

Confidential

Bill No. 6 of 2008

(Authorized English Version)

THE RAJASTHAN FINANCE BILL, 2008

(to be introduced in the Rajasthan Legislative Assembly)

A

Bill

further to amend the Rajasthan Value Added Tax Act, 2003, Rajasthan Entertainments and Advertisements Tax Act, 1957, the Rajasthan Motor Vehicles Taxation Act, 1951 and Rajasthan Contingency Fund Act, 1956 and to amend the Rajasthan Finance Act, 2006 and to provide for levy of environment and health cess in the State of Rajasthan, in order to give effect to the financial proposals of the State Government for financial year 2008-09 and to make certain other provisions.

Be it enacted by the Rajasthan State Legislature in the Fifty-ninth Year of the Republic of India, as follows: -

CHAPTER I

PRELIMINARY

1. Short title.- This Act may be called the Rajasthan Finance Act, 2008.

2. Declaration under section 3, Rajasthan Act No. 23 of 1958.- In pursuance of section 3 of the Rajasthan Provisional Collection of Taxes Act, 1958 (Act No. 23 of 1958), it is hereby declared that it is expedient in the public interest that provisions of this Bill shall have immediate effect under the said Act.

CHAPTER II

AMENDMENT IN THE RAJASTHAN VALUE ADDED TAX ACT, 2003

3. Amendment of section 23, Rajasthan Act No. 4 of 2003.- In section 23 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), hereinafter in this chapter referred to as the principal Act, for the existing punctuation mark ".", appearing at the end, the punctuation mark

":" shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that where a dealer so opts in the prescribed manner, he shall not be deemed to have been assessed under this section."

4. Amendment of section 24, Rajasthan Act No. 4 of 2003.-
After the existing sub-section (4) of section 24 of the principal Act, the following sub-section shall be added, namely: -

"(5) Where a dealer opts under proviso to section 23, or where the State Government so directs by notification in the Official Gazette, a dealer may be assessed annually and no such assessment orders shall be passed after the expiry of two years from the end of the relevant year; however, the Commissioner may for reasons to be recorded in particular case may extend such time limit by a period not exceeding six months."

5. Amendment of section 73, Rajasthan Act No. 4 of 2003.-
For the existing sub-section (1) of section 73 of the principal Act, the following shall be substituted, namely.-

"(1) Every registered dealer, other than the dealer who has opted for payment of tax under sub-section (2) of section 3 or under section 5 or who files e-returns with prescribed documents or submits returns and documents in soft copy to the assessing authority or the officer authorised by the Commissioner, shall, if his turnover exceeds rupees forty lacs in any year, get his accounts in respect of such year audited by an Accountant within the prescribed period from the end of that year and furnish within the prescribed period the report of such audit in the prescribed form duly signed and verified by such Accountant setting forth such particulars and certificates as may be prescribed.

Explanation.- For the purposes of this section "Accountant" means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act No. 38 of 1949)."

6. Insertion of section 97A, Rajasthan Act No. 4 of 2003.-
After the existing section 97 and before the existing section 98 of the principal Act, the following section shall be inserted and shall be deemed always to have been inserted, namely.-

"97A. No refund etc. in case of retrospective exemption. –
Notwithstanding anything contained in this Act, where amendment

in a Schedule results in exemption from tax or, otherwise tax is exempted under this Act, with retrospective effect, the amount charged or collected by a dealer till the date of such amendment or exemption -

- (i) shall be deposited with the State Government; and
 - (ii) if already deposited, shall not be refunded,
- and any input tax credit availed in respect of such amount shall be reversed."

CHAPTER III

AMENDMENT IN THE RAJASTHAN ENTERTAINMENTS AND ADVERTISEMENTS TAX ACT, 1957

7. Amendment of section 3, Rajasthan Act No. 24 of 1957.- After the existing clause (4) and before the existing clause (5) of section 3 of the Rajasthan Entertainments and Advertisements Tax Act, 1957 (Act No. 24 of 1957), hereinafter in this chapter referred to as the principal Act, the following new clause shall be inserted, namely:-

“(4A) “direct to home broadcasting service” means distribution of multi-channel television programmes by using satellite system by providing television signals direct to the premises of subscribers without passing through an intermediary such as cable service.”.

