

Gujarat Sales Tax Tribunal Regulations, 1973

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Gujarat Sales Tax Tribunal Regulations, 1973

In exercise of the powers conferred by sub-section (9) of section 28 of the Gujarat Sales Tax Act, 1969 (Gujarat Act 1 of 1970), and with the previous sanction of the Government of Gujarat, the Gujarat Sales Tax Tribunal hereby makes the following regulations, namely:

CHAPTER 1 GENERAL

1. Short title :-

These regulations may be called the Gujarat Sales Tax Tribunal Regulations, 1973.

2. Definitions :-

In these regulations, unless the context otherwise requires

(b) "appeal" means an appeal made to the Tribunal under clause (c) of sub-section (1) and second appeal made to the Tribunal under sub-section (2) of section 65 and includes a memorandum of cross objections filed by the Commissioner under sub-section (5) of section 65;

(d) "application for reference" means an application made under sub-section (1) of section 69, requiring the Tribunal to refer to the High Court any question of law arising out of its order;

(f) "application for restoration" means an application for restoration (or rehearing of an appeal or application) made under regulation (22);

(g) "Bench" means a bench of the Tribunal constituted under regulation (32);

(h) "Form" means a form appended to these regulations;

(i) "Government Agent" includes any officer or a legal Practitioner duly appointed by Government by notification in the official Gazette, generally to appear, act and plead on its behalf in all or any proceeding before the Tribunal and to receive on its behalf notices issued by the Tribunal;

(j) "legal representative" means a person who in law represents the estate of a deceased person and includes any person held by the Tribunal to represent the deceased person in the proceeding before the Tribunal, unless and until a competent Court has decided otherwise;

(k) "President" means the President of the Tribunal;

(l) "Registrar" means the Registrar of the Tribunal and includes any person who is for the time being discharging the functions of the Registrar;

(n) "section" means a section of the Act.

CHAPTER 2

SITTINGS AND OFFICE HOURS

3. Place of hearing :-

(1) The quarters of the Tribunal shall be at Ahmedabad.

(2) All appeals and applications shall ordinarily be heard at

Ahmedabad. Provided that the President may, by reason of the large number of such appeals or applications in respect of any area or for any other reason, by order direct that any appeal or application or any class of appeals or applications specified therein shall be heard at any other convenient place in the State of Gujarat.

4. Senior most member to perform Presidents functions :-

The President may by an order direct that during his absence on account of leave or his absence from headquarters, the senior most member of the Tribunal shall perform all or any of the duties to be performed by the president under these regulations.

5. Office hours :-

The office of the Tribunal shall observe the same office hours as the other offices of the State Government, and shall remain closed on Sundays and on holidays declared by the State Government, except that when the Tribunal is on vacation the office shall remain open during such hours and on such days as the president may notify in the official Gazette.

CHAPTER 3

PRESENTATION, REGISTRATION AND ADMISSION OF APPEALS AND APPLICATIONS

6. Presentation of appeals and applications :-

(1) An appeal or an application for revision, reference, rectification, restoration or any other miscellaneous application shall be presented during office hours by the appellant or applicant as the case may be, in person or by duly appointed responsible agent or by a pleader to the Registrar or shall be sent by Registered Post with acknowledgement due.

(2) Where an agent who has not appeared in the original proceedings presents an appeal or application such appeal or application shall be accompanied by a letter of authority appointing him as such.

7. Requirements of an application for reference :-

(1) An application for reference shall be in Form A and shall clearly set out the facts which are admitted and/or found by the Tribunal and which are necessary for drawing up the Statement of the case, and the question of law which the applicant required to be referred to the High Court and the manner in which the question arises. Every such application when made by a dealer shall be accompanied by the fee specified in sub-section (1) of section 69.

(3) When the application for reference is, allowed five sets of the annexures mentioned in the statement of the case shall be tendered by the applicant within 15 days from the date of the receipt of the certified copy of the statement of the case for the purpose of sending them to the High Court.

8. Registration of appeals or applications :-

(2) If the Registrar finds that the appeal or the application does not conform to any of the said provisions, he shall make a note on the appeal or the application to that effect and shall call upon the party concerned or his agent, if any, by a notice in Form B to remedy the defects within a period of ten days of the receipt of notice to do so. The Registrar may, for good cause, extend the period for the purpose of remedying the defects, provided that if the extension of more than thirty days in the aggregate is sought, the Registrar shall place the matter before the President and obtain his orders in that behalf.

