

THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

2: Definitions:

In this Act, unless the context otherwise requires-

(1) "**Assessee**" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him;

(2) "**Assessing Authority**" means any person appointed by the State Government or the Commissioner to perform all or any of the functions of assessing authority under this Act;

(3) "**Assessment Year**" means a period of 12 months ending on March 31;

(4) "**Appellate Authority**" means the authority to whom an appeal lies under section 51;

(5) "**Appellate Tribunal**" means the Appellate Tribunal constituted under section 54 of this Act;

(6) "**Bussiness**" includes:

(a) any trade, commerce or manufacture; or

(b) any adventure or concern in the nature of trade, commerce or manufacture; or

(c) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or

(d) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; or

(e)the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period); and

(f)Any transaction of buying, selling or supplying plant, machinery, raw materials, processing material, packing material, empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern or works contract or lease but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods;

(7) "**Casual Dealer**" means a person who whether as principal, agent or in any other capacity, undertakes occasional transactions involving buying, selling, supplying or distributing goods or conducting any exhibition-cum-sale in the State of Uttarakhand, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, for a period not exceeding 60 days at a time or such other period as may be prescribed;

(8) "**Capital Goods**" means plant, machinery and equipments (including pollution control equipments, quality control equipments or laboratory equipments) used in the manufacturing or processing of taxable goods excluding Special Category Goods specified in Schedule III of this Act, and

also excluding such goods when used in civil structures as may be prescribed;

(9) "**Commissioner**" means the Commissioner of Commercial Tax appointed by the State Government and includes an Additional Commissioner and a Joint Commissioner of Commercial Tax appointed by the Government;

(substituted vide notification no. 1314/XXXVI(4)/2008 Dated 31st March, 2008)

"**Commissioner**" means the Commissioner of Commercial Tax appointed by the State Government and includes an Additional Commissioner, Additional Commissioner Grade-1, Additional Commissioner Grade-2, a Joint Commissioner and a Deputy Commissioner of Commercial Tax appointed by the Government;

(10) "**Date of commencement**" means the date on which this Act comes into force.

(11) "**Dealer**" means any person who, for the purposes of or in connection with or incidental to or in the course of his business, carries on in Uttarakhand the business of buying, selling, supplying or distributing goods with a motive of profit or not directly or indirectly, regularly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration, and includes:-

- (a) a department of the Central Government or any State Government or a local authority by name of any Panchayat, Municipality, Development Authority, Cantonment Board or any autonomous or statutory body;

- (b) an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State Governments or of a local authority;
- (c) a commission agent, factor, broker, arhti, del credere agent, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, whether disclosed or not;
- (d) any person who acts within the State as an agent of a non-resident dealer i.e. as an agent on behalf of a dealer residing out side the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer, as
 - (i) a mercantile agent as defined in the Sale of Goods Act, 1930, or
 - (ii) an agent for handling of goods or documents of title relating to goods, or
 - (iii) an agent for the collection or the payment of the sale price of goods or a guarantor for such collection or such payment.
- (e) an individual, a firm or a company or other body corporate, club, Hindu undivided family or any other system of joint family, association of persons, trust, and cooperative society or any other society, whether such society is incorporated or un-incorporated, and which carries on such business including buying goods for and selling to its members for a price, fee or subscription, whether in the course of business or not;

- (f) a non-resident dealer whether an individual, or a firm or a company or association or other body of persons, whether incorporated or not, the principal office or head quarter whereof is out side the State, whether or not having branch or office in the State, in respect of purchases or sales , supplies or distribution of goods in the State of Uttarakhand directly or through his agent or through such branch or office;
- (g)an auctioneer, who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
- (h) a casual dealer;
- (i) a person who supplies by way of or as a part of any service or any other manner whatsoever, goods, being foods or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash or deferred payment or other valuable consideration;
- (j)any person who, for the purposes of or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale;
- (k)a person engaged in the business of transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(l) any person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract;

(m) Any person who carries on the business of transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(n) any person engaged in business of delivery of goods on hire purchase or any other system of payment by instalment;

