

Karnataka Special Tax On Entry Of Certain Goods Act, 2004

29 of 2004

[11 August 2004]

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Karnataka Special Tax On Entry Of Certain Goods Act, 2004

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An Act to provide for levy of special tax on the entry of certain goods into local areas for consumption, use or sale therein.

Whereas it is expedient to provide for levy of special tax by the Government, on the entry of certain goods into local areas for consumption, use or sale therein; Be it enacted by the Karnataka State Legislature in the fifty fifth year of the Republic of India as follows:-

CHAPTER 1
PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Karnataka Special Tax on Entry of Certain Goods Act, 2004.

(2) It extends to the whole of the state of Karnataka.

(3) It shall come into force on such 1[date] as the Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

1. The Act has come into force on 20th September 2004, vide Notification No. FD 133 CET 2004 dated 20-9-2004 (Karnataka Gazette Extraordinary No. 1033, Dated 20-9-2004)

2. Definitions :-

(1) In this Act, unless the context otherwise requires:

(a) "Assessee" means a person by whom tax is payable;

(b) "Assessing authority" means.-

(i) in the case of an importer, who is a dealer, the authority as specified under the Karnataka Sales Tax Act;

(ii) in the case of an importer, other than a dealer, the officer-in charge of the check post, established under the Karnataka Sales Tax Act through which the notified goods are brought into the State or the Officer who intercepts the goods vehicles while transporting the notified goods if it is intercepted in places other than Check Post, or the Assistant Commissioner of Commercial Tax appointed under the Karnataka Sales Tax Act having jurisdiction over the area, in which such importer ordinarily resides;

(c) "Dealer" means a dealer as defined under the Karnataka Sales Tax Act;

(d) "Entry of goods into a local area" with all its grammatical variations and cognate expressions, means entry of notified goods into a local area from any place outside the State for consumption, use or sale therein;

(e) "Goods vehicle" means a goods vehicle as defined in clause (m-

- 1) of sub-section (1) of section 2 of Karnataka Sales Tax Act;
- (f) "Government" means the Government of Karnataka;
- (g) "Importer" means a person who brings or causes to be brought any notified goods whether on his own account or on account of a principal or any other person, into a local area, from any place outside the State for consumption, use or sale therein or who owns the notified goods at the time of entry into the local area from any place outside the State;
- (h) "Karnataka Sales Tax Act" means the Karnataka Sales Tax Act, 1957 (Karnataka Act No. 25 of 1957);
- (i) "Local area" means an area within the limits of a local authority;
- (j) "Notified Goods" means the goods notified by the Government from time to time for the purpose of this Act;
- (k) "Person" includes any company or association or body of individuals whether incorporated or not, a firm, a local authority, a Hindu Undivided Family, a society, a club, an individual or the Government of any other state or Union Territory;
- (l) "State" means the State of Karnataka;
- (m) "Tax" means tax leviable under this Act;
- (n) "Value of the notified goods" means the purchase value of the notified goods, as ascertained from original invoice and includes the value of accessories fitted to such goods, insurance, excise duties, countervailing duties or any other duties, sales tax, transport fee, freight charges and all other charges incidentally levied on the purchase of such goods:

Provided that, where the purchase value of any notified Goods is not ascertainable on account of non availability or non production of an original invoice or when the invoice produced is proved to be false or if any notified goods is acquired or obtained otherwise than by way of purchase; then the purchase value shall be the value or price at which any goods of like kind or quality is sold or is capable of being sold, in open market.

(2) Words and expressions used in this Act, but not defined, shall have the meaning assigned to them in the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

CHAPTER 2

LEVY OF TAX

3. Levy And Collection Of Tax :-

(1) Subject to other provisions of this Act, there shall be levied and collected a tax on the entry of any notified goods into any local

area for consumption, use or sale therein, on the value of the notified goods at the rate specified in respect of such goods under the Karnataka Sales Tax Act.

(2) The tax shall be payable by an importer in accordance with the provisions of this Act or the rules made there under.

4. Reduction In Tax Liability :-

(1) Where an importer of any notified goods liable to pay tax under this Act, being a dealer in notified goods becomes liable to pay tax under the Karnataka Sales Tax Act, by virtue of sale of such notified goods, then his liability under the Karnataka Sales Tax Act, shall be reduced to the extent of tax paid under this Act or if the tax paid under this Act is in excess of the amount paid under Karnataka Sales Tax Act, such excess tax paid shall be refunded as may be prescribed.

(2) Where an importer who, not being a dealer in notified goods, causes entry of the notified goods for his own use or consumption from any Union Territory, or from any other State, then his liability under this Act, shall, subject to such conditions as may be prescribed, be reduced to the extent of amount of tax paid, if any, under the Law relating to General Sales Tax or under the Central Sales Tax Law as may be in force in that Union Territory or State.

5. Power To Exempt Tax :-

(1) The State Government may if it is necessary so to do in public interest, by notification, exempt the tax payable under this Act, by any specified class of importers or on any class of notified goods.

(2) Any exemption, notified under sub-section (1) may be subject to such restrictions and conditions as may be specified in the notification.

(3) The State Government may, by notification, cancel or vary any notification issued under sub-section (1).

CHAPTER 3

TAX AUTHORITIES, RETURNS, ASSESSMENTS, PAYMENTS, RECOVERY, ETC.

