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MADHYA PRADESH ACT

No. 11 OF 2010.

THE MADHYA PRADESH VAT (AMENDMENT) ACT, 2010

[Received the assent of the Governor on the 29th March, 2010; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 1st April, 2010.]

An ACT further to amend the Madhya Pradesh Vat Act, 2002.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Madhya Pradesh Vat (Amendment) Act, 2010.

(2) (a) The provisions of clause (ii) of Section 2 and Section 3 of this Amending Act shall be deemed to have come into force from 1st August, 2009; and

(b) the remaining provisions of this Amending Act shall come into force from the date of publication of this Act in the Madhya Pradesh Gazette.

Amendment of Section 2.

2. In Section 2 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002) (hereinafter referred to as the Principal Act),—

(i) after clause (h), the following clause shall be inserted, namely —

“(ha) “cooked food” means meals prepared and served by hotels, restaurants and the like, including prepared tea and prepared coffee;”;

(ii) for clause (d) of explanation to clause (u), the following clause shall be substituted, namely :—

“(d) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, two independent sale or purchase shall, for the purposes of this Act, be deemed to have taken place, when the goods specified in Schedule II are transferred from a unit of a dealer to another unit of the same dealer for sale or for consumption or use in/for manufacture of goods specified in Schedule II in such unit and the dealer holds separate registration certificate for each of such units.”.

Substitution of Section 10-A.

3. For Section 10-A of the Principal Act, the following section shall be substituted, namely :—

Levy of purchase tax on certain goods.

“10-A (1) Notwithstanding anything to contrary contained in this Act, every dealer who in course of his business purchases goods as may be notified by the State Government, shall be liable to pay tax at the rate of four percent on the purchase price of the notified goods :

Provided that no tax under this section shall be payable on the purchases of such goods, if the goods are consumed in the process of manufacture as may be specified by the State Government, within the State.

(2) No tax under this section shall be levied in respect of the purchases made from a registered dealer by whom tax under this section is payable and who has declared by putting a statement on the sale bill that tax under this section is payable by him on such goods.

(3) The tax under this section shall be levied in respect of a dealer from the date on which aggregate of the purchase prices of goods notified exceeds rupees five crores in the first instance, in a year :

Provided that the following purchase prices of notified goods shall not be included in the aggregate of the purchase prices for determination of liability to pay tax under this section :—

(i) Purchase price of notified goods purchased from outside the State;

(ii) Purchase price of notified goods which have been sold against declaration under sub-section (6);

(iii) Purchase price of notified goods which have been purchased before the date of notification under sub-section (1);

(iv) Purchase price of notified goods which have been consumed after purchase, in the process of manufacture as specified under proviso to sub-section (1).

(4) Every dealer who is liable to pay tax under sub-section (1) shall continue to be so liable until the expiry of two consecutive years during which aggregate of purchase prices of the notified goods has not exceeded the limits specified in sub-section (3) and on the expiry of such period his liability to pay tax under this Section shall cease.

(5) Every dealer who is engaged in the manufacture as specified under proviso to sub-section (1) shall obtain a certificate of recognition in the prescribed manner from the prescribed authority.

(6) If a dealer, who is liable to pay tax under this Section, sells the notified goods to a dealer, who holds a certificate of recognition, against a declaration issued in the manner and form as may be prescribed, the selling dealer shall be entitled to claim deduction of the purchase price of the goods sold and such purchase price shall not be included in the aggregate of purchase prices.

(7) If the dealer holding certificate of recognition purchased the notified goods and instead of using such goods in the manufacture as specified in proviso to sub-section (1), sells or disposes off such goods in any other manner, he shall be liable to pay tax at the rate of 4 percent on the purchase price of those goods.

(8) The State Government may, by notification, exempt whether prospectively or retrospectively any transactions, as it may deem fit, from payment of tax under this Section for such period as may be specified in the notification."

4. In Section 20 of the Principal Act, in sub-section (4), in clause (a), for the words, bracket, figures and letter "under sub-section (1) of Section 20-A", the words, brackets, figures and letters "under sub-section (1) and (1A) of Section 20-A" shall be substituted.

Amendment of Section 20.

