



LEGISLATIVE ASSEMBLY OF THE STATE OF GOA

**THE GOA VALUE ADDED TAX
(SECOND AMENDMENT) BILL, 2006.**

(Bill No. 21 of 2006)

AS

~~(Bill)~~ introduced in the Legislative Assembly of the State of Goa

GOA LEGISLATURE SECRETARIAT
ASSEMBLY HALL, PORVORIM, GOA
JULY, 2006.

THE GOA VALUE ADDED TAX (SECOND AMENDMENT) BILL, 2006.

(Bill No. 21 of 2006)

A

Bill

*further to amend the Goa Value Added Tax Act, 2005
(Act No. 9 of 2005).*

5 Be it enacted by the Legislative Assembly of Goa
in the Fifty-seventh Year of the Republic of India
as follows:—

1. *Short title and commencement.*— (1) This Act may
be called the Goa Value Added Tax (Second Amendment)
Act, 2006.

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

15 2. *Amendment of section 2.*— In section 2 of the Goa
Value Added Tax Act, 2005 (Act 9 of 2005) (hereinafter
referred to as the “principal Act”), in clause (i), the
expression “/Sales Tax or Value Added Tax” shall be
omitted.

3. *Amendment of section 7.*— In section 7 of the
principal Act, after sub-section (2), the following sub-
section shall be inserted, namely:—

20 “(3) Any dealer who is eligible for composition of
tax under sub-section (1), fails to file returns for all the
quarters of the year within the time prescribed, he shall
be disqualified for the composition of tax for the next
two consecutive years.”

4. *Amendment of section 9.*— In section 9 of the principal Act, in sub-section (2), after clause (viii), the following clauses shall be inserted, namely:—

“(ix) in respect of purchase of motor vehicle including car, three wheeler and two wheeler under this Act or tax paid under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) on import of such motor vehicle before grant of registration mark under the Motor Vehicles Act, 1988 (Central Act 58 of 1988), when such vehicle is resold as true value vehicle or otherwise by a registered dealer under this Act;

(x) in respect of raw material used in the manufacture of ready mixed concrete;

(xi) in respect of Naphta used as raw material by chemical fertilizer industry.”

5. *Amendment of section 10.*— In section 10 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) After adjustment under sub-section (1), the excess input tax credit of a registered dealer other than those covered under sub-section (3) shall be carried over as an input tax credit to the subsequent period upto the end of the respective financial year and if there is any unadjusted input tax credit thereof, the same shall be refunded in the prescribed manner within three months, from the date of filing of the last quarterly return of the respective financial year or from the date of filing an application by the dealer claiming such refund, whichever is later”.

6. *Amendment of section 29.*— In section 29 of the principal Act,— (i) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) No assessment under this section for any year shall be made after a period of two years from the end of the year to which the return under section 24 is submitted by a dealer and no assessment under sub-section (9) shall be made after the expiry of five years from the end of the year in respect of which or part of which such assessment is to be made:

Provided that where assessment is made in consequence of or to give effect to, any order of an Appellate Authority or Revisional Authority or of a Court, the said period of two years shall be reckoned from the date of such order :

Provided further that in computing the period laid down in this sub-section, any period during which assessment proceedings are stayed by an order or injunction of any Court or authority such period shall be excluded”;

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

“(9) Where, the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, the Commissioner shall proceed to assess, to the best of his judgement, wherever necessary, the amount of tax due from the dealer in respect of such period and all subsequent periods and, in making such assessment, he shall give the dealer reasonable opportunity of being heard; and if he is satisfied that the default is without reasonable cause, direct the dealer to pay by way of penalty, in addition to tax assessed, a sum not exceeding the amount of tax assessed.”.

7. *Amendment of section 33.*— In section 33 of the principal Act, in sub-section (1), for the expression “due

from him under this Act and also excess of input tax credit”, the expression “ due from him under this Act or unduly paid by him and also excess of input tax credit” shall be substituted.

8. *Amendment of section 39.*—The existing provision of section 39 of the principal Act, shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely :—

“(2) Subject to such rules as may be prescribed, any assessment made or order passed under this Act or under the rules made thereunder by any authority appointed under section 13 of this Act, may be reviewed by the respective authority passing it upon an application or of it’s own motion, as the case may be:

Provided that no order of assessment or any other order shall be reviewed after the expiry of two years from the date of order, by any authority under this sub-section.”.

9. *Amendment of section 55.*—The existing provision of section 55 of the principal Act, shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) Any registered dealer covered under Schedule ‘E’ appended to this Act, fails to file a return within the time required under this Act, he shall be liable for penalty of Rs. 1000/- per quarter plus an amount equal to simple interest at the rate of 2% per month on the tax payable for the return period.”.

