

Gujarat Sales Tax (Amendment) Act, 1979

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 2 Of Gujarat 1 Of 1970
3. Amendment Of Section 3 Of Gujarat 1 Of 1970
4. Amendment Of Section 4A Of Gujarat 1 Of 1970
5. Amendment Of Section 25 Of Gujarat 1 Of 1970
6. Insertion Of New Section 28A In Gujarat 1 Of 1970
7. Amendment Of Section 42 Of Gujarat 1 Of 1970
8. Insertion Of New Section 44A In Gujarat 1 Of 1970
9. Insertion Of New Section 46A In Gujarat 1 Of 1970
10. Amendment Of Section 47 Of Gujarat 1 Of 1970
11. Insertion Of New Section 47A In Gujarat 1 Of 1970
12. Amendment Of Section 54 Of Gujarat 1 Of 1970
13. Amendment Of Section 57 Of Gujarat 1 Of 1970
14. Insertion Of New Chapter Via In Gujarat 1 Of 1970
15. Amendment Of Section 67 Of Gujarat 1 Of 1970
16. Amendment Of Section 84 Of Gujarat 1 Of 1979
17. Amendment Of Schedule Ii - Part A Of Gujarat 1 Of 1970
18. Savings

Gujarat Sales Tax (Amendment) Act, 1979

An Act further to amend the Gujarat Sales Tax Act, 1969. It is hereby enacted in the Thirtieth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Gujarat Sales Tax (Amendment) Act, 1979. (2) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. Amendment Of Section 2 Of Gujarat 1 Of 1970 :-

In the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the principal Act"), in section 2, after clause (30), the following clauses shall be inserted, namely:- "(30A) Settlement Commission means the Sales Tax Settlement Commission constituted under section 28A; (30B) specified day means the date of the coming into force of the Gujarat Sales Tax (Amendment) Act, 1979;"

3. Amendment Of Section 3 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 3, - (1) in sub-section (1), for the words, brackets and figure "relevant limit specified in sub-section (4)" occurring at two places, the words, brackets and figures "relevant limit specified in clause (i) or clause (ii) of sub-section (4)" shall be substituted; (2) after sub-section (1), the following sub-section shall be inserted, namely:- "(1A) Every dealer whose turnover either of all sales or of all purchases made during - (i) the year immediately preceding the year within which the specified day falls, or (ii) the year commencing on the first day of the year within which the specified day falls, has exceeded or exceeds the limit specified in clause (iii) of sub-section (4), shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales, and on his turnover of purchases, made on or after the specified day: Provided that a dealer to whom clause (i) does not apply but clause (ii) applies and whose turnover either of all sales or of all purchases first exceeds the limit specified in clause (iii) of sub-section (4) after the specified day shall not be liable to pay tax in respect of sales and purchases which take place up to the time when his turnover of sales, or his turnover of purchases as computed from the first day of the year in which the specified day falls, first exceeds the limit specified in clause (iii) of sub-section (4)."; (3) in sub-section (2), for the words, brackets and figures "in sub-section (1),", the words, brackets, figures and letter "in sub-section (1) or, as the case may be, in sub-section (1A)," shall be substituted; (4) in sub-section (4), - (a) in clause (ii), in item (b), for the words, brackets, figure and letter "to whom neither clause (i) nor item (a) of this clause applies", the words, brackets, figures and letter "to whom clauses (i) and (iii) and item (a) of this clause do not apply" shall be substituted; (b) after clause (ii), the following clause shall be added, namely:- "(iii) Limit of turnover Rs. 50,000. - In case of a dealer to whom neither clause (i) nor item (a) of clause (ii) applies and the value of taxable goods sold or purchased by him during the year exceeds Rs. 3,000: Provided that the value of taxable goods purchased does not include any value exceeding Rs. 3,000 of taxable goods purchased from persons who are not registered dealers.".