5. In Section 20-A of the Principal Act,—

(i) in sub-section (1), in the proviso, for full stop, the colon shall be substituted and thereafter the following proviso shall be inserted, namely :—

" Provided further that the State Government May, by notification, extend the dates of filing of returns/revised returns as specified in clause (a) with an interest of 0.5 percent per month, which shall be in addition to the interest payable in accordance with the provision of clause (a) of sub-section (4) of Section 18."

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

"(2) Notwithstanding anything to the contrary contained in sub-section (1) and (1A), the Commissioner shall select for reassessment a number of such dealers, as he deems fit, whose assessment for a year is deemed to have been made under sub-section(1) of Section 20 in accordance with the provisions of sub-section (1) and (1A) and such selection shall be made during the year immediately following the said year."

Amendment of Section 20-A.

6. In Section 39 of the Principal Act, in sub-section (5), for the bracket and figure "(1)" the bracket and figure "2" shall be substituted.

Amendment of Section 39.

7. In Section 42 of the Principal Act, sub-section (2) shall be renumbered as sub-section (3) and before sub-section (3) as so renumbered, the following new sub-section shall be inserted, namely :—

Amendment of Section 42.

"(2) The Commissioner may transfer any proceeding or class of proceedings under section 46 from an Appellate Authority appointed under section 3-A to any other Appellate Authority, and intimation about the transfer of any such proceeding or proceedings shall be sent to the dealer."

Amendment of Section 71.

8. In Section 71 of the Principal Act, in sub-section (2), after clause (ea), the following clause shall be inserted, namely :—
“(eb) the manner in which recognition certificate shall be obtained under sub-section (5) of Section 10-A and the manner and the form in which declaration shall be issued under sub-section (6) of Section 10A;”.

Amendment of Schedule I.

9. In Schedule I of the Principal Act,—

(i) against serial number 77, in column (2) for the words “Atta Chakki”, the words “Atta Chakki and its parts including Pat” shall be substituted;

(ii) after serial number 83, the following serial numbers and entries relating thereto shall be inserted, namely :—
“84 Isabgol

85. Products of Research and Training Institutes when sold by the Research and Training Institutes and total annual turnover of such products is less than rupees twenty five lacs”.

Amendment of Schedule II.

10. In Schedule II of the Principal Act,—

(i) in part II,—

(a) after serial number 71, the following serial number and entries relating thereto shall be inserted, namely :—
“72. Cooked food 5”;

(b) after serial number 74, the following serial number and entries relating thereto shall be inserted, namely :—
“75. Saw dust 5”;

(ii) in part III,—

(a) against serial numbers 4, 6 and 7, in column (3), for the figure “12.5”, the figure “13” shall be substituted;

(b) after serial number 9, the following serial number and entries relating thereto shall be inserted, namely :—

“10. Capital goods (other than plant and machinery and motor vehicle), on which tax under the Act has been paid at the time of purchase and no input tax rebate was admissible on such purchase. 1.5”;

(iii) in part IV, in column (3), for the figure “12.5”, the figure “13” shall be substituted.

भोपाल, दिनांक 10 अगस्त 2010

क्र. 4689-303-इक्कीस-अ-(प्र.)—भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, मध्यप्रदेश वेट (द्वितीय संशोधन) अधिनियम, 2010 (क्रमांक 20 सन् 2010) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
राजेश यादव, अपर सचिव.

MADHYA PRADESH ACT

No. 20 OF 2010.

THE MADHYA PRADESH VAT (SECOND AMENDMENT) ACT, 2010.

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MADHYA PRADESH ACT

No. 20 OF 2010.

THE MADHYA PRADESH VAT (SECOND AMENDMENT) ACT, 2010.

[Received the assent of the Governor on the 9th August, 2010; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 10th August, 2010].

An Act further to amend the Madhya Pradesh Vat Act, 2002.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-first year of the Republic of India as follows:—

1. (1) This Act may be called the Madhya Pradesh Vat (Second Amendment) Act, 2010.

Short title and commencement.

(2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette

Amendment of
Section 4.

