

Madhya Pradesh Vat (Second Amendment) Act, 2010

20 of 2010

[10 August 2010]

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 4
3. Insertion Of Section 4-A And 4-B
4. Amendment Of Section 9
5. Amendment Of Section 11
6. Amendment Of Section 14
7. Amendment Of Section 17
8. Amendment Of Section 20A
9. Insertion Of Section 24-A, 24-B And 24-C
10. Amendment Of Section 39
11. Amendment Of Section 46

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An Act further to amend the Madhya Pradesh Vat Act, 2002. Be it enacted by the Madhya Pradesh Legislature in the Sixty-first year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Madhya Pradesh Vat (Second Amendment) Act, 2010.

(2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

2. Amendment Of Section 4 :-

In Section 4 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002) (hereinafter referred to as the Principal Act),-

(i) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) The Appellate Board shall consist of a Chairman and such

number of judicial and Accountant members as the State Government may decide.";

(ii) proviso to Sub-section (5) shall be omitted; and

(iii) sub-section (6) shall be renumbered as sub-section (12) and before sub-section (12) as so renumbered, the following sub-sections shall be inserted namely:-

"(6) The Chairman of the Board shall be a retired member of the Indian Administrative Service who has held a post equivalent to the Chief secretary of the State Government or Secretary to the Government of India and has experience of tax administration.

(7) Judicial members shall be the person who has been a member of Madhya Pradesh Higher Judicial Service or a person who has been an advocate dealt in tax matters for at least ten years. At least one Judicial member shall be a serving or retired member of the Madhya Pradesh Higher Judicial Service.

(8) Accountant members shall be the person who has been in practice of accountancy in Sales Tax/Commercial Tax/Value Added Tax, as a Chartered Accountant for at least ten years, or who has been a member of the Madhya Pradesh State Taxation Service and has held the post of Additional Commissioner or equivalent or a higher post for at least three years. At least one accountant member shall be a serving or retired member of Madhya Pradesh State Taxation Service.

(9) The State Government may remove from office, the Chairman or member of the Board who-

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to effect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuation in office prejudicially to the public interest;

Provided that the Chairman shall not be removed from his office on the ground specified in clauses (d) and (e) above except on an enquiry held by the State Government in accordance with such procedure as it may prescribe in this behalf and finds the Chairman to be guilty of such ground:

Provided further that any member of the Board may be removed from the office, only after the consultation with the chairman.

(10) The terms and conditions of the service of the Chairman and

the members of the Board shall not be varied to their disadvantage during their tenure of office.

(11) The Chairman or any member ceasing to hold office shall not be eligible to appear, act or plead before any authority appointed under the Act.";

3. Insertion Of Section 4-A And 4-B :-

After Section 4 of the principal Act, the following Sections shall be inserted in Chapter II, namely :-

"4A. Orders of Appellate Board.

(1) The Appellate Board may after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it think fit.

(2) The Appellate Board may, at any time within four calendar years from the date of order, with a view to rectify any mistake apparent in the record, rectify any order passed by it under sub-section (1), and may make such rectification if the mistake is brought to its notice by the dealer or the Assessing Officer:

Provided that no such rectification shall be made if it has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of a dealer, unless the Appellate Board has been given notice to the dealer of its intention to do so and has allowed the dealer a reasonable opportunity of being heard.

(3) On an application under sub-section (6) of Section 46, the Appellate Board may, after considering the merits of the application made by the dealer, pass an order of stay for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Board shall dispose of the Appeal within the said period of stay specified in that order:

Provided that where such appeal is not disposed of within the said period of stay as specified in the order of stay, the Appellate Board may, on an application made in this behalf by the dealer and on being satisfied that the delay in disposing of the appeal is not attributable to the dealer, extend the period of stay, or pass an order of stay for a further period, or periods as it think fit, so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty five days and the Appellate Board shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided further that if such appeal is not disposed of within the

period allowed under this sub-section or the period or periods extended or allowed under the first proviso, which shall not in any case, exceed three hundred and sixty five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of appeal is not attributable to the dealer.

(4) The cost, if any, in an appeal shall be at the discretion of the Appellate Board.

(5) The Appellate Board shall send a copy of any order passed under this Section to the dealer and to the Commissioner.

4-B. Procedure of Appellate Board

(1) The powers and functions of the Appellate Board may be exercised and discharged by Benches constituted by the Chairman of the Appellate Board from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Division Bench shall include at least one judicial member and one accountant member.