6. Tax Authorities, Returns, Assessments, Payments, Recovery, Etc. :-

(1) Subject to other provisions of this Act and the rules made there under, the authorities for the time being empowered under the Karnataka Sales Tax Act, to assess, reassess, collect and enforce

payment of tax, including any interest or penalty payable by an importer shall assess, reassess, collect and enforce payment of tax including any interest or penalty as if the tax or interest or penalty payable by an importer under this Act, is a tax or interest or penalty payable under the Karnataka Sales Tax Act and for this purpose they may exercise all or any of the powers they have under the Karnataka Sales Tax Act and all the provisions of that law including provisions relating to returns, provisional assessment, advance payment of tax, imposition of the tax liability of a person carrying on business on the transfer of, or successor to, any business transferred, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, rebates, penalties, charging or payment of interest, inspection of the premises of transporters, goods vehicles, business premises, search of residential accommodation, seizure of unaccounted notified goods, seizure of documents, offences and compounding of offences (excluding the provisions relating to matters provided in sections 10 and 11) and treatment of document furnished by an importer as confidential, shall apply accordingly.

(2) Subject to the provisions of sub-section (1) in the case of an importer other than a dealer, the assessment, payment, enforcement and collection of tax shall be such as may be prescribed.

7. Burden Of Proof :-

(1) For the purpose of assessment of tax under this Act, the burden of proving that the notified goods brought into or caused to be brought into a local area, is not liable to tax under this Act, shall be on such importer.

(2) Where an importer furnishes, issues or produces bill of sale, voucher, declaration, certificate or any other document which he knows or has reason to believe to be false with a view to support or make any claim that he or any other importer is not liable to be taxed under this Act, the assessing authority shall on detecting such furnishing or issue or production, direct the importer furnishing, issuing or producing such a bill of sale, voucher, declaration, certificate or other documents to pay as penalty,-

(i) in the case of first detection, three times the tax levied or leviable in respect of such goods; and

(ii) in the case of second or subsequent detection, five times the tax levied or leviable in respect of such goods:

Provided that before issuing any direction for payment of penalty under this sub-section, the assessing authority shall give to the importer an opportunity of being heard against the levy of such penalty.

8. Protection Of Action In Good Faith :-

(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the Government for any action taken or purporting to be taken under this Act, without the previous sanction of the Government, and no such suit, prosecution or other proceeding shall be instituted after the expiry of six months from the date of action complained of.

(2) No officer or servant of the Government shall be liable in respect of any such action in any Civil or Criminal proceedings, if the action taken was in good faith in the course of execution of duties imposed on him or the discharge of functions entrusted to him by or under this Act.

9. Courts Not To Set Aside Or Modify Assessment, Except, As Provided In This Act :-

No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any assessment made under this Act.

CHAPTER 4

OFFENCES AND PENALTIES

10. Offences And Penalties :-

(1) Any person, who,-

(a) fails to pay, within the time allowed any tax assessed or any penalty imposed on him under this Act, or

(b) willfully acts in contravention of the provisions of this Act or the rules made thereunder, shall, on conviction, be liable to be punished with fine which may extend to two thousand rupees.

(2) Any person, who,-

(a) willfully submits an untrue return or fails to submit a return as required by the provisions of this Act or the rules made thereunder., or (b) fraudulently evades the payment of any tax and other amount due from him under this Act.

shall, on conviction be liable to be punished if it is a first offence with fine which may extend to two thousand rupees and if it is a second or subsequent offence with simple imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

(3) Any person who makes any statement or declaration in any of the records or documents, which statement or declaration he knows or has reason to believe to be false shall, on conviction, be liable to be punished with simple imprisonment, which may extend to six months or with fine which may extend to two thousand rupees or with both.

(4) Any person, who has indulged in any fraudulent evasion or attempted at evasion or abetment of evasion of any tax payable under this Act shall, on conviction be punished with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both.

11. Offences By Companies :-

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible for, the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect, on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this Section –

(a) Company means any body corporate and includes a firm or other association of individuals; and

(b) director in relation to a firm means a partner in the firm.

12. Cognizance Of Offences :-

(1) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate First Class shall try any offence punishable under this Act.

(2) No Court shall take cognizance of any offence punishable under Section 11 except upon a complaint in writing by such authority as may be notified by the Government from time to time.

13. Compounding Of Offences :-

The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under section 11 by way of composition of such offence a sum of money not exceeding ten thousand rupees or double the amount of tax payable, whichever is greater.

CHAPTER 5 **MISCELLANEOUS**

14. Power To Remove Difficulties :-

If any difficulty arises, in giving effect to the provisions of this Act, the Government may by order make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

15. Power To Make Rules :-

(1) The Government may, by notification, after previous publication make rules to carry out the purpose of this Act.

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

(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 the proceeding under this Act;

(d) any other matter including levy of fees for which there is no specific provision in this Act, and for which provision is, in the opinion of the Government necessary for giving effect to the purpose of this Act ; and

(e) the procedure for any other matter incidental to the disposal of the appeal or revision.

(3) Every rule made under the provisions of this Act and every notification issued under Section 5 shall be laid as soon as may be after it is published, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions immediately following and if both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule or notification.