

Rajasthan Sales Tax (Amendment) Act, 1979

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Rajasthan Sales Tax (Amendment) Act, 1979

An Act further to amend the Rajasthan Sales Tax Act, 1954. BE it enacted by the Rajasthan State Legislature in the Thirtieth Year of the Republic of India as follows:- Statement of Object "The Rajasthan Sales Tax (Amendment) Ordinance, 1979 (Ordinance No. 1 of 1979) (See page 39 supra.), was promulgated to raise the maximum limit of sales tax rate up to 60 per cent. The Bill seeks to replace the said Ordinance. 2. Opportunity has also been availed to meet certain interpretations put by the Supreme Court and the Board of Revenue on the definition of 'dealer' and sections 7AA and 11B. 3. The provisions regarding payment of tax in advance of return are being made more explicit and certain. 4. The limit has also been proposed for completion of assessments to reduce old assessments in arrears. There is some lacuna in section 5C which permits concession to dealers in exempted goods though they do not pay Rajasthan sales tax or Central sales tax. Any officer authorised by the Commissioner has been empowered to file revisions before the Board of Revenue. Similarly, the Commissioner or any officer authorised by him has been empowered to apply for reference to the High Court. Provision regarding prosecution of unregistered dealers having turnover above Rs. 1 lac is proposed to be deleted. This would also remove the lacuna regarding non-registration or non-assessment of such dealers. The Bill seeks to

achieve the above objects." MEMORANDUM ON DELEGATED LEGISLATION "Clause 9 of the Bill seeks to empower the Commissioner to authorise any officer to file revision under section 14. 2. Clause 10 of the Bill seeks to empower the Commissioner to authorise any officer to apply for reference to the High Court."

1. Short title :-

This Act may be called the Rajasthan Sales Tax (Amendment) Act, 1979.

2. Amendment of section 2, Rajasthan Act 29 of 1954 :-

In sub-clause (i) of clause (f) of section 2 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), hereinafter referred to as the principal Act, - (i) the expression "the Central or a State Government or any of their departments" shall be and shall be deemed always to have been omitted; (ii) the existing explanation shall be numbered as "Explanation 1"; and (iii) after explanation 1 as so numbered, the following shall be, and shall be deemed always to have been added, namely:- "Explanation 2. - The Central or a State Government or any of their departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act."

3. Amendment of section 5, Rajasthan Act 29 of 1954 :-

In sub-section (1) of section 5 of the principal Act, for the word "thirty", the word "sixty" shall be and shall be deemed to have been substituted as from the 5th day of February, 1979.

4. Amendment of section 5C, Rajasthan Act 29 of 1954 :-

In section 5C of the principal Act, in sub-section (1), for the expression "goods for sale", the expression "goods other than exempted goods for sale by him" shall be substituted.

5. Amendment of section 7, Rajasthan Act 29 of 1954 :-

In section 7 of the principal Act, - (a) in sub-section (1), the punctuation mark "," occurring after the expression "such other dealer" shall be and shall be deemed always to have been omitted; and (b) in sub-section (2A), - (i) for the expression "proportionate tax on the basis of the last return", the expression "tax according to his accounts" shall be substituted; and (ii) after the expression "in advance of the return", the punctuation mark "." and the words

"The difference, if any, of the tax payable according to the return and the advance tax paid shall be deposited with the return" shall be deleted.

6. Amendment of section 7AA, Rajasthan Act 29 of 1954 :-

In section 7AA of the principal Act, for the expression "a sum equal to two per cent of the tax, for every month during which the default continued but not exceeding in the aggregate fifty per cent of the tax", the expression "rupees ten per day of the period during which the default continues but not exceeding in the aggregate fifty per cent of the tax assessed for the period to which the return relates" shall be substituted.

