

The Maharashtra Value Added Tax Act, 2002

[ACT NO. IX OF 2005]

A Act

further to amend the Maharashtra Value Added Tax Act, 2002.

WHEREAS it is expedient further to amend the Maharashtra Value Added Tax Act, 2002, for the purposes hereinafter appearing; it is hereby enacted in the Fifty-sixth Year of the Republic of India as follows :

1. Short title and commencement.

(1) This Act may be called the Maharashtra Value Added Tax (Levy and Amendment) Act, 2005.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. Amendment of section 2 of Mah. IX of 2005

In section 2 of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as "the principal Act"),—

(1) in clause (8),

(a) in sub-clause (a), after the words "to his engagement in or" the words "in connection with or incidental to or" shall be inserted ;

(b) in sub-clause (b), for the portion beginning with the words "an auctioneer" and ending with the words "auction of goods", the following portion shall be substituted, namely :

"an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organises the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods" ;

(c) in clause (c), for the words "engagement in or in the course of the business" the words "engagement in or in connection with or incidental to or in the course of, the business" shall be substituted ;

(d) in sub-clause (d),—

(i) in the *Explanation*, for the words "dispose of any goods including goods as unclaimed or confiscated or as unserviceable or a scrap, surplus, old, obsolete or discarded material or waste products" the words "sell any goods" shall be substituted ;

- (ii) after clause (iv), the following clause shall be inserted, namely:–
“(iv-a) Public Charitable Trust;”
- (iii) proviso shall be deleted;
- (2) for clause (10), the following clause shall be substituted, namely :–
“(10) “document” includes electronic record as defined in the Information Technology Act, 2002 ;”
- (3) in clause (11), sub-clause (iii) shall be deleted;
- (4) in clause (24), in the *Explanation*, in sub-clause (b), paragraph (vii) shall be deleted;
- (5) in clause (25),–
(a) in *Explanation II*, for the word “dealer” the word “seller” shall be substituted;
- (b) after *Explanation III*, following *Explanation* shall be added, namely :–
“*Explanation IV.*– The amount of valuable consideration paid or payable to a dealer for the sale of Drugs specified in entry 29 in Schedule C shall be the maximum retail price printed on the package containing the Drugs.”.
- (6) in clause (29), the words “or purchase tax,” shall be deleted;
- (7) in clause (32), *Explanation II* shall be deleted;
- (8) in clause (33), *Explanation II* shall be deleted;
- (9) in clause (34), for the word “includes” the word “means” shall be substituted.

3. Amendment of section 3 of Mah. IX of 2005

In section 3 of the principal Act,

- (1) in sub-section (1),–
(i) for the words “ten lakh” the words “five lakh” shall be substituted ;
(ii) for the words “and his turnover of sales in the said year had” the words “and his turnover of sales or purchases in the said year had” shall be substituted;
- (2) in sub-section (2),
(i) for the words “either of all sales or of all purchases” the words “of all sales” shall be substituted;

(ii) in the proviso,

(a) for the words “such sales and purchases” the words “such sales” shall be substituted ;

(b) the words “or turnover of purchases” shall be deleted;

(3) in sub-section (3), the words “or turnover of purchases” shall be deleted;

(4) in sub-section (4), in clause (b), for the words, letters and figures “Limit of turnover Rs. 10,00,000” the words, letters and figures “Limit of turnover Rs. 5,00,000” shall be substituted;

(5) in sub-section (5),–

(i) in clause (b), the words “and purchases” shall be deleted;

(ii) in clause (d), the words “or purchases” shall be deleted;

(6) in sub-section (6), for the words, brackets and letters “sub-clauses (a), (b) and (c)” the words, brackets and letters “sub-clause (a), (b) or (c)” shall be substituted.

4. Substitution of section 5 of Mah. IX of 2005.

For section 5 of the principal Act, the following section shall be substituted, namely:–

“5. Tax not leviable on certain goods

Subject to the other provisions of this Act, and the conditions or exceptions, if any, set out against each of the goods specified in column (3) of the Schedule A, no tax shall be payable on the sales of any goods specified in column (2) of that Schedule.”

5. Substitution of section 6 of Mah. IX of 2005.

For section 6 of the principal Act, the following section shall be substituted, namely :–

6. Levy of sales tax on the goods specified in the Schedules.

“There shall be levied a sales tax on the turnover of sales of goods specified in column (2) in Schedule B, C, D or, as the case may be, E, at the rates set out against each of them in column (3) of the respective Schedule.”

6. Substitution of section 7 of Mah. IX of 2005.

For section 7 of the principal Act, the following section shall be substituted, namely :–

“7. Rate of tax on packing materials

Where any goods are sold and such goods are packed in any material, the tax shall be leviable under section 6 on the sales of such packing material,

whether such materials are separately charged for or not, at the same rate of tax, if any, at which tax is payable on the sales of the goods so packed.”

7. Amendment of section 8 of Mah. IX of 2005.

In section 8 of the principal Act,—

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

“(3) The State Government may, by general or special order, published in the *Official Gazette*, and subject to such conditions and restrictions as may be specified in the said order, exempt from payment of tax any class or classes of sales of goods made by any unit in the Special Economic Zone, a developer of the Special Economic Zone, any hundred percent export oriented unit, any unit in the Software Technology Park or any unit in the Electronic Hardware Technology Park.

