

The Goa Value Added Tax (Ninth Amendment) Bill, 2016

(Bill No. 25 of 2016)

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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-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 (Ninth Amendment) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 3.— In section 3 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the “principal Act”), in sub-section (4),—

(i) in clause (ii), for the letters and figures “Rs. 1,00,000/-”, the letters and figures “Rs. 5,00,000/-” shall be substituted;

(ii) in clause (iii), for the letters and figures “Rs. 5,00,000/-”, the letters and figures “Rs. 10,00,000/-” shall be substituted.

3. Amendment of section 10.— In section 10 of the principal Act, for sub-section (2), the following sub-sections 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 a period of 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.

(2A) Any dealer, who has applied for carry forward of excess input tax credit after coming into force of the Goa Value Added Tax (Sixth Amendment) Act, 2012 and has been allowed to carry forward the same by an order in writing, may instead of availing the benefit of carry forward, claim refund of the amount allowed to be carried forward under sub-section (2) by making an application within six months from the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016.

(2B) The dealer who has not applied for carry forward of excess input tax credit after coming into force of the Goa Value Added Tax (Sixth Amendment) Act, 2012, he also may claim refund under sub-section (2) by making an application within six months from the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016 and he shall be assessed for the respective financial year and the amount of the excess input tax credit as may be determined in the assessment shall be allowed to be refunded to him.

(2C) The dealer who is claiming excess input tax credit at the end of financial year but does not apply for refund, he shall be assessed for the respective financial year and such amount of the excess input tax credit as may be determined in the said assessment shall be allowed to be carried forward.”.

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.”.

Statement of Objects and Reasons

The Bill seeks to amend clauses (ii) and (iii) of sub-section (4) of section 3 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the “said Act), so as to enhance the threshold limit of turnover for registration from rupees one lakh to rupees five lakhs in case of importer/manufacturer and from rupees five lakhs to rupees ten lakhs in cases other than importer/manufacturer, non-resident dealer and casual trader.

The Bill further seeks to amend section 10 of the said Act so as to allow refund of excess input tax credit at the end of the financial year.

The Bill also seeks to substitute sub-section (4) of section 35 of the said Act so as to make the appellants to deposit 10% of the disputed dues alongwith undisputed dues, while preferring an appeal with Appellate Authority.

This Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The proposed amendment to sub-section (4) of section 3, would push out small time dealers from the tax net / coverage. There are approximately 2000 dealers who remit approximately Rs. 400 lakhs to Rs. 500 lakhs annually.

However, in the proposed amendment to sub-section (4) of section 35, it is expected that during the first appeal itself, the dealers would be depositing 10% of the disputed dues and continuing the pending appeals. It is expected that recovery of tax dues and deposits, would be around Rs. 5000 lakhs during the year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Government to frame rules specifying the manner in which the excess input tax credit shall be refunded to the dealer.

This delegation is of normal character.

Assembly Hall,
Porvorim, Goa.
5th August, 2016.

SHRI LAXMIKANT PARSEKAR
Chief Minister/Finance Minister

Assembly Hall,
Porvorim, Goa.
5th August, 2016.

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 (Ninth Amendment) Bill, 2016.

RAJ BHAVAN

Date: 04 / 08 /2016.

MRIDULA SINHA

Governor of Goa

ANNEXURE

Bill No. 25 of 2016

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

3. Incidence of Tax.-

(1) Every dealer, whose turnover of all sales made during-

(i) the year ending on the 31st day of March of the year preceding the year in which this Act is enforced; or

(ii) the year commencing on the 1st day of April of the year during which this Act is enforced;

has exceeded or exceeds the relevant limit specified in sub-section (4), of this section shall until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales, made, on or after the appointed day:

Provided that, a dealer to whom clause (i) of sub-section (1) does not apply but clause (ii) applies and whose turnover of all sales first exceeds the relevant limit specified in sub-section (4) of this section after the appointed day shall not be liable to pay tax in respect of sales which take place upto the time when his turnover of sales, as computed from the first day of the year during which this Act is enforced, does not exceed the relevant limit applicable to him under sub-section (4).

(2) Every dealer whose turnover, of all sales made, during any year commencing on the first day of the year, being a year subsequent to the years mentioned in sub-section (1), first exceeds the relevant limit specified in sub-section (4), shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the said date:

Provided that, a dealer shall not be liable to pay tax in respect of such sales as take place during the period commencing on the first day of the said year upto the time when his turnover of sales does not exceed the relevant limit applicable to him under sub-section (4).

(3) Every dealer who has become liable to pay tax under this Act, shall continue to be so liable until his registration is duly cancelled; and upon such cancellation his liability to pay tax, shall cease other than tax, already levied or leviable.

Provided that, if the dealer becomes liable to pay tax again in the same year in which he ceased to be liable as aforesaid, then in respect of such sales as take place during the period commencing on the date of the cessation of liability to tax and upto the time when his turnover of sales does not exceed the relevant limit applicable to him under sub-section (4), no tax shall be payable by him.