8. Insertion of section 4AAA, Rajasthan Act No. 24 of 1957.- After the existing section 4AA, and before the existing section 5 of the principal Act, the following new section shall be inserted, namely.-

“4AAA. Levy of tax on direct to home broadcasting service.- The proprietor of a direct to home broadcasting service shall be liable to pay entertainment tax at such rates, not exceeding twenty per cent of the monthly subscription charges per subscriber, as the State Government may, from time to time, notify in the Official Gazette, in this behalf and different rates may be notified for different categories of subscribers.”.

CHAPTER IV

AMENDMENT IN THE RAJASTHAN MOTOR VEHICLES TAXATION ACT, 1951

9. Amendment of section 4-D, Rajasthan Act No. 11 of 1951.- In the table given below sub-section (1) of section 4-D of the Rajasthan

Motor Vehicle Taxation Act, 1951 (Act No. 11 of 1951), hereinafter in this chapter referred to as the principal Act, for the existing expression "7 years", appearing in column No. 2 against Serial No. 2, the expression "5 years" shall be substituted.

10. Amendment of section 5, Rajasthan Act No. 11 of 1951.- In sub-section (2) of section 5 of the principal Act, after the existing proviso, the following new proviso shall be added, namely:-

"Provided further that where the tax under section 4-B on contract carriage becomes payable for the first time after the commencement of any month, the tax payable shall be for the remaining period of the month on pro rata basis."

CHAPTER V AMENDMENT IN THE RAJASTHAN CONTINGENCY FUND ACT, 1956

11. Amendment of section 3, Rajasthan Act No. 40 of 1956.- In sub-section (1) of section 3 of the Rajasthan Contingency Fund Act, 1956 (Act No. 40 of 1956), for the existing expression "thirty five crores of rupees", the expression "two hundred crores of rupees" shall be substituted.

CHAPTER VI AMENDMENT IN RAJASTHAN FINANCE ACT, 2006

12. Amendment of section 37, Rajasthan Act No. 4 of 2006.- For the existing sub-section (2) of section 37 of the Rajasthan Finance Act, 2006 (Act No. 4 of 2006), hereinafter in this chapter referred to as the principal Act, the following shall be substituted, namely: -

"(2) It shall be deemed to have come into force on and from 31st day of March, 2006."

13. Amendment of section 38, Rajasthan Act No. 4 of 2006.- In clause (c) of section 38 of the principal Act, the existing expression "an urban", appearing after the existing expression "purposes or" and before the existing expression "land as defined", shall be deleted.

CHAPTER VII ENVIRONMENT AND HEALTH CESS

14. Extent.- This Chapter shall extend to the whole of the State of Rajasthan.

15. Definition.- In this Chapter, unless the context otherwise requires,-

- (a) "cess" means environment and health cess levied under this Chapter;
- (b) "dispatched" includes removal for captive use; and
- (c) "mineral right" means rights conferred on a lessee under a mining lease granted or renewed for mining operations in relation to minerals as defined in the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957).

16. Levy and collection of cess on mineral rights.- Subject to any limitation imposed by Parliament by law relating to mineral development, there shall be levied and collected, in such manner as may be prescribed, an environment and health cess on mineral rights in respect of such minerals and at such rates, not exceeding rupees five hundred each tonne of mineral dispatched, as may be notified by the State Government from time to time.

17. Application of proceeds of cess.- The proceeds of the cess levied under this Chapter shall first be credited to the Consolidated Fund of the State and may, if the State Legislature by appropriation made by law in this behalf so provides, be utilized for protection of environment and health, and maintenance of ecological balance specially in mining areas of the State.

18. Exemption. - Notwithstanding anything contained in this Chapter, where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt cess, fully or partially, whether prospectively or retrospectively, in respect of such class of minerals as may be specified in the notification.