Explanation.— For the purposes of this sub-section,—

- (a) “a unit in the Special Economic Zone” means a unit,—
- (i) situated in a zone which is declared as Special Economic Zone by the Central Government or, as the case may be, the State Government, and
 - (ii) which has been certified by the Commissioner;
- (b) “a unit in the Software Technology Park” means a unit,—
- (i) set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry, and
 - (ii) which has been certified by the Commissioner;
- (c) “a unit in the Electronic Hardware Technology Park” means a unit,—
- (i) set up in accordance with the Electronic, Hardware Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry, and
 - (ii) which has been certified by the Commissioner;
- (d) “a hundred percent export oriented unit” means a unit,—
- (i) which has been approved as a hundred percent export oriented unit by the Board appointed in this behalf by the Central Government in exercise of the power conferred by section 14 of the Industries (Development and Regulation) Act, 1951 and the rules made thereunder, and
 - (ii) which has been certified by the Commissioner.”

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

“(4) The State Government may by general or special order published in the *Official Gazette*, and subject to such conditions and restrictions as may be specified in the order, provide for exemption from payment of the whole of tax in respect of any class or classes of sales of goods effected by a unit holding a Certificate of Entitlement as defined under section 88 to whom incentives are granted under any Package Scheme of Incentives, by way of exemption from payment of tax.”

8. Amendment of section 9 of Mah. IX of 2005.

In section 9 of the principal Act,—

(1) in sub-section (1),

(i) first proviso shall be deleted;

(ii) in the second proviso, the word “further” shall be deleted.

(2) in sub-section (2), for the word brackets and figure “sub-section (5)” the word, brackets and figure “sub-section (6)” shall be substituted.

9. Amendment of section 10 of Mah. IX of 2005.

In section 10 of the principal Act,—

(1) in sub-section (3), the portion beginning with the words “and, of an Additional Commissioner of Sales Tax” and ending with the words “State Government may, by Notification in the *Official Gazette*, specify” shall be deleted;

(2) in sub-section (4), for the words “otherwise directed by the State Government” the words “otherwise directed by the Commissioner” shall be substituted.

10. Amendment of section 12 of Mah. IX of 2005.

In section 12 of the principal Act, in sub-section (1), the words “within three months of the receipt of report” shall be deleted.

11. Amendment of section 14 of Mah. IX of 2005.

In section 14 of the principal Act, in sub-section (4), after the words “proceedings under this Act” the words “or for a prosecution” shall be inserted.

12. Amendment of section 15 of Mah. IX of 2005.

In section 15 of the principal Act, for the words “or proposed” the words “or intended” shall be substituted.

13. Amendment of section 16 of Mah. IX of 2005

In section 16 of the principal Act, in sub-section (3),—

(1) for the portion beginning with the words “The prescribed authority shall” and ending with the words “in the prescribed form to him”, the following shall be substituted, namely:—

“If the prescribed authority, after scrutiny of the application and after such enquiry as it deems fit, is satisfied that the application for registration is in order and the prescribed conditions are fulfilled, shall register the applicant and issue to him a certificate of registration in the prescribed form” ;

(2) in the proviso, the words “in the case of an application made voluntarily” shall be deleted.

14. Substitution of Section 20 of Mah. IX of 2005

For section 20 of the principal Act, the following section shall be substituted, namely :--

“20. Returns and self-assessment

(1) (a) Every registered dealer shall file correct, complete and self-consistent return in such form, by such date, for such period and to such authority as may be prescribed. Different types of returns may be prescribed for different classes of dealers.

(b) The Commissioner may examine the return to ascertain whether it is complete and self-consistent. If the return is not complete or self-consistent, the Commissioner may serve on the dealer, within four months of date of filing of the return, a defect notice in the prescribed form. The said registered dealer shall correct the defects and submit to the prescribed authority a fresh complete and self-consistent return, within one month of the service of the defect notice:

Provided that, the registered dealer who fails to submit a complete or self-consistent fresh return within the said period of one month shall be deemed not to have submitted the return within the prescribed time as required under clause (a).

(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, subject to such terms, and conditions, as may be prescribed, permit any dealer,—

(a) to furnish returns for such different period, or

(b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State for such period or periods, to such authority, as he may direct.

(3) Every person or an unregistered dealer who is required to file a return under any other provision of this Act, shall file such return for such period, in such form, by such date and to such authority as may be prescribed and the provisions contained in paragraph (b) of sub-section (1) shall apply to such return as they apply to the return prescribed under paragraph (a) of sub-section (1).

(4) Any person or dealer who, having furnished a return under sub-section (1), (2) or (3) discovers any omission or incorrect statement therein, may furnish a revised return in respect of the period covered by the return at any time before a notice for assessment is served on him in respect of the period covered by the return or before the expiry of a period of six months from the end of the year containing the period to which the return relates, whichever is earlier.”

15. Substitution of Section 21 of Mah. IX of 2005

For section 21 of the principal Act, the following section shall be substituted, namely:—

“21. No notice for assessment in certain cases

(1) Where a return is filed by the prescribed date by a registered dealer, no notice calling the dealer for assessment in respect of the period covered by the return shall be served on the dealer after two years from the end of the year containing the period to which the return relates.

(2) Where a registered dealer has not filed a return in respect of any period by the prescribed date, no notice calling the dealer for assessment in respect of the said period shall be served on the dealer after three years from the end of the year containing the said period.