4. Amendment Of Section 4A Of Gujarat 1 Of 1970 :-

In the principal Act, in section 4A, in sub-section (1), for the words "six paise in the rupee", the words "ten paise in the rupee" shall be substituted.

5. Amendment Of Section 25 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 25, in the second proviso, for the words "fifteen days", the words "forty-five days" shall be substituted.

6. Insertion Of New Section 28A In Gujarat 1 Of 1970 :-

In the principal Act, after section 28, the following section shall be inserted, namely:- "28A. Settlement Commission - (1) The State Government shall constitute a Settlement Commission to be called the Gujarat Sales Tax Settlement Commission consisting of as many members as it thinks fit for the settlement of cases under Chapter VIA. (2) The State Government shall appoint one of the members of the Settlement Commission to be the Chairman thereof. (3) The qualifications of the members constituting the Settlement Commission shall be such as may be prescribed and a member shall hold office for such period as the State Government may fix in this case. (4) The State Government may terminate the appointment of any member of the Settlement Commission before the expiry of the term of his office if such member - (a) is adjudged as insolvent, or (b) engages during his term of office in any paid employment outside the duties of his office, or (c) is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the State Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member, or (d) is in the opinion of the State Government, unfit to continue in office by reason of infirmity of mind or body, or (e) is convicted of an offence involving moral turpitude. (5) Any vacancy in the membership of the Settlement Commission shall be filled up by the State Government as soon as practicable. (6) Subject to the previous sanction of the State Government, the Settlement Commission shall for the purpose of regulating its procedure (including place or places at which it shall sit) and the disposal of its business make regulations consistent with the provisions of the Act and the Rules. (7) The regulations made under sub-section (6) shall be published in the official Gazette."

7. Amendment Of Section 42 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 42, in sub-section (1), in clause (a), for the words "three years", the words "two years" shall be substituted.

8. Insertion Of New Section 44A In Gujarat 1 Of 1970 :-

In the principal Act, after section 44, the following section shall be

inserted, namely:- "44A. Reopening of assessment at the instance of dealer - (1) Where the Commissioner assesses under sub-section (4) of section 41 or section 44 or 50, the amount of tax due from a dealer, such dealer may make an application in the prescribed form to the Commissioner within thirty days from the date of service of the order of the assessment, for the cancellation of such order on the ground that - (a) no notice was served on him under sub-section (3) of section 41, or under section 44 or 50, as the case may be, or (b) he was prevented by sufficient cause from appearing before the Commissioner at the time and the date appointed by such notice served on him. (2) On receipt of an application under sub-section (1), the Commissioner shall, if satisfied about the existence of the grounds mentioned in clause (a) or (b) of sub-section (1) cancel the order of assessment and reassess the amount of tax due from the dealer in accordance with the provisions of this Act: Provided that no such application made under this section shall be entertained by the Commissioner unless the applicant declares that no appeal under section 65 has been preferred against the order of assessment on the grounds specified in clause (a) or (b) of sub-section (1): Provided further that notwithstanding anything contained in section 65, no appeal shall lie against the order of reassessment made under this section on the grounds mentioned in clause (a) or (b) of sub-section (1).".

9. Insertion Of New Section 46A In Gujarat 1 Of 1970 :-

In the principal Act, after section 46, the following section shall be inserted, namely:- "46A. Dealers to be heard in certain cases - (1) Where any sales tax authority mentioned in section 27 exercising the powers under section 41 proposes to make an order of assessment under that section and, such order if made, would in the opinion of such authority, impose on a dealer a liability to pay an amount not less than Rs. 25,000 by way of tax in respect of a period in addition to the amount of tax indicated by the dealer in his declaration or return in respect of that period, such authority shall serve in such manner as may be prescribed on such a dealer a draft order and invite his objections in relation to it. (2) Where any sales tax authority mentioned in section 27 exercising the powers under section 44, 45 or 46 proposes to make an order of reassessment under section 44 or an order imposing a penalty under section 45 or 46 and such order if made, would in the opinion of such authority, impose on a dealer a liability to pay an amount not less than Rs. 25,000 by way of tax or an amount not

