

**Uttar Pradesh Value Added Tax (Amendment) Act, 2008****19 of 2008**

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**Uttar Pradesh Value Added Tax (Amendment) Act, 2008****19 of 2008**

An Act further to amend the Uttar Pradesh Value Added Tax Act, 2008 It is hereby enacted in the Fifty-ninth Year of the Republic of India as follows:-- 1. Received the assent of the Governor on August 27, 2008 and published in the U.P. Gazette, Extra., Part 1, Section (Ka), dated 29th August, 2008, pp. 7-11

**1. Short Title And Commencement :-**

(1) This Act may be called the Uttar Pradesh Value Added Tax (Amendment) Act, 2008.

(2) Section 4 shall be deemed to have come into force on January 1, 2008 and the remaining provisions shall be deemed to have come into force on July 16, 2008.

**2. Amendment Of Section 2 Of U.P. Act No. 5 Of 2008 :-**

In Section 2 of the Uttar Pradesh Value Added Tax Act, 2008 hereinafter referred to as the principal Act, in clause (f), sub-clause (vi) appearing at the end shall be omitted.

**3. Amendment Of Section 13 :-**

In Section 13 of the principal Act, in sub-section (1),--

(a) for clause (b) the following clause shall be substituted, namely:--

"(b) Input tax credit of full amount of input tax shall be allowed to every dealer, liable to pay tax, in respect of capital goods purchased on or after the date on which dealer becomes liable for payment of tax under this Act, if such goods are to be used in,--

(i) manufacture of any taxable goods except non-vat goods and where such manufactured goods is,--

A. Sold within the State or in the course of inter-State trade or commerce or in the course of the export of the goods out of the territory of India; or

B. Transferred or consigned outside the State otherwise than as a result of a sale; or

(ii) manufacture of any exempt goods except non-vat goods and where such manufactured goods are sold in the course of export of the goods out of the territory of India; or

(iii) generation of electrical energy, where such energy is used for the manufacture of any taxable goods other than non-vat goods and such manufactured goods is,--

A. Sold within the State or in the course of inter-State trade or commerce or in the course of the export of the goods out of the territory of India; or

B. Transferred or consigned outside the State otherwise than as a result of a sale; or

(iv) generation of electrical energy where such energy is used for the manufacture of any exempt goods and such exempt goods is sold in the course of export of the goods out of territory of India;

and the amount of input tax shall be computed and be claimed in prescribed manner.

Explanation.--For the purposes of this clause,--

(a) if 90% of electrical energy generated is consumed for the purposes referred to in sub-clauses (iii) and (iv), 100% Input Tax may be claimed and be allowed as Input Tax Credit.

(b) the expression generation of electrical energy shall mean generation of electrical energy by using captive power plant including repairing and maintenance thereof."

(b) for the Explanation appearing at the end, the following Explanation shall be substituted, namely:--

"Explanation.--For the purposes of this sub-section, for entry against Serial No. 1 of the table under clause (a), re-sale of goods includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."

#### **4. Substitution Of Section 42 :-**

For Section 42 of the principal Act, the following section shall be substituted, namely:--

"42. Treatment of industrial units availing exemption or reduction in the rate of tax under erstwhile Act.--

(1) No industrial unit,--

(a) availing benefit of exemption from or reduction in the rate of tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales or purchase or both as the case may be, before the commencement of this Act; or

(b) which is granted the benefit of exemption from or reduction in the rate of tax on the turnover of sale or purchase or both as the case may be, under the erstwhile Act or under the Central Sales Tax Act, 1956;

shall be permitted to avail the benefit of exemption from, or reduction in the rate of, tax on the turnover of sale or purchase or both as the case may be, on or after the commencement of this Act.

(2) The industrial unit availing the benefit of tax deferment under the erstwhile Act or under the Central Sales Tax Act, 1956 before the commencement of this Act or a unit which is granted facility of tax deferment under the erstwhile Act or under the Central Sales Tax Act, 1956 shall continue to avail the facility of deferment for net tax payable under this Act and the Central Sales Tax Act, 1956 subject to such conditions and restriction as may be prescribed.

(3) (a) The industrial unit availing benefit of exemption from, or reduction in the rate of, tax under the erstwhile Act or under the Central Sales Tax Act, 1956 on the turnover of sales of manufactured goods; and

(i) whose facility of exemption or reduction in the rate of tax is based on the fixed capital investment as provided under the erstwhile Act or notification issued thereunder; or

(ii) an industrial unit purchased from the State Government or any corporation or undertaking owned or controlled by the State Government and to whom exemption or reduction in the rate of tax has been granted under the erstwhile Act may apply to the Commissioner for issue of the Certificate of entitlement in the prescribed form and in prescribed manner.

(b) The Commissioner after examining the relevant records and report from the assessing authority and if he is satisfied that the information furnished is correct and complete, shall issue within 60 days from the date of receipt of the application, the Certificate of

entitlement in prescribed form and in prescribed manner containing such particulars as may be prescribed including period of validity of certificate and amount of entitlement if any.

(c) If the Commissioner is satisfied that particulars furnished by an industrial unit in the application is wrong or incomplete or is not worthy of credence, he shall after giving the applicant the opportunity of being heard, reject the application and inform the industrial unit accordingly.

(d) Subject to an appeal to the Tribunal under Section 57 the order passed by the Commissioner in this behalf, shall be final.

