourth Schedule within the State, shall be eligible for input tax credit.
- (2) The dealer availing of the input tax credit shall maintain the register and the books of accounts in the manner as may be prescribed.
  - (3) The input tax credit shall be allowed to the extent of the amount of tax paid by the purchasing dealer on his purchase of taxable goods other than the goods specified in the Fourth Schedule, made in the State, from a registered dealer holding a valid certificate of registration, which are intended for the purpose of.-
    - (a) sale or re-sale by him in the State; or
    - (b) sale in the course of inter-state trade or commerce; or

- (c) sale in the course of export out of the territory of India, or
- (d) use as raw material or as capital goods in the manufacture and processing of taxable goods other than the goods specified in the Fourth Schedule, intended for sale of the nature referred to in clauses (a), (b) and (c); or
- (e) use as containers or materials for packing of taxable goods other than the goods specified in the Fourth Schedule, intended for sale of the nature referred to in clauses (a), (b) and (c);

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

- (4) The input tax credit shall not be claimed by the dealer until the tax period in which he receives from a registered dealer from whom he has purchased the goods, a tax invoice in the prescribed form (in original) evidencing the amount of input tax, expires;

Provided that for good and sufficient reasons to be recorded in writing and in the prescribed manner the Commissioner may allow such credit subject to such conditions and restrictions as may be specified.

- (5) Input tax credit on capital goods as admissible under this section shall commence from the date of commencement of commercial production and shall be adjusted against tax payable on output over a period of three years in thirty six equal installments.

**Amendment:** In section 14, in sub-section (5) the word “in thirty six equal installments” has been inserted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

Provided that in case of closure of business before the period specified above, no further input tax credit shall be allowed and input tax credit carried forward, if any, shall be forfeited.

**Amendment:** In section 14, in sub-section (5) the second proviso has been omitted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

- (6) No input tax credit shall be claimed by a registered dealer or shall be allowed to him for.-
  - (a) tax paid on the purchases of goods used in the exploration, extraction manufacture, processing or packing of goods specified in the First and the Fourth Schedule :  
Provided that an Oil Refinery shall not be eligible for input tax credit on the purchase of any goods including crude oil used in the refining, manufacturing, processing or packing of any petroleum products specified in the Fourth Schedule or in any other Schedule."
  - (b) Purchases made in the course of interstate trade and commerce or in the course of import from outside the country or from outside the State in respect of tax paid in the other country or other state;
  - (c) purchases of goods made in the State from an unregistered dealer or from a dealer provisionally registered or from a dealer whose certificate of registration has been suspended or from a registered

dealer who has given an option to pay lump sum amount in lieu of tax by way of composition or for purchases of goods made in the State by a dealer opting for such lump sum tax;

- (d) purchases of goods used as free samples or gift, or for personal consumption, and if a dealer has already taken any input tax credit against purchases of such goods there shall be a reverse tax credit at the end of the month in which such goods are used as such;
- (e) goods purchased for the use specified under sub-section (3) but not sold because of any theft, loss or destruction or any reason including natural calamity and if a dealer has already taken any input tax credit against purchases of such goods there shall be a reverse tax credit at the end of the month in which such goods are stolen, lost or destroyed.
- (f) purchases of capital goods specified in the Seventh Schedule.
- (g) stock of goods remaining unsold at the time of closure of business and if a dealer has already taken any input tax credit against purchases of such stock of goods, there shall be a reverse tax credit on the date of stoppage or closure of such business;
- (h) tax paid on purchases of goods dispatched to a place outside the State not as a direct result of sale in the course of inter-state trade.

Provided that the input tax, credit may be allowed for the tax paid in excess of the amount of tax that would have been livable had the goods been sold in the course of inter-state trade or commerce to a registered dealer;

- (i) tax paid on purchases of goods used as raw material for manufacture of goods dispatched outside the State otherwise than by way of sale;

Provided that the input tax credit shall be allowed for the tax paid on the raw materials in excess of the tax that would have been livable had such raw materials been sold in the course of inter-state trade commerce to a registered dealer.

