

Confidential

Bill No. 14 of 2009

(Authorized English Version)

THE RAJASTHAN FINANCE BILL, 2009

(to be introduced in the Rajasthan Legislative Assembly)

A

Bill

further to amend the Rajasthan Fiscal Responsibility and Budget Management Act, 2005, the Rajasthan Value Added Tax Act, 2003 and the Rajasthan Electricity (Duty) Act, 1962 and to make certain other provisions.

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

CHAPTER I

PRELIMINARY

- 1. Short title.** - This Act may be called the Rajasthan Finance Act, 2009.
- 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 the provisions of clauses 3 to 12 of this Bill shall have immediate effect under the said Act.

CHAPTER II

AMENDMENT IN THE RAJASTHAN FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT ACT, 2005

- 3. Amendment of section 2, Rajasthan Act No. 7 of 2005.**- The existing clause (kk) of section 2 of the Rajasthan Fiscal Responsibility and Budget

Management Act, 2005 (Act No. 7 of 2005), hereinafter in this Chapter referred to as the principal Act, shall be deleted.

4. Amendment of section 6, Rajasthan Act No. 7 of 2005.-For the existing first proviso of section 6 of the principal Act, the following shall be substituted, namely:-

"Provided that revenue deficit and fiscal deficit may exceed the limits specified under this section-

- (a) due to ground or grounds of unforeseen demands on the finances of the State Government arising out of national security or natural calamity including drought relief or such other exceptional circumstances beyond the control of the State Government; or
- (b) due to developmental and other unavoidable expenditure; or
- (c) up to the limits indicated by the Central Government from time to time:" .

5. Deletion of section 6A, Rajasthan Act No.7 of 2005.- The existing section 6A of the principal Act shall be deleted.

CHAPTER III

AMENDMENT IN THE RAJASTHAN VALUE ADDED TAX ACT, 2003

6. Amendment of section 3, Rajasthan Act No. 4 of 2003.-In sub-section (2) of section 3 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), hereinafter in this Chapter referred to as the principal Act, after the existing expression "clause (b) of sub-section (1)", and before the existing expression " , who purchases goods", the expression "or the dealer or class of dealers as may be notified by the State Government" shall be inserted.

7. Amendment of section 38, Rajasthan Act No. 4 of 2003. - In sub-section (4) of section 38 of the principal Act, for the existing punctuation mark ".", appearing at the end, the punctuation mark ":" shall be substituted and after the aforesaid sub-section (4), so amended, the following proviso shall be added, namely:-

"Provided that where an application for stay is not disposed of within a period of thirty days from its filing and the delay is not attributable to the applicant, the same shall be deemed to have been accepted subject to the condition that such dealer or person furnishes sufficient security to the satisfaction of the Assessing Authority or the officer, as the case may be, in such form and in such manner as may be prescribed."

8. Amendment of section 53, Rajasthan Act No. 4 of 2003. - In sub-section (1) of section 53 of the principal Act, for the existing punctuation mark ".", appearing at the end, the punctuation mark ":" shall be substituted and after the aforesaid sub-section (1), so amended, the following proviso shall be added, namely:-

"Provided that in case of the dealer who files returns electronically and also opts for quarterly assessment under sub-section (2) of section 23, refund may be made provisionally to the extent of fifty percent of the refundable amount subject to the condition of subsequent verification of the deposit of refundable amount."

9. Amendment of section 58, Rajasthan Act No. 4 of 2003. - For the existing section 58 of the principal Act, the following shall be substituted, namely:-

“58. Penalty for failure to furnish return.- Where the assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer as authorized by the Commissioner is satisfied that any dealer has, without reasonable cause, failed to furnish prescribed returns within the time allowed, he may direct that such dealer shall pay by way of penalty,-

- (i) in case the dealer is required to pay tax every month under section 20, a sum equal to rupees one hundred per day for first fifteen days of such default and thereafter a sum equal to rupees five hundred per day for the period during which the default in furnishing such return continues, but not exceeding in the aggregate thirty percent of the tax so assessed; and
- (ii) in all other cases, a sum equal to rupees fifty per day subject to a maximum limit of rupees five thousand, for the period during which the default in furnishing of such return continues.”.