(4) The industrial unit availing benefit of exemption from, or reduction in the rate of, tax on the turnover of sales before the date of commencement of this Act or an industrial unit which is granted the facility of exemption from, or reduction in the rate of, tax on or after such commencement, on the turnover of sales under the erstwhile Act or the Central Sales Tax Act, 1956 shall be entitled for exemption by way of refund of net tax paid along with the return of tax period in prescribed manner and on fulfilling the conditions that,--

(a) the unit shall hold valid registration certificate issued under this Act or under the Central Sales Tax Act, 1956,

(b) the unit shall have a valid Certificate of Entitlement issued by the Commissioner,

(c) the amount of refund shall not be more than an amount equal to net tax paid for relevant tax period,

(d) the net tax payable has been deposited along with return of tax period in prescribed manner,

(e) the refund shall be subject to the provisions of Section 40 except that the amount shall not be adjusted against the admitted tax liability,

(f) the facility of refund shall cease on the day when the amount or the period mentioned in the Certificate of Entitlement, whichever is earlier,

(g) the tax payable on the turnover of sales of goods mentioned in the Certificate of Entitlement and which is manufactured in the industrial unit shall be deducted from the total amount mentioned or described in the Certificate of Entitlement,

(h) the industrial unit has not misused the facility of exemption from or reduction in the rate of tax in any manner.

Explanation.--The expression net amount of tax payable means--

(i) the differential amount of tax payable under this Act on the sale of taxable goods other than non-vat goods, manufactured in the

unit and input tax credit available to the extent or proportionate to taxable goods other than non-vat goods sold, in case of an industrial unit availing facility of exemption from tax under the erstwhile Act and the Central Sales Tax Act, 1956.

(ii) the partial amount of net tax computed under clause (i) above, in proportion to the rate of tax available for exemption to the rate of tax payable under the erstwhile Act, in case of an industrial unit availing benefit of reduction in the rate of tax.

(5) (a) The amount found refundable shall be refunded within a period of 30 days from the last date of the month in which dealer files the return of relevant tax period along with the proof of deposit of net tax payable.

(b) The amount of refund shall be made in such manner as may be prescribed.

(c) The industrial unit failing to deposit the net tax admittedly payable within prescribed time and in prescribed manner or deposits it after due date, the amount of interest leviable and penalty imposed if any, shall be adjusted and only the balance amount shall be refunded.

(6) (a) The total amount of the refund shall be limited to the extent of the differential amount of the total eligible amount available for exemption or reduction in the rate of tax and the amount availed in exemption or reduction in the rate of tax before the commencement of this Act.

(b) The total period of the refund shall not exceed difference of the total period available for exemption or reduction in the rate of tax and the period exhausted before the commencement of this Act.

(7) If any amount is found refundable and is not refunded within the prescribed time, the industrial unit shall be entitled to simple interest at the rate of twelve per cent per annum from the last date prescribed for refund. The amount of interest shall be refunded in such manner as may be prescribed.

(8) The industrial unit availing the benefit of tax deferment as provided under sub-section (2) or availing the facility of refund as provided under sub-section (4), shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of Section 13.

(9) Where the amount or the period for exemption or reduction in the rate of tax changes on account of any valid reason or otherwise, the Commissioner shall suo motu or on an application of the industrial unit, amend the certificate of entitlement accordingly.

(10) The facility of refund shall be available under this Act and

under the Central Sales Tax Act, 1956.

(11) An industrial unit claiming the refund under this section shall not be deemed to have been assessed based on the returns filed by it and any refund made shall be subject to assessment requiring production of accounts in support of the return filed.

(12) The provisions of this section shall mutatis mutandis apply to those units which were established before 9th November, 2000 (the date of re-organisation of Uttar Pradesh) and now situated within the territory of Uttarakhand subject to the following conditions,--

(a) the goods are manufactured in a unit established in the State of Uttarakhand having eligibility certificate (validity commencing prior to 9th November, 2000) issued under Section 4-A of the erstwhile Act for the manufacture of such goods.

(b) such goods are sold for the first time after their manufacture within the period of facility of exemption or reduction in the rate of tax, after bringing them into the State by way of transfer other than sales, by manufacturer having his place of business in the State of Uttarakhand.

(c) valid and genuine certificate issued by the assessing authority of the State of Uttarakhand is produced before the assessing authority of the State of Uttar Pradesh indicating therein that the amount has been reduced in the overall limit of exemption or reduction in the rate of tax available to the manufacturer.

(13) Facility of refund of tax under sub-section (12) shall be withdrawn, if the certificate referred to in clause (c) of sub-section (12) is found false or fake and not issued by the relevant assessing authority of Uttarakhand."

## **5. Amendment Of Section 57 :-**

In Section 57 of the principal Act,--

(a) in sub-section (4) for the words and figure "an order passed under Section 55" the words and figures "an order passed under Section 42, Section 55" shall be substituted;

(b) in sub-section (12), in clause (d) for the words and figure "a decision given under Section 59" the words and figures "an order passed under Section 42 or a decision given under Section 59" shall be substituted.

## **6. Repeal And Saving :-**

(1) The Uttar Pradesh Value Added Tax (Amendment) Ordinance, 2008 (U.P. Ordinance No. 3 of 2008) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act as if the provisions of this Act were in force at all material times.