

TRADE CIRCULAR

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No.VAT/AMD-1011/1A/ADM-6

Mumbai, Dt. 04/05/2011

Trade Cir. No. 7 T of 2011

- Sub : Amendment to the Maharashtra Value Added Tax Act, 2002.
Ref. : 1. Maharashtra Act No. xv of 2011 dated 21st April 2011.
2. Notification published in the Government Gazette, Extra ordinary Part-IV-B No.-53 dated 27th April 2011.

Gentlemen/Sir/Madam,

To give effect to the Budget proposals, a Bill (Legislative Assembly Bill No. XVII of 2011) to amend the Maharashtra Value Added Tax Act, 2002 was introduced in the Legislature. The said Bill has been passed by both the houses of the Legislature. The Act is now published in the Maharashtra Government Gazette dated 21st April 2011.

The salient features of the amendments are briefly explained below:

2. Date on which the Act shall come into force:-

Section 2 mentions the date from which the provisions of this Amendment Act shall come into force. They are as follows:-

- (a) The provisions of section 19(1) which relates to entry 45 of schedule A i.e. tax on textiles fabrics and sugar covered by ADE Act 1957 has come into force from 8th April 2011 i.e. from the date of commencement of the Finance Act 2011 by Central Government.
(b) Section 16(3) of the said Act has come into force with effect from 1st April 2011. This relates to time period for grant of refund under section 51.
(c) All other sections are made effective from 1st May 2011.

3. Amendments to Maharashtra Value Added Tax Act, 2002:-

(1) Amendment of section 16:-

- (a) Section 16 provides for registration by a dealer or a person who is engaged in business. Sub-section (2) provides for voluntary registration.
(b) Earlier, by virtue of proviso to sub-section (2), the dealer who desired to get voluntary registration was required to deposit Rs. 25,000/- as advance towards tax. The dealer was allowed to adjust the said amount towards tax, interest or penalty that may become due.

(c) The said proviso is now amended. The amendment provides that with effect from 1st May 2011, the application under voluntary registration shall not be entertained unless applicant deposits into Government Treasury Rs. 25,000/ as security deposit. This Security Deposit is not adjustable towards Tax, interest, penalty or any other liability under the Act.

(d) The security deposit is refundable in the manner and time and on fulfilment of such conditions as is prescribed in the rules. The rule 60A provides that same will be refunded on applications within six months of cancellation of registration, where registration is cancelled within 3 years. In other cases the dealer may apply for refund within 4 years from the date of registration but after completing 3 years from date of registration. The refund shall be granted within 90 days of application subject to condition of filing of all returns and payment of taxes. In any other case the deposit shall stand forfeited.

(2) Amendment of section 20:-Section 20 deals with the return and self assessment.

Amendment to sub-section (4):-

Prior to this amendment, a dealer could file any number of revised returns for a given period within the prescribed time. This was sometimes leading to multiple revised returns being filed and not filing correct return in the first place. This provision is now amended.

The amendment provides that under each of the clause of this sub-section not more than one revised return may be filed. Thus, one revised return may be filed under each of the circumstances specified below:

- On his own within 10 months from the end of the year.
- within one month after the due date of audit report u/s 61
- after intimation of result of audit or any proceedings by department.

(3) Amendment to section 41:-

(a) Section 41 provides for the exemption and refund to certain classes of dealers. A scheme for taxation of liquor has been declared in the budget speech. This section is enacted to enable the implementation of the scheme.

(b) Accordingly, the State Government has issued a notification dated 30th April 2011, in this respect. A separate Trade Circular to explain the taxation of liquor is issued.

(4) Amendment to section 50:-

This is consequential to amendment made in section 16 of MVAT Act enabling refund of security deposit.

(5) Amendment of Section 51:-Section 51 provides for the refund as per the submission of Form-501 by the claimant dealer.

(a) Amendment to sub-section (2)(a):-

In this sub-section there was a time limit of one month from the date of application, for calling additional information. The same has now been removed. The additional information can now be called at any time after the filing of application but before the due date of grant of refund.

(b) Section 2(b) is deleted :-

By this deletion, the distinction between newly registered dealer and other registered dealers for the purpose of refund under section 51 is removed.

(c) Amendment to sub-section (3)(a):-

(i) Section (3)(a) is an exception to section 2(a). It provides that the categories of the dealer stated below may file application for refund as per their periodicity,-

- Exporter as defined under rule 55A(3);
- Units specified in explanation to sub-section (3) of section (8);
- Dealers covered under PSI Scheme or New PSI Scheme;
- The Canteen stores department or the Naval Canteen stores.

(ii) The provision in respect of class of dealers selling goods in the course of inter-state trade has been deleted. As a result of this, the dealers covered under this category shall be eligible to file refund application only after the end of the year to which return relates.

