

## **GUJARAT EDUCATION CESS ACT, 1962**

**35 of 1962**

[ ]

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## **GUJARAT EDUCATION CESS ACT, 1962**

**35 of 1962**

**[1]**

An Act to provide for the creation of fund for the promotion of education in the State of Gujarat and for the levy of education cess for the purpose and for matters connected therewith. The Validating Act (14 of 1977) came to be passed in order to validate the levy and collection of education cess by the Collectors in those areas in which the municipal rules did not provide machinery for assessment and collection. Therefore, question of striking down the assessment list which generally a municipality prepares does not arise. Secondly, irrespective of whether the assessment lists are valid or not, if any tax is levied unlawfully and collected by the State Government, it is open to the State Legislature to pass a Validating Act and to validate it. *Atmanand Jain Punjabi Dharamshala v. State of Gujarat and Ors.*, 1980 GLR 787. It is hereby enacted in the thirteenth Year of the Republic of India as follows:-

### **1. Short title and extent :-**

(1) This Act may be called the Gujarat Education Cess Act, 1962 .

(2) It extends to the whole of the State of Gujarat.

### **CHAPTER 1**

### **PRELIMINARY**

## **2. Definitions :-**

in this Act, unless the context otherwise requires-

(i) "annual letting value" means the ratable value or annual letting value or gross annual letting value of lands and buildings as determined in accordance with the relevant local authority law and includes annual value as defined by S.64 of the Cantonments Act, 1924 III of 1924):

Provided that, in a case where the property tax is assessed on any building or land on its capital value, such percentage of the capital value as may be determined by the State Government shall be deemed to be the annual letting value:

(ii) "City of Ahmedabad" means the city of Ahmedabad as constituted for the time being under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949):

(iii) "Collector" includes an officer appointed by the State Government to exercise the powers and perform the functions of the Collector under this Act:

<sup>1</sup>[(iii-a) "disabled person" means a person who on account of injury, disease, physical or mental condition arising from imperfect development of any organ or otherwise, or congenital deformity is substantially handicapped in obtaining or keeping employment, or in undertaking work on his own account, of a kind which apart from that injury, disease, physical or mental condition or deformity would be suited to his age, experience and qualifications:]

(iv) "education cess" means a surcharge or tax on lands and building levied under this Act:

(v) "lands" and "buildings" means shall have the meaning respectively assigned to them in the relevant local authority law:

(vi) "local authority" means a municipal corporation, municipality, notified area committee, nagar panchayat, village panchayat or gram panchayat or other body constituted under the relevant local authority law:

(vii) "prescribed" means prescribed by rules made under this Act:

(viii) "property tax" means in the City of Ahmedabad the general tax levied under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949) and in other urban areas a tax or rate on

buildings or lands or a tax on rate in the form of such tax or rate on buildings or lands levied under the relevant local authority law:

<sup>2</sup>(i) in a City, where property tax is levied under S.129 of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949) or S.141B of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), general tax, and."

(ix) "relevant Code" means-

(i) in relation to the Bombay and Saurashtra areas of the State, the Bombay Land Revenue Code, 1879 (Bom. V of 1879):

(ii) in relation to the Kutch area of the State, the Bombay Land Revenue Code, 1879 as applied to that area:

(x) "relevant local authority law" means-

(i) in relation to the City of Ahmedabad, the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949):

(ii) in relation to a municipal borough-

(a) in the Bombay area of the State, the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925)-.

(b) in the Saurashtra area of the State, the Bombay Municipal Boroughs Act, 1925 (Born. XVIII of 1925), as adapted and applied to that area:

(c) in the Kutch area of the State, the Bombay Municipal Boroughs Act, 1925, (Born. XVIII of 1925) as applied to that area',

(iii) in relation to a municipal district or notified area-

(a) in the Bombay area of the State, the Bombay District Municipal Act, 1901 (Bom. III of 1901):

(b) in the Saurashtra area of the State, the Bombay District Municipal act, 1901 (Bom. III of 1901) as adapted and applied to that area:

(iv) in relation to a panchayat, the Bombay Village Panchayats Act, 1958 (Bom III of 1959):

(v) in relation to a nagar or gram, the Gujarat Panchayats Act, 19612 (Gujarat VI of 1962) and

(vi) in relation to a cantonment, the Cantonments, Act. 1924 (II of

1924).

