

The Goa Value Added Tax (Tenth Amendment) Bill, 2017

(Bill No. 16 of 2017)

A

BILL

further to amend the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005).

BE it enacted by the Legislative Assembly of Goa, in the Sixty-Eighth Year of Republic of India, as follows:-

1. Short title and commencement.— (1) This Act may be called the Goa Value Added Tax (Tenth Amendment) Act, 2017.

(2) It shall be deemed to have come into force on the 1st day of July, 2017.

2. Amendment of section 2.— In section 2 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the “principal Act”),—

(i) clauses (a), (b), (j) and (l) shall be omitted;

(ii) for clause (p), the following clause shall be substituted, namely:—

“(p) “goods” means—

(i) petroleum crude;

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption;”.

3. Amendment of section 35.— In section 35 of the principal Act, in sub-section (4), for the expression “sub-section (2)”, the expression “this section” shall be substituted.

4. Amendment of section 70.— In section 70 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), every dealer liable to pay tax, other than the one dealing in any of the goods, namely, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, shall, if his gross turnover of sales for the period commencing from the first day of the respective financial year till the end of the day immediately before commencement of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017), exceeds rupees twenty-five lakh, or in any other case, if the amount of input tax credit claimed by him during the said period exceeds rupees three lakh, get his accounts in respect of that period audited by an accountant by such date and in such manner as may be prescribed and furnish the report of such audit duly verified and signed by such accountant setting forth such particulars and certificates, in such form and within such period, as may be prescribed:

Provided that except in case of oil marketing company, the turnover of goods listed in Schedule ‘D’ and Schedule ‘G’ shall not be included in the gross turnover of sales specified above.”.

5. Repeal and Saving.— (1) The Goa Value Added Tax (Tenth Amendment) Ordinance, 2017 (Ordinance No. 4 of 2017) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Statement of Objects and Reasons

The Bill seeks to omit clauses (a), (b), (j) and (l) of section 2 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the “said Act”), so as to omit certain definitions and amend clause (p) of section 2 of the said Act in view of the amendment carried out to the constitution of India vide the Constitution (One Hundred and First Amendment) Act, 2016 and implementation of the Goa Goods and Services Tax Act, 2017 (Act 4 of 2017) from 01st July 2017, as this State is now empowered to levy taxes only on sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption.

The Bill further seeks to amend sub-section (4) of section 35 of the said Act so as to make the appellants to deposit ten percent of the disputed dues alongwith payment of whole of undisputed dues, while preferring an appeal with Appellate Authority within the prescribed time.

The Bill also seeks to amend section 70 of the said Act by inserting sub-section (1A) therein, so as to make the dealers, whose turnover for the period commencing from the 1st day of April, 2017 and ending with the 30th day of June, 2017 exceeds twenty-five lakh rupees or as the case may be, who claims an input tax credit of an amount exceeding three lakh rupees for the said period, to get their accounts audited by an accountant and furnish the report of the audit thereof with in prescribed period.

The Bill also seeks to replace the Goa Value Added Tax (Tenth Amendment) Ordinance, 2017 (Ordinance No.4 of 2017), promulgated by the Governor of Goa on the thirtieth day of June, 2017.

This Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

No financial implications are involved in this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Government to frame rules to specify the period within which and the manner in which, the dealer shall get his accounts audited from an accountant, and also the form in which and the period within which the audit report is to be furnished.

This delegation is of normal character.

Assembly Hall,
Porvorim, Goa.
_____, 2017.

SHRI MANOHAR PARRIKAR
Hon. Chief Minister/Finance Minister

Assembly Hall,
Porvorim, Goa.
_____, 2017.

N. B. SUBHEDAR
Secretary to the Legislative Assembly of Goa

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Mridula Sinha, the Governor of Goa hereby recommend to the Legislative Assembly of Goa, the introduction and consideration of the Goa Value Added Tax (Tenth Amendment) Bill, 2017.

RAJ BHAVAN
Date: / /2017.

