
Gujarat Tax On Entry Of Specified Goods Into Local Areas Act, 2001

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SCHEDULE 1 :- SCHEDULE I

Gujarat Tax On Entry Of Specified Goods Into Local Areas Act, 2001

First published, after having received the assent of the Governor in the "Gujarat Government Gazette", (Extraordinary No. 29, Part IV). An Act to provided for the levy of a tax in the State of Gujarat on the entry of certain goods into a local area of the State from any place outside the State, but not outside the territory of the Union of India for consumption, use or sale therein and for the matters connected therewith or incidental thereto. It is hereby enacted in the Fifty-second Year of the Republic of India as follows:-

Statement of Object This Bill seeks to introduce the entry tax on the specified goods with a view to giving effect to the proposal contained in the Budget Speech of the Finance Minister in the Legislative Assembly on the 26th July, 2001. During the recent past, it has been observed that due to the difference in the rate of

sales tax between the State of Gujarat and neighbouring States, diversion of trade has taken place and in some cases sales tax payments are avoided or evaded by various methods. This results in the loss of sales tax revenue legitimately due to the State of Gujarat. With a view to compensating such loss of sales tax revenue, it is considered necessary to levy a tax on entry of certain specified goods purchased outside the State and brought into the local areas of the State of Gujarat for use, consumption or sale therein.

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Gujarat Tax on Entry of Specified Goods into Local Areas Act, 2001. (2) It extends to the whole of the State of Gujarat. (3) It shall come into force on the 1st September, 2001.

2. Definitions :-

In this Act, unless the context otherwise requires, - (a) "Appellate Authority" means an Appellate Authority appointed under Section 6; (b) "Appellate Tribunal" means the Gujarat Sales Tax Tribunal constituted under Section 28 of the Gujarat Sales Tax Act, 1969; (c) "Assessing Authority" means any officer appointed under Section 5; (d) "Entry of specified good into a local area" with all its grammatical variations and cognate expressions means entry of specified goods into a local area from any place outside the State but not being a place outside the territory of the Union of India, for consumption, use or sale therein; (e) "Importer" means a person who brings any of the specified goods into a local area from any place outside the State but not being a place outside the territory of the Union of India, for consumption, use or sale therein; (f) "Local area" means, - (i) a city within the meaning of the Bombay Provincial Municipal Corporations Act, 1949; (ii) a municipal borough, transitional area, small urban area or a notified area within the meaning of the Gujarat Municipalities Act, 1963; (iii) a village, within the meaning of the Gujarat Panchyats Act, 1993; (iv) a cantonment within the meaning of the cantonment Act, 1924; (g) "Person" includes any company or association or body of individuals, whether incorporated or not, a society, a club or an institution and also a Hindu Undivided Family, a firm, a local authority the Central Government or any State Government; (h) "Prescribed" means prescribed by rules; (i) "Purchase value" means the value of the specified goods as ascertained from the original invoice and includes insurance, excise, duties, counter-vailing

duties, sales tax, transport fee, octroi, freight charges and all other charges incidentally, levied on the purchase of the specified goods and in the case of the specified goods mentioned at serial number 1 of the Schedule also the value of accessories fitted therein; Provided that where purchase value of the specified good is not ascertainable on account of non-availability or non-production of the original invoice, or when the invoice produce is proved to be false, or if the specified goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or price at which the specified goods of the like kind or quality are sold or are capable of being sold, in open market in the local area; (j) "Rules" means rules made under this Act; (k) "Specified goods" means goods specified in column 2 of the Schedule; (l) "State" means the State of Gujarat; (m) "Tax" means the tax payable under this Act.