less than Rs. 7,500 by way of penalty in respect of a period in addition to the amount of tax assessed or penalty imposed in respect of that period, such authority shall serve in such manner as may be prescribed on such dealer a draft order and invite his objections in relation to it. (3) Where the dealer to whom the draft order is served under sub-section (1) or (2) communicates in writing to the authority his objections in relation to the draft order within a period of thirty days from the date of service of the draft order, the authority shall transfer the proceedings to such order sales tax authority to which an appeal against the order would have lied under section 65, and thereupon the other authority to which the proceedings have been transferred shall exercise the powers under section 41, 44, 45, or, as the case may be, 46 in relation to those proceedings: Provided that nothing in section 82 shall apply to any transfer of proceedings made under this sub-section. (4) Where the dealer to whom the draft order is served under sub-section (1) or (2) fails to communicate in writing to the authority his objections in relation to the draft order within a period of thirty days from the date of service of the draft order, the authority shall make an order of assessment or, as the case may be, an order imposing penalty under section 41, 44, 45 or, as the case may be, 46 in accordance with the draft order."

10. Amendment Of Section 47 Of Gujarat 1 Of 1970 :-

In principal Act, in section 47, sub-section (6) shall be deleted.

11. Insertion Of New Section 47A In Gujarat 1 Of 1970 :-

In the principal Act, after section 47, the following section shall be inserted, namely:- "47A. Special powers of sales tax authorities for recovery of tax as arrears of land revenue - (1) For the purpose of effecting recovery of the amount of tax or penalty due from any dealer or other person by or under the provisions of this Act or under any earlier law, as arrears of land revenue, - (i) the Commissioner of Sales Tax, the Additional Commissioners of Sales Tax and the Deputy Commissioners of Sales Tax shall have and exercise all the powers and perform all the duties of the Collector under the Bombay Land Revenue Code, 1879, (ii) the Assistant Commissioner of Sales Tax shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Assistant or Deputy Collector under the said Code, (iii) the Sales Tax Officers shall have and exercise all the powers (except the powers of confirmation of sale and arrest and confinement of a defaulter in a civil jail) and

perform all the duties of the Mamlatdar under the said Code. (2) Every order passed in exercise of the powers conferred by sub-section (1) shall, for the purposes of sections 64, 65, 66, 67, 69 and 72 be deemed to be an order passed under this Act."

12. Amendment Of Section 54 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 54, in sub-section (1), - (1) for the portion beginning with the words "Where an amount required to be" and ending with the words "period of ninety days to the date of the refund", the following portion shall be substituted, namely:- "(a) Where an amount required to be refunded by the Commissioner to any person by virtue of an order of assessment under section 41 is not so refunded to him within a period of thirty-five days of the date of the order, or (b) where an amount required to be refunded by the Commissioner to any person by virtue of any other order made under this Act is not so refunded to him within a period of ninety days of the date of the order, the State Government shall pay to such person simple interest at twelve per cent per annum on the said amount from the date immediately following the expiry of the period specified in clause (a) or, as the case may be, clause (b) to the date of the refund:"; (2) in explanation 1, for the words "the period of ninety days aforesaid", the words, brackets and letters "the period specified in clause (a) or (b)" shall be substituted.

13. Amendment Of Section 57 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 57, in clause (b), - (1) for the words "sixty thousand rupees", the words "one lakh rupees" shall be substituted; and (2) for the words "five rupees", the words "ten rupees" shall be substituted.