(4) If the party concerned or his agent fails to remedy the defects within the said period, the Registrar shall place it before the President or any member authorized by him, and with his approval fix the appeal or application for hearing before the Tribunal and after giving due notice in Form C of the date so fixed for hearing to the party or his agent, the Tribunal on the date fixed may summarily reject the appeal or application for not complying with the provisions of clause (a), (b) or (c) specified in sub-regulation (1), or hear the party or his agent and pass such orders as the Tribunal may deem fit.

(5) Where an appeal or application is ordered to be registered under this regulation, the Registrar shall see that it is registered within reasonable time in any case not later than seven days from the date of the order requiring it to be registered or within such time as may be extended by the President.

9. Maintenance of Registers :-

The Registrar shall maintain separate registers for-

(i) appeals in Form D

(ii) applications for revision in Form E

(iii) applications for reference in Form F

(iv) applications for rectification in Form G

(v) applications for restoration in Form H, and

(vi) miscellaneous applications in Form I.

10. Stay of execution of order :-

(1) Pending a decision on an appeal or an application for revision made to the Tribunal, the Tribunal or the President or a Member authorised by the President, may direct the execution of any order against which the appeal or application is made, to be stayed on such conditions as it or he thinks fit.

(2) An order made under sub-regulation (1) may be vacated by the Tribunal, if made by it or by the President or by any Member: Provided that before such order is vacated a notice shall be given to the party in whose favour such order had been made to show cause why it should not be vacated, and an opportunity shall be given to such party of being heard.

11. Calling for the record and proceedings :-

(1) Where an appeal or application has been registered, the Registrar may send an intimation to the Commissioner in Form J calling for the record and proceedings relating to such appeal or application or any other papers or documents.

(2) Where the record and proceedings called for under sub-regulation (1) relate to a second appeal and such second appeal is thereafter admitted, the Registrar may send the record and the proceedings to the Commissioner to enable him to file cross, objections.

(4) Before the date fixed for hearing of an appeal or application the Registrar may make the record and proceedings thereof available to the Government Agent to enable him to prepare the case.

(5) On completion of proceedings before the Tribunal relating to an appeal or application, the Registrar shall, as soon as practicable, return to the Commissioner the record and proceedings called for under this regulation.

12. Furnishing of securities :-

(2) Where the appellant deposits Government securities in any of the form prescribed in clause (ii) of rule 64, such securities shall be deposited with such Sales Tax authority as may be specified by the Tribunal.

13. Admission :-

(2) The Tribunal shall give notice in Form K to the appellant or applicant, as the case may be, of the date fixed for preliminary hearing and give an opportunity to him of being heard. The Tribunal may then admit the appeal or application, as the case may be, or summarily reject it and in case the appeal or application is summarily rejected, the Tribunal shall give reasons for doing so.

14. Fixing of an appeal or application before a bench :-

When an appeal or application is directed to be fixed for preliminary hearing or where an appeal or application is admitted and in case of second appeal where cross objections are filed or no cross objections are filed and the period prescribed in sub-section (5) of section 65 has expired, the Registrar shall obtain orders from the President about the bench before which the appeal application, as the case may be, shall be fixed for hearing. The President shall direct that the appeal or application, as the case may be, be fixed before a bench constituted by him under regulation 32.

15. Notice of date of hearing :-

The Registrar shall, with the approval of the President, arrange for the sitting of the Tribunal and published the days fixed for such sittings on the notice board of the Tribunal, sufficiently in advance.

CHAPTER 4

CROSS-OBJECTIONS

16. Filing of cross-objection :-

(1) On a second appeal being admitted, the Registrar shall give notice thereof to the Commissioner in Form-L. The Commissioner may file cross objections under sub-section (5) of section 65 within the period prescribed thereunder. The cross objections shall be in the form of memorandum and the provisions contained in rule 63 relating to appeals shall, in so far as they relate to the form and contents of the memorandum of appeal apply thereto.

(2) If the Commissioner files cross objections he shall furnish five copies of the memorandum of cross objections and also five copies of each of the documents referred to or relied upon by him in the memorandum of cross objections other than those filed by the appellant. Such copies shall, as far as possible, be neatly typed with double spacing and with sufficient margin.