10. *Amendment of section 79.*— In section 79 of the principal Act, in sub-section (3), in clause (f), for the expression “Sales Tax department”, the expression “Commercial Tax Department” shall be substituted.

11. *Amendment of section 82.*— In section 82 of the principal Act,—

(i) in sub-section (1), —

(A) in clause (c), for the expression “sales tax practitioner”, the expression “commercial tax practitioner” shall be substituted;

(B) for the expression “ sales tax practitioner is authorized”, the expression “commercial tax practitioner or sales tax practitioner is authorized” shall be substituted.

(ii) in sub-section (2), for the expression “sales tax practitioner” wherever it occurs, the expression “commercial tax practitioner” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to amend sub-section (3) of section 7 of the said Act so as to provide that if any dealer who is eligible for composition of tax, fails to file returns within the time prescribed, he shall be disqualified for the composition of tax for the next two consecutive years.

The Bill seeks to amend sub-section (2) of section 9 of the said Act so as to provide that no input tax credit shall be claimed on raw material used in the manufacture of ready mixed concrete, used (motor vehicles) including two and three wheelers and naphta used as raw material by chemical fertilizer industry, as these items are proposed to be taxed by amending Schedules appended to the said Act, suitably.

The Bill seeks to amend sub-section (2) of section 10 of the Goa Value Added Tax Act, 2005 (Act 9 of 2005) (hereinafter referred to as the "said Act") so as to reduce the period for refund of excess input tax credit from two years to one year.

The Bill seeks to insert sub-section (9) to section 29 of the said Act so as to provide powers to the Commissioner to assess the unregistered dealers.

The Bill seeks to amend section 33 of the said Act so as to provide for refund of tax unduly paid.

The Bill seeks to amend section 39 of the said Act so as to allow the tax authorities to review their own orders of assessment.

The Bill seeks to insert sub-section (2) to section 55 of the said Act so as to specify penalty for not filing return within time by any registered dealer covered under Schedule 'E' to the said Act.

The Bill seeks to amend section 79 and 82 of the said Act in view of change in the name of

"Sales Tax Department" to that of "Commercial Tax Department".

This Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

No financial implications are involved in this Bill since no additional expenditure will be incurred on account of the proposed amendment.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 1 (2) of the Bill empowers the Government to appoint a date for bringing into force the Act, by Notification in the Official Gazette.

Clause 3 of the Bill empowers the Government to make rules specifying time for filing returns.

Clause 8 of the Bill empowers the Government to frame rules subject to which any authority may review its own assessment or order.

These delegations are of normal character.

Assembly Hall,
Porvorim, Goa

19 July, 2006

PRATAPSINGH RANE
Chief Minister

T. N. DHURUV KUMAR
Secretary (Legislature)

Governor's Recommendation under Article 207 of the Constitution

In pursuance of Article 207 of the Constitution of India, I, S.C. Jamir, the Governor of Goa, hereby recommends to the Legislative Assembly of Goa, the introduction and consideration of the Goa Value Added Tax (Second Amendment) Bill, 2006

ANNEXURE

.....
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;

(vii) 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);

(viii) 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);

(ix) Advertising agencies;

(x) Any other corporation, company, body or authority owned or set up by, or subject to administrative control of the Government;

(xi) Income Tax Department of Government of India administering the Income Tax Act, 1961 (Central Act 43 of 1961);

(xii) 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

(ii) 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.

7. *Composition of Tax.*— (1) Subject to such conditions and in such circumstances as may be prescribed, if any registered dealer, of the class specified in Schedule E, whose total turnover in the previous year does not exceed the limit specified in the said Schedule and who is liable to pay tax under section 3, so elects, the Commissioner may accept towards composition of tax, in lieu of the net amount of tax payable by him under this Act, during the year, an amount at the rate shown against respective class of dealers in the said Schedule calculated on total turnover, either in full or in instalments, as may be prescribed.

(2) Any dealer eligible for composition of tax under subsection(1) shall not :-

(a) be permitted to claim any input tax credit on purchases and on stock held on the appointed day or on the day from which he is held liable to pay tax under this

Act or on the day on which his Registration Certificate is made valid, as the case may be;

(b) charge any tax under this Act in his sales bill or sales invoice in respect of sales made by him;

(c) issue tax invoice to any dealer who has purchased the goods from him.

N.B.:- Total turnover for the purposes of this section will include aggregate sales of taxable and non-taxable goods.