3. Incidence Of Tax :-

(1) Subject to the other provisions of this Act, on and from the 1st day of September, 2001, there shall be levied and collected on the entry of specified goods into a local area, a tax on the purchase value thereof at such rates as may be fixed by the State Government by notification in the Official Gazette, but not exceeding the maximum rates specified in column 4 of the Schedule, and different rates may be fixed for different specified goods. (2) The tax shall be payable and paid by an importer in such manner and within such time as may be prescribed. (3) The tax shall be in addition to the tax levied and collected as octroi by a municipal corporation of a city constituted under the Bombay Provincial Municipal Corporations Act, 1949 or any other local authority as the case may be, within its local area.

4. Reduction In Tax Liability :-

(1) The amount of tax leviable under this Act shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to Sales Tax as may be in force in any other State or Union Territory by an importer who had purchased the specified goods in that State. (2) The amount of tax leviable under this Act shall, subject to such conditions as may be prescribed, be reduce to the extent of the amount of tax paid, if any, under the Central Sales Tax Act, 1956 on the purchase of the specified goods in the course of inter-State trade or commerce. (3) Where an importer of specified goods liable to pay tax under this Act, being a dealer in the specified goods,

becomes liable to pay tax under the Gujarat Sales Tax Act, 1969 or the Bombay Sales of Motor Spirit Taxation Act, 1958 by virtue of the sale of such specified goods, then his liability under the Gujarat Sales Tax Act, 1969 or the Bombay Sales of Motor Spirit Taxation Act, 1958 shall be reduced to the extent of tax paid under this Act.

5. Assessing Authorities :-

The State Government may, by notification in the Official Gazette, appoint such officers to be the Assessing Authorities for the purpose of this Act and may assign to them such local area or areas as may be specified in the notification.

6. Appellate Authorities :-

The State Government may by notification in the Official Gazette, appoint such officers to be the Appellate Authorities for the purpose of this Act and may assign to them such local area or areas as may be specified in the notification.

7. Returns :-

(1) Every person liable to pay tax under this Act shall furnish returns in such form, for such period, by such dates, and to such authority as may be prescribed. (2) If any person liable to pay tax under this Act, having furnished return under Sub-section (1) discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months from the last date prescribed for furnishing the original return.

8. Assessment :-

(1) The amount of tax due from a person liable to pay tax under this Act shall be assessed separately for such period as may be prescribed. (2) If the Assessing Authority is satisfied that the return furnished by a person liable to pay tax under this Act is correct and complete, he shall assess the amount of tax due from the person on the basis of such return. (3) If the Assessing Authority is not satisfied that the return furnished by a person liable to pay tax under this Act is correct and complete, and the Assessing Authority thinks it necessary to require the presence of the person or the production of further evidence, the Assessing Authority shall serve on the person in the prescribed manner a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which the person relies in support of this return, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Assessing Authority shall, after considering all

the evidence which may be produced, assess the amount of tax due from the person. (4) If a person fails to comply with the requirements of any notice issued under Sub-section (3), the Assessing Authority shall determine the purchase value of the specified goods under the proviso to clause (i) of Section 2 and assess to the best of his judgment, the amount of tax due from him. (5) No order of assessment under sub-section (3) or (4) shall be made after the expiry of three years from the last date prescribed for furnishing of returns of the particular period. If for any reason, such order is not made within the period aforesaid, then the return so furnished shall be deemed to have been accepted as correct and complete for assessing the tax due from such person.

9. Reassessment :-

If, after a person liable to pay tax under this Act has been assessed under Section 8 for any period, the assessing authority has reason to believe that any purchase value or part thereof has, in respect of that period, escaped assessment, or has been under assessed or assessed at a lower rate, then the assessing authority may, within five years from the date of the order of assessment of the particular period, after giving the person a reasonable opportunity of being heard, reassess, to the best of his judgment, the tax due from him.