10. Amendment of section 73, Rajasthan Act No. 4 of 2003.- In sub-section (1) of section 73 of the principal Act, after the existing expression “by the Commissioner”, and before the existing expression “, shall, if his turnover”, the expression “or the dealer or class of dealers as may be notified by the State Government” shall be inserted.

11. Amendment of section 77, Rajasthan Act No. 4 of 2003.- For the existing sub-section (2) of section 77 of the principal Act, the following shall be substituted and shall be deemed to have always been substituted, namely.-

“(2) Notwithstanding any thing contrary contained in any contract under sub-section (1), a contractor covered by sub-section (1) shall deposit the amount of-

- (i) tax collected; or
- (ii) the amount of contracted annual tax revenue,

whichever is higher, subject to revision on account of any increase or decrease in the rate of tax or grant of exemption from tax, in such manner and within such time as may be prescribed, and all the provisions of this Act including the provisions of recovery and interest shall, so far as may be, apply to such contractor.

(2A) Notwithstanding anything contained in any rule, judgment, order or any other instrument, the amount of tax payable in accordance with the provisions of sub-section (2) as amended by the Rajasthan Finance Act, 2009 (Act No---- of 2009), if not paid, shall be deposited to the State Government within two months from the commencement of this Act. ” .

CHAPTER IV

AMENDMENT IN THE RAJASTHAN ELECTRICITY (DUTY) ACT, 1962

12. Insertion of section 3B, Rajasthan Act No. 12 of 1962.- After the existing section 3A and before section 4 of the Rajasthan Electricity (Duty) Act, 1962 (Act No. 12 of 1962), the following new section shall be inserted, namely:-

"3B. Levy of water conservation cess. - (1) There shall be levied for, and paid to, the State Government on the energy consumed by a consumer or by a person other than a supplier generating energy for his own use or consumption, a cess to be called "water conservation cess" at the rate of ten paise per unit:

Provided that no cess under this section shall be levied on the energy-

- (a) consumed by the Government of India;
- (b) consumed in the construction, maintenance or operation of any Railway by the Government of India;
- (c) consumed in domestic category;
- (d) consumed by a cultivator in agriculture operations;
- (e) consumed by the following classes of institutions, namely:-
 - (i) hospitals or dispensaries, which are not maintained for private gain,
 - (ii) recognized educational institutions,
 - (iii) places of public worship,

subject to the condition that the exemption under this sub-clause shall not be applicable to energy consumed in buildings or part of buildings, used for commercial purposes;

- (f) is generated at voltage not exceeding 100 volts.

(2) The provisions of this Act or the rules made there under shall, so far as may be, apply in relation to levy, payment, interest, computation and recovery of the cess payable under sub-section (1) as they apply to levy, payment, interest, computation and recovery of electricity duty payable under this Act.

(3) The cess collected under this section shall be earmarked and utilized for the purpose of water conservation in the State."

STATEMENT OF OBJECTS AND REASONS

1. THE RAJASTHAN FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT ACT, 2005

Fiscal Responsibility and Budget Management Act was enacted for the purpose of making State Government manage State finances in a fiscally responsible manner by undertaking fiscal consolidation with time bound targets. With a view to set aside a part of State revenues in the years of above normal revenue growth and using such accumulations in the years of fiscal distress and for poverty alleviation and development purposes, an equalisation fund in the name of "Rajasthan Development and Poverty Alleviation Fund" was created by an Amendment in the Act in the year 2007. In fact, creation of this fund has led to inconsistencies in the accounting. The fund is created by making provisions in the revenue expenditure head, and the expenditure incurred from the fund, for creation of capital assets is not reflected in the capital account of the State. Besides, as per the amendment, this fund can be utilised to meet revenue and capital expenditure in a year wherein total tax receipts of the State are estimated to be less than 10 percent over the previous year and for meeting development expenditure or poverty reduction programmes. Therefore, in a situation where the tax receipts are not less than 10 percent but due to increased revenue expenditure, revenue deficit is likely to occur, the fund can not be utilised. This is not in line with the spirit of FRBM Act as it envisages elimination of revenue deficit. Therefore, section 6A of the Act is proposed to be deleted. Consequently, clause (kk) of Section 2 of the Act is also proposed to be deleted.

