



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष १, अंक ३८]

गुरुवार, ऑगस्ट २७, २००९/भाद्र ५, शके १९३१

[पृष्ठे ५, किंमत : रुपये २०.००

असाधारण क्रमांक ६५

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधी व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Value Added Tax (Levy, Amendment and Validation) Ordinance, 2009 (Mah. Ord. XVIII of 2009), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

H. B. PATEL,

Secretary to Government.

Law and Judiciary Department.

(Translation in English of the Maharashtra Value Added Tax (Levy, Amendment and Validation) Ordinance, 2009 (Mah. Ord. XVIII of 2009), published under the authority of the Governor)

FINANCE DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 27th August 2009.

MAHARASHTRA ORDINANCE No. XVIII OF 2009.

AN ORDINANCE

further to amend the Maharashtra Value Added Tax Act, 2002.

WHEREAS both Houses of the State Legislature are not in session;

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Value Added Tax Act, 2002, for the purposes hereinafter appearing;

Mah.
IX of
2005.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:--

1. (1) This Ordinance may be called the Maharashtra Value Added Tax (Levy, Amendment and Validation) Ordinance, 2009.

Short title and commencement.

(2) It shall come into force at once.

Amendment
of section 6
of Mah. IX
of 2005.

2. Section 6 of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as "the principal Act") shall be re-numbered as sub-section (1) thereof; and after sub-section (1) as so re-numbered, the following sub-section shall be added and shall be deemed to have been added with effect from the 1st April 2005, namely :—

Mah.
IX
of
2005.

"(2) Notwithstanding anything contained in sub-section (1), there shall be levied a sales tax, in addition to the sales tax leviable under sub-section (1), on the sales of any motor spirits specified in Schedule D at such rate per litre, if any, as may be set out from time to time against each of the motor spirits, in column (3) of the said Schedule."

Amendment
of section
93 of Mah.
IX of 2005.

3. In section 93 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted and deemed always to have been substituted, namely :—

"(1) Notwithstanding anything to the contrary contained in any Package Scheme of Incentives, any Eligible Unit, to whom the Eligibility Certificate and Certificate of Entitlement have been granted at any time before or after the appointed day, on account of increase in production capacity or, as the case may be, acquisition of new fixed capital assets, shall be entitled to draw the benefits in any year, only on that part of its turnover of sales or purchases as may be arrived at by applying the provisions of sub-section (1A) to the total turnover of sales and purchases of the said unit in that year.

(1A) In case where the Eligible Unit has,—

(a) maintained separate account of sales and purchases and is able to identify the sales and purchases pertaining to the increased production capacity or, as the case may be, the said eligible investment, then the portion of the turnover eligible for benefits will be decided solely on the basis of such identification;

(b) not maintained separate account of sales and purchases and is not able to identify the sales and purchases in relation to increase in the production capacity or, as the case may be, the said eligible investment, then such benefits shall be calculated after applying the formulae in sub-clause (i) or, as the case may be, sub-clause (ii) given as under :—

(i) in case where there is increase in production capacity then for the Package Scheme of Incentives for 1988 or, as the case may be, Package Scheme of Incentives for 1993, the formulae shall be as below :—

$$\text{Eligible Turnover} = \frac{\text{Turnover} \times \text{Increase in production capacity}}{\text{Total production capacity after such increase.}}$$

(ii) in case where there is no increase in production capacity then for the Package Scheme of Incentives for 1993, the formulae shall be as below :—

$$\text{Eligible Turnover} = \frac{\text{Turnover} \times \text{New fixed capital investment}}{\text{Total gross fixed capital investments.}}$$

(1B) When the eligible turnover comprises of multiple finished products then,—

(a) the production capacity of each of the finished products shall be separately considered in determining the corresponding eligible turnover, and

(b) eligible turnover shall relate to those products on which the eligible investment has made impact and when eligible investment does not add to production capacity, then it shall apply to all the finished products.” ;

(b) after sub-section (3), the following *Explanation* shall be added, namely :—

“*Explanation.*- For the purpose of this section, the expressions, ‘production capacity’, ‘eligible investment’, ‘gross fixed capital investments’ shall have the same meaning as respectively assigned to them in the relevant Package Scheme of Incentives.”.

4. After section 93 of the principal Act, the following section shall be inserted, namely :—

Insertion of new section 93A to Mah. IX of 2005.

“**93A.** The provisions of section 93 shall apply to all the Eligible Units, to whom the Eligibility Certificate and Certificate of Entitlement have been issued under any of the Package Scheme of Incentives,—

Application of provisions of section 93 to certain Eligible Units.

(a) if such Certificates are issued on or before the appointed day then from appointed day; and

(b) in any other case from the date of effect mentioned in such Certificates.”.

5. (1) Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal to the contrary, any assessment, review, levy or collection of tax in respect of sales or purchases effected by any dealer or person, or any action taken or thing done in relation to such assessment, review, levy or collection under the provisions of the Maharashtra Value Added Tax Act, 2002 (hereinafter in this section referred to as “the Value Added Tax Act”), before the date of the commencement of the Maharashtra Value Added Tax (Levy, Amendment and Validation) Ordinance, 2009 (hereinafter referred to as “the said Ordinance”), shall be deemed to be valid and effective as if such assessment, review, levy or collection or action or thing had been duly made, taken or done under the Value Added Tax Act, as amended by the said Ordinance, and accordingly,—

Validation and savings.

Mah. IX of 2005.

Mah. Ord. XVIII of 2009.

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, review, levy or collection of any such tax, shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with the law;

(b) no suit, appeal, application or other proceedings shall lie or be maintained or continued in any Court or before any Tribunal, officer or other authority, for the refund of any tax so paid; and

(c) no Court, Tribunal, officer or other authority shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing a person,—

(a) from questioning in accordance with the provisions of the Value Added Tax Act, as amended by the said Ordinance, any assessment, review, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the Value Added Tax Act, as amended by the said Ordinance.

(3) Nothing in the Value Added Tax Act, as amended by the said Ordinance shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done by him, before the commencement of the said Ordinance, if such act or omission was not an offence under the Value Added Tax Act but for the amendments made by the said Ordinance; nor shall any person in respect of such act or omission be subject to a penalty have greater than that which could have been imposed on him under the law in force immediately before the commencement of the said Ordinance.

STATEMENT

With a view to meet certain contingencies, it is proposed to amend the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005), suitably.

2. Some of the important provisions which are proposed to be made are explained broadly as follows :—

(i) In order to validate the levy and collection of the tax of Re. 1 per litre on the sale of Motor Spirit, it is proposed to amend section 6 of the said Act, with effect from the 1st April 2005.

(ii) In order to provide the proportionate benefits to the Eligible Units in the proportion of acquisition of the new fixed capital assets or, as the case may be, increase in the production capacity, it is proposed to amend section 93 of the said Act and insert a new section 93A therein with retrospective effect.

3. As both the Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that the circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005) for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,
Dated the 27th August 2009.

S. C. JAMIR,
Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

VIDYADHAR KANADE,
Principal Secretary to Government.