2. In Section 4 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002) (hereinafter referred to as the Principal Act),—

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

“(3) The Appellate Board shall consist of a Chairman and such number of Judicial and Accountant members as the State Government may decide.”;

(ii) proviso to sub-section (5) shall be omitted; and

(iii) sub-section (6) shall be renumbered as sub-section (12) and before sub-section (12) as so renumbered, the following sub-sections shall be inserted, namely:—

“(6) The Chairman of the Board shall be a retired member of the Indian Administrative Service who has held a post equivalent to the Chief Secretary of the State Government or Secretary to the Government of India and has experience of tax administration.

(7) Judicial members shall be the person who has been a member of Madhya Pradesh Higher Judicial Service or a person who has been an advocate dealt in tax matters for at least ten years. At least one Judicial member shall be a serving or retired member of the Madhya Pradesh Higher Judicial Service.

(8) Accountant members shall be the person who has been in practice of accountancy in Sales Tax/Commercial Tax/ Value Added Tax, as a Chartered Accountant for at least ten years, or who has been a member of the Madhya Pradesh State Taxation Service and has held the post of Additional Commissioner or equivalent or a higher post for at least three years. At least one accountant member shall be a serving or retired member of Madhya Pradesh State Taxation Service.

(9) The State Government may remove from office, the Chairman or a member of the Board who—

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the Chairman shall not be removed from his office on the ground specified in clauses (d) and (e) above except on an enquiry held by the State Government in accordance with such procedure as it may prescribe in this behalf and finds the Chairman to be guilty of such ground:

Provided further that any member of the Board may be removed from the office, only after the consultation with the Chairman.

- (10) The terms and conditions of the service of the Chairman and the members of the Board shall not be varied to their disadvantage during their tenure of office.
- (11) The Chairman or any member ceasing to hold office shall not be eligible to appear, act or plead before any authority appointed under the Act.”.

3. After Section 4 of the principal Act, the following Sections shall be inserted in Chapter II, namely:—

Insertion of
Section 4-A and
4-B.

“4-A. Orders of Appellate Board.

- (1) The Appellate Board may after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) The Appellate Board may, at any time within four calendar years from the date of order, with a view to rectify any mistake apparent in the record, rectify any order passed by it under sub-section (1), and may make such rectification if the mistake is brought to its notice by the dealer or the Assessing officer:

Provided that no such rectification shall be made if it has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of a dealer, unless the Appellate Board has given notice to the dealer of its intention to do so and has allowed the dealer a reasonable opportunity of being heard.

- (3) On an application under sub-section (6) of Section 46, the Appellate Board may, after considering the merits of the application made by the dealer, pass an order of stay for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Board shall dispose of the appeal within the said period of stay specified in that order:

Provided that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Board may, on an application made in this behalf by the dealer and on being satisfied that the delay in disposing of the appeal is not attributable to the dealer, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit: so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Board shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided further that if such appeal is not disposed of within the period allowed under this sub-section or the period or periods extended or allowed under the first proviso, which shall not in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of appeal is not attributable to the dealer.

- (4) The cost, if any, in an appeal shall be at the discretion of the Appellate Board.
- (5) The Appellate Board shall send a copy of any order passed under this Section, to the dealer and to the Commissioner.

4-B. Procedure of Appellate Board

- (1) The powers and functions of the Appellate Board may be exercised and discharged by Benches constituted by the Chairman of the Appellate Board from among the members thereof.
- (2) Subject to the provisions contained in sub-section (3), a Division Bench shall include at least one judicial member and one accountant member.
- (3) The Chairman or any other member of the Appellate Board may, sitting singly, dispose of any case which pertains to a dealer whose total turnover as computed by the Assessing Officer in the case does not exceed rupees sixty lacs and the Chairman may for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.
- (4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the Chairman of the Appellate Board for hearing on such point or points by one or more of the other members of the Appellate Board, and such point or points shall be decided according to the opinion of the majority of the members of the appellate Board who have heard the case, including those who first heard it.
- (5) Subject to provisions of this Act, the Appellate Board shall have power to regulate its own procedure and the procedures of benches thereof on all matters arising out of the exercise of its powers or of the discharge of its function, including the places at which the Benches shall hold their sittings.
- (6) The appellate Board shall, for the purpose of discharging its functions, have all the powers which are vested in the taxing authorities referred to in Section 3, and any proceeding before the appellate Board shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860) and for the purpose of Section 196 of the Indian Penal Code, 1860 (45 of 1860), the Appellate Board shall also be deemed to be a civil court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973 (No. 2 of 1974)."