(3) Notwithstanding anything contained in sub-section (1) or (2), a notice for assessment in respect of any period ending on or before the 31st March 2008, may be served on the dealer within a period of four years from the end of the year containing the said period.”

16. Amendment of section 22 of Mah. IX of 2005

In section 22 of the principal Act, sub-sections (2), (4), (6), (7) and (8) shall be deleted.

17. Amendment of section 23 of Mah. IX of 2005

In section 23 of the principal Act,—

(1) for sub-section (1), the following sub-section, shall be substituted, namely :—

“(1) Where a registered dealer fails to file a return in respect of any period by the prescribed date, the Commissioner may assess the dealer in respect of the said period to the best of his judgment without serving a notice for assessment and without affording an opportunity of being heard:

Provided that, if after the assessment order is passed, the dealer submits the return for the said period alongwith evidence of payment of tax due as per the return or submits evidence of return for the said period having been filed before, the passing of the assessment order along with evidence of payment of tax due as per the return, then the Commissioner shall cancel, by order in writing, the said assessment order and after such cancellation, the dealer may be assessed in respect of the said period under the other provisions of this section:

Provided further that, such cancellation shall be without prejudice to any interest or penalty that may be levied in respect of the said period :

Provided also that, no order under this sub-section shall be passed after three years from the end of the year containing the said period.”

(2) in sub-section (2),—

(a) (i) for the words “Where the annual return in respect of any year” the words “Where the return in respect of any period” shall be substituted;

(ii) for the portion beginning with the words “the turnover of sales and purchases” and ending with the words “to be payable and has been paid,” the words “return is correct and complete” shall be substituted;

(iii) for the words “in support of his annual return,” the words “in support of his return” shall be substituted;

(b) (i) in the second proviso, the portion beginning with the words “no notice under this sub-section” and ending with the words “to which the said return relates and” shall be deleted;

(ii) for the words “said financial year” the words “year containing the period to which the return relates” shall be substituted ;

(3) in sub-section (3),—

(a) (i) for the words “annual return in respect of any year” the words “return in respect of any period” shall be substituted;

(ii) for the words “within three years from the end of the said year” the words “within three years from the end of the year containing the said period” shall be substituted;

(b) in the proviso, for the words “the said financial year” the words “the year containing the said period” shall be substituted;

(4) for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) (a) During the course of any proceedings under section 64, in case of any dealer or person, if the prescribed authority is satisfied that tax has been

sought to be evaded in respect of any period or periods by not recording or recording in an incorrect manner, any transaction of sale or purchase, or that any claim has been incorrectly made, then in such a case notwithstanding that any notice for assessment has been issued under other provisions of this section or any other section of this Act, the prescribed authority may, after giving such dealer or person a notice in the prescribed form and a reasonable opportunity of being heard, initiate assessment of the dealer or person in respect of such transaction or claim.

(b) During the course of any proceedings under section 64, if the prescribed authority is satisfied that the tax has been or is sought to be evaded, as provided under clause *(a)* by any dealer or person, the said authority may, after issuing a notice in the prescribed form and after giving a reasonable opportunity of being heard to such dealer or person, proceed to assess such dealer or person as provided in clause *(a)* in respect of any such transaction or claim relating to any period or periods and such authority shall, notwithstanding anything contained in section 59, be deemed to have the requisite jurisdiction and power to assess such dealer or person in respect of such transaction of sale or purchase or claim, covered by clause *(a)* and such assessment proceedings shall, for all purposes of this Act, be deemed to have been transferred to such authority.

(c) The assessment proceedings under this sub-section shall be without prejudice to the assessment proceedings in respect of the said period or periods under any other provisions of this Act by any authority who otherwise has the jurisdiction to assess such dealer or person in respect of other transactions of sale or purchase or any other claim which are not covered by clause *(a)* and clause *(b)*.

(d) The assessment under this sub-section shall be made separately in respect of the transaction or claim relating to the said period or periods to the best of the judgment of the prescribed authority where necessary and irrespective of any assessment made under this sub-section, the dealer may be assessed separately under the other provisions of this section in respect of the said period or periods:

Provided that, once the dealer or person is assessed under this sub-section, no tax from such transaction or claim and penalty and interest, if any, consequent upon such tax shall be levied or demanded from such dealer or person, at the time of assessment to tax under the other provisions of this section in respect of the said period or periods relating to such transaction or claim.”

(5) for sub-section (6), the following sub-section shall be substituted, namely :

“(6) If the Commissioner is of the opinion that, in respect of any period covered by a return, any turnover of sales or of purchases has not been disclosed, or that tax has been paid at a lesser rate, set-off has been wrongly claimed, or deduction has been wrongly claimed, then, notwithstanding anything contained in section 21 or the other provisions of this section the Commissioner may at any time within five years from the end of the year containing the said period, serve a notice in the prescribed form on the dealer and proceed to assess him in respect of the said period after giving him a reasonable opportunity of being heard :

Provided that, the assessment order shall be passed, by the Commissioner to the best of his judgment, where necessary, within six years from the end of the year containing the said period.”