The provision contained in regulation 8 in so far as it relates to the

Registrar satisfying himself on the points stated therein, shall apply to cross objections.

17. Procedure on cross objections being filed :-

If the Commissioner files cross objection, the memorandum thereof shall be placed on the record of the second appeal as part thereof. On the Registrar satisfying himself on the points referred to in sub-regulation (3) of regulation 16 the Registrar shall give to the appellant notice in Form M of cross objections having been filed. Such notice shall be accompanied by a copy of the memorandum of cross objections.

18. Procedure on withdrawal or dismissal for default of second appeal :-

Where in any case in which the Commissioner has under subsection (5) of section 65 filed a memorandum of cross objections, the original appeal is withdrawn or is dismissed for default the cross objections so filed, may nevertheless be heard and decided. In such case if the Tribunal thinks that before hearing and deciding the cross objections, another notice to the appellant is necessary, the Tribunal may hear and decide the cross objections after such notice.

CHAPTER 5

HEARING, ADJOURNMENT AND JUDGMENT

19. Notice of hearing :-

(1) After an appeal (except second appeal) or application has been admitted a notice shall be delivered or sent by post to the appellant and respondent or the applicant and opponent, as the case may be, calling upon each of them to appear before the Tribunal on the date specified in the notice.

(2) After a second appeal has been admitted and cross objections are filed and intimation thereof is given to the appellant or the period prescribed for filing cross objections has expired but no cross objections are filed, a notice of hearing shall be delivered or sent by post to the appellant and respondent calling upon each of them to appear before the Tribunal on the date specified therein.

(4) The notice to the appellant or applicant shall be in Form N and to the respondent or opponent shall be in Form O with suitable modifications.

20. Procedure at the hearing :-

On the date fixed or on any other day to which the hearing may be adjourned, the appellant or applicant or his agent shall ordinarily be heard first in support of his appeal or application. The respondent or the opponent or his agent shall, if necessary, be heard next and in such a case the appellant or applicant or his agent shall be entitled to reply.

21. Hearing in the absence of parties :-

(1) If, on the date fixed for hearing or on any other day to which the hearing may be adjourned, the appellant or the applicant does not appear either in person or through his agent when the appeal or application is called on for hearing, the Tribunal may dismiss the appeal or application or may decide it on merits after hearing the respondent or opponent or his agent, if present.

(2) If, on the date fixed for hearing or on any other day to which the hearing may be adjourned, the respondent or the opponent does not appear either in person or through his agent when the appeal or application is called on for hearing, the Tribunal may decide the same ex-parte on merits, after hearing the appellant or applicant or his agent, if present.

22. Restoration of appeals and applications dismissed for default and rehearing of appeals and applications decided ex-parte :-

Within thirty days from the date on which an appeal or application for revision was dismissed for default or decided ex-parte, the appellant or applicant or respondent or opponent may apply for setting aside the order of dismissal or ex-parte decision as the case may be, and if he satisfies the Tribunal that the intimation of the date of hearing was not duly served upon him or he was prevented by sufficient cause from appearing when the appeal or application was called on for hearing, the Tribunal shall make an order setting aside the dismissal or ex-parte decision upon such terms as it thinks fit and shall restore the appeal or application, as the case may be:

Provided that where the other party had appeared at the hearing of the appeal or application, such party shall be given notice and an opportunity of being heard before the order for restoration is made.

23. Fresh evidence :-

(2) A party desiring to adduce fresh documentary evidence shall file

four copies of such evidence, and shall furnish a fifth copy to the opposite party.

(3) If the Tribunal is of opinion that any witness should be examined in connection with any case before it, it may, instead of examining him before itself, issue a commission to any Assistant Commissioner for examining the witness, after giving notice to the other side, who will have the right of cross-examination and adducing evidence in rebuttal.

(4) Where fresh evidence has been adduced under sub-regulation (1) or a witness has been examined, as provided in sub-regulation (3), the parties may, if they so desire, address the Tribunal on points arising out of the fresh evidence or the deposition of the witness.

24. Adjournment :-

(1) The Tribunal may at any stage and on such terms as it thinks fit adjourn the hearing of any appeal or application;

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(2) Notwithstanding the provision contained in sub-regulation (1) if the question of adjournment arises before the date fixed for hearing the hearing may, on such terms as he or it thinks fit, be adjourned by the president or the Bench before which the hearing is fixed.