**3** [(x-a) "specified disabled person" means a disabled person whose principal means of livelihood is the income from the rent of land or building situated in an urban area and owned by him, the annual letting value of which does not exceed two thousand rupees:

(x-b) "specified widow" means a widow whose principal means of livelihood is the income from the rent of land or building situated in an urban area and owned by her, the annual letting value of which does not exceed two thousand rupees:]

(xi) "surcharge" means a surcharge levied under Section 5 or Section 7 :

(xii) "tax" means a tax on lands and buildings levied under Section 12 -.

(xiii) "tenement" means a building or part of a building let or intended to be or occupied separately:

(xiv) "urban area" means an area which is for the time being included in the limits of a city, municipal borough, municipal district, notified area, nagar or cantonment under the relevant local authority law and the population of which is not less than 10,000:

Explanation.-For the purpose of this clause "population" means population as ascertained at the last preceding census:

(xv) "village industry" means an industry which is a village industry within the meaning of the Bombay Khadi and Village Industries Act, 1960, (Bom XIX of 1960):

(xvi) "village site" means the site of a village, town or city determined under Section 126 of the relevant Code:

(xvii) words and expression used but not defined In this Act shall-

(a) so far as the provisions of this Act relate to a surcharge on lands have the meanings assigned to them in the relevant Code and the rules made thereunder, and

(b) so far as the provisions of this Act relate to a tax on lands and buildings shall have the meaning, assigned to them in the relevant local authority law.

Section 2, in clause (viii) for sub-clause (i), shall be substituted by Bombay Provincial Municipal Corporation (Gujarat Amendment and

Validation) Ordinance, 2007 by Gujarat Government Gaz., Exty.m,  
Part IV, No. 1, date 20/1/2007, page 1-1  
Inserted by Gujarat 17 of 1972.

## CHAPTER 2

### EDUCATION CESS AND THE STATE EDUCATION CESS FUND

#### **3. Education Cess :-**

For the purpose of providing for the cost of promoting education in the State of Gujarat, there shall be levied and collected in accordance with the provisions of this Act an education cess which shall consist of-

- (a) a surcharge on all lands except lands which are included within a village site and not assessed to land revenue;
- (b) a tax on lands and buildings in urban area.

## CHAPTER 3

### SURCHARGE ON LANDS

#### **5. Levy of Surcharge on agricultural lands :-**

(1) Subject to the provisions of this Act, with effect from the revenue year commencing on the 1st day of August 1962, on all lands (except lands included within a village site and not assessed to land revenue) which are assessed or held for the purpose of agriculture and not used for any purpose unconnected with agriculture, [there shall be levied a surcharge at the following rates, that is to say- Where the sum assessed on such land or otherwise payable to the State Government as land revenue is-

- (i) not more than fifty rupees, twenty paise on every rupee of such sum,
- (ii) More than fifty rupees, twenty five paise on every rupee of such sum:]

Provided that where any such land-

(i) is wholly or partially exempt from payment of land revenue, a sum which would have been assessed on such land, had there been no alienation of land revenue, or

<sup>1</sup>[(ia) is held by a small holder as defined In the Explanation to section 15 of the Bombay Land Revenue Code, 1879 (Bom.

(ii) is liable to the payment of land revenue but is un-assessed, a sum which would have been assessed on such land as land

revenue, shall be treated as the sum, on every rupee of which the surcharge shall be leviable.

<sup>2</sup>(1-A) In computing the amount of surcharge payable under this section, the amount shall, if it is not a multiple of five paise, be increased to the next higher multiple of five paise.]

(2) For the purposes of this section "land revenue" shall include water rate levied under section 55 of the relevant Code but shall not include-

(a) penalties and fines including any charge imposed under section 148 thereof as penalty or interest in case of default and any fine levied under section 65 thereof.

(b) occasional fixed payments, in commutation of all claims of the State Government in respect of a succession to or transfer of inams payable on each such succession or transfer:

(c) land revenue on sendee inam lands recovered from inferior village servants for periods of unauthorised absence from service and all other such charges of assessment on inams and watans for broken periods and past years, and

(d) fees for grazing when charged per head of cattle.

(3) For the purposes of this section, grass land, that is to say, land on which grass grows naturally or grass is raised, shall be deemed to be land used for the purpose of agriculture.