14. Insertion Of New Chapter Via In Gujarat 1 Of 1970 :-

In the principal Act, after Chapter VI, the following chapter shall be inserted, namely:- "CHAPTER VIA SETTLEMENT OF CASES 61A. Definitions - In this chapter, unless the context otherwise requires, - (a) case means any proceedings under this Act for or in connection with the assessment or reassessment of turnover of sales or turnover of purchases of any person in respect of any year or years which may be pending before a sales tax authority on the date on which an application under sub-section (1) of section 61C is made; (b) sales tax authority means any authority specified in section 27. 61B. Settlement of cases by Settlement Commission. (1) Where the books of account of any dealer or other persons have been seized under this Act under a belief that such dealer or person

has concealed transactions of sales or purchases in connection with his business, such dealer or person may make an application in such form and in such manner and containing such particulars as may be prescribed to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided. (2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed. (3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant. 61C. Settlement of cases - (1) On receipt of an application under section 61B, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may by order allow the application to be proceeded with or reject the application: Provided that the application shall not be rejected under this sub-section unless an opportunity of being heard has been given to the applicant: Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of turnover of sales or turnover of purchases on the part of the applicant or perpetration of fraud by him for evading any tax, penalty or interest chargeable or imposable under this Act has been established or is likely to be established by any sales tax authority in relation to the case. (2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner. (3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and, after examination of such records, if the Settlement Commission is of the opinion that any further inquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further inquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case. (4) After examination of the records, and the report of the Commissioner received under sub-section (1), and the report if any of the Commissioner received under sub-section (3) and after giving an opportunity to the applicant and to the Commissioner to be heard either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement

Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3). (5) The materials brought on record before the Settlement Commission shall be considered by all the members thereof before passing any other under sub-section (4) and in the case of a difference of opinion among the members, the opinion of the majority shall prevail and such order shall be expressed in terms of the views of the majority. (6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts. (7) Where a settlement becomes void as provided under sub-section (6) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the sales tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

61D. Power of Settlement Commission to reopen completed proceedings - If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under the earlier law or under this Act, by any sales tax authority before the application under section 61B was made, it may, with the concurrence of the applicant, reopen such proceedings and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also: Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of a period of eight years from the end of the assessment year to which such proceeding relates.

61E. Powers and procedures of Settlement Commission - (1) In addition to the powers conferred on the Settlement Commission under this

chapter, it shall have all the powers which are vested in a sales tax authority under this Act. (2) Where an application made under section 61B has been allowed to be proceeded with under section 61C, the Settlement Commission shall, until an order is passed under sub-section (4) of section 61C, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of a sales tax authority under this Act in relation to the case. (3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect, - (a) the operation of the provisions of this Act requiring the applicant to pay tax on the basis of self-assessment or by way of advance tax in relation to the matters before the Settlement Commission, or (b) the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission. (4) The Settlement Commission shall, subject to the provisions of this chapter, have power to regulate its own procedure (including the fixation of places and times of its meetings) and may act notwithstanding that any of its members is not present at any of its meetings.

61F. Inspection, etc., of reports - No person shall be entitled to inspect, or obtain copies of any reports made by any sales tax authority to the Settlement Commission: Provided that for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose: Provided further that the Settlement Commission may, in its discretion, furnish copies of such reports to any person on an application made to it in this behalf and no payment of the prescribed fee.

61G. Power of Settlement Commission to grant immunity from prosecution and penalty - (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 61B has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his turnover of sales or turnover of purchases, grant to such person, subject to such conditions as it may think fit impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code for the time being in force and also from the imposition of any penalty or interest under this Act, with respect to the case

covered by the settlement. (2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person has not complied with the conditions subject to which the immunity was granted or that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence for which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty or interest under this Act to which such person would have been liable, had not such immunity been granted.

61H. Order of settlement to be conclusive. - Every order of settlement passed under sub-section (4) of section 61C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

61I. Recovery of sums due under order of settlement - Any sum specified in an order of settlement passed under sub-section (4) of section 61C, may, subject to such conditions, if any, as may be specified therein, be recovered (and any penalty or interest for default in making payment of such sum may be imposed and recovered), in accordance with the provisions of Chapter V, by the sales tax authority having jurisdiction over the person who made the application for settlement under section 61B.