9. Input Tax Credit.— (1) Subject to such conditions and restrictions as may be prescribed Input Tax Credit either partially or wholly shall be allowed for the tax paid during the tax period in respect of goods including capital goods purchased and/or taken on hire or leased to him within Goa, other than those specified in Schedule 'G' and/or such other goods as may be notified from time to time by the Government, provided, the goods purchased are for resale in Goa or for sale in course of Inter State Trade or in course of export outside the territory of India or used by him as raw materials/capital goods in the manufacture or processing of taxable goods in Goa or for sale by transfer of right to use.

(2) No input tax credit under sub-section (1) shall be claimed or be allowed to a registered dealer:-

(i) in respect of goods purchased on payment of tax if such goods are not sold because of theft or destruction for any reason;

(ii) in respect of stock of goods remaining unsold at the time of closure of business;

(iii) in respect of any taxable goods under the Act purchased by him from another registered dealer for resale but given away by way of free samples or gifts;

(iv) in respect of capital goods, covered under Schedule 'B' of the Act, if said goods are utilized for the purposes other than those covered in the prescribed declaration;

(v) in respect of goods purchased from a dealer who has opted for composition of tax under sub-section (1) of section 7;

(vi) in respect of capital goods:-

(a) purchased or paid prior to appointed day;

(b) capital expenditure incurred prior to the date of registration under this Act;

(c) capital goods not connected with the business of the dealer;

(d) capital goods used in the manufacture of goods or providing services which are not liable to tax under this Act;

(e) capital goods used in generation of energy/power including captive power;

(f) motor cars, its accessories and spare parts.

(3) If goods purchased are intended for use specified under sub-section (1) and are subsequently used fully or partly, for purposes other than those specified under the said sub-section, or loss of goods arising out of theft or destruction for any reason or the stock of goods remaining unsold at the time of closure of business, the input tax credit availed at the time of such purchase shall be reduced from the tax credit for the period during which the said utilization has taken place provided that if part of the goods purchased are utilized otherwise, the amount of reverse tax credit shall be proportionately calculated.

(4) Input tax credit shall be allowed to the registered dealer, subject to restrictions of sub-section (2), in respect of tax charged to him by a registered seller on taxable sales of goods made to him for the purpose of the business within three months prior to the date of his registration provided that no input tax credit shall be allowed in respect of goods which have been sold or otherwise disposed of prior to the date of registration.

(5) (a) where a registered dealer has availed of the input credit on any goods and the same goods are not used in the course of his business, input tax credit so availed becomes repayable in the tax period following the date on which these goods were put to such other use;

(b) where such goods were wholly or mainly used or are intended for use in sale of taxable goods prior to change of use, tax shall be calculated on the prevailing market value of such goods at the time of change of use.

(6) The registered dealer shall be liable for input tax credit in respect of Entry Tax paid by him under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) on goods brought by him for use or consumption except those covered under Schedule 'G' of the Act.

(7) Balance unclaimed input tax credit of capital goods shall not be allowed in case of closure of business.

(8) The registered dealer shall be liable for input tax credit on stock held on the appointed day, towards the tax paid under the earlier law subject to such conditions as may be prescribed. The period and the date from which such input tax credit is to be apportioned shall be as notified.

(9) The deduction of input tax credit on capital goods under this section shall be allowed in two equal annual instalments after the close of the respective year as under:

(i) in case of existing units, upon installation of such capital goods, and

(ii) in case of new units, upon commencement of commercial production.

10. *Input Tax Credit Exceeding Tax Liability.*— (1) Subject to the provisions of sub-section (2), if the input tax credit of a registered dealer, determined under section 9 of this Act for a period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act or earlier law.

(2) After adjustment under sub-section (1), the excess input tax credit of a registered dealer other than those covered under sub-section (3) shall be carried over as an input tax credit to the subsequent period upto the end of next financial year and if there is any unadjusted input tax credit at the end of the second year,

the same shall be refunded in the prescribed manner within three months from the date of filing of application claiming the refund.

(3) In case of exporter selling goods outside the territory of India, the excess input tax credit, if any, admissible as per provision of this Act, proportionate to the goods exported and carried over at the end of any quarter shall be refunded in the prescribed manner within 3 months from the date of filing of application claiming the refund.

(4) Notwithstanding anything contained in sub-section (2), the Government may allow, carry forward of excess input tax credit, if any, to such shorter period and grant refund of unadjusted portion thereof in respect of such goods to such registered dealer on such conditions and at such proportion as may be specified by the Notification in the Official Gazette.