As part of the second economic stimulus package announced by the Government of India, the States have been allowed to raise, in the financial year 2008-09, additional market borrowing of 0.5 percent of their Gross State Domestic Product (GSDP), for capital expenditure. Accordingly, the Government of India has relaxed the fiscal deficit targets for the year 2008-09 and has also relaxed the requirement of elimination of revenue deficit. For the year 2009-10 also, the Government of India has granted the same relaxation in the fiscal targets. Accordingly, the first proviso of Section 6 of the Act is proposed to be amended so that the State Government may exceed the fiscal targets to the extent allowed by the Government of India or to meet developmental and other unavoidable expenditure.

2. THE RAJASTHAN VALUE ADDED TAX ACT, 2003

Sub-section (2) of section 3 provides that dealers other than an importer or manufacturer, purchasing goods from registered dealers of the State and whose turnover do not exceed rupees fifty lac in a year, can exercise option to make payment of tax on his turnover at the notified rate. It is felt that in view of the intricacies involved, this facility should not be granted to certain trades. With this objective in view, it is proposed to empower the State Government to exclude dealer or class of dealers, as it may notify, from the purview of sub-section (2) of section 3.

Delay in disposal of the stay application by Deputy Commissioner (Appeals) defeats the very purpose of stay. To ensure that stay applications are decided on priority basis, it is proposed to amend the existing provisions of sub-section (4) of section 38 so that where the stay application is not decided within thirty days from its filing and the delay is not attributable to the applicant, such application shall deemed to have been accepted subject to the condition of furnishing of adequate security.

To motivate dealers to opt for quarterly assessment along with filing of returns electronically thereof, it is proposed to provide incentive by way of granting provisional refund to the extent of fifty percent of refundable amount subject to subsequent verification of the refundable amount. To give effect to this proposal, a proviso is proposed to be added in sub-section (1) of section 53 of the Act.

The existing penal provisions for delay in filing of the returns by the dealer have failed to improve the compliance level in filing of returns. Self assessment based on the returns is the basic theme of VAT, as such compliance in filing of return has to be improved. It is therefore, proposed to substitute the existing provision of section 58 to provide higher penalties for delay in filing of returns.

Section 73 of the Act enumerates provisions as to the audit of accounts of registered dealer. At present 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 authorized by the Commissioner, have been excluded from the purview of audit. In view of the genuine demand from various sectors for being excluded from purview of audit, it is proposed to empower the State Government to notify any dealer or class of dealers to be excluded from purview of audit under section 73 of the Act. With this objective in view, the existing sub-section (1) of section 73 is proposed to be amended.

As per existing provisions of sub-section (2) of section 77, a contractor is required to deposit tax collected by him, however, when tax is collected less than the contracted amount then such contractor deposits the collected tax amount and not the contracted amount. To remove this anomaly, sub-section (2) of section 77 of the Act, is proposed to be substituted. It is also proposed to give retrospective effect to the proposed amendment from date of introduction of VAT, i.e., with effect from April 1, 2006.

3. THE RAJASTHAN ELECTRICITY (DUTY) ACT, 1962

The state is facing severe drinking water crisis in almost all parts of the State. Due to intensive use of ground water, the ground water level is depleting at a faster rate. Therefore, judicious use of water along with water conservation has become essential. Construction of water harvesting structure, both for collecting the run off as well as for ground water recharge, are required at a large scale to ensure more water availability in the state. People at large, are to be informed, educated and sensitized to initiate and sustain the habit of conserving water in day to day life. All these activities need financial resources, which at present, amidst pressure of recession is not easily affordable. The proposed water conservation cess is intended to provide financial resources to such activities.

The Bill seeks to achieve the aforesaid objects.

Hence the Bill.

**अशोक गहलोत,
Minister Incharge**

MEMORANDUM REGARDING DELGATED LEGISLATION

Clause 7 of the Bill, which seeks to add a new proviso in sub-section (4) of section 38 of the Rajasthan Value Added Tax Act, 2003, if enacted, shall empower the State Government to prescribe form and manner in which security shall be furnished by a dealer or a person.

Clause 11 of the Bill, which seeks to substitute sub-section (2) of section 77 of the Rajasthan Value Added Tax Act, 2003, if enacted, shall empower the State Government to prescribe the time and manner in which amount of tax collected or amount of contracted annual tax revenue shall be revised on account of increase or decrease of rate of tax or grant of exemption from tax.