- (j) tax paid on purchases of goods specified in the Fourth Schedule.
- (k) purchases of goods which are used as fuel in generation of energy;
- (l) purchases where-
  - (i) tax invoice is not available with the dealer; or
  - (ii) there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased; or
  - (iii) the original invoice does not contain the details of tax charged separately by the selling dealer from whom the purchasing dealer has purchased the goods;
- (m) automobiles of any type including commercial vehicles, two and three wheelers, and spare parts for repair and maintenance thereof, unless, the dealer is in the business of dealing in such automobiles or spare parts;
- (n) food, beverages and tobacco products, unless the dealer is in the business of providing food, beverages and tobacco products;
- (o) air-conditioning units unless the dealer is in the business of dealing in such units;
- (p) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees including any residential accommodation; and



- (q) purchases of goods, if the tax payable to the Government by the purchaser himself in respect of purchase of such goods has not been paid.
- (7) The Government may, by notification in the Official Gazette, specify any goods in respect of which input tax credit shall not be allowed in part or in full or specify the class of dealers who shall not be entitled to input tax credit in part or in full.
- (8) If the goods purchased were intended for the purposes specified under sub-section (3) and are subsequently used fully or partly for purposes other than those specified under the said sub-section or are used fully or partly in the circumstances described in sub-section (6), the input tax credit, if availed of, shall be reduced on account of such use, from the tax credit being claimed for the tax period during which such use has taken place; and such reduction shall be done in the manner as may be prescribed.
- (9) Without prejudice to the generality of the provisions of subsection (8), input tax credit already availed of shall stand reversed in the following circumstances,-
- (a) if the dealer discontinues his business and he holds the stock to taxable goods at the time of such discontinuance; or
  - (b) if the registration certificate granted to a dealer is cancelled and at the time of such cancellation, he holds the stock of taxable goods, or
  - (c) if the purchased goods or the goods manufactured out of the goods purchased or the packing materials are stolen or destroyed or lost or disposed of or dispossessed of otherwise than in the course of business; or
  - (d) where excess input tax credit has been claimed, or
  - (e) if the purchased goods are returned to the selling dealer, or
  - (f) if the goods purchased inside the State are dispatched to a place outside the State not as a direct result of sale in the course of inter-state trade, but it shall be subject to the provisions of clause (h) of sub-section (6); or
  - (g) if the credit note has been received from the selling dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act .

**Amendment:** In section 14, in sub-section (9), in clause (g) the last paragraph has been omitted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

- (10) Where any purchaser, being a registered dealer, has been issued with a credit note or debit note or if he returns or rejects goods purchased, as a consequence of which the input tax credit availed of by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such shortfall or excess by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to such conditions as may be prescribed.
- (11) A registered dealer may avail of the amount of net tax credit, which shall be determined in the following manner, namely,-  
Net Tax Credit = A + B - C Where-  
"A" represents the amount of input tax credit the dealer is entitled to,  
"B" represents outstanding credit brought forward from the previous tax period, and

"C" represents reverse input tax credit as determined under sub-section (8) or sub-section (9).

- (12) The methods that are used by a registered dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied in the course of making taxable sales shall be fair and reasonable;

Provided that the Commissioner may, after giving the dealer a reasonable opportunity of being heard and for the reasons to be recorded in writing, reject the method adopted by the dealer and calculate the amount of tax credit.

- (13) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention of defrauding the Government of its revenue or with the intention that the Government may be defrauded of its revenue, the Commissioner may, after making such inquiry as he thinks fit and after giving the dealer a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealers issuing or accepting such tax invoice, retail invoice, bill or cash memorandum either prospectively or retrospectively from such date as the Commissioner may, having regard to the circumstances of the case, fix.

- 15. Input tax credit exceeding tax liability :** (1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under this Act for a period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act.

- (2) The excess input tax credit after adjustment under sub-section (1) may be carried over as an input tax credit to the subsequent period or periods :

"Provided that if a registered dealer has an excess tax credit for twenty four consecutive months, he shall make an application for refund of such unadjusted input tax credit and the Prescribed Authority shall ordinarily refund him the excess credit within three months of the receipt of the application."

- (3) In case where input tax credit is carried forward, a quarterly credit statement may be forwarded to the dealer concerned and the claims be reconciled accordingly.

- 16. Tax payable :** (1) The net tax payable by a registered dealer for a tax period shall be the difference between the output tax plus purchase tax, if any, and the input tax, which can be determined by the following formula :

Net tax payable = (O+P)-I

where 'O' denotes the output tax payable for any tax period as determined under section 10, 'P' denotes the purchase tax paid by a registered dealer for any tax period as determined under section 12 and 'I' denotes the input tax paid or payable for the said tax period as determined under section 14.