<sup>3</sup> [Explanation.-In this section "alienation of land revenue" includes any concession granted by or under any law for the time being in force so as to render any land not liable to the payment of any revenue or liable to the payment of land revenue at a sum lower than the sum of full assessment leviable on such land: and such land shall be deemed to be wholly or, as the case may be, partially exempt from the payment of land revenue for the purpose of this section.]

1. Inserted by Gujarat 25 of 1972.

2. Inserted by Gujarat 14 of 1977.

3. Added by Gujarat 26 of 1963.

## **6. Assistance to superior holders :-**

The provisions of law relating to the assistance to be given to superior holders for the recovery of their dues from their tenants and occupants under them, shall be applicable to all superior

holders, whether of alienated or unlamented land in respect of the recovery of the surcharge described in section 5 from their tenants, or occupants and shall be applicable also to occupants of land under the relevant Code, for the recovery of the said surcharge from their tenants or joint occupants.

**7. Levy of Surcharge in addition to non-agricultural assessment In respect of certain lands :-**

(1) Notwithstanding any usage, custom or settlement or anything contained in any agreement, sanad or order or a decree or order of a Court or any law for the time being in force, on all unlamented lands on which non- agricultural assessment is levied under the relevant Code and on all alienated lands (except lands included within a village site) which are used. or may hereafter be used, for a purpose unconnected with agriculture there shall be levied and collected a surcharge at the rate of-

(i) 12.50 per cent of the amount of non-agricultural assessment so levied or as the case may be which would have been leviable had there been no alienation of land revenue, if the land be used for a residential purpose or <sup>1</sup>[for village industry or for] any purpose other than trade, commerce or industry or the carrying on of a profession or business and be situate in an area where the rates of non-agricultural assessment under the relevant Code have been fixed or revised within three years immediately pending the 1st day August, 1962;

(ii) 25 per cent of the amount of non-agricultural assessment so levied or leviable, if the land be used for a residential purpose or for a village industry or for any purpose other than trade, commerce or industry or the carrying on of a profession or business, and be situate in any area to which clause (i) does not apply;

(iii) 50 per cent of the amount of non-agricultural assessment so levied or leviable, where the land is used for any industry other than a village industry:

(iv) 75 per cent of the amount of non-agricultural assessment so levied or leviable, where the land is used for a commercial purpose or for the purpose of <sup>2</sup>[any trade, profession] or business:

Provided that where any land is simultaneously used for two or more purposes and that part used for each such purpose is not



separatable, the surcharge shall be levied at the highest rate

**3** [(1-A) Where any land is leased by the Government for a purpose unconnected with agriculture and under the terms of such lease no non-agricultural assessment is leviable on such land, then notwithstanding anything contained in the terms of such lease, there shall be levied and collected on such land a surcharge at the rate specified in sub-section (1) on the amount which would have been assessed on such land as non-agricultural assessment had such assessment been leviable thereon.]

(2) In the case of land on which because of its non-agricultural use the surcharge becomes leviable at the commencement of this Act, the surcharge under sub-section (1) shall be levied and collected with effect from the revenue year commencing on the 1st day of August 1962 and in any other case it shall be levied from the commencement of the revenue year during which the land becomes liable for the payment of the surcharge.

1. Inserted by Gujarat 26 of 1963.

2. Subs, by Gujarat 26 of 1963.

3. Inserted by Gujarat 17 of 1972.

#### **8. Collector to determine questions as to nature of use of land :-**

Should any question arise under section 7 as to the nature of use of any land, the Collector shall after holding a summary inquiry, decide the question.

#### **9. Manner of levying Surcharges :-**

The surcharge on lands described In section 5 or 7 shall be levied, so far, as may be in the same manner and under the same provisions of law, as the land revenue:

Provided that in the case of land in the possession of a tenant liable to pay the land revenue thereon under the provisions of the relevant Code, he shall be primarily liable for payment of the surcharge on it under section 5.

#### **10. Right of holder to recover amounts of Surcharge on nonagricultural assessment from actual occupiers :-**

Where any land which is liable to a portion thereof or any building constructed thereon or any tenement therein or any part thereof is not in the occupation of the person primarily liable to pay the non-agricultural assessment and surcharge by virtue of the land or

portion thereof or of the building or tenement or part of the building being let, then notwithstanding anything contained in any agreement or order or a decree or order of a Court or any law for the time being in force but without prejudice to the primary liability of such person as aforesaid, such person shall be entitled to recover an amount equal to the amount of surcharge from the person in actual occupation of the land or portion thereof or of the building, tenement or part of the building in proportion to the area in the occupation of the person, as if the person in actual occupation were liable to pay the surcharge.