(6) in sub-section (7),—

(a) for the words “to the assessing officer in charge of the case” the words “to the Commissioner” shall be substituted ;

(b) in the proviso, for the words “to the said assessing officer” the words “to the Commissioner” shall be substituted ;

(7) after sub-section (9), the following sub-section shall be added, namely:—

“(10) A dealer or a person may be assessed under a single notice and by a single order of assessment in respect of more than one period covered by a return so long as all such periods are comprised in one year.”

18. Amendment of section 25 of Mah. IX of 2005.

In section 25 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) After any order including an order under this section or any order in appeal is passed under this Act, rules or notifications, by any officer or person subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether:—

(a) any turnover of sales or purchases has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, any claim is incorrectly granted or that the liability to tax is understated, or

(b) in any case, the order is erroneous, in so far as it is prejudicial to the interests of revenue,

and after examination, may, by serving on the dealer a notice in the prescribed form, pass an order to the best of his judgment, where necessary.

(2) (a) For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice in the prescribed form, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence which he thinks necessary for the purposes aforesaid.

(b) No order under this section shall be passed after the, expiry of five years from the end of the year in which the order passed by the subordinate officer has been served on the dealer.

(c) Where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any appellate authority including the Tribunal, or such order is pending for decision in appeal, or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in appeal, the Commissioner may within five years of the end of the year in which the said order was passed by the subordinate officer has been served on the dealer, make a report to the said appellate authority including the Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary. For the purposes of section 26, such order shall be deemed to be an order passed in appeal.”

19. Amendment of section 26 of Mah. IX of 2005.

In section 26 of the principal Act,—

(1) in sub-section (3), for the figures and word “24, 26 and 27” the figures and word “24, 25 and 27” shall be substituted;

(2) in sub-section (5), in clause (c), the words “or, may, subject to the rules, if any, remit the interest in full or in part” shall be deleted;

(3) in sub-section (7), for the portion beginning with the words “by providing equal” and ending with the words “the quantum of relief sought”, the following shall be substituted, namely :—

“by such priorities as may be prescribed:”.

20. Amendment of section 29 of Mah. IX of 2005

In section 29 of the principal Act,—

(1) sub-sections (1) and (2) shall be deleted;

(2) in sub-section (3), for the words “After passing any order” the words “While or after passing any order” shall be substituted;

(3) sub-section (5) shall be deleted;

(4) in sub-section (8), the words “other than an annual return” shall be deleted;

(5) in sub-section (9),—

(a) paragraphs (a) and (b) shall be deleted;

(b) in paragraph (c),—

(i) the words “other than an annual return” shall be deleted ;

(ii) for the words “correct and complete” the words “complete and self-consistent” shall be substituted;

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

“(10)Where a person or dealer has collected any sum by way of tax in contravention of the provisions of section 60,—

(a) he shall be liable to pay a penalty not exceeding two thousand rupees, and

(b) in addition, any sum collected by the person or dealer in contravention of section 60 shall be forfeited to the State Government.

If the Commissioner, in the course of any proceeding under this Act or otherwise, has reasons to believe that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under this sub-section, he may serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in this sub-section should not be imposed on him. The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit. When any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.”

(7) for sub-section (11), the following sub-section shall be substituted, namely :—

“(11) No order levying penalty under the foregoing provisions of this section shall be passed in respect of any period after five years from the end of the year containing the said period.”

(8) in sub-section (12),—

(a) in clause (a), for the words “fifty thousand” the words “five lakh” shall be substituted;

(b) in clause (b),—

(i) after the words “Deputy Commissioner”, the words “or a Senior Deputy Commissioner” shall be inserted;

(ii) for the words “one lakh” the words “ten lakh” shall be substituted.

21. Amendment of section 30 of Mah. IX of 2005

In section 30 of the principal Act,—

(1) in sub-section (1),—

(a) for the words “the interest on the enhanced amount shall be calculated *mutatis-mutandis*” the words “the interest on the enhanced amount shall be calculated *mutatis-mutandis* upto the date of such order” shall be substituted;

(b) in the proviso, for the words “the amount of interest levied” the words “the amount of interest payable” shall be substituted;

(2) in sub-section (2), in the proviso,—

(a) for the words “the return or, as the case may be” the words “the return, fresh return or as the case may be” shall be substituted;

(b) for the words “revised return”, wherever they occur, the words “fresh return or revised return” shall be substituted;

(3) in sub-section (3), for the words “a sum equal to two percent of such tax” the words “a sum calculated at the prescribed rate on the amount of such tax” shall be substituted;

(4) sub-section (4) shall be deleted.

22. Amendment of section 32 of Mah. IX of 2005

In section 32 of the principal Act,—

(1) in sub-section (2), for the words, brackets and figures “by sub- section (2) of section 20” the words and figures “by section 20” shall be substituted;

(2) in sub-section (3), for the word, brackets and figure “sub-section (5)” the word, brackets and figure “sub-section (4)” shall be substituted.

23. Amendment of section 38 of Mah. IX of 2005

In section 38 of the principal Act, in sub-section (1), for the words “any dealer liable to pay tax or any other sum payable under this Act, the total amount of which exceeds rupees twenty-five thousand,” the words “the Commissioner has reason to believe that the liability of the dealer to pay tax or any other sum payable under this Act, is likely to be in excess of rupees twenty-five thousand and the dealer” shall be substituted.

24. Amendment of section 40 of Mah. IX of 2005

In section 40 of the principal Act, for the words, “any amount due shall first be adjusted” the words “any amount due as per any order passed under the Act shall first be adjusted” shall be substituted.