25. Procedure in case of death of one of several appellants or applicants or of sole appellant or applicant :-

If while the appeal or application is pending an appellant or applicant dies and it cannot be proceeded with unless his legal representative is made a party to the appeal or application, the Tribunal shall adjourn further proceedings to enable his legal representative to appear and apply for being made a party. If the legal representative fails to do so within ninety days from the date on which the appellant or applicant dies, the appeal or the application shall abate as regards the deceased, and if he be the sole appellant or applicant the appeal or application shall be dismissed. Otherwise, it shall be proceeded with as regards the remaining appellants or applicants.

26. Procedure in case of death of one of several opponents or of sole opponent :-

If while the application is pending an opponent dies and it cannot

be proceeded with unless his legal representative is made a Party to the application, the applicant shall apply to the Tribunal for making the legal representative of such opponent a party to the application within ninety days from the date on which the opponent dies. If the applicant fails to do so, the application shall abate as regards the deceased. If the deceased be the sole opponent the application shall be dismissed. Otherwise, it shall be proceeded with as regards the remaining opponents.

27. No abatement by reason of death after hearing :-

Notwithstanding anything contained in regulations 25 and 26 there shall be no abatement by reason of the death of any party, between the conclusion of the hearing and the pronouncing of the Judgment and the judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place. No legal representative need be made a party in such case.

28. Determination of legal representative :-

If any question arises in any appeal or application whether a person is or is not the legal representative of deceased party, such question may be determined by the Tribunal in a summary way after taking evidence, if necessary.

29. Procedure in case of assignment :-

In any case where the business of a dealer, who is a party to an appeal or application before the Tribunal, if during the pendency of it, assigned or developed wholly or in part to or upon some other person, the appeal or application may, by leave of the Tribunal, be continued by or against such person.

30. Procedure in case of insolvency :-

If a dealer, who is a party to an appeal or application, becomes insolvent and his estate becomes vested in the assignee or receiver, the latter may, by leave of the Tribunal, be made a party to the appeal or application.

31. Setting aside of abatement or dismissal for failure of legal representative, etc. to apply in time :-

Where an appeal or application has abated or has been dismissed under regulation 25 or 26, the appellant or applicant or a person claiming to be the legal representative of a deceased appellant or applicant or the assignee or receiver of an insolvent appellant or applicant may apply, within sixty days from the date of abatement

or dismissal of the appeal or application, to have the abatement of dismissal set aside, and if it is proved to the satisfaction of the Tribunal that he was prevented by sufficient cause from applying within time, the abatement or dismissal shall be set aside by the Tribunal and the appeal or application shall be proceeded with:

Provided that an application under this regulation may be admitted after the aforesaid period of sixty days from the date of abatement or dismissal where the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

32. Benches :-

(1) The President shall constitute, from amongst the members of the Tribunal, including himself, Bench or Benches of one or more members to hear and dispose of appeals or applications, directed by him to be placed before such Bench or Benches.

(2) Every such appeal or application for revision, reference, rectification or restoration or any other miscellaneous application allotted to such bench shall be heard and disposed of by the bench.

(3) The President may transfer any appeal or application allotted to one Bench to any other Bench for hearing and disposal.

33. Pronouncement of judgment :-

(1) When the hearing of an appeal or application is complete, the Tribunal shall pronounce or reserve the judgment. In case the judgment is reserved the date for pronouncing the judgment shall be fixed and notice of such date shall be given to the parties, unless the date is fixed in the presence of the parties at the time of reserving the judgment.

(2) The judgment may be pronounced by dictation to a shorthand writer in open court.

(3) If the Tribunal thinks fit, the substance of the judgment intended to be delivered may be announced just after the hearing of the appeal or application is complete, in open court.

34. Unanimous or majority judgment :-

When the judgment is by a single member each it shall be dated and signed by such member. Where the judgment is unanimous, it shall be dated and it shall be signed by all the members. Where the judgment is of the majority, it shall be dated and it shall be signed

by the members forming the majority. The dissenting member shall also write his judgment and record his opinion on the point or points on which he dissents and the judgment shall be signed by him.

35. Certain matters to be specified in the judgment :-

The Tribunal shall, in its judgment, state at the end, whether the appeal or application or cross objections are dismissed or allowed wholly or in part and mention the relief, if any, granted to the appellant or applicant or respondent as the case may be.