**11. Amount of Surcharge to be rounded to multiple of five naye paise :-**

The amount of the surcharge leviable under this Chapter shall, if it be not a multiple of five naye paise, be increased to the next higher multiple of five naye paise.

CHAPTER 4

TAX ON LANDS AND BUILDINGS

**12. Tax on lands and buildings :-**

<sup>1</sup>[(1) Subject to the provisions of this Act, there shall be levied and collected with effect from the 1st day of April 1970 a tax on lands and buildings situated in an urban area at the following rates, that is to say:

(a) where a building or land is used for residential purposes or any purpose other than trade, commerce or industry or the carrying on of a profession or business-

(i) if the annual letting value thereof exceeds three hundred rupees but does not exceed one thousand rupees, at the rate of three per cent of the annual letting value:

(ii) if the annual letting value thereof exceeds one thousand rupees but does not exceed two thousand and five hundred rupees, at the rate of five percent of the annual letting value:

(iii) If the annual letting value thereof exceeds two thousand and five hundred rupees but does not exceed four thousand and five hundred rupees, at the rate of six per cent of the annual letting value:

<sup>2</sup>(iv) if the annual letting value thereof exceeds four thousand and five hundred rupees but does not exceed six thousand rupees, at

the rate of seven per cent of the annual letting value: and

(v) if the annual letting value thereof exceeds six thousand rupees, at the rate of ten per cent of the annual letting value, and]

<sup>3</sup>[(b) where a building or land is used for the purpose of trade, commerce or industry, or the carrying on of a profession or business,-

(i) if the annual letting value thereof exceeds three hundred rupees but does not exceed one thousand rupees, at the rate of seven per cent, of the annual letting value;

(ii) if the annual letting value thereof exceeds one thousand rupees but does not exceed two thousand and five hundred rupees, at the rate of eleven per cent of the annual letting value:

(iii) if the annual letting value thereof exceeds two thousand and five hundred rupees but does not exceed four thousand and five hundred rupees at the rate of fourteen per cent of the annual letting value:

<sup>4</sup> (iv) if the annual letting value thereof exceeds four thousand and five hundred rupees but does not exceed six thousand rupees, at the rate of sixteen per cent of the annual letting value:

(v) if the annual letting value thereof exceeds six thousand rupees, at the rate of twenty per cent of the annual letting value].

(2) Where any building consists of more tenements than one, irrespective of such tenements not being separately assessed to the property tax, the tax under this section shall be assessed on the annual letting value of each such tenement as if it were a building.

(3) Where any land, building, tenement or a part of a building is separately assessed to tax but is simultaneously used for two or more purposes mentioned in sub-section (1), the tax under this section shall be levied at the highest rate applicable in relation to any of the purposes for which the land, building, tenement or part of the building is used.

(4) In computing the amount of tax payable under this section, the amount shall, if it is not a multiple of five naya paise, be increased to the next higher multiple of five naya paise.

1. Substituted by Gujarat 8 of 1970.

2. Substituted by Gujarat 14 of 1977.

3. Substituted by Gujarat 9 of 1976.
4. Substituted by Gujarat 14 of 1977.

**13. Exemption of certain lands and buildings from payment of tax :-**

The tax under section 12 shall not be leviable in respect of the following, that is to say-

- (1) buildings and lands vesting in the Central Government;
- (2) Buildings and lands vesting in the State Government, or belonging to a local authority, local board, taluka panchayat, district panchayat or a Cantonment Board and used solely for public purposes and not used or intended to be used for purposes of profit;
- (3) any building or land or class of buildings or lands, which the State Government, if it considers it necessary to do so in the public interest, may] by notification in the Official Gazette, exempt from payment of the tax under section 12:

Provided that-

- (i) every such notification shall be laid for not less than thirty days before the State Legislature as soon as possible after it is published, and shall be subject to rescission by the State Legislature, or to such modification as the State Legislature may make, during the session in which it is so laid or the session immediately following: and
- (ii) any rescission or modification so made shall be published in the Official Gazette, and shall thereupon take effect.