19. Power to make rules.- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely:-

- (a) the assessment and collection of the cess levied under this Chapter;

- (b) the manner in which accounts relating to the proceeds of cess shall be maintained; and
 - (c) the manner in which the proceeds of the cess may be applied at the object specified in section 17,
- (3) The rules made under this section may provide penalty for contravention of such rules to the following extent, namely:-
- (i) in cases of evasion or avoidance of cess, to the extent of double the amount of cess evaded or, as the case may be, avoided; and
 - (ii) in other cases, to the extent of ten thousand rupees.

(4) All rules made under this Chapter, shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the sessions in which they are so laid or in the session immediately following the House of the State Legislature makes any modification in any of such rules or resolves that any such rules should not be made, such rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

STATEMENT OF OBJECTS AND REASONS

I. RAJASTHAN VALUE ADDED TAX ACT, 2003

As per the existing provisions of the Rajasthan Value Added Tax Act, 2003, there is a scheme of self assessment based on the returns filed by the dealers. In order to provide option to the dealers for annual assessment instead of the assessment for the return period, a proviso is proposed to be inserted in section 23. Simultaneous to this the State Government is being empowered to direct for annual assessment of the dealers in appropriate cases and commissioner is being authorized to extend the period of limitation for annual assessment up to six months, with these objectives in view, a new sub-section (5) is proposed to be added to section 24.

VAT system reposes confidence in the dealers and provides for self assessments on the basis of their returns. However, audit of certain categories of dealers are required to be conducted by Chartered Accountant and audit report is to be submitted as per the provisions of sub-section (1) of section 73. At present dealers who have opted for payment of tax under sub-section (2) of section 3 or under section 5 of the Act, have been excluded from purview of audit. Except these class of dealers all other dealers whose turnover exceeds rupees forty lacs in a year, are required to submit audit report in the specified time. It is proposed to exclude the dealers who files e-returns with prescribed documents or submits returns and documents in soft copy to the Department from the purview of such audit. To achieve this objective, sub-section (1) of section 73 is proposed to be amended.

The Act provides for grant of exemption and reduction in the tax rates with retrospective effect by amending the respective schedules and issuance of notification under the existing provisions. In the public interest, sometimes retrospective exemption or reduction in tax rates are made but in absence of any specific provisions to ensure that no unjust enrichment accrue to the dealers, it is proposed to insert a new section 97A in the Act. The proposed section would ensure that tax charged or collected during retrospective period by the dealer shall be deposited to the State Government, the tax already deposited shall not be refunded and the claim of input tax credit availed, if any, shall be reversed.

II. RAJASTHAN ENTERTAINMENTS AND ADVERTISEMENTS TAX ACT, 1957

Direct to Home (DTH) Broadcasting System has created a

revolution in the entertainment sector by distribution of multi channel television programmes using satellite system direct to individual and/or multiple subscribers without any involvement of cable service. It may be mentioned that entertainment tax is being leviable in the State on proprietors of cable television network providing cable services in the State. In view of better technology the DTH is a fast grooming market in the State. It is therefore proposed to charge entertainment tax from the DTH service providers. To achieve this object, clause (4A) in section 3 and a new section 4AAA is being proposed to be inserted in the Act.

III. THE RAJASTHAN MOTOR VEHICLES TAXATION ACT, 1951

The rapid growth of motor vehicles has resulted in the increase of motor vehicle emissions resulting in air pollution. Hence it is proposed to levy Green Tax on transport vehicles completing 5 years instead of present period of 7 years at the time of renewal of fitness certificate.

The motor vehicles covered under contract carriage permits paying special road tax on monthly basis are required to pay tax for the complete month in which the permit is obtained by them. In order to provide relief to such motor vehicle owners it has been provided to charge special road tax from such vehicles owners on pro-rata basis for the remaining part of the month in which permit is obtained by them. Therefore, it has been proposed to amend section 5 of the Act.