Amendment of
Section 9.

4. In section 9 of the principal Act.—

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

“(2) Notwithstanding anything to the contrary contained in this Act, no tax shall be levied on goods specified in Schedule II, if the goods are sold by any one of the oil companies, as may be notified, to any one of the notified oil companies.”;

- (ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Notwithstanding anything to the contrary contained in this Act, no tax shall be levied on such goods as may be notified by the State Government, subject to such restrictions and conditions as may be specified in the notification, if the goods are sold by a joint venture company to its holding company.”.

5. In Section 11 of the Principal Act, in sub-section (1), for the words "fifty lacs", the words "sixty lacs" shall be substituted. Amendment of Section 11.

6. In Section 14 of the Principal Act, after sub-section (1-A), the following sub-section shall be inserted, namely:— Amendment of Section 14.

"(1-B) Subject to such restrictions and conditions as may be prescribed, where a registered dealer sells the goods as may be notified by the State Government, and the dealer consumes the goods purchased by him within the State of Madhya Pradesh from another such dealer after payment to him input tax, in the manufacture of such notified goods, he shall claim or be allowed in such manner and within such period as may be prescribed, input tax rebate of the amount of such tax. The provisions of clause (a) of sub-section (1) shall mutatis mutandis apply to the input tax rebate claimed or allowed under this sub-section."

7. In section 17 of the Principal Act.— Amendment of Section 17.

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

"(4) (a) On the day the application for grant of a registration certificate as required by sub-section (1) or sub-section (2) is received, the said authority shall grant the applicant a registration certificate in the prescribed form.

(b) After issue of the registration certificate under clause (a), the Commissioner shall verify the particulars given in the application in such manner as may be prescribed.

(c) If the Commissioner on verification under clause (b), is satisfied that the particulars given by the applicant in his application are incorrect or that the applicant has misrepresented certain facts, he shall, after giving the applicant an opportunity of being heard and recording the reasons in writing, cancel the registration certificate issued to the applicant under clause (a) in accordance with the provisions of clauses (c) or clause (e) of sub-section (10) from the date of its issued, not later than thirty days of the date of receipt of the application.";

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

"(10) When-

(a) on an application by a registered dealer that his business has been discontinued or transferred, or the Commissioner on his own motion finds that a registered dealer has discontinued or transferred his business; or

(b) on an application by a registered dealer that his liability to pay tax has ceased, or the Commissioner on his own motion finds that as per the returns submitted by a registered dealer, his turnover in the immediate previous year has not exceeded the limit prescribed under section 5; or

(c) the Commissioner on his own motion finds that a registered dealer has been granted a registration certificate on the basis of the incorrect information furnished by the dealer; or

(d) the Commissioner on his own motion finds that a registered dealer is in arrears of tax or penalty or any other sum due under this Act or under the Act repealed by this Act, which is more than rupees one lac and which remains outstanding for more than six months; or

(e) the Commissioner on his own motion finds that the certificate of a registered dealer should be cancelled for reasons to be recorded in writing by him,

the Commissioner may cancel the registration certificate.

Provided that where the Commissioner proposes to cancel the registration certificate of a dealer under this sub-section, he shall give the dealer an opportunity of being heard."

Amendment of section 20A.

8. In section 20-A of the Principal Act, after sub-section (1-A), the following sub-section shall be inserted, namely:—

"(1-B) Notwithstanding anything to the contrary contained in sub-section (1) and (1-A), the State Government may, by notification, provide that assessment of a registered dealer subject to such requirements, restrictions and conditions as may be specified in the notification, shall be deemed to have been made for the purpose of sub-section (1) of Section 20."

Insertion of section 24A-24B & 24C.

9. After Section 24 of the Principal Act, the following sections shall be inserted, namely:—

"24-A. Commercial tax settlement Authority.

