
Madhya Pradesh General Sales Tax (Third Amendment) Act, 1983

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Madhya Pradesh General Sales Tax (Third Amendment) Act, 1983

An Act further to amend the Madhya Pradesh General Sales Tax Act, 1958. BE it enacted by the Madhya Pradesh Legislature in the thirty-fourth year of the Republic of India as follows:- Statement of Object An Act further to amend the Madhya Pradesh General Sales Tax Act, 1958. BE it enacted by the Madhya Pradesh Legislature in the thirty-fourth year of the Republic of India as follows:-

1. Short Title And Commencement :-

- (1) This Act may be called the Madhya Pradesh General Sales Tax (Third Amendment) Act, 1983.
- (2) It shall come into force at once, except that section 3 which shall be deemed to have come into force with effect from the 24th August, 1982.

2. Amendment Of Section 2 :-

In section 2 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) (hereinafter referred to as the principal Act), -

(i) for clause (k), the following clause shall be substituted, namely:-

"(k) place of business means any place where a dealer purchases or sells any goods or stores goods or keeps accounts of his purchases or sales or both and also includes -

(i) the place of business of an agent where a dealer carries on business through an agent;

(ii) any place, or building whether any business is carried on therein or not, in which the person carrying on the business, states that any of his books of accounts, documents, stocks or other things relating to his business are kept;"

(ii) after clause (k), the following clause shall be inserted, namely:-

"(kk) purchase price shall comprise of -

(i) the amount payable by a dealer as valuable consideration for the purchase of goods simpliciter:

Provided that where goods are purchased together with the packing material or container, then notwithstanding anything contained in this Act, the purchase price of such goods shall be inclusive of the price or cost or value of such packing material or container, whether such price or cost or value is paid separately or not, as if such packing material or container were the parts of the goods purchased;

(ii) transport costs, if any;

(iii) trade commission, if any, by whatever name called;

(iv) forwarding and handling charges, if any;

(v) insurance charges, if any;

(vi) local taxes, if any;

(vii) excise duty, if any, leviable under the Central Excises and Salt Act, 1944 (No. 1 of 1944);

(viii) cost of packing, if any; and

(ix) any other charges or costs other than those specified above, if incurred or paid in respect of goods so purchased.

Explanation. - For the purpose of this clause transport cost includes such expenses as are incurred by the dealer on transportation of goods after taking delivery from the seller;"

(iii) in clause (o) the words "and the expression purchase price shall be construed accordingly" shall be omitted.

3. Amendment Of Section 16-A :-

In sub-section (1) of section 16-A of the principal Act, for the words "furnished security of not less than five hundred rupees or such

higher amount", the words "furnish cash security of not less than five hundred rupees or such higher amount" shall be and shall always be deemed to have been substituted with effect from the 24th August, 1982.

4. Amendment Of Section 17 :-

In sub-section (3) of section 17 of the principal Act, -

(a) in clause (ii), for the words "one hundred rupees", the words "five hundred rupees" shall be substituted; and

(b) in clause (iii), for the words and figures "not less than 15 per cent and not exceeding 35 per cent", the words and figures "not less than 25 per cent and not exceeding 40 per cent" shall be substituted.

5. Amendment Of Section 18 :-

In sub-section (8) of section 18 of the principal Act, -

(i) in clauses (i) and (ii), for the words "three calender years", the words "two calender years" shall be substituted; and

(ii) after the second proviso, the following proviso shall be added, namely:

"Provided also that any assessment proceedings in relation to any year ending before the date of commencement of the Madhya Pradesh General Sales Tax (Third Amendment) Act, 1983, shall be completed in accordance with and within the period specified in the provisions in force before the date of such commencement or within two calender years following such commencement, whichever is earlier."

6. Omission Of Section 18-B :-

Section 18-B of the principal Act shall be omitted.

7. Insertion Of New Section 19-A :-

After section 19 of the principal Act, the following section shall be inserted, namely:-

"19-A. Power of reassessment in certain cases. - (1) Where any order passed in respect of a dealer for any period is rendered erroneous and prejudicial to the interests of revenue consequent to or in the light of any judgment or order of any court or tribunal, which has become final, then notwithstanding anything contained in this Act, the Commissioner may at any time within a period of

three years from the date of such judgment or order initiate proceedings to reassess the tax payable by such dealer.

