

Gujarat Value Added Tax (Second Amendment) Act, 2006

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 2 Of Guj. 1 Of 2005
3. Amendment Of Section 9 Of Guj. 1 Of 2005
4. Amendment Of Section 11 Of Guj. 1 Of 2005
5. Amendment Of Section 14 Of Guj. 1 Of 2005
6. Insertion Of New Sections 14B And 14C In Guj. 1 Of 2005
7. Amendment Of Section 31 Of Guj. 1 Of 2005
8. Amendment Of Section 41 Of Guj. 1 Of 2005
9. Amendment Of Section 60 Of Guj. 1 Of 2005
10. Amendment Of Section 64 Of Guj. 1 Of 2005
11. Amendment Of Section 98 Of Guj. 1 Of 2005
12. Amendment Of Section 2 Of Guj. 1 Of 2005
13. Amendment Of Section 11 Of Guj. 1 Of 2005
14. Insertion Of New Section 14D In Guj. 1 Of 2005
15. Amendment Of Section 31 Of Guj. 1 Of 2005
16. Amendment Of Section 60 Of Guj. 1 Of 2005
17. Amendment Of Section 11 Of Guj. 1 Of 2005
18. Amendment Of Section 29 Of Guj. 1 Of 2005
19. Amendment Of Section 30 Of Guj. 1 Of 2005
20. Repeal And Savings

Gujarat Value Added Tax (Second Amendment) Act, 2006

AN ACT further to amend the Gujarat Value Added Tax Act, 2003. It is hereby enacted in the Fifty-seventh Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Gujarat Value Added Tax (Second Amendment) Act, 2006. (2) The provisions of Part I of this Act shall be deemed to have come into force on the 10 May, 2006; the provisions of Part II shall be deemed to have come into force on the 4th August, 2006 and the provisions of Part III of this Act shall come into force at once. PART- I

2. Amendment Of Section 2 Of Guj. 1 Of 2005 :-

In the Gujarat Value Added Tax Act, 2003 (Guj. 1 of 2005) (hereinafter referred to as "the principal Act" in section 2, in clause (27), for the word and figures "section 14" the words, figures and

letters "section 14,14A, 14B or 14C" shall be substituted.

3. Amendment Of Section 9 Of Guj. 1 Of 2005 :-

In the principal Act, in section 9, after sub-section (3), the following sub-section shall be added, namely:- (4) Where a dealer or a Commission Agent who is liable to pay tax under this Act purchases taxable goods from a Commission Agent to whom permission to pay lumpsum tax is granted under section 14B and the goods so purchased by him are not resold within the State, then such dealer or the Commission Agent shall be liable to pay purchase tax on the turnover of such purchases at the rate set out against each of such goods in Schedule II.

4. Amendment Of Section 11 Of Guj. 1 Of 2005 :-

In the principal Act, in section 11, sub-section (5), in clause (c), for the word and figures "section 14", the words, figures and letters "section 14, 14A, 14B or 14C" shall be substituted.

5. Amendment Of Section 14 Of Guj. 1 Of 2005 :-

In the principal Act, in section 14, in sub-section (1),- (1) in clause (a), in the proviso, clause (vii) shall be deleted; (2) in clause (b), for the words, brackets and figures "clauses (i) to (vii)", the words, brackets and figures "clauses (i) to (vi)" shall be substituted.

6. Insertion Of New Sections 14B And 14C In Guj. 1 Of 2005 :-

In the principal Act, after section 14A, the following sections shall be inserted, namely:- "14B. Composition of tax on agricultural produce. (1) Notwithstanding anything contained in this Act, the Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit a Commission Agent engaged in the business of agricultural produce, to pay at his option in lieu of the amount of tax leviable from him under this Act, a lumpsum tax by way of composition at such rate as may be fixed by the State Government by notification in the Official Gazette. (2) The permission to pay lump sum tax under sub-section (1) shall be granted by the Commissioner to a Commission Agent who, - (a) exclusively carries on a business of agricultural produce, and (b) is licensed as general commission agent with a market committee established under the Gujarat Agricultural Produce Markets Act, 1963. (3) The Commissioner shall not grant permission to pay lump sum tax under sub-section (1) to a Commission Agent who, - (a) sells the goods in the course of inter-State trade and commerce or exports goods out of the territory of India,