MRIDULA SINHA
Governor of Goa

ANNEXURE

Bill No. ____ of 2017

Extract of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005)

2. Definition.- In this Act, unless the context otherwise requires,-

(a) "agriculture" with all its grammatical variations and cognate expressions, includes horticulture, the raising of crops, grass or garden produce, and also grazing ; but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forests or rearing of seedlings or plants;

Explanation.— For the purposes of this clause and clause (d), the expression "forest" means the forest to which the Indian Forest Act, 1927(Central Act 16 of 1927), in its application to the State of Goa, applies;

(b) "agriculturist" means a person who cultivates land personally, for the purpose of agriculture;

(c) "appointed day" means the day on which this Act shall come into force;

(d) "business" includes, -

(i) any trade, commerce or manufacture;

(ii) any adventure or concern in the nature of trade, commerce or manufacture;

(iii) any transaction in connection with, or incidental to or ancillary to trade, commerce, manufacture, adventure or concern;

(iv) any transaction in connection with, or incidental to or ancillary to the commencement or closure of such business;

(v) any occasional transaction in the nature of trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction,

whether or not trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

Explanation.- For the purpose of this clause,

(i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business.

(ii) any transaction of sale of capital goods pertaining to such trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business.

(iii) sales of any goods, the proceeds of which are credited to the business shall be deemed to be transactions comprised in business;

(e) "business premises" means any place where a dealer or a transporter sells, transports, books or delivers goods and includes any place where he stores, processes, produces or manufactures goods or keeps books of accounts;-

(f) "capital goods" means plant and machinery (including spares and components) and equipment used in or in relation to manufacture or processing of goods for sale or any other goods which is notified by the Government and used in furtherance of any business excluding such civil structures as may be prescribed;

(g) "casual trader" means a dealer who, whether as principal, agent or in any other capacity, has occasional or seasonal transaction involving the selling, supplying or distribution of goods or conducting any exhibition-cum-sale in Goa whether for cash or for deferred payment, commission, remuneration or other valuable consideration;

- (h) "Company" means a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a body corporate or corporation within the meaning of clause (7) of section (2) or Foreign Company referred to in section 591 of that Act;
- (i) "Commissioner" means the person appointed to be the Commissioner of Commercial Taxes /Sales Tax or Value Added Tax for the purposes of this Act;
- (j) "to cultivate personally" means to carry on any agricultural operation on one's own account,-
- (i) by one's own labour, or
 - (ii) by the labour of one's family, or
 - (iii) by servants on wages payable in cash or kind (but not in crop share), or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation I - A widow or a minor, or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation II- In the case of a Hindu undivided family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

- (k) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire purchase or any system of payment by instalments, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes;
- (a) a casual trader;
 - (b) a commission agent, a broker or a del-credere agent or an auctioneer or any other mercantile agent, by whatever name called;
 - (c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;
 - (d) a person who, whether in the course of business or not,-
 - (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
 - (ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;
 - (iii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

Explanation-

- (a) an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause;
- (b) government or departments of Union Governments or Other State Governments and Union Territories which whether or not in the course of business, sells, supplies or distributes, goods directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste

products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act;

(c) each of the following persons and bodies who dispose of any goods including goods as unclaimed or confiscated or as unserviceable or as scrap, surplus, old, obsolete or discarded material or waste products whether by auction or otherwise, directly or through an agent for cash or for deferred payment, or for any other valuable consideration, shall notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, to the extent of such disposals, namely:-

- (i) Port Trust;
- (ii) Municipal Corporation/Council, and other Local authorities;
- (iii) Railway Administration as defined under the Railway Act, 1989 (Central Act 24 of 1989);
- (iv) Shipping Transport and Construction Companies;
- (v) Air Transport companies and Airlines;
- (vi) Transporters, holding permit for transport vehicles granted under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) which are used or adopted to be used for hire;
- (vi) Customs and Central Excise Department of Government of India administering the Customs Act, 1962 (Central Act 52 of 1962) and the Central Excise Tariff Act, 1985 (Central Act 5 of 1986);
- (vii) Insurance and Financial Corporations or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (Act 2 of 1934);
- (viii) Advertising agencies;
- (ix) Any other corporation, company, body or authority owned or set up by, or subject to administrative control of the Government;
- (x) Income Tax Department of Government of India administering the Income Tax Act, 1961 (Central Act 43 of 1961);
- (xi) Any other body as may be notified by the Government from time to time.