61J. Bar on subsequent application for settlement in certain cases - Where, - (i) an order of settlement passed under sub-section (4) of section 61C provides for the imposition of a penalty or interest on the person who made the application under section 61B for settlement, on the ground of concealment of particulars of any transaction, or (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter VIII in relation to that case, then, he shall not be entitled to apply for settlement under section 61B in relation to any other matter.

61K. Proceedings before Settlement Commission to be judicial proceedings - Any proceedings under this chapter before the Settlement Commission shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

61L. Certain persons who have filed appeals to be entitled to make applications to the Settlement Commission.- (1) Any dealer who has filed an appeal under this Act shall, on

withdrawing such appeal be entitled to make an application under section 61B to the Settlement Commission to have his case settled under this chapter. (2) Any dealer referred to in sub-section (1) may make an application to the concerned sales tax authority or the Tribunal for permission to withdraw the appeal. (3) On receipt of an application under sub-section (2), the sales tax authority or the Tribunal shall grant permission to withdraw the appeal. (4) Upon the withdrawal of the appeal the proceeding in appeal immediately before such withdrawal shall, for the purposes of this chapter, be deemed to be a proceedings pending before the sales tax authority. (5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the sales tax authority permitting the withdrawal of the appeal is communicated to the dealer. (6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 61B and the provisions of this chapter except sub-section (7) of section 61C shall apply accordingly. (7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the dealer shall not be deemed to have withdrawn the appeal and the provisions contained in section 65 shall, so far as may be, apply accordingly."

15. Amendment Of Section 67 Of Gujarat 1 Of 1970 :-

In the principal Act, in section 67, - (1) in sub-section (1), - (a) in clause (a), after the words "of his own motion within three years", the words "or on application made to him within one year" shall be inserted; (b) in clause (b), after the words "in second appeal", the words, brackets and letter "or under clause (a) in revision on an application" shall be inserted; (2) to sub-section (2), the following proviso shall be added, namely:- "Provided that the proceedings in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made."; (3) for sub-section (4), the following shall be substituted, namely:- "(4) Where the Commissioner or the Tribunal rejects any application for revision under this section, the Commissioner or, as the case may be, the Tribunal shall record the reasons for such rejection."

16. Amendment Of Section 84 Of Gujarat 1 Of 1979 :-

In the principal Act, in section 84, after the words "of the Tribunal", the words "and of the Settlement Commission" shall be inserted.

17. Amendment Of Schedule Ii - Part A Of Gujarat 1 Of 1970 :-

In the principal Act, in Schedule II - Part A, - (1) in entry 16, for sub-entry (2), the following sub-entry shall be substituted, namely:- "(2) Electric motors and spare parts and accessories thereof and oil engines;"; (2) after entry 100, the following entry shall be inserted, namely:- "101 Spare parts and accessories of oil engines to which entry 16 applies. -Six paise in the rupee. -Six paise in the rupee.".

18. Savings :-

(1) Nothing in section 3 of the principal Act as amended by section 3 of this Act shall affect the liability to pay tax (in respect of turnover of sales or turnover of purchases made before the specified day) of a dealer to whom item (b) of clause (ii) of sub-section (4) of section 3 of the principal Act applied before the specified day but to whom neither item (b) of clause (ii) nor clause (iii) of sub-section (4) of section 3 of the principal Act, as amended by this Act, applies after the specified day and - (a) any proceedings in relation to such liability may be instituted, continued or enforced, and (b) any penalty or punishment may be imposed, under the principal Act as if this Act had not been passed. (2) Nothing in section 42 of the principal Act as amended by section 7 of this Act shall affect the power of the Commissioner to make an order of assessment in respect to any assessment proceedings (including any notice issued) pending immediately before the specified day and the Commissioner may make an order under section 42 in respect of such proceedings as if this Act had not been passed. Explanation. - For the purpose of this section "specified day" means the date on which this Act comes into force.