THE GUJARAT VALUE ADDED TAX (AMENDMENT) BILL, 2009.

GUJARAT BILL NO. 18 OF 2009.

A BILL

further to amend the Gujarat Value Added Tax Act, 2003.

It is hereby enacted in the Sixtieth Year of the Republic of India as follows:-

Short title and commencement.

1. (1) This Act may be called the Gujarat Value Added Tax (Amendment) Act, 2009.

(2) It shall come into force on the 1st August, 2009.

H-277-1

Amendment of section 29 of Guj. 1 of 2005.

2. In the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the principal Act"), in section 29, in sub-section (5),- Guj. 1 of 2005.

(i) for the words "a sum of rupees one hundred per month or part thereof for the default period", the words "such sum as may be prescribed but not exceeding rupees ten thousand per return" shall be substituted;

(ii) for the words "The penalties specified", the words "The penalties prescribed" shall be substituted.

Amendment of section 34 of Gu.1 of 2005.

3. In the principal Act, in section 34, in sub-section (7), for the words "equal to", the words "not exceeding" shall be substituted.

Amendment of section 59B of Guj. 1 of 2005.

4. In the principal Act, in section 59B, after sub-section (4), the following sub-sections shall be inserted, namely:-

"(4A) Every person referred to in clause (a) or, as the case may be, clause (b) of sub-section (3) responsible for paying specified sale price, shall within the prescribed time limit apply in the Form as may be prescribed, to the Commissioner for allotment of a Tax Deduction Account Number (TDN). The Tax Deduction Account Number shall be quoted in such documents, statements and returns as may be prescribed.

(4B) If the Commissioner is satisfied that a person who is liable to obtain Tax Deduction Account Number under sub-section (4A) has failed to obtain Tax Deduction Account Number without reasonable cause, he shall direct the person to pay, by way of penalty, a sum not exceeding rupees ten thousand after giving the person an opportunity of being heard.".

Amendment of section 63 of Guj. 1 of 2005.

5. In the principal Act, in section 63, in sub-section (1), for the words "six months", the words "nine months" shall be substituted.

Amendment of Schedule II to Guj.1 of 2005.

6. In the principal Act, in Schedule II, -

(1) the entry at serial No. 9 shall be deleted;

(2) the entry at serial No. 18 shall be deleted;

(3) in the entry at serial No. 28A, for the sub-entry (i), the following sub-entry shall be substituted, namely:-

1.	2.	3.
"28A.	(i) Drugs, medicines and vaccines including bulk drugs but excluding- (a) food and dietary supplements including foods for special dietary uses, and (b) cosmetics and toilet preparations including tooth paste, tooth powder, hair oil, face and body lotions and cream, and soaps.	Four paise in the rupee";

(4) for the entry at serial No.45, the following entry shall be substituted, namely:-

1	2	3
"45.	IT products as may be specified by the State Government by notification in the *Official Gazette*.	Four paise in the rupee";

(5) in the entry at serial No. 61, the following *Explanation* shall be added at the end, namely:-

> "***Explanation.***- For the removal of doubt it is clarified that the renewable energy devices and components and parts thereof do not include battery operated vehicle and equipments of any type.".

Amendment of Schedule III to Guj.1 of 2005.

7. In the principal Act, in Schedule III, in the entry at serial No.6, in column 2, after the words "Any other kind of motor spirit", the words "excluding natural gas and liquefied petroleum gas" shall be added.

STATEMENT OF OBJECTS AND REASONS

The Gujarat Value Added Tax Act, 2003 has been implemented in the State since 1.4.2006. Amendments have been made in the said Act from time to time to remove difficulties arising in the implementation of the Act. However, the representations have further been received by the Government from traders and businessmen on some new issues. Also, some issues regarding tax rate on certain commodities have arisen which need to be clarified to protect revenue interests of the State Government and to offer a clear picture to the market. The State Government has, therefore, considered such representations and issues arising during the administration of the Act, and has decided to amend the Act to remove difficulties and to clarify certain issues.

Clause 2 of the Bill seeks to amend sub-section (5) of section 29 so as to increase the amount of penalty for the return defaults in order to reduce default of return by the dealers, and to ensure timely compliance for better tax administration.

Clause 3 of the Bill seeks to amend sub-section (7) of the section 34 so as to allow levy of penalty according to nature of offence instead of a fixed penalty as has been provided presently.

Clause 4 of the Bill seeks to insert new sub-section (4A) in section 59B so as to allot a Tax Deduction Account Number (TDN) to the person deducting the amount as tax in respect of specified works contract in accordance with the provisions of sub-section (3) of section 59B. It also seeks to insert new sub-section (4B) in section 59B so as to empower the Commissioner to penalize the person who fails to get such Tax Deduction Account Number.

Clause 5 of the Bill seeks to amend sub-section (1) of section 63 so as to extend the time limit for the submission of the audit report by a dealer as per section 63 of the Act from six months to nine months from the end of the year.

Sub-clause (1) of *clause 6* of the Bill seeks to delete the entry at serial No. 9 of Schedule II for brass parts so as to avoid possibility of inclusion of hardware and bathroom fittings in this entry.

Sub-clause (2) of *clause 6* of the Bill seeks to delete the entry at serial No. 18 of Schedule II as chemicals predominantly used as industrial inputs have been already covered under entry 42A of Schedule II.

Sub-clause (3) of *clause 6* of the Bill seeks to substitute the entry at serial No. 28A of Schedule II so as to explicitly exclude dietary and food supplements, and cosmetic and toilet preparations from this entry.