**14. Primary responsibility for tax on lands and buildings :-**

(1) Where the actual occupier of any land or building is the owner thereof or holds it on a building or other lease granted by or on behalf Government or a local authority or on a building lease from any person, then the tax shall be leviable primarily on such occupier:

<sup>1</sup> Provided that in the City of Ahmedabad. if any land has been let for any term exceeding one year to a tenant and such tenant has built upon the land, the tax assessed upon the said land and upon the building erected thereupon shall be primarily leviable from the said tenant or any person deriving title from the said tenant by the operation of law or by assignment or transfer but not by sub-lease

or the legal representative of the said tenant or person, whether the premises be in the occupation of the said tenant or person or legal representative or a sub-tenant.

(2) In any other case, the said tax shall be leviable primarily as follows, that is to say-

(a) if the land or building is let, upon the lessor:

(b) if the land or building is sub-let, upon the superior lessor:

(c) if the land or building is un-let, upon the person in whom the right to let vests.

1. Added by Gujarat 43 of 1963.

**15. Authorities competent to collect tax etc. :-**

(1) The tax under section 12 shall be collected-

(a) in the Cantonment of Ahmedabad, by the Collector of Ahmedabad; and

(b) in other urban areas, by the respective local authorities concerned:

Provided that where a local authority is not for the time being levying a property tax or where a local authority has made a default in the collection of the tax or payment thereof to the State Government, the State Government may by order direct that the tax shall be collected by the Collector.

(2) The collection of tax (including any penalty) under this Act shall be made-

(a) in the Cantonment of Ahmedabad, as an arrear of land revenue:

(b) in any other urban area. in the same manner in which the property tax is collected in that area under the relevant local authority law or where a direction under clause (b) of subsection (1) has been issued in such manner as may be prescribed.

(3) The collection of the tax and the recovery of penalty under this Act on behalf of any local authority shall be made by the appropriate authority appointed to collect the property tax on behalf of such local authority under the law under which the local authority is constituted.

(4) The local authority shall, in respect of the cost of collection of the tax, be entitled to such rebate as may be prescribed, and different rates of rebate may be provided for different urban areas.

**15A. Issue of certificate to specified disabled person and specified widow :-**

(1) Every person claiming to be a specified widow or a specified disabled person for the purposes of this Act shall apply to the officer authorised by the State Government in the prescribed form for the issue of a certificate that the person so claiming is specified widow or a specified disabled person, as the case may be.

(2) On receipt of such application, the officer so authorised shall, after making such inquiry as he deems fit, decide whether such person is a specified widow or a specified disabled person, as the case may be, and the decision of such officer shall, subject to an appeal to the State Government, be final.

(3) If the officer decides that such person is a specified widow or, as the case may be, a specified disabled person, he shall issue a certificate to that effect in the prescribed form to such person.

(4) Notwithstanding anything contained in sub-section (1), (2) and (3), if at any time, on receipt of an application or otherwise, the State Government or the officer authorised by the State Government under sub-section (1), is satisfied after making such inquiry as may be thought fit and giving reasonable opportunity to be heard to the person concerned, that any person to whom a certificate given under sub-section (3) has ceased to be a specified widow, or as the case may be, a specified disabled person, the State Government or such officer may, by order in writing, direct that with effect from such date as may be specified in the order such person shall cease to be a specified widow or, as the case may be, a specified disabled person, and thereupon any certificate granted to such person under sub-section (3) shall stand revoked and such person shall be bound to surrender the same to the State Government.

**16. Penalty for failure to pay tax :-**

(1) If any person, on being served with a notice of demand for the collection of tax in pursuance of the provisions of section 15, fails to pay within the period mentioned in the notice, any amount due from him on account of tax, the local authority, collector or, as the

case may be, the Collector of Ahmedabad, on being satisfied that such person has wilfully failed to pay the tax may, subject to the general or special orders of the State Government recover from him as penalty a sum not exceeding one fourth of the amount of the tax so unpaid, in addition to the amount of tax payable by him.

(2) Sums recoverable under this section shall be recovered in the manner provided in section 15 for the collection of tax.

**17. Tax to be first charged on lands and buildings on which it is leviable :-**

Notwithstanding anything contained in any law and notwithstanding any rights arising out of any contract or otherwise howsoever, all sums due as tax or penalty, in respect of any land or building shall, subject to prior payment the land revenue (if any) thereon due to the State Government be a first charge-

(a) in the case of any land or building held immediately from the Government, upon the interest in such land or building of the person liable for such tax or penalty, and upon the goods and other movable property, if any, found within or upon such land or building and belonging to such person; and

(b) in the case of any other land or building, upon such land or building and upon the goods and other movable properties, if any, found within or upon such land or building and belonging to the person liable to pay such tax or penalty.