(b)purchases the goods in the course of inter-State trade and commerce or imports goods from a place out of the territory of India, (c)dispatches the goods to his branch or his consigning agent out side the State or receives the goods from his branch situated out side the State or from his consigning agent out side the State, (d)sells the goods to a person who is not a registered dealer, or (e)sells the goods to a dealer who is permitted to pay lump sum tax under section 14. (4)The Commission Agent who is permitted under sub-section (1) to pay lump sum tax shall not,- (a)be entitled to claim tax credit in respect of tax paid by him on his purchases, (b)charge any tax under this Act in his sales bill or sales invoices in respect of the sales on which lump sum tax is payable, and (c)issue tax invoice to any dealer who has purchased the goods from him. (5)The Commission Agent who is permitted to pay lump sum tax under sub-section (1) shall be liable to pay purchase tax leviable under sub-sections (1), (3) and (4) of section 9 in addition to the lump-sum tax under this section. (6)The permission granted under sub-section (1) shall remain valid so long as the provisions of this section and rules made in this behalf are complied with; and in case of breach of any of the provisions of this section or rules, the Commission Agent shall be liable to pay tax under sections 7 and 9 for such tax period as may be prescribed. 14C. Composition of tax on turnover of right to use the goods. (1)The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit a dealer referred to in sub-clause (h) of clause (10) of section 2, to pay at his option in lieu of amount of tax leviable from him under this Act, a lump sum tax by way of composition at such rate as may be fixed by the State Government by notification in the Official Gazette. (2)The provisions of sub-sections (3) and (4) of section 14 shall apply mutatis-mutandis to a dealer who is permitted under sub-section (1) to pay lump sum tax by way of composition. (3)The permission granted under sub-section (1) shall remain valid so long as the provision of this section and rules made in this behalf are complied with; and in case of breach of any of the provision of this section or the rules, the dealer shall be liable to pay tax under sections 7 and 9 for such tax period as may be prescribed."

7. Amendment Of Section 31 Of Guj. 1 Of 2005 :-

In the principle Act, in section 31, in sub-section (2), for the word and figures "section 14", the words, figures and letters "section 14, 14A, 14B or 14C" shall be substituted.

8. Amendment Of Section 41 Of Guj. 1 Of 2005 :-

In the principal Act, in section 41, in sub-section (1), for the words "inequitable situation", the words "inequitable situation or for sufficient and reasonable cause" shall be substituted.

9. Amendment Of Section 60 Of Guj. 1 Of 2005 :-

In the principal Act, in section 60, in sub-section (1), in the proviso- (i) in clause (b), for the word and figures "section 14", the words, figures and letters "section 14, 14A, 14B or 14C" shall be substituted; (ii) in clause (c), the word "or" appearing at the end shall be deleted; (iii) in clause (d), the word " or" shall be added at the end; (iv) after clause (d), the following clause shall be added, namely:- "(e) in such other cases as the State Government may, by notification in the Official Gazette, specify."

10. Amendment Of Section 64 Of Guj. 1 Of 2005 :-

In the principal Act, in section 64,- (1) for the words "eight years", the words "six years" shall be substituted; (2) the following proviso shall be added, namely:- "Provided that where the dealer is a party to an appeal or revision under this Act, he shall preserve the books of accounts and the records pertaining to the subject matter of such appeal or revision until the appeal or revision is finally disposed of."

11. Amendment Of Section 98 Of Guj. 1 Of 2005 :-

In the principal Act, in section 98, after sub-section (2), the following sub-section shall be inserted, namely:- "(2A) Any rule made under the Act, may be made so as to have retrospective effect.". PART II

12. Amendment Of Section 2 Of Guj. 1 Of 2005 :-

In the principal Act, in section 2, in clause (27), for the figures, letters and word "14B or 14C", the figures, letters and word "14B 14C or 14D" shall be substituted.

13. Amendment Of Section 11 Of Guj. 1 Of 2005 :-

In the principal Act, in section 11, in sub-section (5), in clause (c), for the figures, letters and word "14B or 14C", the figures, letter and word "14B, 14C or 14D" shall be substituted.