36. Order to contain statement of case to the High Court :-

In its order, on an application for reference, the Tribunal shall give a concise but clear statement of the facts leading to the application and shall formulate with precision the question of law to be referred to the High Court for decision.

37. Costs :-

(1) The costs of the appeal or application shall be in the discretion of the Tribunal.

(2) In its final order, the Tribunal shall state who shall bear the costs and in what proportion, if any.

(3) A bill of costs, if any, shall be drawn up by the Registrar in Form P and attached to the judgment.

38. Supply of certified copies of judgment to Commissioner and other party :-

A certified copy of every judgment of the Tribunal shall be forwarded to the Commissioner as soon as practicable. A certified copy of it shall also be supplied free of cost and without application to the other party to the appeal or application.

CHAPTER 6

MISCELLANEOUS

39. Functions of the Registrar :-

The Registrar shall perform such functions as are assigned to him by these regulations or by the President.

40. Seal of Tribunal :-

The Tribunal shall have an official seal which shall be kept in the custody of the Registrar.

41. Notice, judgments, etc. to be signed and sealed :-

Every notice and every certified copy of judgment or any document shall be signed by the Registrar with the date, month and year of signing and shall be sealed with the official seal of then Tribunal.

42. Copies of documents on payment of fees :-

(1) A person who is a party to an appeal or application before the Tribunal may apply to the Registrar for a certified copy of any document or statement produced, filed or made in the assessment proceedings or appeal or application, or any order passed by the Sales Tax authorities therein.

(3) If the Registrar feels any doubt about the propriety of granting a copy of any such document, he shall place the application before the President and act in accordance with the order of the President.

(4) Persons who are not parties to an appeal or application may be supplied with a copy of any document other than those mentioned in section 76 under the order of the President and on payment of copying fees in accordance with sub-regulation (2).

(5) The Registrar shall make endorsement on the application for certified copy as and when received and make further endorsement about such application having been granted. The certified copy shall bear endorsement mentioning the date on which the application was made, the date on which the copy was ready and the date on which the copy was supplied and the fee charged. A register relating to the applications and supply of certified copies shall be maintained by the Registrar.

43. Regulation 43 :-

(1) Any party to the proceedings or his agent intending to have the inspection of the record or the proceedings shall make an application in writing to the Registrar, stating therein the purpose for which the said request is made. Such application shall be made affixing court-fee stamp of Rs. 1/- and containing undertaking that the inspection fees as laid down in sub-regulation (5) shall be paid up when demanded by the Registrar.

(2) If the Registrar is satisfied that the application made under sub-regulation (1) ; is in order he shall make the endorsement on it about date on which it was received by him and place before the President for orders.

(3) If the application is not in order then the Registrar shall return

it to the party or his agent presenting the same.

(4) The President shall pass the orders either granting the application for inspection or rejecting the same. If the application is rejected, the grounds rejecting the same may briefly be stated.

(6) No inspection of the record of the Tribunal shall be allowed except in the presence of an official of the Tribunal appointed in that behalf by the Registrar.

(7) The fees for inspection of record shall be Re. 1 /- per case per every two hours or part thereof during which such inspection is allowed and the fee shall be recovered in the form of Court- fee stamps.

44. Forms of notice :-

Forms B, C and J to O and Q with suitable modifications shall be used for the purpose of the notices to be issued by the Tribunal.

45. Service of notices on Government :-

Notices required to be served on Government shall be served on the Government Agent and pending his appointment, on the Commissioner.

46. Service of notice in general :-

The notices required to be issued to the parties under the Act or these regulations shall be served in the manner provided in rule 74 of the Rules.

47. Power to administer oath to the deponents :-

The Registrar shall have power to administer oath to a deponent who may have to file affidavit before the Tribunal.

48. Procedure relating to fee payable along with application for reference :-

49. Tribunal to follow provisions of Civil Procedure Code in the matters not provided in these regulations :-

The Tribunal shall, in any matter not provided for in these regulations, follow the procedure, as far as it is applicable, laid down in the Code of Civil Procedure, 1908 .

50. Repeal and Savings :-

On the commencement of these regulations the Gujarat Sales Tax Tribunal Regulations, 1961, shall stand repealed : Provided that any thing done or any action taken under any of the regulations so

repealed shall be deemed to have been done or taken under the corresponding provisions of these regulations.