- (2) The net tax payable by a dealer liable to pay tax, but not registered under this Act, for a tax period, shall be equal to the output tax payable for the said tax period as determined under section 10.

- (3) If the amount calculated under sub-section (1) is a negative quantum,-

(a) the same shall be adjusted at the option of the dealer against the tax liability, if any, of the dealer under the Central Sales Tax Act, 1956 for the said tax period and only the remaining amount of the Central Sales Tax shall be payable; or (Central Act 74 of 1956)

(b) any amount of credit remaining after such adjustment shall be carried forward to the next tax period.

- 17. Powers of Government to amend Schedules:** The Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose any entry or part of entries or the rate or rates or the point or points of levy or otherwise amend or modify any Schedule, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

Provided that the Government shall not vary the rate of tax so as to enhance it, in any case, exceeding forty paise in a rupee.

- 18. Time and place of sale of goods :** (1) Notwithstanding anything contained in the Sale of Goods Act, 1930, for the purpose of this Act, the time of sale of goods shall be deemed to be the earliest of the following, (Central Act 3 of 1930)
- (a) issue of the tax Invoice,
  - (b) receipt of payment, in full or in part;
  - (c) transfer of title or possession of the goods or incorporation of the goods in the course of execution of any work contract.
- (2) For the purpose of the clause (43) of section 2, a sale of purchase shall be deemed to have taken place in the state-
- (a) in case falling under sub-clause (ii) of the said clause, if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of the works contract, notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State;
  - (b) in a case falling under sub-clause (iv) of the said clause, if the contract for the lease has been executed inside the State; or
  - (c) in any other case, if the goods are within the State,-
    - (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
    - (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior to or subsequent to such appropriation.
- 19. Burden of proof :** In respect of any sale or purchase effected by a dealer the burden of proving that he is not liable to pay tax under section 10 or section 12 or that he is eligible to input tax credit under section 14 shall be on him.
- 20. Composition of tax liability :** (1) (a) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions, if any, as it may specify therein, permit any retail dealer, whose gross turnover calculated from the commencement of any year first exceeds within such year the taxable quantum but does not exceed such amount as may be specified by the Government in such a notification, to pay at his option, in lieu of the amount of tax payable under the provisions of this Act, an amount by way of composition calculated at the rate as may be fixed by the Government in the said notification but not exceeding five per centum of such gross turnover.

Explanation: For the purpose of this sub-section, the expression “retail dealer” shall mean any dealer who purchases goods inside the State and re-sells such goods exclusively within the State to a person, who purchases the goods for his own use and not for resale.

(b) If on the basis of evidences reasonable grounds exist to believe that the dealer who was not eligible to pay tax at a rate fixed under this sub-section, the Prescribed Authority may, impose a penalty equivalent to three times of the amount of tax arrived at after applying the rate notified under this sub-section to the gross turnover of the dealer computed on the basis of evidence available in this regard:

Provided that no order under this sub-section shall pass without giving the dealer a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions, if any, as may be specified therein, permit any dealer liable to pay tax on sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, to pay, at his option, in lieu of the amount of tax payable by him under this Act, an amount by way of composition at the rate specified in the said notification but not exceeding five percentum of the total contract value of the works contract.

(3) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions as may be specified therein, permit any class of dealers, to pay in lieu of the tax payable under this Act, for any period, an amount, linked with the production capacity or the extent of business, or calculated at a fixed rate of gross receipt of business or some such other thing, to be determined by the Government by way of composition and to be paid at such intervals and in such manner, as may be prescribed, and the Government for the purpose of this Act may, in respect of such class of dealers, prescribe a simplified system of maintenance of accounts and filing of returns which shall remain in force during the period of such composition.

(4) A dealer in whose case composition under this section is in force, shall not,-

(i) be entitled to any claim of input tax credit in respect of purchase of any goods by him in the State and

(ii) omitted

**Amendment:** In section 20, in sub-section(4), in clause (i) after the punctuation mark “;”, the word “and” has been inserted and Clause (ii) has been omitted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

(iii) issue tax invoice to any dealer who has purchased the goods from him.

(5) The option so exercised under this section shall be final for that year and shall continue for subsequent years until the dealer becomes ineligible, or withdraws his option in writing.