10. Payment Of Tax :-

(1) The tax shall be paid in the manner hereinafter provided. (2) A person liable to pay the tax, shall, before furnishing return as required by Sub-section (1) of Section 7, first pay into the Government treasury in the prescribed manner, the whole of the amount of tax due from him according to such return. (3) If a person liable to pay the tax furnishes a revised return in accordance with Sub-section (2) of Section 7, and if such revised return shows that the amount of tax is larger than the amount of tax already paid or payable, he shall first pay into the Government treasury in the prescribed manner the additional amount of tax according to such revised return. (4) The amount of - (i) tax due where return has been furnished without full payment thereof, or (ii) difference in the tax assessed under Section 8 or reassessed under Section 9 for any period and the sum already paid by the person in respect of such period, and (iii) penalty (if any) levied under Section 17, shall be paid by the person into the Government treasury by such date as may be specified in the notice issued by the assessing authority for this purpose, being a date not earlier than thirty days from the

date of service of the notice. (5) Any tax or penalty which remains unpaid after the date specified in the notice for payment, shall be recoverable as an arrear of land revenue, and for that purpose all the assessing authorities shall have and exercise all the powers of a Collector under the provisions of the Bombay Land Revenue Code, 1879.

11. . Refund Of Tax :-

The assessing authority shall, on an application made in such form and within such period as may be prescribed, refund to a person the amount of tax and penalty, in any, paid by such person in excess of the amount due from him. The refund may be either by cash payment, or at the option of such person, by deduction of such excess from the amount of tax and penalty, if any due from such person in respect of any other period: Provided that the assessing authority shall first apply such excess towards the recovery of any amount due in respect of which a notice under Sub-section (4) of Section has been issued, and shall then refund the balance, if any, in such manner as may be prescribed.

12. Exemption :-

(1) No tax shall be levied and collected in respect of motor vehicles mentioned at serial number 1 in the Schedule if such motor vehicles are registered in any other State or Union Territory of India under the Motor Vehicles Act, 1988 for a period exceeding fifteen months before their entry into a local area of the State. (2) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in public interest, by notification in the Official Gazette, exempt any class of importers from payment of the whole or any part of the tax payable under this Act.

13. Appeal :-

(1) An appeal from every original order under this Act or the Rules made thereunder shall lie to the appellate authority appointed under Section 6. (2) In the case of an order passed in appeal by the appellate authority, a second appeal shall lie to the Appellate Tribunal. (3) No appeal shall be entertained by the appellate authority or the Appellate Tribunal unless it is filed within thirty days from the date of receipt of the order, appealed against by the assessee and unless the entire amount of tax and penalty, if any, has been credited by the assessee in the Government treasury: Provided that an appellate authority or the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an

appeal against such order - (a) without payment of tax with penalty (if any) or, as the case may be, of the penalty, or (b) on proof of payment of such smaller sum as it may consider reasonable, or (c) on the appellant furnishing in prescribed manner, security for such amount as the appellate authority or as the case may be, the Appellate Tribunal may direct. (4) Subject to such rules of procedure as may be prescribed, every appellate authority or as the case may be, the Appellate Tribunal shall have the following powers, namely:- (a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment; or it may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and, after making such further inquiry as may be necessary, the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment; and (b) in any other case, the appellate authority or the Appellate Tribunal, as the case may be, may pass such orders on appeal as it deems just and proper.

14. Application Of Sections 4 And 12 Of Limitation Act :-

In computing the period laid down under Section 13, the provisions of Sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

15. Extension Of Period Of Limitation In Certain Case :-

An appellate authority and the Appellate Tribunal may admit any appeal under Section 13 after the period of limitation laid down in the said section, if the appellant satisfies the appellate authority or the Appellate Tribunal, as the case may be, that he had sufficient cause for not preferring the appeal within such period.

16. Transfer To Defraud Revenue Void :-

Where, any person, after the tax has become due from him under this Act, creates a charge on, or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his property in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the person under this Act: Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of any proceeding under this Act.