(3) The Chairman or any other member of the Appellate Board may, sitting singly, dispose of any case which pertains to a dealer whose total turnover as computed by the Assessing Officer in the case does not exceed rupees sixty lacs and the Chairman may for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the member of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the Chairman of the Appellate Board for hearing on such point or points by one or more of the other members of the Appellate Board, and such point or points shall be decided according to the opinion of the majority of the members of the appellate board who have heard the case, including those who first heard it.

(5) Subject to provisions of this Act, the Appellate Board shall have power to regulate its own procedure and the procedures of benches thereof on all matters arising out of the exercise of its power or of the discharge of its function, including the places at which the Benches shall hold their sittings.

(6) The Appellate Board shall, for the purpose of discharging its functions, have all the powers which are vested in the taxing authorities referred to in Section 3, and any proceeding before the appellate Board shall be deemed to be a judicial proceeding within

the meaning of Sections 193 and 228 of the Indian penal Code, 1860(45 of 1860) and for the purpose of section 196 of the Indian Penal Code, 1860(45 of 1860), the Appellate Board shall also be deemed to be a civil court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973 (No. 2 of 1974).

4. Amendment Of Section 9 :-

In section 9 of the principal Act.-

(i) for sub-section (2), the following sub-section shall be substituted namely:-

"(2) Notwithstanding anything to the contrary contained in this Act, no tax shall be levied on goods specified in Schedule II, if the goods are sold by any one of the oil companies, as may be notified, to any one of the notified oil companies";

(ii) after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) Notwithstanding anything to the contrary contained in this Act, no tax shall be levied on such goods as may be notified by the State Government, subject to such restrictions and conditions as may be specified in the notification, if the goods are sold by a joint venture company to its holding company.

5. Amendment Of Section 11 :-

In Section 11 of the Principal Act, in sub-section (1), for the words "fifty lacs", the words "sixty lacs", shall be substituted.

6. Amendment Of Section 14 :-

In section 14 of the Principal Act, after sub-section (1-A), the following sub-section shall be inserted, namely :-

"(1-B) Subject to such restrictions and conditions as may be prescribed, where a registered dealer sells the goods as may be notified by the State Government, and the dealer consumes the goods purchased by him within the State of Madhya Pradesh from another such dealer after payment to him input tax, in the manufacture of such notified goods, he shall claim or be allowed in such manner and within such period as may be prescribed, input tax rebate of the amount of such tax. The provisions of clause (a) of sub-section (1) shall mutatis mutandis apply to the input tax rebate claimed or allowed under this sub-section".

7. Amendment Of Section 17 :-

In section 17 of the Principal Act,

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

"(4) (a) On the day the application for grant of registration certificate as required by sub-section (1) of sub-section (2) is received, the said authority shall grant the applicant a registration certificate in the prescribed form.

(b) After issue of the registration certificate under clause (a), the Commissioner shall verify the particular given in the application in such manner as may be prescribed.

(c) If the Commissioner on verification under clause (b), is satisfied that the particulars given by the applicant in his application are incorrect or that the applicant has misrepresented certain facts, he shall, after giving the applicant an opportunity of being heard and recording the reasons in writing, cancel the registration certificate issued to applicant under clause (a) in accordance with the provision of clause (c) or clause (e) of sub-section (10) from the date of its issued, not later than thirty days of the date of receipt of the application";

(ii) for sub-section (10), the following sub-section shall be substituted, namely :-

"(10) when-

(a) on an application by a registered dealer that his business has been discontinued or transferred, or the Commissioner on his own motion finds that a registered dealer has discontinued or transferred his business; or

(b) on an application by a registered dealer that his liability to pay tax has ceased, or the Commissioner on his own motion finds that as per the returns submitted by a registered dealer, his turnover in the immediate previous year has not exceeded the limit prescribed under Section 5; or

(c) the Commissioner on his own motion finds that a registered dealer has been granted a registration certificate on the basis of the incorrect information furnished by the dealer; or

(d) the Commissioner on his own motion finds that a registered dealer is in arrears of tax or penalty or any other sum due under this Act or under the Act repealed by this Act, which is more than rupees one lac and which remains outstanding for more than six months; or

(e) the Commissioner on his own motion finds that the certificate of

a registered dealer should be cancelled for reasons to be recorded in writing by him,

The Commissioner may cancel the registration certificate.

Provided that where the Commissioner proposes to cancel the registration certificate of a dealer under this sub-section, he shall give the dealer an opportunity of being heard."

8. Amendment Of Section 20A :-

In section 20-A of the principal Act, after sub-section (1-A), the following sub-section shall be inserted, namely:-

"(1-B) Notwithstanding anything to the contrary contained in sub-section (1) and (1-A), the State Government may, by notification, provide that assessment of a registered dealer subject to such requirements, restrictions and conditions as may be specified in the notification, shall be deemed to have been made for the purpose of sub-section (1) of Section 20.