IV. THE RAJASTHAN CONTINGENCY FUND ACT, 1956

The Rajasthan Contingency Fund Act, 1956 makes a provision of a sum of thirty five crores of rupees to be placed at the disposal of the Governor for meeting unforeseen expenditure not provided for in the budget. Size of Government budget has increased about ten times since last revision in 1988. Likewise demands of unforeseen items is also likely to go up. It is, therefore, proposed that the imprest in the Rajasthan Contingency Fund be raised from thirty five crores of rupees to two hundred crores of rupees.

V. RAJASTHAN FINANCE ACT, 2006

Land tax was imposed by Chapter VII of the Rajasthan Finance Act, 2006. Commencement of this Chapter was subject to the notification by the State Government. Now this Chapter is sought to be commenced with effect from 31st March, 2006. With a view to clarify the definition of

land, it is proposed to delete the word 'an urban' from clause (c) of section 38 of the aforesaid Act.

VI. ENVIRONMENT AND HEALTH CESS

Directive principals of State Policy in our Constitution require that the State should endeavor to promote welfare of people not only by securing a just and equitable social order but also by improving public health. Article 48A casts duty on the State to protect and improve the environment.

Environment is what we owe to our future generations. Every human being in the universe is duty bound to preserve it and pass on it to the next generation at least in the condition in which we inherited from our ancestors. Despite efforts, damage to the environment is unavoidable in mining operations. Therefore, the beneficiaries from mining operations should contribute for its protection.

In addition to environmental degradation, public health is also get affected by mining activities. Minerals are nature's gift to the people. Therefore their use should enhance welfare of the people. It should not result in accumulations of wealth in the hands of the few. People who gain much from the minerals should contribute, not much, but at least a small amount for those who suffer from the activities of winning minerals.

In view of the duty of the State to protect and improve the environment and health of the people and corresponding social and moral duty of those who are benefited by these natural resources, it was considered expedient that a environment and health cess be levied on mineral rights and the proceeds of the cess be dedicated to the protection and improvement of environment and health and maintenance of ecological balance, specially in those areas of State where mineral are being mined.

The Bill seeks to achieve the aforesaid objectives.

Hence the Bill.

वसुन्धरा राजे,
Minister Incharge.

FINANCIAL MEMORANDUM

Attention is invited to clause 2 of the Rajasthan Contingency Fund (Amendment) Bill, 2008 whereby an additional amount of One Hundred Sixty Five crores of rupees is provided to be paid in the Contingency Fund of the State of Rajasthan from and out of the Consolidated Fund of the State.

The expenditure will be of a non-recurring nature.

वसुन्धरा राजे,
Minister Incharge.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill, if enacted, shall empower the State Government to prescribe the manner in which option shall be given by the dealer.

Clause 5 of the Bill, if enacted, shall empower the State Government to prescribe the period within which accounts of the dealers shall be get audited, the period within which report of the audit shall be furnished and the particulars and certificates which shall be set forth by the accountant while verifying such accounts.

Clause 19 of the Bill, if enacted, shall empower the State Government to make rules to generally carry out the purposes of this Bill.

The proposed delegation is of normal character and mainly relates to the matters of detail.

वसुन्धरा राजे,
Minister Incharge.

**EXTRACTS TAKEN FROM THE RAJASTHAN VALUE ADDED
TAX ACT, 2003 (Act No. 4 of 2003)**

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23. Self Assessment.- Every registered dealer who has filed return within the prescribed time shall, subject to the provisions of section 24, be deemed to have been assessed on the basis of the return filed under section 21, for the period to which it relates and a list of such registered dealers so assessed may be published through electronic or print media and such publication shall be deemed to be due intimation to such dealers wherever required.

24. Assessment.- (1) Every return furnished by a registered dealer shall be subject to such scrutiny as may be determined by the Commissioner, to verify, its correctness and if any error is detected, the assessing authority or the officer authorised by the Commissioner shall within one year from the last date for filing such return, serve a notice in the prescribed form on the dealer to rectify the errors and file a revised return within such period as may be specified therein.