- (l) "declared goods" means declared goods as defined in the Central Sales Tax Act, 1956 (Central Act 74 of 1956);
- (m) "director", in relation to a company, include any person occupying the position of director by whatever name called;
- (n) "document" includes written or printed records of any sort, title deeds and data stored electronically in whatever form;
- (o) "earlier law" means the Goa Sales Tax Act, 1964 (Act 4 of 1964) as amended from time to time, and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws;
- (p) "goods" means all kinds of movable property (other than newspapers) and includes livestock, all materials, commodities, grass or things attached to or forming part of the earth which are agreed to be severed before sale or under a contract of sale, and property in goods (whether as goods or in some other form) involved in the execution of works contract, lease or hire-purchase or those to be used in the fitting out, improvement or repair of movable property but does not include actionable claims, stocks, shares and securities;
- (q) "importer" means a person who brings any goods into the State or to whom any goods are despatched from any place outside the State;
- (r) "Input-tax" means tax charged under this Act by a registered dealer to another registered dealer on purchases of goods in the course of business;

- (s) "manufacture" includes any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character, use and includes extracting any goods but does not include such activity of manufacture as may be notified;
- (t) "non-resident dealer" means a dealer who has no place of business in the State of Goa but who sells or delivers goods in the State of Goa for sale therein;
- (u) "notification" means any notification issued under the Act;
- (v) "Output tax" in relation to any registered dealer, means the tax charged in respect of sale or supply of goods made by that dealer;
- (w) "person" includes an individual, any Government, any company or society or club or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm and a local authority and every artificial juridical person not falling within any of the preceding descriptions;
- (x) "prescribed" means prescribed by the rules made under this Act;
- (y) "raw materials" means goods used as ingredients in the manufacture of other goods and includes processing materials, consumable stores and material used in the packing of the goods so manufactured;
- (z) "registered dealer" means a dealer registered under this Act;
- (aa) "resale" means a sale of purchased goods—
 - (i) in the same form in which they were purchased; or
 - (j) without doing anything to them, which amounts to, or results in, a manufacture, and the word "resell" shall be construed accordingly;
- (ab) "rules" means rules made under this Act;
- (ac) "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes –
 - (a) transfer, otherwise than in pursuance of a contract, of property, in goods for cash, deferred payment or other valuable consideration;
 - (b) transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract;
 - (c) delivery of any goods on hire purchase or any other system of payment by instalments;
 - (d) transfer of the right to use any goods for any purpose (whether or not for a specified period), for cash, deferred payment or any other valuable consideration;
 - (e) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;

Explanation – A sale shall be deemed to take place in Goa if the goods are within Goa,-

- (i) in the case of specific or ascertained goods, at the time the contract of sale made; and
- (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to the appropriation:

Provided that where there is a single contract of sale in respect of goods situated in Goa as well as in places outside Goa, provisions of this Explanation shall apply as if there were a separate contract of sale in respect of the goods situated in Goa.

- (ad) "sale price" means the amount of valuable consideration received or receivable by a dealer for the sale of any goods less any sum allowed as cash discount, according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, excise duty, special excise duty or any other duty or taxes except the tax imposed under this Act;
- (ae) "Schedule" means the Schedule appended to this Act;
- (af) "State" means the State of Goa;
- (ag) "Government" means the Government of Goa;
- (ah) "tax" means a tax, payable under this Act;
- (ai) "taxable goods" means goods other than those specified in Schedule D;
- (aj) "tax period" means such period as may be prescribed as tax period;
- (ak) "Tribunal" means the Tribunal constituted under section 14 of this Act;
- (al) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or dispatched outside the State otherwise than by way of sale;
- (am) "turnover" means the aggregate amount of sale price for which goods are sold or supplied or distributed by a dealer, either directly or through another, whether on own account or on account of others, whether for cash or for deferred payment, or other valuable consideration;
- (an) "taxable sale" means sale which is taxable under the provisions of this Act;
- (ao) "taxable person" means every person who is registered or is liable to be registered and liable to pay tax under this Act;
- (ap) "vehicle" includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers;
- (aq) "Works contract" shall include any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacturing, processing, fabrication, erection, installation, fitting out improvement, modification, repair or commissioning of any movable or immovable property;
- (ar) "year" means, the financial year;
- (as) "Quarter" means the period of three months ending on the 30th June, 30th September, 31st December or 31st March.

35. Appeals.- (1) Any person objecting to an order affecting him passed under the provisions of this Act by an authority may appeal to Appellate Authority as may be prescribed within sixty days from the date of receipt of order by him.

(2) Where the Appellate Authority is satisfied that the person has reasonable cause for not preferring an appeal within the time specified in sub-section (1), he may accept an appeal, provided it is made within one year, from the date of receipt of order by him.

(3) The appeal shall be in the prescribed form and shall specify in detail the grounds upon which it is made.

(4) In case of an appeal against an assessment or any order raising demand against the person, the Appellate Authority shall consider it only if the person has paid the tax which is not disputed by him.

