

Confidential

Bill No. 3 of 2010

(Authorized English Version)

THE RAJASTHAN FINANCE BILL, 2010

(to be introduced in the Rajasthan Legislative Assembly)

A Bill

further to amend the Rajasthan Value Added Tax Act, 2003 and Rajasthan Electricity (Duty) Act, 1962, in order to give effect to the financial proposals of the State Government for financial year 2010-11 and to make certain other provisions.

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

CHAPTER I

PRELIMINARY

1. Short title.— This Act may be called the Rajasthan Finance Act, 2010.

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 clauses 3 to 10 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 3, Rajasthan Act No. 4 of 2003.— In clause (c) of sub-section (1) 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, for the existing expression “rupees five lacs”, the expression “rupees ten lacs” shall be substituted.

4. Amendment of section 16, Rajasthan Act No. 4 of 2003.–

In sub-section (4) of section 16 of the principal Act,-

- (i) in the existing clause (g), for the existing expression “invoices”, the expression “invoices ;or” shall be substituted.
- (ii) after the existing clause (g), so amended, the following new clause shall be added, namely:-
“(h) a dealer has failed to furnish information, statement or return as required by Commissioner under sub-section (2) of section 91 within the period specified thereunder-”.

5. Amendment of section 20, Rajasthan Act No. 4 of 2003.–

After the existing sub-section (2) and before the existing sub-section (3) of section 20 of the principal Act, the following new sub-section shall be inserted, namely:-

“(2A) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), where a registered dealer sells goods to a department of the State Government or to a public sector undertaking, corporation or company owned or controlled by the State Government or a co-operative society having contribution of State Government in its share capital or a municipality or a Panchayati Raj Institution at district and block level or any other local authority or statutory body constituted by or under a law of the State Legislature, such department, public sector undertaking, corporation, company, co-operative society, municipality, Panchayati Raj institution, local authority or statutory body, as the case may be, shall deduct from the amount payable to the selling dealer an amount equal to tax payable by such dealer on such goods and shall deposit or credit the same in the Government account, in the manner and in the time as may be prescribed.”.

6. Amendment of section 23, Rajasthan Act No. 4 of 2003.–

For the existing sub-section (1) of section 23 of the principal Act, the following shall be substituted, namely:-

“(1) Every registered dealer who has filed annual return or audit report for the year within the prescribed time shall, subject to the provisions of section 24, be deemed to have been assessed for that year on the basis of annual return filed under section 21 or, as the case may be, the audit report filed under section 73.”.

7. Amendment of section 24, Rajasthan Act No. 4 of 2003.–

In section 24 of the principal Act,-

- (i) for the existing sub-section (4), the following shall be substituted, namely:-

“(4) Where a dealer, other than those who have opted for quarterly assessment under sub-section (2) of section 23, does not file annual return under section 21, or audit report under section 73, within the prescribed time, the assessing authority or the officer authorised by the Commissioner shall, assess the dealer on the basis of his books of accounts and if he fails to produce the same, to the best of his judgement.”.

(ii) after the sub-section (4), so substituted, and before the existing sub-section (5), the following new sub-section shall be inserted, namely:-

"(4A) Where a dealer who has opted for quarterly assessment under sub-section (2) of section 23, does not file return for the quarter within the prescribed period under section 21, the assessing authority or the officer authorised by the Commissioner shall, assess the dealer on the basis of his books of accounts and if he fails to produce the same, to the best of his judgement for the quarter.”.

8. Amendment of section 37, Rajasthan Act No. 4 of 2003.— In sub-section (4) of section 37 of the principal Act, for the existing expression “Commissioner”, the expression “Commissioner or any other officer authorised by him in this behalf”, shall be substituted.

9. Insertion of section 51A, Rajasthan Act No. 4 of 2003.— After the existing section 51 and before the existing section 52 of the principal Act, the following new section shall be inserted, namely:-

“51A. Power of State Government to waive penalty and interest in certain cases- Notwithstanding anything contained in this Act, the State Government in the public interest, by notification in Official Gazette, may reduce or waive any amount of interest or penalty payable for any period by any class of dealers, subject to such terms and conditions as may be specified in the notification.”.

10. Amendment of section 82, Rajasthan Act No. 4 of 2003.— In sub-section (3) of section 82 of the principal Act, for the existing expression “remaining demand over and above the admitted tax or other amounts”, the expression “disputed tax amount” shall be substituted.

CHAPTER III
AMENDMENT IN THE RAJASTHAN ELECTRICITY (DUTY) ACT,
1962

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

"3C. Levy of urban 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 "urban 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 by a cultivator in agriculture operations;
- (d) consumed in areas outside the municipal area in the State;
- (e) consumed in domestic category in municipal area where consumption does not exceed 100 units per month;
- (f) consumed by the following classes of institutions, namely:-
 - (i) hospitals or dispensaries, which are not maintained for private gain,
 - (ii) recognized educational institutions, which are not maintained for private gain,
 - (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;
- (g) generated at voltage not exceeding 100 volts.