**18. Recovery of tax from occupier of portion of lands or buildings :-**

On the failure to recovery any sum due on account of tax from the person primarily liable therefor, there may be recovered from the occupier of any part of the land or building in respect of which the tax is due, such portion thereof as bears to the total amount of the tax due the same ratio which the rent annually payable by such occupier bears to the aggregate amount of the annual letting value thereof.

**19. Person liable to pay tax entitled to recover amount from occupier of land or building etc. :-**

(1) If any person from whom under the provisions of section 12, the tax is leviable pays the tax in respect of any land or building he shall, if he be not himself in occupation thereof during the period for which, he has paid the tax, be entitled to recover from the

person, if any, in actual occupation of such land or building for such period,-

(a) an amount not exceeding half the amount of the tax, if such land or building is used for the public charitable purposes by a public trust registered under the Bombay Public Trust Act, 1950 (Bom. XXIX of 1950) or for residential purposes.

(b) full amount of the tax, if such land or building is used for the purposes of trade, commerce or industry or carrying on of profession or business of or for the purposes other than those specified in clause (a).

(2) Where tax is paid in respect any of building consisting of more tenements than one, by the person primarily liable or on his behalf, he shall be entitled to recover, (from the occupiers of the tenements amount not exceeding half the amounts paid) pro rata to the amount of rents for which such tenements are let:

[Provided that If the person who has paid tax under the provisions of section 12 Is a specified widow or specified disabled person, such widow or disabled person shall be entitled to recover the full amount paid by her. or as the case may, by him. from the person in occupation of the land, building or tenement, as the case may be, in respect of which the tax has been so paid):

[Provided further that], no such recoveries shall be made in respect of-

(a) any tenement in occupation of such person or any person acting on his behalf, or

(b) any tenement the tax on which by the terms of the tenancy, such person has agreed to pay for its occupier.

(3) The recovery of any amount of tax from a occupier under this section shall not be deemed to be an increase for the purposes of section 7 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947) or any law corresponding thereto.

**20. Apportionment of liability for tax when lands or buildings are let and ratable value exceeds amount of rent :-**

(1) If any land or building assessed to tax is let, and the ratable



value thereof exceed the amount of rent payable in respect thereof to the person from whom under the provisions of section 14 the tax is leviable, he shall be entitled to recover [from his tenant not more than half of the difference] between the amount of the tax levied upon him and the amount which would have been leviable had the tax been calculated on a ratable value equal to the amount of rent payable to him;

(Provided that where such person is a specified widow or a specified disabled person, he or she, as the case may be shall entitled to recover from the tenant not more than full amount of such difference.]

(2) Where such land or building had been sublet and the ratable value exceeds the rent recoverable by the tenant from the sub-tenant, the tenant shall be entitled to recover [from his sub-tenant not more than half of the difference] between the amount of tax levied and the tax which would have been leviable had It been calculated on a ratable value equal to such rent:

Provided that the amount recoverable shall not exceed the amount recovered from the tenant under the provisions of sub-section (1).

(3) Where such land or building is held by a person holding under a sub-tenant, the provisions of sub-section (2) shall apply mutatis mutandis as if the sub-tenant had been the tenant and such person the sub-tenant.

## **21. Rights and remedies for recovery of sums under section 19 or 20 :-**

Any person entitled to recover any sum under section 19 or 20 shall have for the recovery thereof, the same rights and remedies as he would have if such sum were rent payable to him by the person from whom he is entitled to receive the same.

## **22. Amount recoverable under section 19 or 20 to exclude in computing annual letting value :-**

Any amount which is liable to be recovered under Section 19 or Section 20 shall not be deemed to be a part of the rent of the land, building, tenement or part of the building for the purpose of computing the annual letting value thereof for the purpose of the levy of any property tax or a tax under this Act.

## **23. Remission and refund :-**

(1) Where any land or building is assessed to tax, and if in respect of such land or building or portion thereof, a draw-back (if any) or remission or refund of property tax is sanctioned or granted on or after the 1st day of August, 1962 under the relevant local authority law, than the local authority, or as the case may be, the Collector shall remit or refund such portion of the tax, in such manner and subject to such conditions as may be prescribed.