25. Amendment of section 41 of Mah. IX of 2005

In section 41 of the principal Act, sub-sections (2) and (3) shall be deleted.

26. Amendment of section 42 of Mah. IX of 2005

In section 42 of the principal Act,—

(1) in sub-section (1),—

(a) in clause (b), for the words “then the officer in charge of the case shall refer the question” the words “then the question shall be referred” shall be substituted;

(b) in clause (c), for the word and figure “section 8” the words, brackets and figures “sub-section (1) of section 8” shall be substituted;

(2) in sub-section (2),—

(i) the words “which is generally accessible to members of the public at large” shall be deleted;

(ii) after the words “non-alcoholic drinks” the words “or tax payable by dealers running bakeries or dealers of second hand motor vehicles whose principal business is buying or selling motor vehicles” shall be added;

(3) in sub-section (3), the following shall be added at the end, namely:—

“after deducting from the total contract value of the works contract the amount payable towards sub-contract to sub-contractor”.

27. Amendment of section 45 of Mah. IX of 2005

In section 45 of the principal Act,—

(1) in sub-section (1), the words “or purchases”, at both the places where they occur, shall be deleted;

- (2) in sub-section (2), the words “or purchased” shall be deleted;
- (3) in sub-section (3),–
 - (i) the words “or purchases”, at both the places where they occur, shall be deleted;
 - (ii) in the proviso, the words “or purchase” shall be deleted.

28. Amendment of section 47 of Mah. IX of 2005

In section 47 of the principal Act,–

- (1) in sub-section (1), for the words “and the order is to take effect” the words “passed after the appointed day and is to take effect” shall be substituted;
- (2) after sub-section (2), the following sub-section shall be inserted, namely:–

“(2A) (a) When any company is to be demerged by the order of the Court or of the Central Government passed after the appointed day and is to take effect from a date earlier to the date of the order, then for all of the purposes of this Act, it shall be presumed that the two or more companies brought into existence by the operation of the said order have not sold or purchased any goods to each other from the date of effect of the order to the date of the order.

(b) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as a single company for all the periods upto the date of the said order and the registration certificate of the company to be demerged shall be cancelled with effect from the date of the said order and the said two or more companies shall, subject to rules, be granted registration certificates from the date of the said order.”

- (3) in the marginal note, after the word “Amalgamation” the words “or demerger” shall be inserted.

29. Amendment of section 48 of Mah. IX of 2005.

In section 48 of the principal Act,–

- (1) in sub-section (1), in clause (b), the words “or purchase price” and “or purchases” shall be deleted;
- (2) in sub-section (3), after the words “relevant Schedule” the words “under any earlier law” shall be inserted;
- (3) in sub-section (6), the words “for the period covered by a return or in respect of which a notice of demand has been served on the dealer” shall be deleted.

30. Amendment of section 51 of Mah. IX of 2005.

In section 51 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely :—

“(2) The Commissioner may, require the said dealer to furnish such bank guarantee for such amounts and for such period as may be prescribed. On receipt of such guarantee, the Commissioner shall, subject to rules, grant the dealer a provisional refund of the amount claimed refundable as aforesaid within six months of the end of the year containing the period to which the return or revised return relates and the refund relating to all the periods contained in one year may be granted by a single order:

Provided that, the refund relating to any period covered by a return shall be granted within three months of the end of the period to which the return relates, if the dealer,—

(a) is an exporter within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956;

(b) is a unit specified in the *Explanation* to sub-section (3) of section 8;

(c) holds a certificate of Entitlement under any Package Scheme of incentives;

(d) is a person or dealer specified to be eligible for refund in any notification issued under sub-section (1) of section 41:

Provided further that, where the dealer has obtained a registration certificate as provided under section 16 except on account of change of place of business to different local area, then the provisional refund in respect of the year containing the date of effect of the certificate of registration shall be granted within six months of the end of the year succeeding the said year.

(3) If it is found that the provisional refund granted is in excess of the refund found due, then the excess shall be recovered as if it is a tax due from the dealer and on such excess, interest shall be leviable at the prescribed rate per month or part thereof from the date of grant of the provisional refund.

(4) If the dealer is required to furnish any information before the grant of provisional refund and the required information is not furnished in the prescribed time, then, for the purposes of this Act, the period in which the refund is to be granted shall commence from the first date of the month following the month in which the required information is furnished.

(5) Provisional refund shall not be granted under this section to any dealer if before the grant of refund, a notice for assessment covering the period to which the refund relates is issued or proceedings under sub-section (3) or (4) of section 64 in respect of the period to which the refund relates are initiated.”

31. Amendment of section 52 of Mah. IX of 2005

In section 52 of the principal Act,—

(1) the words “in pursuance of any order under this Act” shall be deleted;

(2) for the words “last date of the period covered by the order and ending on the date of such order” the words “last date of the period to which the refund relates and ending on the date of the order sanctioning the refund” shall be substituted;

(3) for the words “adjusted towards any recovery under this Act” the words “adjusted towards, any recovery under this act, any earlier law” shall be substituted;

(4) the following provision shall be added, namely—

“Provided that, interest under this section shall not be granted towards any provisional refund granted under section 51.”