(2) The provisions of this Act or the rules made thereunder 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 utilized for the purpose of providing basic amenities like street lighting, sanitation, maintenance of roads and energy conservation in municipal areas.

Explanation.- For the purposes of this section "municipal area" means the municipal area as defined in clause (xxxix) of section 2 of the Rajasthan Municipalities Act, 2009 (Act No. 18 of 2009).".

STATEMENT OF OBJECTS AND REASONS

RAJASTHAN VALUE ADDED TAX ACT, 2003

Provisions relating to dealers liable to tax under the Act have been incorporated in section 3. Dealers who are neither importer of goods from other States nor are manufacturers are required to be registered if their annual turnover exceeds rupees five lacs. With a view to provide relief to the small dealers, it is proposed to raise the existing limit from exceeding rupees five lacs to exceeding rupee ten lacs.

With a view to update the basic data of the registered dealers and to ensure that the dealers, who are not carrying out any business activities, shall be de-registered, it is proposed to amend sub-section (4) of section 16 of the Act, to enable cancellation of registration of such non functional dealers. For this a new clause (h) is proposed to be added in the above referred sub-section, so that the dealer who fails to furnish information required by Commissioner under section sub-section (2) of section 91 of the Act, his registration certificate may be cancelled by the assessing authority or the authority competent to grant registration after affording opportunity of hearing to such registered dealers.

It has been a consistent demand of trade and industry that the existing system of tax deposited by the selling dealer should be modified in a manner so that in the case of purchases made by State Government or public sector undertaking, corporation or company owned or controlled by the State Government or a co-operative society having contribution of State Government in its share capital or a municipality or a Panchayati Raj Institution at district and block level or any other local authority or statutory body constituted by or under a law of the State Legislature, the purchaser should be made responsible to deposit tax being so levied. It has been submitted by the dealers that the payments are inordinately delayed on sales to such departments/ institutions, still the dealers are generally required to deposit tax amount in the immediately succeeding month of such sales, which results in liquidity problems. To resolve the issue, it is proposed to insert a new sub-section (2A) in section 20 of the Act, wherein the purchaser would be held responsible for payment of tax amount payable by the selling dealer on such sales.

The self assessment concept based on the accepting of the returns submitted by the dealers is not applicable in cases where the dealer fails to file all the returns (including any of the quarterly returns) in the prescribed period. Delay of a few days in filing of quarterly returns has kept number of dealers outside the purview of self assessment. To enlarge the scope of self assessment, it is proposed to amend section 23 of the Act by way of substitution of sub-section (1), so that in case a dealer has filed annual return or audit report for the year within the prescribed time, he shall, subject to the provisions of section 24, be deemed to have been assessed for that year on the basis of such annual return or audit report.

The existing provisions of sub-section (4) of section 24 provides that in case a dealer fails to file all or any of the returns (including quarterly returns) within the prescribed period under section 21, he cannot be self assessed but be subjected to assessment on the basis of books of accounts and if fails to produce the same, he shall be assessed on best judgment basis. A large number of dealers are being excluded from the purview of self assessment solely on the ground that any of their return (including quarterly returns) has been filed after the prescribed period. To maximize coverage of dealers in the self assessment ambit, and in continuance of the amendment in sub-section (1) of section 23 of the Act, it is proposed to substitute the existing sub-section (4) of section 24. For the dealers opting for quarterly assessments, a new sub-section (4A) is proposed to be inserted so that in case such a dealer fails to file quarterly return within the prescribed time, he can be assessed on the basis of books of accounts and in their absence on best judgment basis.

With a view to comply with the limitation provisions for disposal of tax evasion or avoidance cases, it is proposed that in addition to Commissioner, the officer authorized by him may be empowered to transfer such cases from one assessing authority to another assessing authority. At present every such case is required to be transferred only by Commissioner or Additional Commissioner. To achieve this objective sub-section (4) of section 37, is proposed to be amended.

A dealer may submit application for waiver of interest and/or penalty amount before the Commissioner having been empowered by section 51 of the Act to reduce or waive such amount keeping in view the financial and genuine hardship being caused to such dealer. Circumstances may warrant that a general waiver or reduction of penalty and interest amount may be made for a class of dealers. Keeping this objective in view, it is proposed to insert a new section 51A in the Act to empower the State Government to reduce or waive the outstanding demand of penalty and interest for a class of dealers.