9. Insertion Of Section 24-A, 24-B And 24-C :-

After section 24 of the principal Act, the following sections shall be inserted, namely:-

"24-A. Commercial tax settlement Authority

(1) The state Government may constitute an Authority to be called the Commercial Tax Settlement Authority for the settlement of cases under the Madhya Pradesh General Sales Tax Act, 1958 (No.2 of 1959) (Repealed Act), Madhya Pradesh Commercial Tax Act, 1994 (No.5 of 1995) (Repealed Act), Madhya Pradesh VAT Act, 2002 (No.20 of 2002), Central Sales Tax Act, 1956 (No.74 of 1956) and the Madhya Pradesh Ksthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No.52 of 1976).

(2) The minister in charge of the Commercial Tax Department shall be the Chairman of the Settlement Authority .

(3) The Settlement Authority shall include one representative each from Finance, Law and Legislative affairs and Commercial Tax Department not below the rank of Secretary as Member.

(4) The Commissioner, Commercial Tax shall be the member Secretary of the Settlement Authority.

24-B. Application of settlement of cases.

(1) Notwithstanding anything to the contrary contained in this Act, if any amount of tax, interest and penalty under the Madhya Pradesh General Sales Tax Act, 1958 (No.2 of 1959) (Repealed Act), Madhya Pradesh Commercial Tax Act, 1994 (No.5 of 1995)

(Repealed Act), Madhya Pradesh VAT Act, 2002 (No.20 of 2002), Central Sales Tax Act, 1956 (No.74 of 1956) and the Madhya Pradesh Ksthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No.52 of 1976).-

(i) is disputed by a dealer and the dispute is pending before the High Court for adjudication;

(ii) hardship is being caused to a dealer due to any order passed under any of the provisions of the Act.

the dealer may apply for the settlement of the amount of tax, interest and penalty to the Settlement Authority.

(2) an application for settlement of the amount shall be submitted in the form and the manner as may be prescribed.

(3) The dealer shall pay-

(i) the undisputed amount of tax in full and twenty five percent of the disputed amount of tax, in case of application under clause (i) of sub-section (i);

(ii) the full amount of tax in case of application under clause (ii) of sub-section (1) before submission of the application

24-C Procedure on receipt of an application

(1) The Settlement Authority shall pass an appropriate order, including waiver of the whole or part of the interest and penalty levied and included in the amount payable by the dealer, on every application for settlement after affording an opportunity of hearing to the dealer.

(2) The Settlement Authority shall consider the application and the submissions, if any made before them by the dealer and thereafter decide the amount to be deposited by the applicant.

(3) The dealer shall submit an application for withdrawal of the case pending before the High Court and a copy thereof shall be submitted to the Settlement Authority before the issue of order of settlement.

(4) If the amount required to be deposited under sub-section (2), has already been deposited by the dealer, the Settlement Authority shall pass an order of settlement. If the amount deposited is less than the amount decided by the Settlement Authority. The balance amount shall be deposited by the dealer within the time as may be decided by the Settlement Authority. On receipt of proof of payment of the balance amount. The Settlement Authority shall pass an order of settlement.

(5) The Settlement Authority shall pass a settlement order on every application indicating the balance amount of interest and penalty waived on settlement.

(6) The Settlement Authority may remand the case wherever it thinks fit.

(7) An order of settlement shall not form the basis for any claim by the applicant in cases other than the case in which such settlement order has been passed.

(8) No penal action against the applicant under any Act administered by the department shall be initiated after an order of settlement has been passed under this section. The dealer also shall not be entitled to refund of any amount of any other benefit under any Act afterwards.",

10. Amendment Of Section 39 :-

In section 39 of the principal Act, in sub-section (2), for the words "forty lacs", the words "sixty lacs" shall be substituted.

11. Amendment Of Section 46 :-

In section 46 of the principal Act,-

(i) in sub-section (8), in clause (b), for the words "the Appellate Board shall make an endeavor to pronounce its order in writing within one calendar year from the date of filing of appeal", the words "the Appellate Board shall dispose of every appeal within two calendar years from the date of filing of appeal" shall be substituted;

(ii) after sub-section (8-A), the following sub-sections shall be inserted, namely:-

"(8-B) The appeals pending before the Appellate Board on the date of commencement of Madhya Pradesh Vat (Second Amendment) Act, 2010 shall be disposed of by the Appellate Board within the period specified in sub-section (8) or the period of one calendar year following such commencement, whichever is later."