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

**अशोक गहलोट,
Minister Incharge**

exceptional circumstances beyond the control of the State Government.

Provided further that the excess beyond limits arising due to the grounds mentioned in the first proviso shall be explained with a detailed statement on the said grounds, as soon as possible, before the House of the State Legislature.

6A. Rajasthan Development and Poverty Alleviation Fund.-

(1) There shall be crated a fund called 'Rajasthan Development and Poverty Alleviation Fund' (hereinafter referred to as the Fund) in the Public Account of the State.

(2) Tax receipts of the State, comprising of its own taxes and share in central taxes, in any year in excess of 17.5% over previous year an any other revenue receipts, as the State Government may think fit, shall, if the State legislature by appropriation made by law in this behalf so provides, be credited to the Fund in the ensuing year.

(3) The Fund may be used by the State Government only for the following purposes:

- (a) to meet revenue or capital expenditure in a year wherein tax receipts of the State, comprising of its own taxes and share in central taxes, are estimated to be less than 10% over the previous year;
- (b) to meet expenditure on developmental schemes or poverty reduction programmes.

(4) The Fund shall not be used for meeting non-developmental or establishment expenditure as defined by Controller and Auditor General of India.

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2. EXTRACTS TAKEN FROM THE RAJASTHAN VALUE ADDED

TAX ACT, 2003

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3. Incidence of tax. –. (1) XX XX XX

(2) Notwithstanding anything contained in sub-section (1) a dealer other than that enumerated in clause (a) or clause (b) of sub-

section (1), who purchases goods from a registered dealer of the State and sells such goods within the State, may opt for payment of tax on his turnover excluding the turnover of the goods specified in Schedule I, at the rate as may be notified under sub-section (3) of section 4, subject to the condition that such annual turnover does not exceed rupees fifty lacs in a year.

(3) to (6)	XX	XX	XX
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38. Liability for payment of tax or demand.- (1) to (3) XX XX

(4) Where a dealer or a person has filed an appeal to the Appellate Authority against an order passed by an assessing authority or any other officer, the said Appellate Authority may, after registering such appeal and after having heard the appellant and the assessing authority or officer or any representative thereof, stay the recovery of the disputed amount of tax or demand or any part thereof for a period of six months from the date of such order or till the disposal of the appeal, whichever is earlier, on the condition that the said dealer or the person furnishes sufficient security to the satisfaction of, the Assessing Authority or the officer, as the case may be, in such form and in such manner as may be prescribed. However, the appellate authority may for reasons to be recorded in writing continue such stay beyond the aforesaid period of six months for a further period not exceeding six months.

(5) to (7)	XX	XX	XX
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53. Refund. - (1) Where any amount is refundable to a dealer under the provisions of this Act, after having duly verified the fact of deposit of such amount, the assessing authority or the officer authorised by the Commissioner, shall in the prescribed manner refund to such dealer the amount to be refunded either by cash payment or by adjustment against the tax or other sum due in respect of any tax period.

(2) to (6)	XX	XX	XX
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58. Penalty for failure to furnish return. – Where the assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer as authorised by the Commissioner is satisfied that any dealer has, without reasonable cause, failed to furnish prescribed returns within the time allowed, he may direct that such dealer shall pay by way of penalty–

- (i) in case the dealer is required to pay tax every month under section 20, a sum equal to rupees ten per day for the period during which the default in furnishing such return continues, but not exceeding in the aggregate twenty percent of the tax so assessed; and
- (ii) in all other cases, a sum equal to rupees five per day subject to a maximum limit of rupees five hundred, for the period during which the default in furnishing of such return continues.

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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 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 one hundred lac 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:–

- (i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act No. 38 of 1949); and
- (ii) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (Central Act No. 23 of 1959).

(2)

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77. Establishment of check–post on contract basis.– (1) XX XX

(2) A contractor covered by sub-section (1), shall deposit the entire amount of tax collected subject to revision on account of any increase or decrease in the rate of tax or grant of exemption from tax, in such manner and within such time as may be prescribed, and all the provisions of this Act including the provisions of recovery and interest shall, so far as may be, apply to such contractor.

(3) to (6) XX

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