7. Insertion of new section 10B, Rajasthan Act 29 of 1954 :-

After section 10A of the principal Act, the following new section shall be inserted, namely:- "10B. Time-limit for assessment. - (1) No assessment shall be made - (i) in cases under section 10 - after the expiry of five years from the end of the relevant assessment year; (ii) in cases in which a person or a dealer liable to tax did not get himself registered or did not submit due returns after the expiry of eight years from the end of the total period in respect of which tax is to be assessed: Provided that assessments pending on the date of commencement of the Rajasthan Sales Tax (Amendment) Act, 1979, shall be completed within three years from the date of such commencement or within the period specified in clause (i), or, as the case may be clause (ii), whichever is later; (iii) in cases falling under section 10A - after expiry of one year from the date of filing the report, and in the absence of any such report after the expiry of two years from the date of transaction; (iv) in cases falling under section 10C - after the expiry of two years from the date of receipt of application from the dealer: Provided that assessments pending on the date of commencement of the Rajasthan Sales Tax (Amendment) Act, 1979, shall be completed within one year from the date of such commencement or within the period specified in clause (iii) or clause (iv), as the case may be, whichever is later: Provided further that the Commissioner may, for reasons to be recorded in writing, extend in any particular case, the period specified in this sub-section by a period not exceeding six months. (2) Notwithstanding anything contained in sub-section (1), - (i) Where such assessment is made in consequence of or to give effect to, any order of an appellate or revisional authority or reference to the High Court or of a

competent court, it shall be completed within two years of the communication of such order to the assessing authority and all such assessments pending on the date of commencement of the Rajasthan Sales tax (Amendment) Act, 1979, shall be completed within one year from the date of such commencement or within two years from the date of communication of such order to the assessing authority, whichever is later: Provided that the Commissioner may, for reasons to be recorded in writing in any particular case extend the period specified in this clause by a further period not exceeding six months; (ii) the period, if any, spent in the prosecution of a dealer, from the institution of a complaint to its final disposal or the period during which the assessment proceedings remain stayed, or restrained under the orders of any competent authority or court, shall be excluded in computing the period of limitation under sub-section (1)."

8. Substitution of section 11B, Rajasthan Act 29 of 1954 :-

For section 11B of the principal Act, the following section shall be substituted, namely:- "11B. Interest on failure to pay tax, fee or penalty. - (1)(a) Where any registered dealer or any other dealer has furnished returns but has not paid the tax as per return or within the time allowed by or under the provisions of this Act, he shall be liable to pay interest on the whole or that part of the amount of tax which was not paid as per returns within the time as aforesaid, at the rate of one and a quarter per cent per month from the date by which he was required to pay the tax by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of payment; (b) Where any registered dealer or any other dealer has furnished a revised return as provided under sub-section (3) of section 7, which revised return shows that amount of tax larger than that already paid is payable, such dealer shall be liable to pay interest on the excess amount of tax at such rate and for such period as provided in clause (a) of this sub-section as if such amount of tax payable as per the revised return was the amount of tax payable according to the original return; (c) Where any registered dealer has filed a return after the expiry of the period prescribed therefor but has not paid the tax as per the return, or within the time allowed by or under the provisions of this Act, he shall be liable to pay interest on the whole or that part of the amount of tax as per return which was not paid within the time as aforesaid at one and a quarter per cent per month, from the date by which he was required to pay the tax

by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of payment; (d) Where any registered dealer is required to pay tax without furnishing a return for any period by or under the provisions of this Act, and such tax is not paid or not paid in full by the due date, such dealer shall be liable to pay interest on the amount of tax not paid at one and a quarter per cent per month from the date by which he was required to pay the tax by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of payment; (e) Where any registered dealer or any other dealer required to furnish returns, pays tax for any period without furnishing the returns, the tax so paid shall be divided proportionately amongst the periods for which he was required by or under the provisions of this Act to pay but has failed to pay the same and the amount so determined shall be deemed to be the amount of tax payable for such period and the dealer shall be liable to pay interest at one and a quarter per cent per month on the aforesaid amount from the date by which the tax was required to be paid for such period by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of payment: Provided that, where any such dealer shows to the satisfaction of the assessing authority that the whole or any part of the amount of tax paid is attributable to any particular period, he shall be liable to pay interest on such amount at one and a quarter per cent per month from the date by which the tax for the said period was required to be paid by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of payment; (f) Where the liability to pay tax is quantified in respect of a registered dealer or any other dealer, - (i) who has furnished returns for the period for which the tax is quantified; or (ii) who has failed to furnish returns for the whole of the period for which the tax is quantified; or (iii) who has failed to furnish returns for any part of the period for which the tax is quantified; then, in respect of categories (i) and (iii), the difference between the tax quantified and the tax shown payable in the returns and in respect of category (ii), the difference between the tax quantified and the tax paid, if any, shall in respect of categories (i) and (ii) be divided proportionately amongst the periods for which he was required to pay tax by or under the provisions of this Act and in respect of category (iii) be divided proportionately amongst the periods for which he was required to