- (2) Where the registered dealer, in pursuance of the notice issued under sub-section (1),-
- (a) files revised return in terms of the notice, and deposits the tax, if any, he shall be deemed to have been assessed as per such revised return;
 - (b) does not file revised return or the return filed by the dealer is not in terms of the notice, the assessing authority or the officer authorised by the Commissioner shall assess the dealer to the best of his judgment.
- (3) Where the dealer does not file return within the prescribed period under section 21, the assessing authority or the officer authorised by the Commissioner shall, within two years from the last date prescribed for filing the return, assess the dealer to his best of judgment.
- (4) Notwithstanding anything contained in sub-section (3), where an assessment order is passed in consequence of or to give effect to any order of an appellate or revisional

authority or a competent court, it shall be completed within two years of the communication of such order to the assessing authority; however, the Commissioner may for reasons to be recorded in writing, extend in any particular case, such time limit by a period not exceeding six months.

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73. Audit of accounts. – (1) Every registered dealer, other than the dealer who has opted for payment of tax under sub-section (2) of section 3 or under section 5 of the Act, shall if his turnover exceeds rupees forty lacs in any year, get his accounts in respect of such year audited by an Accountant within the prescribed period from the end of that year and furnish within the prescribed period the report of such audit in the prescribed form duly signed and verified by such Accountant setting forth such particulars and certificates as may be prescribed.

Explanation. – For the purposes of this section "Accountant" mean a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Act No. 38 of 1949).

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**EXTRACTS TAKEN FROM RAJASTHAN MOTOR VEHICLES
TAXATION ACT, 1951 (Act No. 11 of 1955)**

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4-D. Levy of Green Tax.- (1) There shall be levied and collected a cess called "green tax" in addition to the tax levied under section 4, 4-B and 4-C of the Act, on such vehicles suitable for use on road as specified in column (2) of the table below as the rates fixed by the State Government by notification in the Official Gazette not exceeding the maximum rates specified in column (3) of the said table, for the purpose of implementation of various measures to control air pollution.

S. No.	Class and age of the vehicle	Maximum rate of cess (in Rupees)
1	2	3
1.	Non-transport vehicle completed 15 years from the date of its registration, at the time of renewal of certificate of registration as per sub-section	

	(10) of section 41 of the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) (a) two wheelers (b) other than two wheelers	750.00 1500.00
2.	Transport vehicle completed 7 years from the date of its registration, at the time of renewal of fitness certificate as per section 56 of the Motor Vehicles Act, 1988 (Central Act. No. 59 of 1988)	600.00 per annum.

(2) XX XX XX

5. Payment of Tax.- (1) XX XX XX

(2) Where the tax on any motor vehicle becomes payable otherwise than as one time tax or lump sum tax for the first time after the commencement of a financial year, the tax payable shall be one twelfth of the annual rate for each calendar month or part thereof where annual rate is prescribed:

Provided that where the tax under section 4-B on stage carriage other than those plying exclusively on city routes becomes payable for the first time after the commencement of any month, the tax payable shall be for the remaining period of that month on pro rata basis.

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EXTRACTS TAKEN FROM THE RAJASTHAN CONTINGENCY FUND ACT, 1956 (Act No. 40 of 1956)

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3. Establishment of the State Contingency Fund, the custody thereof and withdrawals therefrom.- (1) With effect from the appointed day there shall be established for the State a Contingency Fund in the nature of an imprest entitled the Contingency Fund of the State of Rajasthan into which shall be paid from and out of the Consolidated Fund of the State a sum of thirty five crores of rupees.

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**EXTRACTS TAKEN FROM THE RAJASTHAN FINANCE ACT,
2006 (Act No. 4 of 2006)**

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37. Extent and commencement.- (1) This Chapter shall extend to the whole of the State of Rajasthan.

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

38. Definitions.- In this Chapter, unless the context otherwise requires,-

(a) and (b)

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(c) "land" shall not include the land held or used exclusively for agricultural or residential purposes or an urban land as defined in the Rajasthan Land and Building Tax Act, 1964 (Act No. 18 of 1964) or an abadi land as defined in clause (b) of section 103 of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956);

(d) to (g)

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