17. Penalty :-

(1) If any person liable to pay tax under this Act fails to comply with any of the provisions of this Act, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax. (2) If the person does not, without reasonable cause, pay the tax within the time, he is required by or under the provisions of this Act, to pay it, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty, in addition to the amount of tax and penalty under Sub-section (1), a sum of equal to eighteen per cent per annum for the period during the time the person continues to make default in the payment of tax. (3) If any person commits breach of any rule punishable with penalty, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose upon him a sum by way of penalty not exceeding the sum of penalty specified in the rule.

18. Officers And Servants To Be Public Servant :-

All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

19. Protection Of Action Taken In Good Faith :-

No suit, prosecution or other legal proceedings shall lie against the Government, or any public servant for anything which is in good faith done or purported to be done under this Act. 20. Power to make rules. - (1) The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act: Provided that if the State Government is satisfied that the circumstances exist which render it necessary for it to take immediate action, it may dispense with the previous publication of any rule to be made under this section. (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 duties and powers of officers appointed for the purpose of enforcing the provisions of this Act; (b) all matters expressly required or allowed by this Act to be prescribed; (c) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act; (d) any other matter

including levy of fees for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act; (e) the procedure for any other matters (including fees) incidental to the disposal of appeal, and the value of court-fee stamp which a memorandum of appeal should bear; (f) the person who may appear or attend before any authority in connection with any proceedings under the Act, including, his qualifications, the conditions subject to which the person shall be entitled to appear and attend and the form to authorisation authorising such person to attend. (3) In making any rules under this section, the State Government may direct that the breach thereof shall be punishable with penalty not exceeding two thousand rupees and when the breach is a continuing one, with a daily penalty not exceeding one hundred rupees during the continuance of the breach. (4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subjected to rescission by the State Legislature or to such modification as the State 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.

SCHEDULE 1

SCHEDULE I

Explanation. - For the purposes of this Schedule, -

(1) Where sales of any of the specified goods at Sr. Nos. 1 to 6 of the Schedule is, by notification under Sub-section (2) of Section 49 of the Gujarat Sales Tax Act, 1969 exempt from whole or any part of the tax payable under that Act, the maximum rate of tax for such goods shall be reduced by such exemption.

(2) Where sales of the specified good at Sr. No. 7 of the Schedule is, by notification under Section 35 of the Bombay Sales of Motor Spirit Taxation Act, 1958, exempt from whole or any part of the tax payable under that Act, the maximum rate of tax for such goods shall be reduced by such exemption.

The Financial Memorandum and Memorandum regarding Delegated Legislation appended to the Gujarat Tax on Entry of Specified Goods into Local Areas Bill, 2001 (Bill No. 36 of 2001 (Gujarat Government Gazette, Extraordinary No. 36, Part V, dated 28th August, 2001,)) runs as follows:-

NOTES ON CLAUSES

The following notes on clauses explain the important provisions of the Bill:-

Clause 3. - This clause deals with the incidence of tax leviable on the entry of the specified goods into a local area for use, consumption or sales therein which shall not exceed the maximum rates specified in column 4 of the Schedule. It also provides that rates of such tax may be fixed by the Government by a notification in the Official Gazette.

Clause 4. - This clause provides for reduction in the tax liability to the extent of the tax paid.

Clauses 5 and 6. - These clauses respectively provide for the appointment of assessing authorities and appellate authorities for the purpose of this Act.

Clause 7 and 8. - These clauses respectively provide for furnishing of returns and assessment of tax on the basis of returns.

Clause 9. - This clause provides for reassessment of tax.

Clause 10. - This clause provides for the manner in which tax is to be paid.

Clause 11. - This clause provides for the refund of tax.

Clause 12. - This clause provides for exemption of any specified class of importers from the payment of the whole or any part of the tax payable under this Act.

Clause 13. - This clause provides for appeals.

Clause 14 and 15. - These clauses respectively provide for applicability of Sections 4 and 12 of the Limitation Act, 1963 in computing the period of limitation and empower the authority to condone the delay in not preferring appeal within prescribed time.