pay the tax by or under the provisions of this Act but has failed to pay such tax, and the amount so determined shall be deemed to be the amount of the tax payable of such period and the dealer shall be liable to pay interest at the rate of one and a quarter per cent per month on the aforesaid amount from the date by which the tax was payable for such period by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of quantification. Explanation. - The expression liability to pay tax is quantified in this clause means determination of the tax liability under section 7A, 7B, 10, 10A, 13 or 14 of this Act: Provided that, where any such dealer shows to the satisfaction of the assessing authority that the whole or any part of the balance of tax found due or liability to pay tax quantified is attributable to any particular period, he shall be liable to pay interest on such amount at the rate of one and a quarter per cent per month from the date by which the tax for the said period was required to be paid by or under the provisions of this Act for a period of three months and at one and a half per cent per month thereafter until the date of quantification. (2) Where any amount of tax, fee, interest or penalty is demanded from a dealer as a result of an order passed in any proceedings under this Act (including assessment, appeal, revision rectification or otherwise) and such tax, interest or penalty is not paid by such dealer within the time required by or under the provisions of this Act, he shall be liable to pay interest at the rate of one and a quarter per cent per month on the amount of tax or interest or penalty from the date of expiry of such time for a period of three months and at one and a half per cent per month thereafter until the date of payment of such amount. (3) Where as a result of any order under this Act, the amount on which interest was payable under this Act, has been reduced, the amount of interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded. (4) No interest shall be payable under this section on such amount and for such period in respect of which interest is paid under the provisions of sections 11 and 14."

9. Amendment of section 14, Rajasthan Act 29 of 1954 :-

In section 14 of the principal Act, - (a) in sub-section (1), for the words "assessing authority", the expression "any officer authorised in this behalf by the Commissioner by any general or special order" shall be substituted; (b) explanation to sub-section (1) shall be deleted; (c) in sub-section (4A), for the words "sixty days", the

words "ninety days" shall be substituted, and after the expression "from the date of", the expression "communication of" shall be inserted; and (d) in sub-section (6), for the words "the authority whose order is sought to be revised or, their representatives", the words "the Commissioner or the officer authorised by him in this behalf by any general or special order" shall be substituted.

10. Amendment of section 15, Rajasthan Act 29 of 1954 :-

In section 15 of the principal Act, - (a) in sub-section (1), for the words "assessing authority", the expression "the Commissioner or any officer authorised by him in this behalf by general or special order" shall be substituted; (b) in sub-section (2), for the word "sixty", the word "ninety" shall be substituted; and (c) in sub-section (3A), for the word "sixty", wherever occurring, the word "ninety" shall be substituted.

11. Amendment of section 16, Rajasthan Act 29 of 1954 :-

In section 16 of the principal Act, - (a) in clause (a) of sub-section (1), the expression "whose annual turnover does not exceed one lakh of rupees" shall be deleted; (b) in sub-section (3), clause (a) shall be omitted.

12. Repeal and savings :-

(1) The Rajasthan Sales Tax (Amendment) Ordinance, 1979 (Rajasthan Ordinance No. 1 of 1979) (See page 39 supra), is hereby repealed. (2) Notwithstanding such repeal, all things done and actions taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act. The Statement of Objects and Reasons and the Memorandum on Delegated Legislation appended to the Rajasthan Sales Tax (Amendment) Bill, 1979 (Rajasthan Gazette, Extraordinary, Part 3(A), dated March 30, 1979, page 309(7).)