(2) Where any building assessed to tax is situated in the City of Ahmedabad and if such building or any portion thereof is demolished or removed otherwise than by order of the Municipal Commissioner and notice in respect of such demolition or removal has been given to the Commissioner under the relevant local authority law, the municipal corporation constituted under such law shall remit or refund such portion of the tax in such manner and subject to such conditions as may be prescribed.

(3) The burden of proving the facts entitling any person to claim relief under this section shall lie upon him.

**23A. Suspension of collection of surcharge under section 5 in certain circumstances :-**

Whenever from any cause the payment of the whole land revenue payable to Government in respect of any land or in respect of lands assessed for agriculture in any area is suspended, the collection of surcharge leviable under Section 5, shall in respect of such land, or, as the case may be, in respect of all lands described in section 5 which are situated in such area, be suspended for the period for which the payment of land revenue is suspended.

**24. Default of local authority in collecting tax :-**

(1) If any local authority makes default in the collection or payment to the State Government of any sum due in respect of the tax on lands and buildings under this Act, the State Government may, after holding such inquiry as it thinks fit, fix a period for the collection or payment of such sum or direct the recovery of the tax in such manner as may be prescribed.

(2) If the collection or payment of the sum is not made within the period so fixed the State Government may, notwithstanding anything contained in any law relating to the funds vesting in such local authority or any other law for the time being in force, direct any bank in which any moneys of the local authority are deposited or the person in charge of the Government treasury or of any other

place of security in which the moneys of such local authority are deposited, to pay such sum from such moneys as may be standing to the credit of the local authority in such bank, or as may be. In the hands of such person or as may from time to time be received from or on behalf of the local authority by way of deposit by such bank or person: and such bank or person shall be bound to obey such order.

(3) Every payment made pursuant to an order under sub-section (2) shall be a sufficient discharge to such bank or person from all liability to the local authority in respect of any sum so paid by it or him out of the moneys of the local authority so deposited with such bank or person.

#### CHAPTER 5

#### MISCELLANEOUS

### **25. Amounts of surcharges not to be included in land revenue in certain circumstances :-**

(1) In computing the average of the land revenue for the purposes of section 195 of the Gujarat Panchayat Act. 1961 (Gujarat VI of 1962) the amounts of the surcharges levied under this Act and collected or recovered during any revenue year shall, notwithstanding anything contained in that Act. be excluded

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(2) The amounts of surcharges levied under this Act shall not be treated as land revenue for the purposes of the levy of any cess on land

### **26. Savings as to application of relevant Code :-**

Nothing Is this Act shall, in any way be deemed to affect the application of any of the provision of the relevant Code and the rules and orders made thereunder to lands to which this Act applies and to the rights and obligations of persons In respect of such lands, in so far as the said provisions are not in any way inconsistent with the express provisions of this Act.

### **26A. Validity of surcharge or tax not levied in the same year :-**

Nothing in the relevant Code or the relevant local authority law shall affect the assessment, levy, collection or recovery of any surcharge or tax leviable under this Act for any year or part thereof merely by reason of the fact that the surcharge or as the case may

be, tax was not assessed or the demand therefor was not made during the year or part for which it was leviable.

**27. Power of Government to reduce rate or remit surcharge or tax :-**

The State Government may in such circumstances and subject to such conditions as may be prescribed, reduce the rate of any surcharge or tax or remit wholly or in part any amount of surcharge or tax either generally or specially in respect of any land, or class of lands or any building or class of buildings.

**28. Power to make rules :-**

(1) The State Government, may by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner in which and conditions under which the amount in the State Education Cess Fund shall be expended under Section 4 :

(b) the manner of collecting tax in urban areas where any property tax is not levied and the rates of rebate under Section 15 :

[(bb) the form of application and the form of certificate under Section 15A :]

(c) the manner in which and the conditions subject to which, the tax shall be remitted or refunded under Section 23 :

(d) circumstances in which and conditions subject to which reduction in the rates of surcharge and the tax may be made or surcharge or tax may be remitted under section 27:

(e) such other matters which in the opinion of the State Government are required to be prescribed by rules.

(3) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the Official Gazette and shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the Legislature, or to such

modification as the Legislature may make. during the session in which they are so laid, or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.