14. Insertion Of New Section 14D In Guj. 1 Of 2005 :-

In the principal Act, after section 14C, the following section shall be inserted, namely:- "14D. Composition of tax on sales of eatables by hotels, restaurants, caterers, etc. (1) Notwithstanding anything contained in this Act, the Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit

any dealer who is engaged in the business of sale of eatables in any form (whether processed or unprocessed) served, delivered or given in package from the place of business of the dealer or any other place, to pay at his option in lieu of the amount of tax leviable from him under this Act in respect of sales of eatables, lump sum tax by way of composition at such rate as may be fixed by the State Government by notification in the Official Gazette: Provided that the Commissioner shall not grant permission to pay lump sum tax to a dealer who is engaged in the activity of manufacture of such goods as the State Government may, by notification in the Official Gazette, specify. (2) The provisions of sub-section (3) and (4) of section 14 shall apply mutatis mutandis to a dealer who is permitted under sub-section (1) to pay lump sum tax by way of composition. (3) The permission granted under sub-section (1) shall remain valid so long as the provisions of this section and rules made in this behalf are complied with; and in case of breach of any of the provisions of this section or the rules, the dealer shall be liable to pay tax under sections 7 and 9 for such tax period as may be prescribed. Explanation.-For the purpose of this section, the word "eatables" means all kind of foods for the purpose of consumption including all types of alcoholic and non-alcoholic beverages, water (mineral, purified or aerated) and soda water, ice-cream and kulfi, sweets and sweetmeats, fruits and fruit juice, all types of milk preparations, bakery products and such other goods as the State Government may, by order specify".

15. Amendment Of Section 31 Of Guj. 1 Of 2005 :-

In the principal Act, in Section 31, in sub-section (2), for the figures, letters and word "14B or 14C, the figures, letters and word "14B, 14C, or 14D shall be substituted.

16. Amendment Of Section 60 Of Guj. 1 Of 2005 :-

In the principal Act, in section 60, in sub-section (1), in the proviso, in clause (b), for the figures, letters and word "14B or 14C" the figures, letters and word "14B, 14C or 14D" shall be substituted.

PART III

17. Amendment Of Section 11 Of Guj. 1 Of 2005 :-

In the principal Act, in section 11, in sub-section (3), to clause (b), the following proviso shall be inserted, namely:- "Provided that where the rate of tax, of the taxable goods consigned or dispatched by a dealer for branch transfer or to his agent outside the State is less than four per cent., then the amount of tax credit in respect of

such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the Schedule on such goods on the turnover of purchases".

18. Amendment Of Section 29 Of Guj. 1 Of 2005 :-

In the principal Act, in section 29, after sub-section (2), the following sub-section shall be inserted, namely:- "(2A) The Commissioner may, in such circumstances and on such terms and conditions as may be prescribed, extend the date of furnishing the return by any dealer or class of dealers."

19. Amendment Of Section 30 Of Guj. 1 Of 2005 :-

In the principal Act, in section 30, after sub-section (2), the following sub-section shall be inserted, namely:- "(2A) The Commissioner may, in such circumstances and on such terms and conditions as may be prescribed, extend in respect of any dealer or class of dealers, the date of payment of tax payable by the dealer according to his returns."

20. Repeal And Savings :-

(1) The Gujarat Value Added Tax (Second Amendment) Ordinance, 2006 (Guj. Ord. 1 of 2006) and the Gujarat Value Added Tax (Third Amendment) Ordinance 2006 (Guj. Ord. 2 of 2006) are hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinances shall be deemed to have been done or taken under the principal Act, as amended by this Act. STATEMENT OF OBJECT AND REASONS OF BILL NO. 28 OF 2006 The Gujarat Value Added Tax Act, 2003 (Guj. 1 of 2005) has been implemented in the State with effect from 1st April, 2006. Representations were received by the Government from the traders and businessmen to remove the difficulties and hardship caused in the implementation of the Act and to grant the benefit of payment of lump sum tax. The State Government had considered such representation and it was considered necessary to amend the Act so as to provide for the following matters which are included in Part I and II of Bill:- (i) New sub-section (4) inserted in section 9 imposes liability on the purchasing dealer to pay purchase tax where the agricultural produce purchased by him from the commission agent has not been resold within the State. (ii) Under the provisions of section 14, a dealer who has been permitted to pay lump sum tax cannot effect sales or purchases with another dealer who is permitted to pay lump sum tax. This restriction has been removed. (iii) New section 14B