Clause 16. - This clause provides for declaring void transfer of any property or creation of a charge on such property by the owner made during pendency of tax proceedings with the intention of defrauding the Government revenue.

Clause 17. - This clause provides for penalty for the failure to comply with any of the provisions of this Act.

Clause 20. - This clause empowers the State Government to make rules generally for carrying out the purposes of this Act and particularly for the matters specified in Sub-clause (2) of this clause. FINANCIAL MEMORANDUM Clauses 5 and 6 of the Bill empower the State Government to appoint assessing authorities and appellate authorities. It is proposed to entrust the work of assessment, collection of tax and appellate work to the officers working in the Sales Tax Department. The collection of tax and administration of the Act would be entrusted to the Sales Tax Department. Therefore, the provisions of the Bill, if enacted and brought into force, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects:-

Clause 3. - (i) Sub-clause (1) of this clause empowers the State Government to fix, by notification in the Official Gazette, the rate of tax not exceeding the maximum rates mentioned for the specified goods in the Schedule;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules, the manner in which and the time within which the tax shall be payable and paid by an importer.

Clause 4. - (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules the conditions subject to which the amount of tax leviable under the Act shall be reduced to the extent of the amount of tax paid, if any, under the law relating to sales tax in force in any other State or Union Territory;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules, the conditions subject to which the amount of tax leviable under the Act shall be reduced to the extent of the amount of tax paid, if any, under the Central Sales Tax Act, 1956 on the purchase of specified goods, in the course of inter-State trade or commerce.

Clause 5. - This clause empowers the State Government to appoint, by notification in the Official Gazette, such officers as the Assessing Authorities and to assign to them such local areas as may be specified in the notification.

Clause 6. - This clause empowers the State Government to appoint, by notification in the Official Gazette, such officers as Appellate Authorities and to assign to them

such areas as may be specified in the notification.

Clause 7. - This clause empowers the State Government to prescribe by rules, the form in which, the period for which, the dates by which and the authority to which, every person liable to pay tax under this Act, shall furnish returns.

Clause 8. - (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the period for which the amount of tax due from a person liable to pay tax under the Act, shall be assessed separately;

(ii) sub-clause (3) of this clause empowers the State Government to prescribe by rules, the manner in which the Assessing Authority shall serve a notice on a person requiring him to attend on a date and at a place specified therein and produce or cause to be produced all evidence on which the person relies in support of his return or produce such evidence as specified in the notice.

Clause 10. - (i) Sub-clause (2) of this clause empowers the State Government to prescribe by rules, the manner in which the whole amount of tax due from a person, according to his return, shall be first paid by him into a Government treasury;

(ii) sub-clause (3) of this clause empowers the State Government to prescribe by rules the manner in which the additional amount of tax according to revised return shall be first paid by him into Government treasury.

Clause 11. - This clause empowers the State Government to prescribe by rules, the form in which and the period within which an application for refund of excess amount of tax and penalty may be made to the Assessing Authority.

The proviso to this clause empowers the State Government to prescribe by rules, the manner in which the balance amount shall be refunded.

Clause 12. - This clause empowers the State Government to exempt, by notification in the Official Gazette, any class of importers from payment of the whole or any part of tax subject to such conditions that may be imposed.

Clause 13. - (i) Paragraph (c) of the proviso to sub-clause (3) of this clause empowers the State Government to prescribe by rules, the manner in which the appellant shall furnish security for such amount as the Appellate Authority may direct;

(ii) sub-clause (4) of this clause empowers the State Government to prescribe the rules of procedure subject to which the Appellate Authority shall have the powers specified therein.

Clause 20. - Sub-clause (1) of this clause empowers the State Government to make by notification in the Official Gazette, rules generally for carrying out the purposes of this Act.

The delegation of the legislative powers as aforesaid is necessary and is of a normal character.