Provided that a person who sells agricultural or horticultural produce grown by him or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods, be treated as a dealer;

(12) "**Declared Goods**" means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter- state trade or commerce;

(13) "**Document**" means title deeds, writing or inscription and includes electronic data, computer programmes, computer tapes, computer discs computer floppies and the like that furnishes evidence;

(14) "**Goods**" means every kind or class of movable property (other than newspaper, actionable claims, stocks, shares and securities and postal stationery sold by the Postal Department) and includes-

(a) livestock, growing crops, grass, trees and things attached to or fastened to any thing permanently attached to the earth which under the contract of sale are agreed to be severed;

(b) all materials, commodities and articles (whether as goods or in some other form) involved in the execution of works contract including those used in the fitting out, improvement or repair of any movable or immovable property, or involved in lease or hire purchase;

(15) "**Government**" means the Government of the State of Uttarakhand;

(16) "Importer" in relation to any goods means the dealer who makes the first sale of such goods after their import into the State;

(17) "**Input Tax**" in relation to any registered dealer means a tax paid or payable under this Act by the dealer to another registered dealer on the purchase of any taxable goods other than Special Category Goods in the course of business for re-sale or for use in manufacturing or processing of such taxable goods for sale or for use as containers or packing materials for packing of such manufactured goods.

(18) "**Lease**" means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalment;

(19) "**Lessee**" means any person to whom the right to use any goods for any purpose is transferred under a lease;

(20) "**Lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease;

(21) "**Manufacture**" means any activity that brings out a change in an article or results in transformation into a new and different article so understood in commercial parlance, and would include producing, making, mining, collecting, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, but would not include any such process or mode of manufacture as may be prescribed;

(22) "**Manufacturer**" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes a dealer who makes purchases from any other dealer not liable to tax on the sales under the Act other than sales exempted under section 4;

(23) "**Non-resident Dealer**" means a dealer who carries on business in Uttarakhand, but who has no fixed place of business or residence in Uttarakhand;

(24) "**Official Gazette**" means the Gazette of Government of Uttarakhand;

(25) "**Officer-in-charge of a check post or barrier**" includes an officer not below the rank of Commercial Tax Officer, posted at such check post or barrier;

(substituted vide notification no. 1314/XXXVI(4)/2008 Dated 31st March, 2008)

"Officer-in-charge of a check post or barrier" includes an officer not below the rank of Commercial Tax Officer, Grade-2 posted at such check post or barrier;

(26) **"Out put Tax"** in relation to any registered dealer means the tax charged or chargeable under this Act in respect of any sale or supply of taxable goods made by the dealer in the course of business and includes tax paid by a Commission Agent in respect of sale of taxable goods made on behalf of such dealer;

(27) **" Person"** includes:-

- (a) an individual;
- (b) a Joint Hindu Family;
- (c) a company or a corporation *or a financial institution or a bank;*

(Added vide notification no. 1314/XXXVI(4)/2008 Dated 31st March, 2008)

- (d) a firm;
- (e) an association of persons or a body of individuals, whether incorporated
or not;
- (f) the Central Government or the Government of Uttarakhand or the Government of any other State or Union Territory in India;
- (g) a local authority, a club, a society or trust;

(28) **"Place of Business "** means any place where a dealer carries on business and includes-

- (a) any shop, ware-house, godown or other place where a dealer stores his goods;
- (b) any place where a dealer produces or manufactures goods;
- (c) any place where a dealer keeps his books of accounts;
- (d) any place where a dealer executes the works contract or where the right to use goods is exercised;
- (e) in any case where a dealer carries on business through an agent (by what ever name called), the place of business of such agent;
- (f) any place where a dealer or a person books or delivers goods and any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting goods.