empowers the Commissioner to permit a commission agent engaged in the business of agricultural product, to pay lump sum tax. (iv) New section 14C empowers the Commissioner to permit a dealer engaged in the business of transferring the right to use the goods, to pay lump sum tax. (v) New section 14D empowers the Commissioner to permit a dealer engaged in the business of sale of eatables i.e. Hotels, restaurants, caterers etc., to pay lump sum tax. (vi) New section 14A, 14B, 14C and 14D are proposed to be inserted in the Act, and therefore consequential amendments are made in section 2, sufficient and reasonable cause for granting the remission. (viii) Section 65 provides that the books of accounts shall be preserved by the dealer for a period of eight years. This time limit of eight years has been reduced to six years except in case where an appeal or revision is pending before any Authority. (ix) In order to enable the State Government to make rules with the retrospective effect, new sub-section (2A) is inserted in section 98. An opportunity has been taken to amend the clause (b) of sub-section (3) of section 11 so as to provide that where the rate of tax of taxable goods consigned or dispatched by a dealer of branch transfer or to his agent outside the State is less than four per cent., the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax provided in the Schedule of tax Act on such goods. It is also considered necessary to amend section 29 and 30 so as to empower the Commissioner to extend the date of furnishing the return as well as the date for making payment of tax by the dealer or class of dealers. As the Gujarat Legislative Assembly was not in session at that time, the Gujarat Value Added Tax (Third Amendment) Ordinance, 2006 were promulgated to amend the said Act. This Bill seeks to replace the said Ordinances by an Act of the State Legislature and also seeks to amend section 1, 29 and 30 to achieve the aforesaid objects.

SAURABHPATEL MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides of delegation of legislative powers in the following respects:

Clause 6:

- (i) Sub-section (1) of section 14B and sub-section (1) section 14C proposed to be inserted by this clause empower the State Government to prescribed by rules, the circumstances in which and the conditions subject to which the dealer can be permitted to pay lump sum in lieu of the Amount of tax leviable under the Act. It also empowers the State Government to fix, by notification in the official Gazette, the rate of lump sum tax.
- (ii) Sub-section (6) of section 14B, and sub-section (3) of section 14C proposed to be inserted by this clause empower the State Government to prescribed by rules the tax period in respect to which the commission agent/dealer shall be liable to pay tax under section 7 and 9 in case of

branch of provisions of the Act or the rules.

Clause-9:-

Clause(e) proposed to be added in the proviso to sub-section (1) of section 60 empowers the State Government to specify, by notification in the Official Gazette, such other cases for which tax invoice shall not be issued.

Clause11:-

Sub-section(2A) proposed to be inserted in section 98 by this clause empowers the State Government to make rules with retrospective effect.

Clause14:-

(i) Sub-section (1) of section 14D proposed to be inserted by this clause empowers the State Government to prescribe by rules, the circumstances in which and the conditions subject to which and the conditions subject to which the dealer can be permitted to pay lump sum tax in lieu of the amount of tax leviable under the Act. It also empowers the State Government to fix, by notification in the Official Gazette, the rate of lump sum tax.

(ii) The proviso to the sub-section (i) of section 14D proposed to be inserted by this clause empowers the State Government to specify, by notification in the Official Gazette, the activity of the manufacture of such goods for which the Commissioner shall not grant permission to pay lump sum tax to dealer who is engaged in the business of sales of eatables.

(iii) Sub-section (30) of section 14D proposed to be inserted by this clause empowers the State Government to prescribe by rules the tax period in respect of which the dealer shall be liable to pay tax under section 7 and 9 in case of branch of provisions of the Act or the rules.

(iv) The Explanation to section 14D empowers the State Government to specify, by order, the other goods which fall within the term eatables in the section.

Clause18:-

Sub-section(2A) proposed to be inserted in section 29 by this clause empowers the State Government to prescribe by rules, the circumstances in which and terms and conditions on which the Commissioner may extend the date of furnishing the return by any dealer or class of dealers.

Clause19:-

Sub-section(2A) proposed to be inserted in section 30 by this clause empowers the State Government to prescribe by rules, the circumstances in which and terms and conditions on which the Commissioner may extend the date of payment of tax payable by any dealer or class of dealers.

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