As per sub-section (3) of section 82 of the Act, a dealer aggrieved against any order can file first appeal before Deputy Commissioner (Appeals). However, the appeal would not be entertained unless it is accompanied by a proof of the payment of tax and other amounts admitted by the appellant to be due from him and in case of an appeal from an *ex-parte* assessment order, five percent of, and in other cases ten percent of the remaining demand over and above the admitted tax or other amounts. The dealers are making consistent demand that in cases of arbitrary creation of demands, the dealers are put to unprecedented hardship and even their right to appeal is denied as they may fail to deposit such amount. In view of the genuine hardship being faced by the dealers, it is proposed to amend sub-section (3) of section 82 of the Act in a manner so that the dealer may be required to deposit five or ten percent of the disputed tax amount, as the case may be.

RAJASTHAN ELECTRICITY (DUTY) ACT, 1962

The State is witnessing rapid urbanization in recent years. However, the urban local bodies responsible for urban development do not have sufficient financial resources to provide civic amenities like payment of bills for street lighting, sanitation or maintenance of roads. In order to strengthen the financial position of the urban local bodies to discharge these responsibilities, it is proposed to levy an urban cess equal to ten paise per unit from urban consumers having monthly consumption of electricity exceeding 100 units. Further, the importance of energy conservation measures in this regard cannot be over emphasized

The cess so collected shall be used for the purpose of providing basic amenities like street lighting, sanitation, maintenance of roads and for energy conservation in urban areas. To achieve these objectives, section 3C is being inserted in the Act.

The Bill seeks to achieve the aforesaid objects.

Hence the Bill.

अशोक गहलोत,
Minister Incharge.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill, which seeks to insert a new sub-section (2A) in section 20 of the Rajasthan Value Added Tax Act 2003, if enacted, shall empower the State Government to prescribe the manner and the time in which tax deducted under that sub-section shall be deposited in the Government account.

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

अशोक गहलोत,
Minister Incharge.

**EXTRACTS TAKEN FROM THE RAJASTHAN VALUE
ADDED TAX ACT, 2003**

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3. Incidence of tax. – (1) Subject to the provisions of this Act, every dealer–

- (a) who is an importer of goods; or
- (b) who is a manufacturer of goods and whose annual turnover exceeds rupees two lacs; or
- (c) whose annual turnover exceeds rupees five lacs,
shall be liable to pay tax under this Act.

(2) to (6) XX XX XX

 XX XX XX

16. Amendment and cancellation of registration certificate. –

(1) to (3) XX XX XX

(4) Where–

- (a) any business in respect of which a certificate of registration has been granted to a dealer under this Act, is discontinued permanently; or
- (b) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or
- (c) a dealer has ceased to be required to be registered and to pay tax under this Act; or
- (d) a dealer has obtained the certificate of registration by misrepresentation of facts or by fraud; or
- (e) a dealer has obtained a certificate of registration against the provisions of this Act; or
- (f) a dealer has failed to furnish security within the period specified under section 15 and a period of ninety days has elapsed ; or
- (g) a dealer issues false or forged VAT invoices

the assessing authority or the authority competent to grant registration may, after affording such dealer an opportunity of being heard and after recording reasons in writing, cancel the certificate of registration from such date as he may deem appropriate.

(5) to (6) XX XX XX
XX XX XX

23. Self Assessment.- (1) Every registered dealer who has filed all the returns for the year within the prescribed time shall, subject to the provisions of section 24, be deemed to have been assessed for that year on the basis of such returns filed under section 21.

(2) to (3) XX XX XX
XX XX XX

24. Assessment.- (1) to (3) XX XX XX

(4) Where the dealer does not file any or all the return(s) within the prescribed period under section 21, the assessing authority or the officer authorised by the Commissioner shall, assess the dealer on the basis of his books of accounts and if he fails to produce the same, to the best of his judgment for the year or the quarter, as the case may be.

(5) to (6) XX XX XX
XX XX XX

37. Transfer of cases. – (1) to (3) XX XX

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Commissioner may, at any time, for administrative reasons, transfer any case or cases from one officer or authority to other officer or authority, without issuing any notice to the dealer or dealers concerned.

Explanation. – The word "case" in relation to any dealer under this section shall mean any proceeding pending under this Act on the date of the order made under sub-section (2) or which may have been completed on or before such date or which may commence after such date.

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82. Appeal to the appellate authority. – (1) to (2) XX XX

(3) Notwithstanding anything contained in sub-section (4) of section 38, no appeal under this section shall be entertained unless it is accompanied by a satisfactory proof of the payment of tax and other amounts admitted by the appellant to be due from him or of such instalment thereof as might have become payable and in case of an appeal from an *ex-parte* assessment order, five percent of, and in other cases ten percent of the remaining demand over and above the admitted tax or other amounts.

(4) to (8) XX XX XX
XX XX XX