29. *Assessment.*— (1) The returns submitted by the dealer shall be accepted as self-assessed:

Provided the Commissioner, as per the procedure prescribed, shall select upto twenty percent of the total number of such dealers or such percentage as may be notified by Government from time to time for detailed assessment:

Provided further when any dealer applies for cancellation of his registration certificate on the ground of closure or stoppage of his business, his last assessment shall be finalized on the basis of books of accounts and other records maintained by him after giving him an opportunity of being heard.

(2) Where —

(a) a person fails to file a return as required by section 24; or

(b) the Commissioner has reason to believe that the returns filed by a person are not correct and complete; or

(c) the Commissioner has reasonable grounds to believe that a person will become liable to pay tax under this Act but is unlikely to pay the amount due,

the Commissioner may make an assessment of the amount of tax payable by the person to the best of his judgement after giving him an opportunity of being heard.

(3) No assessment under this section for any year shall be made after a period of three years from the end of the year to which the return under section 24 is submitted by a dealer.

(4) The Commissioner shall make an assessment of the amount that in his opinion, is the amount of tax payable under this Act, after making necessary enquiries and upon issue of notice on proposed assessment.

(5) The Commissioner shall serve a notice of the proposed assessment in the prescribed manner on the person to be assessed, which shall state —

(a) either the tax payable or the net tax payable in the case of registered dealer and any refund that may be eligible to be claimed;

(b) the time, place, and manner of objecting to the proposed assessment; and

(c) reasons for the assessment to be made.

(6) The Commissioner shall serve a notice on completion of assessment under this section and the dealer shall pay the balance of tax in accordance with the terms of that notice.

(7) An amended assessment shall be treated in all respects as an assessment under this section.

(8) No assessment or other proceedings purporting to be made, issued or executed under this Act, shall be —

(a) quashed or deemed to be void or voidable for want of form; or

(b) affected by reason of mistake, defect or omission therein, if it is in substance and effect, in conformity with this Act or the rules made thereunder and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

33. *Refund and Payment of Interest on Amount Refundable.*— (1) Subject to other provisions of this Act and the Rules made thereunder, the Commissioner shall in the manner and within the time as may be prescribed, refund to a dealer any amount of tax, penalty or interest paid by such dealer in excess of the amount due from him under this Act and also excess of input tax credit over output tax payable under this Act. The amount of such refund shall be credited to the declared Bank account of the dealer.

(2) When any amount refundable to any dealer or person under an order made under any provisions of this Act, including refund admissible to an exporter under sub-section (3) of section 10, is not refunded within ninety days —

(a) of the date of such order is made by any authority; or

(b) the date of receipt of the order by the authority, if such order is made by any other authority; or

(c) of the date of receipt of application for refund under sub-section (3) of section 10, the authority shall pay such person simple interest at the rate of eight percent per annum on the said amount from the day immediately following the day of expiry of the said ninety days to the day of refund:

Provided that the interest calculable shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, penalty or other amount due under this Act, for any year by the person on the date from which such interest is calculable.

39. *Revision/Review by Commissioner.*— The Commissioner may, on his own motion, call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by any authority other than the Tribunal or High Court is erroneous, in so far as, it is prejudicial to the interest of the revenue, after giving the assessee an opportunity of being heard pass such order as he deems fit:

Provided that the Commissioner shall not pass any order under this section after the expiry of three years from the date of such order.

55. *Penalty for Failure to File Return.*— A person who fails to file a return within the time required under this Act is liable for penalty of Rs. 500/- plus an amount equal to simple interest @ 15% per annum or such higher/lower rate as the Government may notify from time to time on the tax payable for the return period.

79. *Disclosure of Information by a Public Servant.*— (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceeding before a Criminal Court), or in any record of any assessment proceeding, or in any proceeding relating to the recovery of a demand, shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), no court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) If, save as provided in sub-section (3), any servant of the Government discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment, which may extend to six months or with fine or with both:

Provided that no prosecution shall be instituted under this section except with the previous sanction of the Government.

(3) Nothing contained in this section shall apply to the disclosure of,-

(a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code, 1860 (Central Act 45 of 1860) or the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), or this Act, or any other law for the time being in force; or

(b) any such particulars to the Government or to any person acting in the execution of this Act or to any person for the purposes of this Act; or

(c) any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or

(d) any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or

(e) any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

(f) any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Sales Tax Department or to any person or persons appointed as Commissioner under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850), or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of such inquiry; or

(g) such facts to an officer of the Central Government or any State Government or Union Territory as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his

powers under the Indian Stamp Act, 1899 (Central Act 2 of 1899), to impound an insufficiently stamped document; or

(i) any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with sales tax proceedings against a legal practitioner, sales tax practitioner or Chartered Accountant, Cost Accountant, to the authority, if any, empowered to take disciplinary action against members practising the profession of a legal practitioner, sales tax practitioner or Chartered Accountant, Cost Accountant, as the case may be; or

(j) any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorized under sub-section (2) of section 78 as may be necessary for enabling the Director or such person or persons to carry on their official duties.