(5) The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed.

(6) After considering the appeal and after affording an opportunity of hearing, the Appellate Authority may allow it in whole or part and amend the assessment or remand it

for fresh disposal or dismiss the appeal or enhance the assessment or penalty or other amount:

Provided that before making an enhancement the appellant shall be given an opportunity of being heard on the proposal of enhancement.

(7) The Appellate Authority shall serve the appellant, with an order in writing, of the appeal decision, setting forth the reasons for the decision.

70. Accounts to be audited in certain cases.- (1) Every dealer liable to pay tax shall, if his gross turnover of sales exceed rupees one crore in any year, or in any other case, if the amount of Input Tax Credit claimed by him in any year exceeds rupees 10 lakhs, get his accounts in respect of such year audited by an accountant within nine months from the end of that year and furnish within that period the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars and certificates as may be prescribed.

(2) For the purposes of this section, "Accountant" means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act 38 of 1949).

(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the time as aforesaid the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, penalty of rupees one thousand plus rupees hundred per day during the first thirty days of default and rupees two hundred fifty per day thereafter, subject to a maximum of rupees one lakh cumulatively.

(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the period prescribed, the Commissioner shall impose on him, in addition to any tax payable, a penalty of rupees one hundred per day for each day of delay, subject to a maximum of rupees twenty-five thousand cumulatively.

Extract of the Goa Value Added Tax (Third Amendment) Act, 2008 (Goa Act 12 of 2008)

5. Amendment of section 70.- In section 70 of the principal Act, (i) for sub-section (1) the following sub-section shall be substituted, namely:-

“(1) Every dealer liable to pay tax shall, if his gross turnover of sales exceeds rupees one crore in any year, or in any other case, if the amount of input tax credit claimed by him in any year exceeds rupees ten lacs, get his accounts in respect of such year audited by an accountant by such date and in such manner as may be prescribed and furnish within the prescribed period the report of such audit in the prescribed form duly verified and signed by such accountant and setting forth such particulars and certificates as may be prescribed.”

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

“(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the period prescribed, the Commissioner shall, impose on him, in addition to any tax payable, a penalty of rupees one thousand plus rupees one hundred per day during the first sixty days of default and rupees two hundred fifty per day thereafter, subject to a maximum of rupees one lac cumulatively.”

(iii) after sub-section (3), the following sub-section shall be inserted, namely:-

“(4) Notwithstanding anything contained in sub-section (3), the Commissioner, upon an application from the dealer and subject to such rules as may be prescribed, remit the whole or any part of the penalty imposed on such defaulting dealer.”

Extract of the Goa Value Added Tax (Sixth Amendment) Act, 2012

(Goa Act 16 of 2012)

6. Amendment of section 70.— In section 70 of the principal Act,—(i) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that except in case of oil marketing company, the turnover of goods listed in Schedule ‘D’ and Schedule ‘G’ shall not be included in the gross turnover of sales specified above.”;

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

“(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the period prescribed, the Commissioner shall impose on him, in addition to any tax payable, a penalty of rupees one hundred per day for each day of delay, subject to a maximum of rupees twenty-five thousand cumulatively.”;

(iii) the sub-section (4) shall be omitted.

**Extract of the Goa Value Added Tax (Seventh Amendment) Act, 2013
(Goa Act 12 of 2013)**

15. Amendment of section 35.— In section 35 of the principal Act, for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) After considering the appeal and after affording an opportunity of hearing, the Appellate Authority may allow it in whole or part and amend the assessment or enhance the assessment or levy tax and/ or penalty and/or other amount or remand it for fresh disposal or dismiss the appeal:

Provided that before making a levy of tax, penalty or other amount and/or enhancement of assessment as the case may be, the appellant shall be given an opportunity of being heard.”.

**Extract of the Goa Value Added Tax (Ninth Amendment) Act, 2016
(Goa Act 17 of 2016)**

4. Amendment of section 35.— In section 35 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) No appeal under sub-section (2) shall be entertained by the Appellate Authority, unless such appeal is accompanied by a satisfactory proof of the payment of whole of the undisputed amount of tax, interest and penalty and ten percent of the disputed amount of tax, interest and penalty, that may be due:

(4A) The provisions of sub-section (4) shall be applicable also to any appeal pending before the Appellate Authority on the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016 and the appellant shall make payment as aforesaid within a period of 120 days from such commencement, failing which, such appeal shall stand abated.”.