32. Amendment of section 55 of Mah. IX of 2005

In section 55 of the principal Act,—

(1) in sub-section (1),—

(a) for the words “Any registered dealer or any association of trade, commerce, industry or the service “sector” the words “On and from such date, as the State Government may, by notification in the *Official Gazette*, specify, any registered dealer” shall be substituted;

(b) after the words “Act, rules or notifications” the words “in respect of a transaction proposed to be undertaken by him,” shall be inserted;

(2) in sub-section (3), —

(a) the words “or five” shall be deleted;

(b) after the words “entitled to appear before the Tribunal” the words “to be nominated by the President” shall be inserted;

(3) in sub-section (4), the portion beginning with the words “If, in any subsequent proceeding” and ending with the words “date of overruling” shall be deleted.

33. Amendment of section 59 of Mah. IX of 2005

In section 59 of the principal Act, the *Explanation II* shall be deleted.

34. Amendment of section 61 of Mah. IX of 2005

In section 61 of the principal Act,—

(1) in sub-section (1), for clause (b), the following clause shall be substituted, namely :—

“(b) a dealer or person who holds licence in,—

(i) Form P.L.L. under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, or

(ii) Form B-RL under the Maharashtra Manufacture of Beer and Wine Rules, 1966, or

(iii) Form E under the Special Permits and Licence Rules, 1952, or

(iv) Forms FL-I, FL-II, FL-III, FL-IV under the Bombay Foreign Liquor Rules, 1953, or

(v) Forms CL-I, CL-II, CL-III, CL/FL/TOD-III under the Maharashtra Country Liquor Rules, 1973,”

(2) in sub-section (2), the following proviso shall be added, namely:—

“**Provided that**, if the dealer fails to furnish a copy or such report within the period prescribed under sub-section (1), but files it within one month of the end of the said period, and the dealer proves to the satisfaction of the Commissioner that the delay was on account of factors, beyond his control, then no penalty under this sub-section shall be imposed on him.”

35. Amendment of section 62 of Mah. IX of 2005

In section 62 of the principal Act,—

(1) in sub-section (1),—

(a) the word “return”, wherever it occurs, shall be deleted;

(b) for the words “and intimation” the words “penalty and forfeiture” shall be substituted;

(2) in sub-section (3), for the words “or intimation” the words, “penalty or forfeiture” shall be substituted.

36. Amendment of section 63 of Mah. IX of 2005

In section 63 of the principal Act, after sub-section (4), the following sub-sections shall be added, namely:—

“(5) Where,—

(a) any sale of goods is made and thereafter the goods are returned within the prescribed time, then the goods returned shall be accounted for in the return for the period in which appropriate entries are taken in the books of accounts; and

(b) any purchase of goods is made and thereafter the goods are returned within the prescribed time, then the goods returned shall be accounted for in the return for the period in which appropriate entries are taken in the books of accounts.

(6) If the sale price or, as the case may be, the purchase price of any goods is varied and credit notes, or as the case may be, debit notes, are requested to be issued to give effect to such variation, then,—

(a) the credit notes or, as the case may be, debit notes, shall separately specify the component of tax, if any, and the component of price, and

(b) such credit notes or, as the case may be, debit notes, shall be accounted for in the return in the period in which appropriate entries (or debit notes and credit notes are taken in the books of accounts.”

37. Amendment of section 64 of Mah. IX of 2005

In section 64 of the principal Act, in sub-section (3), after the words “any proceedings under this Act” the words “or for any prosecution” shall be inserted.

38. Amendment of section 65 of Mah. IX of 2005

In section 65 of the principal Act, sub-sections (3) and (4) shall be deleted.

39. Amendment of section 66 of Mah. IX of 2005

In section 66 of the principal Act, sub-sections (4), (5), (6) and (7) shall be deleted.

40. Amendment of section 69 of Mah. IX of 2005

In section 69 of the principal sub-section (2), for the words “communication or intimation”, wherever they occur, the words “or communication” shall be substituted.

41. Amendment of section 71 of Mah. IX of 2005

In section 71 of the principal Act, in sub-section (3), in clause (d), for the words “a Civil Court” the words “a Civil Court or Tribunal constituted under any Central law” shall be substituted.

42. Amendment of section 72 of Mah. IX of 2005

In section 72 of the principal Act, to sub-section (3), the following proviso shall be added, namely:-

“**Provided that**, no prosecution shall be instituted under this sub-section, except with the previous sanction of the State Government.”

43. Substitution of section 74 of Mah. IX of 2005

For section 74 of the principal Act, the following section shall be substituted, namely :-

“74. Offences and penalty

(1) Whoever knowingly,-

(a) not being a registered dealer under this Act, represents that he is or was a registered dealer at the time when he sells or buys goods, or

(b) furnishes a false return, or

(c) produces before the commissioner or the Tribunal, a false bill, cash memorandum, voucher, declaration, certificate or other document referred to in sub-section (4) of section 29, or

(d) keeps false account of the value of goods bought or sold by him in contravention of sub-section (1) of section 63, or

(e) produces false accounts, registers or documents or knowingly furnishes false information, or

(f) issues to any person any certificate or declaration, under the Act, rules or notifications, or a bill, cash memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reason to believe to be false, or

(g) falsely represents that he is authorised under section 82 to appear before any authority in any proceeding,

shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine.