Sub-clause (4) of *clause 6* of the Bill seeks to substitute the entry at serial No. 45 of Schedule II so as to have a clear list of goods to be covered under the said entry. For this purpose, the goods intended to be covered under this entry will be specified separately by a Government Notification.

Sub-clause (5) of *clause 6* of the Bill seeks to amend the entry at serial No. 61 of Schedule II by putting an explanation so as to clarify that the battery operated vehicles and equipments are not covered under the said entry.

Clause 7 of the Bill seeks to amend the entry at serial No. 6 of Schedule III so as to avoid possibility of misclassification by inclusion of natural gas and liquefied petroleum gas in the said entry as the said goods are covered under entry at serial No. 87 of Schedule II.

The Bill seeks to amend the said Act to achieve the aforesaid objects.

VAJUBHAI VALA,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects, namely:-

Clause 2.- Sub-section (5) of section 29 proposed to be amended by this clause empowers the State Government to prescribe by rules, the amount of penalty for the return default.

Clause 4.- Sub-section (4A) proposed to be inserted in section 59B by this clause empowers the State Government to prescribe by rules, the Form in which and the time limit within which every person shall apply for the Tax Deduction Account Number with reference to deduction of the amount as tax in respect of specified works contract in accordance with the provisions of sub-section (3) of section 59B and the manner in which such person shall submit the documents, statements and returns.

Clause 6. – The entry at serial No. 45 of Schedule II proposed to be substituted by sub-clause (4) of this clause empowers the State Government to specify by notification in the *Official Gazette,* IT products intended to be covered under the said entry.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Gandhinagar.
Dated the 16th July, 2009.

VAJUBHAI VALA.

H-277-2

ANNEXURE

EXTRACT FROM THE GUJARAT VALUE ADDED TAX ACT, 2003.
(Guj. 1 of 2005)

---

29. (1) to (4) xxx xxx xxx **Returns.**

(5) If a registered dealer or any other dealer, not being a dealer referred to in sub-section (4) required to furnish return under this section fails to furnish any return by the prescribed date as required under sub-section (1) or, as case may be, sub-section (2), fails to comply with the requirement of notice issued under sub-section (3), the Commissioner shall direct him to pay, in addition to any tax and interest payable or paid by him, by way of penalty a sum of rupees one hundred per month or part thereof for the default period. The penalties specified under this sub-section shall be imposed by the Commissioner notwithstanding the fact that the assessment proceedings have not been initiated against the dealer under section 32, 33 or 34. Any penalty imposed under this sub-section shall be without prejudice to any prosecution for any offence or any other proceedings under this Act.

34. (1) to (6) xxx xxx xxx **Audit assessment.**

(7) If the Commissioner is satisfied that the dealer, in order to evade or avoid payment of tax, –

(a) has failed to furnish, without reasonable cause, returns in respect of any period or the self-assessment by the prescribed date;

(b) has furnished incomplete or incorrect returns for any period;

(c) has availed tax credit for which he is not eligible;

(d) has employed such method of accounting which does not enable the Commissioner to assess the tax due from him; or

(e) has knowingly furnished false or incorrect self assessment,-

he shall, after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to one and a half times of the amount of tax assessed on account of the said reason in the audit assessment.

(8) to (12) xxx xxx xxx

63. (1) If in respect of any particular year, total turnover of a dealer exceeds such amount, not being less than one crore, as may be prescribed then such dealer shall get his accounts verified and audited by a specified authority within six months from the end of that year and obtain within that period a report of such audit in the prescribed form duly signed and verified by such specified authority alongwith such particulars as may be prescribed. A true copy of such report shall be furnished by such dealer to the Commissioner within such period as may be prescribed.

Accounts to be audited in certain cases.

Explanation.-- xxx xxx xxx

(2) xxx xxx xxx

SCHEDULE II

(*See* section 7 and section 9)

GOODS, THE SALES OR PURCHASE OF WHICH IS SUBJECT TO TAX AND THE RATE OF TAX

Sr. No.	DESCRIPTION OF GOODS.	Rate of tax
1	2	3
1 to 8	xxx xxx xxx	xxx xxx
9	Brass parts.	Four paise in the rupee
10 to 17	xxx xxx xxx	
18	(i) Chemicals of all types excluding those specified in any other entries in this Schedule (ii) Solvent	Four paise in the rupee
19 to 28	xxx xxx xxx	
28A	(i) Drugs, medicines and vaccines including Bulk drugs. (ii) and (iii) xxx xxx xxx	Four paise in the rupee
29 to 44	xxx xxx xxx	
45	IT products namely, computers, computer peripherals, digital electronic equipment, communication equipment and components thereof.	Four paise in the rupee
46 to 60	xxx xxx xxx	
61	Renewable energy devices and spare parts thereof.	Four paise in the rupee
62 to 87	xxx xxx xxx	

SCHEDULE III

(*See* section 7 and section 9)

GOODS, THE SALES OR PURCHASE OF WHICH IS SUBJECT TO TAX, AND THE RATE OF TAX

Sr. No.	DESCRIPTION OF GOODS.	Rate of tax
1	2	3
1 to 5	xxx xxx xxx	
6	Any other kind of motor spirit	Twenty-six paise in the rupee.

Explanation.— xxx xxx xxx xxx

GUJARAT LEGISLATURE SECRETARIAT

GUJARAT BILL NO. 18 OF 2009.

A BILL

further to amend the Gujarat Value Added Tax Act, 2003.

[SHRI VAJUBHAI VALA,
MINISTER FOR FINANCE]

(As published in the Gujarat Government Gazette of 16th July, 2009.)

D.M.PATEL,
Secretary,
Gujarat Legislative Assembly.

H-277-3

Government Central Press, Gandhinagar.