(2) The reassessment proceedings initiated under sub-section (1) shall be completed as far as may be within a period of two calendar years from the date of initiation of such proceedings.

(3) No order of reassessment under this section shall be passed without giving to the dealer a reasonable opportunity of being heard."

8. Amendment Of Section 27 :-

In sub-section (1) of section 27 of the principal Act, -

(a) for the words "rupees sixty thousand", the words "one lakh and fifty thousand rupees"; and

(b) for the words "rupees twenty", the words "rupees fifty", shall be substituted.

9. Amendment Of Section 29 :-

In section 29 of the principal Act,

(i) for the marginal heading, the following marginal heading shall be substituted, namely:-

"Power to require production of accounts and documents and to inspect, search and seize books of accounts, documents and goods";

(ii) for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) For the purpose of sub-section (2) or sub-section (3), the Commissioner may enter and search any place of business of any dealer, or any other place whether such place be the place of his business or not where the Commissioner has reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business or stocks of goods relating to his business, and the Commissioner may for exercising the powers under this sub-section seal or break open the lock of any door, box, locker, safe, almirah or any other receptacle where the keys thereof are not produced on demand or are not available.

(5) For the purposes of sub-section (2) or sub-section (3), the Commissioner may also search any person, who leaves or is about to enter or is already in the place referred to above, if the Commissioner has reason to suspect that such person has secreted about his person, any such books or accounts or other documents relating to any business of a dealer liable to pay tax.

(6) Where the Commissioner has reason to believe that the dealer has stored or kept goods liable to payment of tax without accounting for them in books, registers or accounts maintained by such dealer in the course of his business with a view to their surreptitious sale in order to evade payment of tax in any building, place or vehicle under ownership or control of the dealer in either case whether exclusive or in association with some other person, or in any building, place or vehicle in each case belonging to some other person with express or implied permission of such other person, the Commissioner may enter any such building, place or vehicle with such number of assistants as may be necessary, and inspect and verify if the goods have been accounted for and in the event of his reasonable belief that the dealer has not accounted for such goods with the intention of evading tax, the Commissioner may seize all such goods and take all necessary steps for their removal, proper custody and preservation:

Provided that a list of all goods seized under this sub-section shall be prepared by the Commissioner in presence of at least two respectable persons and a copy thereof shall on demand be furnished to the dealer, or as the case may be, to the person from whose possession or custody they were seized.

(7) The Commissioner shall, as soon as possible, after seizure of the goods under sub-section (6), serve upon the dealer a notice in writing to show cause within a period of thirty days of service of such notice as to why a penalty equal to double the amount of tax payable and calculable on the price which such goods would have fetched on their assumed sale in Madhya Pradesh on the date of seizure, be not imposed on him for the dealers default in not making entries in respect of such goods in his books of account or registers or other documents, as the case may be, maintained by him in the course of his business.

(8) If the Commissioner, after taking into consideration the explanation of the dealer and after giving him an opportunity of being heard, is satisfied that the entries relating to said goods were not made in the books of accounts, registers or other documents of the dealer and without any proper justification, the Commissioner shall pass an order imposing a penalty equal to the sum specified in the notice.

(9) The Commissioner may, at any time after the service of the notice under sub-section (7) and before passing an order imposing penalty under sub-section (8), release the goods seized if the dealer or the person from whom the goods were seized furnishes

security in the form of cash security or bank guarantee or any other security to the satisfaction of the Commissioner, in each case for such reasonable amount as the Commissioner may specify by order in writing with due regard to the amount of penalty proposed.

(10) The cash security, and in the case of bank guarantee or any other security, when the amount thereof is realised, shall be adjusted towards, the penalty imposed and the balance, if any, shall be refunded to the dealer or to the surety, as the case may be.

(11) Where no security is furnished under sub-section (9), the dealer shall pay the amount of penalty within thirty days of the service of the order imposing penalty on him and goods seized shall be released forthwith.

(12) If the dealer fails to pay the penalty imposed under sub-section (8), the Commissioner shall, subject to other provisions of this section, dispose of the goods by sale in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty imposed and the expenses incurred on account of and incidental to the custody, protection, preservation and sale of such goods and shall refund the balance, if any, to the dealer or person entitled.

(13) The penalty imposed under sub-section (8) shall be without prejudice to any other action under any other provisions of this Act.