(2) Whoever willfully attempts in any manner whatsoever to evade any tax leviable under this or payment of any tax, penalty or interest under this Act, shall, on conviction, be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever,—

(a) fails, without sufficient cause, to comply with, the requirements of sub-section (3) of section 14, or

(b) is engaged in business as a dealer without being registered under section 16, or

(c) fails, without sufficient cause, to obtain, in lieu of the existing certificate of registration, a fresh certificate of registration when required to do so as provided in sub-section (1) of section 17, or

(d) fails, without sufficient cause to furnish any information required by section 18, or

(e) fails, without sufficient cause to furnish a declaration or, as the case may be, a revised, declaration as provided in sub-section (1) of section 19 or, fails without sufficient, cause to communicate the permanent account number obtained under the Income Tax Act, 1961 or, as the case may be, fails to state whether he has applied for the same and fails without sufficient cause to provide the details of the application as provided in sub-section (2) of section 19, or

(f) fails, without sufficient cause, to furnish any return or, as the case may be, a complete and self-consistent return as required by section 20 by the date and in the manner prescribed, or

(g) fails, without sufficient cause, to pay the tax deductible at source or to deduct at source such tax, or fails without sufficient cause to obtain the sales tax deduction account number or fails without sufficient cause to file a return as required under the provisions of section 31, or

(h) fails, without sufficient cause, to comply with the requirements of the notice issued under sub-section (1) of section 33, or

(i) fails, without sufficient cause, to comply with the requirements of any order issued under sub-section (1) of section 35, or

(j) fails, without sufficient cause, to comply with the requirements of any order issued under sub-section (3) of section 38, or

(k) fails, without sufficient cause, to comply with the requirements of section 42, or

(l) without reasonable cause, contravenes any of the provisions of section 60, or

(m) fails, without sufficient cause, to get his accounts audited or furnish the report of the audit, as required under section 61, or

(n) fails, without sufficient cause, to comply with the requirements of section 63, or

(o) fails, without sufficient cause, to comply with the requirements of section 64, or

(p) fails, without sufficient cause, to comply with the requirements of section 65, or

(q) fails, without sufficient cause, to furnish any information or return required by section 70 by the date and in the manner prescribed or willfully furnishes any information or return which he knows to be incorrect or false, or

(r) fails, without sufficient cause, to issue a tax invoice, bill or cash memorandum as required under section 86, or

(s) contravenes, without reasonable cause, any of the conditions, subject to which the Certificate of Entitlement is granted, or

(t) fails, without sufficient cause, to comply with any notice in respect of any proceedings,

shall, on conviction, be punished with simple imprisonment for a term which may extend to six months and with fine.

(4) Whoever aids or abets or induces any person in commission of any act specified in sub-section (1) or (2) shall, on conviction, be punished with simple imprisonment which shall not be less than one month but which may extend to one year and with fine and whoever, aids, abets or induces any person in commission of any act specified in sub-section (3) shall, on conviction, be punished with simple imprisonment which may extend to one month and with fine.

(5) Whoever commits any of the acts specified in sub-sections (1) to (4) and the offence is a continuing one under any of the provisions of

these sub-sections, shall, on conviction, be punished with daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

(6) Where a dealer is accused of an offence specified in sub-section (1), (2) or (3), the person deemed to be the manager of the business of such dealer under section 19 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

(7) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.— Culpable mental state includes intention, motive or knowledge of a fact or belief in or reason to believe, a fact and a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

44. Amendment of section 78 of Mah. IX of 2005

In section 78 of the principal Act, in sub-section (1), for the words, brackets and figures “sub-section (8), (10) or (11)” the word, brackets and figure “sub-section (4)” shall be substituted.

45. Amendment of section 81 of Mah. IX of 2005

In section 81 of the principal Act in sub-section (2), for the words “a competent Court” the words “a competent Court or Tribunal” shall be substituted.

46. Amendment of section 85 of Mah. IX of 2005

In section 85 of the principal Act,—

(1) in sub-section (1), the words, brackets and figure “but subject to sub-section (2),” shall be deleted;

(2) in sub-section (2), —

(a) in clause (b), for the words, brackets and figures “any intimation issued under sub-section (1) of section 12” the words and figures “a defect notice issued under section 20” shall be substituted;

(b) after clause (b), the following clause shall be inserted, namely:—

“(b-1) an assessment order passed under sub-section (l) of section 23, or”;

- (c) for clause (d), the following clause shall be substituted, namely:–
“(d) any order or notice issued under sub-section (1) or (2) of section 34, or”;
- (d) clause (f) shall be deleted ;
- (e) clause (h) shall be deleted.

47. Amendment of section 86 of Mah. IX of 2005

In section 86 of the principal Act,–

(1) in sub-section (1), for the words “taxable goods to another registered dealer, he shall” the words “goods, he may” shall be substituted;

(2) in sub-section (2), in clause (b), for the words “as well as the purchasing dealer” the words “as well as the name and address of the purchasing dealer” shall be substituted;

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

“(3) When a registered dealer sells any goods, he may at his option issue to the purchaser a bill or cash memorandum serially numbered, signed and dated by him or his servant, agent or manager and stating therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of three years from the end of the year in which the sale took place. Where the said registered dealer is issuing a bill or cash memorandum, he shall not collect tax separately on such sale.”

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

“(4) Nothing contained in sub-section (1) or (2) shall apply to a dealer who is paying tax by way of composition under sub-section (1) or (2) of section 42.”