(iii) Further, an Explanation is added to clause (i). This provides that for the purposes of this sub-clause (i), an Exporter shall be deemed to be exporter only if his turn-over of export in the previous year or during the period under application filed for refund is not less than the percentage prescribed. Rule 55A provides this percentage to be 50% during the previous year or during the period under refund application.

(d) sub-section (3)(b):-

(i) Clause (b) of this sub-section provides that Commissioner may require the dealer to furnish the Bank Guarantee as provided in the rule made in this behalf.

(ii) A small amendment is made. The provision for calling additional information is removed as the same is covered under clause (a) of sub-section (2). This is a technical amendment.

(e) to sub-section 4:-

(i) This amendment is effective from 1st April 2011.

(ii) Sub-section (4) provides for the time limit from the date of application, for grant of refund. This time limit, prior to amendment was three months from the date of application or in

case additional information being called, six months from the date of application.

(iii) This provision is now amended. The time limit for grant of refund is now extended to one and half year (18 months) counting from the end of the month in which application is made. This provision will be applicable to all the applications for refund for any period, made on or after 1st April 2011.

(iv) **However, a proviso is added to the sub-section, which provides for the refund in respect of the applications pending as on 31st March 2011.**

REFUND IN RESPECT OF PENDING APPLICATIONS:-

(a) The refund applications which pertain to period starting from **1st April 2005 and ending on 31st March 2010** and are filed on or before 31st March 2011, the refund in respect of all such applications, if due, shall be granted on or before **30th September 2011.**

(b) Whereas the refund applications which pertain to period starting from **1st April 2010 and ending on 31st March 2011** and are filed on or before 31st March 2011, then the refund in respect of all such applications, if due, shall be granted on or before **30th June 2012.**

(f) Amendment to Sub-section (7):-

(i) Sub-section (7) provides that the refund under section 51 shall be granted only on application filed within prescribed time limit i.e. three years from the end of the year.

(ii) After amendment the period for submission of refund application will be eighteen months from end of the year to which such return relates.

(iii) This provision is applicable to all the periods for which the time period of 18 months from the end of the relevant year has not expired on 31st March 2011. For the year 2009 -10 the period of 18 months expires on 30th September 2011. For 2010-11, applications for refund should be made on or before 30th September 2012.

(6) Amendment to section 61:-

(a) Amendment to Sub-section (1):-

(i) The section 61 provides for the audit of the accounts in certain cases. At present every dealer having turnover of sales or purchases exceeding rupees sixty lakh in a year is required to get his accounts audited.

(ii) The sub-section (1) is amended providing for filing of "complete audit report." An explanation is added to define the term "Complete Audit Report." The Explanation provides that the Audit Report shall be deemed to be "complete audit report" **only if all the items, certifications, tables, schedules and**

annexures are filled appropriately and are arithmetically self consistent.

(b) Insertion of new sub-section (2A):-

- (i) After sub-section (2) a new sub-section (2A) is inserted. This provides for a penalty of one twentieth percentage of total sales for knowingly filing incomplete audit report. This penalty is in addition to penalty already provided for not filing audit report in prescribed time.

(7) Amendment of section 74:-

- (i) The section 74 deals with the offences and penalties for different offences. After sub-section (1) a new sub-section (1A) is inserted. This provision is made with a view to deal stringently with increasing incidences of "hawala" transactions.
- (ii) It provides for punishment for offence of issuing or producing a false tax invoice with an intention to defraud revenue and thereby making false claims or abetting such offence.
- (iii) The amendment provides for a punishment, on conviction with a rigorous imprisonment for a minimum of one year and which may extend to two years.

(8) AMENDMENTS TO THE NOTIFICATIONS:-

As discussed to give effect to the Budget announcements certain notifications are amended. These amendments shall come into force with effect from 1st May 2011 except the amendment in respect of Composition Scheme for Baker and Retailer, the said amendment shall come into effect with effect from 1st April 2011.

(A) Reduction in the exemption provided by notification u/s 8(5):-

- (1) The Notification-Finance Department No. VAT.1507/C.R.93/Taxation.-1 dated 21st January 2008 provides for reduced rate of tax on sales made to Electric Distribution Company, Mahanagar Telephone company, Department of Space, defence etc. This rate is now enhanced from 4% to 5 % with effect from 1st May 2011.

(B) Amendment to Notification issued for the purposes of Entry 39 of the SCHEDULE-C-appended to the Act:-

- (1) The State Government by Notification-Finance Department No. VAT.1505/C.R.-114/Taxation.-1 dated 1st June 2005 has notified the intangible goods liable to be taxed @ 5%.
- (2) The aforesaid notification is amended with effect from 1st May 2011,-

(a) Amendment to the entry 9:-

- (i) The entry 9 of the said notification is amended. This entry pertains to Copyrights. Now

Copyrights in respect of distribution and exhibition of cinematographic films in theatres and cinema hall is excluded from the Copyrights.