(4) For the purposes of this section, the limits of turnover shall be as follows-

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| (i) Limit of turnover of
Rs. 10000/- | In case of Non-resident dealer and casual trader |
| (ii) Limit of turnover of
Rs. 1,00,000/- | In case of importer/manufacturer. |
| (iii) Limit of turnover of
Rs. 5,00,000/- | In any other case. |

(5) For the purpose of calculating the limit of turnover for liability to tax,-

(a) except as otherwise expressly provided, the turnover of all sales shall be taken, whether such sales are taxable or not or of taxable goods or not;

(b) the turnover shall include all sales made by the dealer on his own account, and also on behalf of his principals whether disclosed or not;

(c) in the case of an auctioneer, in addition to the turnover, if any, referred to in clauses (a) and (b), the turnover shall also include the price of the goods auctioned by him for his principal, whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal, if the price of such goods is received by him on behalf of his principal;

(d) in the case of a manager or agent of a non-resident dealer, in addition to the turnover, if any, referred to in clauses (a), (b) or (c), the turnover shall also include the sales of the non-resident dealer effected in the State.

(6) Notwithstanding anything contained in any contract or any law for the time being in force, but subject to the provisions of this Act, any person covered by sub-clauses (a), (b) and (c) of clause (k) of section 2 shall be liable to pay tax under this Act, whether or not the principal is a dealer and whether or not such principal is liable to pay tax under this section and whether or not the principals are disclosed.

(7) Liability of dealers registered under the Central Sales Tax Act, 1956 (Central Act 74 of 1956).- Every dealer shall, notwithstanding that he is not liable to pay tax under any of sub-sections (1) to (3) of section 3, be liable to pay tax under this Act so long as he is registered under the Central Sales Tax Act, 1956 (Central Act 74 of 1956), on all sales effected by him or on his behalf within Goa, on or after the date of his liability or the date of his registration, whichever is earlier, under the Central Sales Tax Act, 1956 (Central Act 74 of 1956):

Provided that no tax shall be payable in respect of sales in any period prior to commencement of liability under this Act.

(8) Liability of exporters and dealers effecting stock transfers outside the State:-Every dealer exporting any goods outside India or effecting stock transfers to any States and Union Territories within India, shall, notwithstanding that he is not liable to pay tax under any of sub-sections (1) to (3) of section 3, be liable to pay tax under this Act on all taxable sales effected within the State.

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.

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.

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

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.

Extract of the Goa Value Added Tax (Second Amendment) Act, 2006
(Goa Act 18 of 2006)

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.”

Extract of the Goa Value Added Tax (Fifth Amendment) Act, 2011
(Goa Act 2 of 2011)

2. *Amendment of section 3.*— In section 3 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the “principal Act”), after sub-section (8), the following sub-section shall be inserted, namely:—

“(9) Special liability of person organizing or conducting exhibition.— Any person organizing or conducting exhibition either for sale of goods or for promoting goods for sale, by providing stalls or space to other persons or dealers under the banner of specific name and style or under a common roof, for a specific period, shall, notwithstanding that such participating persons or dealers are individually liable to pay tax under any of the provisions of this section, be liable to pay tax on all taxable sales effected by such participating persons or dealers during such exhibition.”.

**Extract of the Goa Value Added Tax (Sixth Amendment) Act, 2012
(Goa Act 16 of 2012)**

4. *Amendment of section 10.*— In section 10 of the principal Act,—

(i) 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:

Provided that in case input tax credit at the end of the last quarter of the year exceeds rupees two lakhs, the dealer shall file an application in the prescribed form within three months to carry forward input tax credit and the Commissioner shall decide the same within three months from the date of filing of such application and thereafter the excess input tax credit, if any, shall be allowed to be carried forward accordingly:

Provided further that if any assessment, is done for the period then only the excess input tax credit as determined in the said assessment shall be allowed to be carried forward.”;

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

3. *Amendment of section 3.*— In section 3 of the principal Act, for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) *Special liability of person organizing or conducting exhibition or event or programme.*— Any person organizing or conducting exhibition or event or programme either for sale of goods or for promoting goods for sale, by providing stalls or space to other persons or dealers under the banner of specific name or otherwise or under a common roof or otherwise shall be liable to pay tax on all taxable sales effected by all such persons or dealers participating in such exhibition or event or programme other than the dealers who are already registered under this Act and self help groups participating in such exhibition or event or programme:

Provided that no person shall be allowed to carry on such exhibition or event or programme without obtaining prior written permission of the Commissioner as per the procedure prescribed and payment in advance of estimated tax. The advance estimated tax shall be adjusted towards the output tax liability payable by the person organizing or conducting exhibition or event or programme so conducted:

Provided further that the owner of the property where the exhibition or event or programme is to be held, shall be jointly and severally liable to pay tax that may become due on sale of goods made in such exhibition or event or programme if he fails to inform the Commissioner about renting/ leasing/letting out of his property, whether residential or commercial, or any open space, alongwith the details of dealer or person conducting the exhibition or event or programme as well as the conditions subject to which the said property is rented/leased/let out and any other relevant information.

Explanation:—

(1) Self Help Groups means Self Help Groups registered with the Rural Development Agency or with the Registrar of Co-operative Society or any other Government Department as Self Help Groups within the State of Goa and are selling goods manufactured by themselves.

(2) For the purpose of calculation of tax to be paid in advance, the stalls occupied by dealers holding valid registration under this Act, and the self help groups shall not be included while making such calculation, provided prior permission of the Commissioner is obtained by them for their participation in such exhibitions, event, or programme in a prescribed manner”.

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.”.