- (1) The State Government may constitute an Authority to be called the Commercial Tax Settlement Authority for the settlement of cases under the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) (repealed Act) Madhya Pradesh Commercial Tax Act, 1994 (No. 5 of 1995) (Repealed Act) Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), Central Sales Tax Act, 1956 (No. 74 of 1956) and the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (No. 52 of 1976).
- (2) The minister in charge of the Commercial Tax Department shall be the Chairman of the Settlement Authority.
- (3) The Settlement Authority shall include one representative each from the Finance, Law and Legislative Affairs and Commercial Tax Department not below the rank of the Secretary as membebr.
- (4) The Commissioner, Commercial Tax shall be the member Secretary of the Settlement Authority.

24-B. Application for settlement of cases.

- (1) Notwithstanding anything to the contrary contained in this Act, if any amount of tax, interest and penalty under the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959) (repealed Act) the Madhya Pradesh Commercial Tax Act, 1994 (No. 5 of 1995) (repealed Act) the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the Central Sales Tax Act, 1956 (No. 74 of 1956) and the Madhya Pradesh Sthaniya kshetra Me Mal Ke Pravesh Par kar Adhinyam, 1976 (No. 52 of 1976),—
 - (i) is disputed by a dealer and the dispute is pending before the High Court for adjudication;
 - (ii) hardship is being caused to a dealer due to any order passed under any of the provisions of the Act.

the dealer may apply for the settlement of the amount of tax, interest and penalty to the Settlement Authority.

- (2) an application for the settlement of the amount shall be submitted in the form and the manner as may be prescribed.
- (3) The dealer shall pay,—
 - (i) the undisputed amount of tax in full and twenty five percent of the disputed amount of tax, in case of application under clause (i) of sub-section (1);
 - (ii) the full amount of tax, in case of application under clause (ii) of sub-section (1),
 before submission of the application.

24.-C. Procedure on receipt of an application

- (1) The settlement Authority shall pass an appropriate order, including waiver of the whole or part of the interest and the penalty levied and included in the amount payable by the dealer, on every application for settlement after affording an opportunity of hearing to the dealer.
- (2) The Settlement Authority shall consider the application and the submissions, if any made before them by the dealer and thereafter decide the amount to be deposited by the applicant.
- (3) The dealer shall submit an application for withdrawal of the case pending before the High Court and a copy thereof shall be submitted to the Settlement Authority before the issue of order of settlement.
- (4) If the amount required to be deposited under sub-section (2), has already been deposited by the dealer, the Settlement Authority shall pass an order of settlement. If the amount deposited is less than the amount decided by the Settlement Authority, the balance amount shall be deposited by the dealer within the time as may be decided by the Settlement Authority. On receipt of proof of payment of the balance amount, the Settlement Authority shall pass an order of settlement.
- (5) The Settlement Authority shall pass a settlement order on every application indicating the balance amount of interest and penalty waived on settlement.
- (6) The Settlement Authority may remand the case wherever it thinks fit.
- (7) An order of settlement shall not form the basis for any claim by the applicant in cases other than the case in which such settlement order has been passed.
- (8) No penal action against the applicant under any Act administered by the department shall be initiated after an order of settlement has been passed under this section. The dealer also shall not be entitled to refund of any amount of any other benefit under any Act afterwards.”.

10. In section 39 of the Principal Act, in sub-section (2), for the words "forty lacs", the words "sixty lacs" shall be substituted.

Amendment of section 39.

Amendment of
section 46.

11. In section 46 of the Principal Act,—

(i) in sub-section (8), in clause (b), for the words “the Appellate Board shall make an endeavour to pronounce its order in writing within one calendar year from the date of filing of appeal”, the words “the Appellate Board shall dispose of every appeal within two calendar years from the date of filing of appeal” shall be substituted;

(ii) after sub-section (8-A), the following sub-section shall be inserted, namely:—

“(8-B) The appeals pending before the Appellate Board on the date of commencement of Madhya Pradesh Vat (Second Amendment) Act, 2010 shall be disposed of by the Appellate Board within the period specified in sub-section (8) or the period of one calendar year following such commencement, whichever is later.”.