(29) "**Prescribed**" means prescribed under this Act or under the rules made or notifications issued under this Act;

(30) "**Purchase**" with all its grammatical variation and cognate expressions shall be construed from the word "Sale";

(31) "**Purchase Price**" means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed by the seller as cash discount according to trade practice and shall include any sum charged for any thing done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of freight or delivery, or the cost of installation when such cost is separately charged;

(32) "**Recipient**" means a person receiving goods, as defined for the purpose of this Act;

(33) "**Registered Dealer**" means dealer registered under this Act, and includes a dealer who has obtained registration voluntarily;

(34) "**Repealed Act** " means the Uttarakhand (the Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002;

(35) "**Repealed Ordinance** " means the Uttarakhand Value Added Tax Ordinance, 2005;

(36) "**Re- Sale**" means a sale of purchased goods-

(a) in the same form in which they were purchased, or

(b) without using them in the manufacture of any goods, or

(c) without doing any thing to them, which amounts to, or results in a manufacture;

(37) "**Return**" means any return prescribed and / or required to be furnished under this Act or the rules made there under;

(38) "**Reverse Tax**" means that portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as container or packing materials within the State;

(39) "**Rules**" means rules made under this Act;

(40) "**Sale**" with its grammatical variation and cognate expressions means any transfer of property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration, and includes-

(a) a transfer other wise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration.

(b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

(c) the delivery of goods on hire purchase or any system of payment by instalments;

(d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) any supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,

(g) a transfer of property in goods by an auctioneer referred to in clause (g) of sub-section (11) or sale of goods by any dealer in the course of any other activity in the nature of banking or insurance, who in the course of his main activity also sells goods repossessed or reclaimed;

And such delivery, transfer or supply of any goods under clauses (a) to (g) above shall be deemed to be the sale of those goods by the person making

the delivery, transfer or supply, and purchaser of those goods shall be the person to whom such delivery, transfer or supply is made;

Explanation 1: A sale or purchase shall not be deemed to have taken place inside the State if the goods are sold-

- (a) in the course of inter-state trade or commerce; or
- (b) outside the State of Uttarnachal otherwise than by way of sale; or
- (c) in the course of import into or export out of the territory of India;

Explanation 2: A sale or purchase shall be deemed to have taken place in the State under sub- clause (b) 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 works contract, notwithstanding that the agreement for works contract has been wholly or in part entered into outside the State;

Explanation 3: Notwithstanding any thing contained in this Act, two independent sales or purchases shall, for the purpose of this Act, be deemed to have taken place-

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser;

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to principal, and if the agent is found in either of the cases aforesaid-

- (i) to have sold the goods at one rate and passed on the sales proceeds to his principal at another rate, or
- (ii) to have purchased the goods at one rate and passed them to his principal at another rate; or

- (iii) not to have accounted to his principal for the entire collection or deductions made to him, from the sales or purchases effected by him on behalf of his principal; or
- (iv) to have acted for a fictitious or non-existent principal;

(41) "**Sale Invoice**" means a document listing goods sold, with price, quantity, tax charged, and such other particulars as may be prescribed in the Act or the Rules made thereunder;

(42) "**Sale Price**" means the amount of valuable consideration received or receivable by a dealer for sale of any goods and shall include any sum charged for any thing done by the dealer in respect of goods at the time or before the delivery thereof, excise duty, special excise duty or any other duty or tax but shall not include-

- (a) any sum allowed by the seller of goods to the purchaser as cash discount, commission or trade discount according to normal trade practice, at the time of sale of goods;
- (b) the cost of outward freight or delivery or the cost of installation in cases where such cost is separately charged;
- (c) the amount of tax under this Act, if separately charged by the dealer;

Explanation: For the purpose of this sub-section "Sale Price" includes

- (a) in relation to the delivery of goods on hire purchase or any other system of payment by installments, the total amount of valuable consideration including deposit or other initial payment in order to complete the purchase or the acquisition of the property in goods. It includes hire charges, interest and other charges incidental to such

transaction, but does not include any sum payable as penalty or as compensation or damages for breach of agreement;

(b) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hire charges received or receivable for such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement;

(c) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, the valuable consideration paid or payable to a person for the execution of such works contract, less the actual amount representing labour and such other charges as may be prescribed, but does not include any sum payable as a penalty or as compensation or damages for breach of agreement;

(d) the amount of duties paid or payable under Central Excise Act, 1944, or Customs Act, 1962, or U.P. Excise Act, 1910, as applicable in Uttarnachal, in respect of such goods at the time of clearance of the goods from bonded warehouse, whether such duties are paid or payable by or on behalf of the seller or by any other person;