(5) after sub-section (5), the following sub-section shall be added, namely:–

“(6) A registered dealer, shall in respect of every sale made by him issue either a tax invoice or bill or cash memorandum as provided under sub-section (1) or (3).”

48. Amendment of section 88 of Mah. IX of 2005

In section 88 of the principal Act,—

(1) in clause (c), for the word “SICOM” the words “SICOM or Directorate of Industries” shall be substituted;

(2) in clause (e),—

(i) after the words and figures “Scheme of Incentives for Tourism, 1993” the words and figures “Electronic Scheme, 1985” shall be inserted;

(ii) for the words and figures “New Package Scheme of Incentives for projects, 1998” the words and figures “New Package Scheme of Incentives for projects, 1999” shall be substituted.

49. In section 89 of the principal Act, in sub-section (2), for the words “issue to the unit a Certificate of Entitlement in such form and subject to such conditions, as may be prescribed” the words “issue, subject to such conditions, as may be prescribed, to the unit a Certificate of Entitlement” shall be substituted.

50. Amendment of section 90 of Mah. IX of 2005

In section 90 of the principal Act,—

(1) in clause (a), in sub-clause (iii), for the words “Certificate of Entitlement” the words “certificate of registration” shall be substituted;

(2) in clause (b), the words “or, if the unit contravenes any of the provisions of the relevant Scheme” shall be added at the end.

51. Amendment of section 91 of Mah. IX of 2005

In section 91 of the principal Act,—

(1) in sub-section (2), the following proviso shall be added, namely:—

“**Provided further** that, no interest under section 30 shall be payable by a dealer to whom a Certificate of Entitlement has been granted and for whom the due date of payment has been extended, moratorium has, been granted or installments have been granted and payments have been made accordingly.

(2) in sub-section (5), clause (iii) shall be deleted.

52. Amendment of section 92 of Mah. IX of 2005

In section 92 of the principal Act, after sub-section (2), the following sub-section shall be added, namely :—

“(3) A unit – holding a Certificate of Entitlement shall not be entitled to claim or receive any incentives towards,—

(i) a sale made by way of transfer of property in goods (whether as goods or in some other form) involved in the execution 'of works contract;

(ii) a sale made by transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;"

53. Amendment of section 94 of Mah. IX of 2005.

In section 94 of the principal Act, in sub-section (1),—

(1) for the words “sales tax, additional tax, surcharge, turnover tax, or purchase tax” the words “sales tax liability” shall be substituted;

(2) for the words “the SICOM” the words “the SICOM or the Directorate of Industries” shall be substituted;

(3) the words “Maharashtra Tourism Development Corporation or the Maharashtra Energy Development Authority” shall be deleted.

54. Amendment of section 95 of Mah. IX of 2005

In section 95 of the principal Act, in sub-section (1), clause (c) shall be deleted.

55. Amendment of section 96 of Mah. IX of 2005

In section 96 of the principal Act, in sub-section (1),—

(1) in clause (c), the following portion shall be added at the end, namely:—

“and subject to the provision of this Act, all registrations and licences granted under any earlier law shall stand cancelled on the appointed day:”

(2) for clause (d), the following clause shall be substituted, namely:—

“(d) if any person or dealer has applied for registration under earlier law, before the appointed day but the registration certificate has not been granted before the appointed day or where any dealer who has become liable to pay tax under earlier law before the appointed day applies within the time provided for such application under earlier law but the application is made after the appointed day, then a registration certificate as provided under earlier law shall be duly granted to such person or dealer and for the purposes of all the provisions of this Act including the provisions contained in section 3, such person or dealer shall be deemed to be holding a valid certificate of registration which is in force

immediately before the appointed day and all, the provisions of this Act shall apply accordingly;”

(3) clause (e) shall be renumbered as sub clause (i) thereof and after sub-clause (i) so renumbered, the following sub-clause shall be added, namely:—

“(ii) where any person or dealer liable to pay tax under the Bombay Sales Tax Act, 1959 has purchased any goods at any time before the appointed day under a certificate or declaration given by him under section 8A, 11, 12 or 41 of the said Act and the conditions, recitals or undertakings of such certificate or declaration are not complied at any time after the appointed day, such dealer shall be liable to pay under the Bombay Sales Tax Act, 1959, the purchase tax on the purchase price of such goods and the purchase tax shall be levied at the rate set against each of such goods in column (4) of Schedules B and C appended to the said Act; and accordingly, he shall file a return with the prescribed authority in the prescribed form in respect of the period in which the goods were purchased and shall include the purchase price thereof in the said return and shall file such return within one month of the end of the month in which such liability arises and pay the tax due as per the return before filing such return;

Provided that, where purchase tax is payable by a dealer or person under this clause by reason of the fact that he has failed to comply with the conditions, recitals or undertakings of a declaration or certificate issued under section 8A, 11, 12 or 41 of the said Act within nine months of the appointed day, then an amount equal to the tax paid or payable under section 11, 12, 13A or, as the case may be, section 41, shall be set-off against the purchase tax so payable;”

(4) in sub-clause (f), for the words “tax due on such amounts” the words “tax due on such amounts at the rates applicable under this Act” shall be substituted;

(5) in clause (g), after the words “then the liability of the dealer to pay tax under this Act” the words “shall be discharged at the rates applicable under this Act, and the liability so discharged” shall be inserted.