(14) Where any objection is made to the seizure of the property seized under sub-section (6) on the ground that such goods do not belong to the dealer or are not otherwise liable to seizure, the Commissioner shall proceed to decide the objection:

Provided that no such objection shall be entertained, -

(a) where, before the objection is made, the property seized has already been sold; or

(b) where the Commissioner considers that the objection was designedly or unnecessarily delayed.

(15) All questions (including question relating to right, title or interest in the property seized) arising between the parties to such proceedings or their representatives and relevant to the adjudication of the claim or objection, shall be determined by the Commissioner dealing with the claim or objection.

(16) Upon the determination of the questions referred to in sub-section (15), the Commissioner shall, in accordance with such determination, -

(a) allow the claim or objection and release the property from distraint either wholly or to such extent as he thinks fit; or

(b) disallow the claim or objection; or

(c) continue the distraint subject to any lien, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case, he deems fit.

(17) Where any claim or objection has been adjudicated upon under sub-section (16) or where the Commissioner refuses to entertain a claim or objection under the proviso to sub-section (14), any such order made shall be deemed to be an order relating to assessment of tax against a dealer under section 18 and shall be subject to the same conditions as to appeal, revision or any other remedy under this Act.

(18) Where the Commissioner apprehends any resistance to entry, search or seizure of goods, he may for reasons to be recorded in writing requisition the services of any police officer of the State Government, having jurisdiction over the local area in which such entry, search or seizure is to be made, to assist him for all or any of the purposes specified in sub-section (3) or sub-section (4), or sub-section (5) or sub-section (6) and it shall be duty of such police officer to comply with such requisition.

(19) The Commissioner while making entry, search and seizure under this section shall, unless otherwise expressly provided by or under this Act, exercise the same powers and follow the same procedure as are exercised by and are required to be followed by a police officer in relation to entry, search and seizure under the provisions of the Code of Criminal Procedure, 1973 (No. 2 of 1974).

10. Amendment Of Section 29-D :-

For sub-section (1) of section 29-D of the principal Act, the following sub-section shall be substituted, namely:

"(1) The Commissioner may establish flying squads for investigation of any case of alleged or suspected evasion of tax. Each flying squad shall consist of a Flying Squad Officer who shall be an officer not below the rank of a Sales Tax Officer and such officers specified in section 3, as the Commissioner may appoint to assist him."

11. Amendment Of Section 30 :-

In section 30 of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation. - for the purpose of this section, any person appointed under section 3, to assist him shall include Flying Squad Officer referred to in sub-section (1) of section 29-D and officers

appointed to assist him under the said sub-section."

12. Amendment Of Section 38 :-

In section 38 of the principal Act, -

(i) in sub-section (1), for the words and figures "to an original order of assessment with or without penalty passed in respect of him under section 18 or section 19" the words, figures and letter "to an original order of assessment under section 18 with or without penalty or to an order of reassessment under section 19 or section 19-A, with or without penalty passed in respect of him" shall be substituted; and

(ii) in sub-section (3), -

(a) for the words "is paid", the words "is paid and the memorandum of appeal is accompanied by a satisfactory proof of payment of such amount," shall be substituted; and

(b) the following proviso shall be added at the end, namely:

"Provided that where a dealer is covered by more than one of the aforesaid clauses, the provisions of the clause requiring the payment of the highest amount shall apply to such dealer and the first or the second appeal shall be admitted only after he has paid such amount."

13. Amendment Of Section 51 :-

In section 51 of the principal Act, -

(a) in sub-section (2), -

(i) clause (hhh) shall be omitted; and

(ii) for clause (n), the following clause shall be substituted, namely:-

"(n) the conditions subject to which the Commissioner may order the production of accounts, registers or documents or require to furnish any information under sub-section (1), and the manner in which the goods shall be disposed of under sub-section (12) of section 29;" and

(b) in clause (b) of sub-section (3), for the words "one hundred rupees", the words "five hundred rupees" shall be substituted.

14. Amendment Of Schedule I :-

In Schedule I to the principal Act, for entry 4, the following entry shall be substituted, namely:-

"4. All kinds of roofing tiles and ridges excepting Mangalore, Bagra,

Kusner and similar superior roofing tiles and ridges."

The Statement of Objects and Reasons appended to the Madhya Pradesh (Third Amendment) Bill, 1983 (Madhya Pradesh Gazette, Extraordinary No. 491, dated October 13, 1983, page 2766.), runs as follows:-