(e) the price of packing material in which goods sold are packed;

(43) "**Special Category Goods**" means the goods specified in Schedule III of this Act on which tax is payable at the point of Importer or Manufacturer;

(44) "**State**" means the State of Uttarakhand;

(45) "**State Government**" means the Government of State of Uttarakhand;

(46) "**Tax**" means the tax payable under this Act, and includes the amount as lump sum (composition money) accepted in lieu of actual amount of tax due on the turnover as provided under section 7 of the Act and amount of reverse input tax credit *and the amount of additional tax leviable under section 3(A)*.

(substituted vide notification 22 January 07, 2010 as above)

(47) "**Tax Period**" means a calendar month, a quarter of a year, or a year, as may be prescribed, or part thereof;

(48) "**Taxable Turnover**" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed;

(49) "**Transporter**" means any person who, for the purpose of or in connection with or incidental to or in the course of business, transports or causes to transport goods, or holds goods in custody for any person before or after their transportation and includes railway, shipping company, air cargo service or courier service;

(50) "**Turnover of Sales**" means the aggregate amount for which goods are sold or supplied or distributed by a dealer, either directly or through another, whether on his own account or on account of others, whether for cash or deferred payment or other valuable consideration;

Explanation 1: "Turnover of Sales" for the purpose of this Act shall include any sum charged for any thing done by the dealer in respect of the goods

sold or supplied at the time of or before delivery thereof but shall not include the sale value of agricultural or horticultural produce effected by a person who produces it by agriculture or horticulture from land owned or held by him as lessee, usufructuary mortgagee or in any other capacity recognized or permitted by law, but the expression agricultural or horticultural produce shall not include timber or standing trees, manufactured tea or any other produce which is subjected to manufacture or processing after harvest;

Explanation 2: "Turnover of Sales" in relation to

- (a) the transfer of property in goods (whether as goods or in some other form) involved in execution of works contract, means the amount of valuable consideration paid or payable to a person for the execution of such works contract
- (b) the delivery of goods on hire purchase or any system of payment by instalment, means the amount of valuable consideration paid or payable to a person for such delivery; and
- (c) the transfer of the right to use any goods for any purpose (whether or not for a specified period) means the valuable consideration received or receivable for such transfer;

Explanation 3: Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:

- (a) the amount for which goods are sold shall include the price of the packing material in which they are packed, and any sum charged for any thing done by the dealer in respect of the goods sold at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as tax on sale or purchase of goods, when such cost or amount is separately charged;
- (b) any cash or other discount on the price allowed in respect of any sale and any

amount refunded in respect of articles returned by customers shall not be included in turnover; and

(c) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sale in respect of such goods shall be included in the turnover of the latter dealer alone;

(51) "**Turnover of Purchases**" with its cognate expression means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by or through him whether for cash or deferred payment, after deducting the amount, if any, refunded to the dealer by the seller in respect of any goods returned to such seller within such period as may be prescribed;

(52) "**Vehicle**" means every wheeled conveyance used for carrying goods solely or in addition to passengers and includes a vessel, an auto vehicle, a bicycle, a hand driven or an animal driven cart, an animal carrying load, a rickshaw, or a person carrying goods;

(53) "**Value of Goods**" means the value as ascertained from the purchase invoice (s)/ bill(s) and includes insurance charges, excise duties, countervailing duties, sales tax, transport charges, freight charges and all other charges incidental to the transaction of the goods:

Provided that where the purchase invoice(s)/bill(s) are not produced or when the goods are acquired or obtained otherwise than by way of purchase, the value of goods shall be the value at which the goods of like kind or quality are sold or are capable of being sold in open market;

(54) "**Vessel**" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(55) "**Works Contract**" include any agreement for carrying out, for cash, deferred payment or other valuable consideration, building, constructing, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

(56) "**Year**" means the financial year beginning from 1st April and ending with 31st March;

(57) "**Year of Commencement**" means the assessment year in which the date of commencement of this Act, falls.