- (ii) Needless to state that all other forms of Copyrights excluding that for distribution and exhibition of cinematographic films in theatres and cinema hall shall remain taxable at schedule rate i.e. 5%.

(b) Addition of new Entry-12:-

- (i) after entry 12 of the said notification entry 13 is added. New entry brings the Live Telecasting rights of events performed in Maharashtra in the ambit of taxation.
- (ii) The receipts on account of sale or transfer of rights of live telecasting of the events performed in Maharashtra such as sports and entertainment events will be liable to tax.
- (iii) The rate of tax shall be 5%.

(C) Amendment to Notification issued under section 42 in respect of Composition Scheme:-

- (1) The State Government in exercise of the powers conferred by section 42 had issued a Notification-Finance Department No. VAT.1505/C.R.105/Taxation.-1 dated 1st June 2005. The said notification provides for Composition to the different class of dealers. The same has been amended from time to time.

(a) Increase in Turn-over limit for Entry-2 in respect of Bakers:-

The turnover limit under Composition Scheme for bakers is enhanced from Rs. 30 lakh to Rs. 50 Lakh with effect from 1st April 2011. The bakers, who are not already under composition and who desire to apply for composition in the year 2011-12 may apply upto 31st May 2011. The composition will be available from 1st April 2011.

If they fail to apply in time, the composition scheme will be available only from 1st April of next financial year. Likewise if application is made any time after 1st April in any year, the composition will be available from 1st April of next year.

(b) Amendment of Notification for Retailers.

Entry 3 of above notification in respect of retailers is amended. the general floor rate was raised from

4% to 5 %. This excluded most retailers from composition of 5 %. This amendment is made to enable retailers to avail 5 % composition.

(c) Amendment to Notification issued under entry C-82 in respect of Solar Energy Devices:-

(i) The Notification-Finance Department No. VAT.1505/C.R.-119/Taxation.-1 dated 1st April 2005 issued under entry 82 of schedule C is amended to exclude biogas units specified in newly introduced entry 56A in schedule A.

(ii) Prefabricated biogas units are now covered by entry 56A of schedule A.

(d) Amendment to Notification issued under entry C-94 in respect of Varieties of Farsan:-

Vada pav, which is in the list of Farsan, is excluded from the said entry. A new sub entry is added to Entry C- 94 to include Vada-pav. Vada-pav will now be taxable @ 5%, whether served for consumption or not.

(e) Goggles:- Notification under entry 107(8) in respect of medical devices and implants is amended. In Entry 5 of the said notification VAT-1505/CR-233/taxation-1 dated 23 Nov. 2005 the description '**spectacles , corrective protective or other**' is replaced by '**corrective spectacles.**' Thus sunglasses commonly known as goggles will no more be covered by this entry.

Amendment to Schedule entries:-

1) In schedule A

- a) Entry 45 in respect of textile fabrics and sugar covered by ADE Act is amended to include the words " as it stood before the Finance Act 2011 comes into force." This was necessitated due to amendment in ADE Act by Central Government in the Finance Act 2011 whereby entries of sugar and textile are removed from the said Schedule. Due to this , sugar and textile would have gone out of entry A-45 .
- b) In entry 55(c) *ral* is now included along with dhoop and loban .
- c) A new entry 56A is added to include "Prefabricated domestic biogas units." Biogas units other than these will be covered by entry 82 of schedule C.

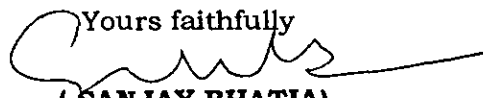
2) Amendment to schedule C:-

- a) Following the amendment to section 15 of the Central sales tax Act 1956, by the Finance Act 2011, by which the limit for tax on declared goods is raised from 4% to 5%, the rate of tax on declared goods covered by Schedule C is raised from 4% to 5% with effect from 1st May 2011.
- b) In entry 94 ,a new sub-entry "c" is added to include VADA-PAV. The same is deleted from entry of farsan.
- c) After entry 108 , a new entry 108A is added. This includes dry fruits other than cashew nuts and cashew kernels and currants and raisins covered by entry 59 of Schedule A. Thus Cashew nuts and kernels will continue to be taxable @ 12.5%.

3) Amendment to Schedule D:-

- a) Entries 1,2 and 3 for IMFL, country liquor and imported liquor respectively, are amended and the Schedule rate of tax is now 50%. There is no change to entry 3A in respect of wine. A notification effective from 1st May 2011, under section 41(5) is issued in respect of tax on liquor covered by these entries . The scheme of tax on liquor is explained by separate trade circular.
- b) Entry 13 is added to include aerated and carbonated non alcoholic soft drinks from 1st May 2011. The rate of tax on these will be 20%.

You are requested to bring the contents of this circular to the attention of all the members of trade . This circular cannot be used for legal interpretation.

Yours faithfully

(SANJAY BHATIA)

Commissioner of sales tax,
Maharashtra State, Mumbai.