(k) any such particulars to an officer of the Central Government or any State Government or Union Territory as may be necessary for the administration of any law in force in any part or the whole of India.

82. *Appearance before any authority in proceedings.*— (1) Any person, who is entitled or required to attend before any authority including the Tribunal in connection with any proceeding under this Act, may be represented

(a) by a relative or a person regularly employed by him; or

(b) by a legal practitioner, Chartered Accountant or Cost Accountant or Company Secretary who is not disqualified by or under sub-section (2); or

(c) by a sales tax practitioner who possesses the prescribed qualifications and on payment of prescribed fees, and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2); or

(d) any person who, immediately before the commencement of this Act was a sales tax practitioner under any earlier law, only if such relative, person employed, legal practitioner, Chartered Accountant, Cost Accountant, Company Secretary or sales tax practitioner is authorized by such person in the prescribed form, and such authorization may include the authority to act on behalf of such person in such proceedings.

(2) The Commissioner may, by order in writing and for reasons to be recorded therein, disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, Cost Accountant, Company Secretary or sales tax practitioner—

(i) who has been removed or dismissed from Government service; or

(ii) who being a sales tax practitioner, a legal practitioner or a Chartered Accountant, Cost Accountant, Company Secretary is found guilty of misconduct in connection with any proceedings under this Act by the Commissioner or by an authority, if any, empowered to take disciplinary action against the member of the profession to which he belongs.

(3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any order of disqualification is made under this section, may, within one month of the date of communication of such order appeal to the Tribunal to have the order cancelled or modified.

(5) The order of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred until the appeal is decided.

(6) The Commissioner may, at any time, suo motu or on an application made to him in this behalf, revoke or modify any

order made against a person under sub-section (2) and thereupon such person shall cease to be disqualified subject to such conditions or restrictions that may be contained in such order.

.....
**Extract of the Goa Value Added Tax Act,
(First Amendment) 2005 (Goa Act 15 of 2005)**
.....

3. *Amendment of section 7.*— In section 7 of the principal Act,-

(i) in sub-section (1),-

(a) after the words “to pay tax under” and before the word and figure “section 3”, the words and figures “sub-sections (1), (2) and (3) of” shall be inserted;

(b) the following proviso shall be inserted, namely:-

“Provided that any dealer of the class specified in Schedule ‘E’ who is liable to pay tax under sub-sections (2) and (3) of section 3, may, at any time during the year, by making self declaration that his turnover of sales during the said year will not exceed the limit specified in the said Schedule ‘E’, apply for composition of tax under this section”;

(ii) after sub-section (1), the following new sub-section shall be inserted, namely,-

“(1A) In the event of transfer of business under any of the circumstances as provided under section 19, the total turnover for the purposes of sub-section (1) shall be the aggregate of the turnover of the transferor as well as the transferee during the year and the prescribed conditions, if any, shall be applicable with reference to such aggregate of the turnover”.

4. *Amendment of section 9.*— In section 9 of the principal Act,-

(a) in sub-section (2),-

(i) in clause(iv), for the words “in respect of capital goods”, the expression “in respect of capital goods industrial inputs and packing materials” shall be substituted;

(ii) after clause (vi), the following clauses shall be inserted, namely:-

“(vii) in respect of taxable goods sold within the State or in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), exempted from payment of tax under any specific notification issued under this Act or under the said Central Sales Tax Act, 1956;

(viii) in respect of goods used in the manufacture or processing of finished goods dispatched other than by way of sales outside the State”;

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

“(6) A registered dealer shall be eligible for input tax credit in respect of entry tax paid by him under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) on goods other than those covered by Schedule ‘G’ and capital goods, brought by him in the local area for use or consumption in the manufacture or processing of goods within the State:

Provided that in respect of finished products dispatched by way other than sales, the input tax credit on goods other than those covered by Schedule ‘G’ and capital goods shall be to the extent it exceeds 4%”.

5. *Amendment of section 10.*— In section 10 of the principal Act, in sub-section (1), after the expression “penalty or interest under this Act or earlier law”, the expression “or under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956)” shall be added.