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PUNJAB VIDHAN SABHA SECRETARIAT

NOTIFICATION

The 29th October, 2013

**No.35-PLA-2013/67.-** The Punjab Value Added Tax (Second Amendment) Bill, 2013 is hereby published for general information under the proviso to rule 121 of the Rule of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly):-

BILL No. 35-PLA-2013

**THE PUNJAB VALUE ADDED TAX (SECOND AMENDMENT) BILL, 2013**

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BILL

further to amend the Punjab Value Added Tax Act, 2005.

BE it enacted by the Legislature of the State of Punjab in the Sixty-fourth Year of the Republic of India, as follows:-

1. (1) This Act may be called the Punjab Value Added Tax (Second Amendment) Act, 2013.

Short title and commencement.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette:

Provided that amendment of sub-section (1) of section 13 shall come into force on and with effect from the 1st day of April, 2014 and omission of sub-section (1-A) of section 13 shall be deemed to have come into force on and with effect from the 4th day of October, 2013.

2. In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 4, for sub-section (2), the following sub-section shall be substituted, namely:-

Amendment in section 4 of Punjab Act 8 of 2005.

"(2) The Tribunal may consist of a Chairman and three other members to be appointed by the State Government from time to time."

3. In the principal Act, in section 6, for sub-section (7), the following sub-section shall be substituted, namely:-

Amendment in section 6 of Punjab Act 8 of 2005.

"(7) (a) Notwithstanding anything contained in this Act or the Rules made thereunder, the State Government may by notification specify the goods on which a taxable person shall pay tax in advance at the rates notified by the Government but not exceeding the rates including surcharge applicable on such goods under this Act, when he imports such goods into the State subject to such conditions, as the State Government may specify in the notification. The aforesaid payment of tax in advance shall be counted towards the final tax liability of the taxable person:

Provided that the State Government may by notification exempt any taxable person or class of taxable persons from payment of tax in advance or reduce the rate of payment of tax in advance subject to such conditions, as may be notified:

Provided further that if on an application made by a taxable person, the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such taxable person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduced for such taxable person, he may do so and impose such terms and conditions on such taxable person as he may deem fit.

Explanation.- The taxable person, who imports goods into the State, shall pay tax in advance, on the presumption that such goods are meant for the purposes of sale or for use in manufacture or processing of goods meant for sale, unless, it is proved otherwise by such taxable person. It is further presumed, unless, it is proved otherwise by such taxable person, that such goods or any product manufactured therefrom, shall not be sold below the price at which such goods have been purchased and imported in the State.

(b) The tax already paid in advance under the provisions of sub section (7) of section 6 as it existed prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall be deemed to have been paid tax in advance under the provisions of clause (a)."

Insertion of new sections 8-C, 8-D And 8-E in Punjab Act 8 of 2005.

4. In the principal Act, after section 8-B, the following sections shall be inserted, namely:-

"8-C. (1) Notwithstanding anything contained in this Act, the State Government, if satisfied that it is necessary or expedient so to do in public interest, may, by notification in the Official Gazette, direct that, in respect of any goods or

class of goods covered under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, a taxable person who is a manufacturer or a first importer of goods, may, at his option, pay tax on the basis of Maximum Retail Price (MRP) as printed upon such goods subject to such conditions as the State Government may specify in the notification.

(2) A taxable person, who opts to pay tax as provided under sub-section (1), shall pay tax at the rate as notified by the State Government on the value of Maximum Retail Price (MRP) by issuing an invoice showing value of goods and tax separately, as Maximum Retail Price (MRP) printed would be inclusive of the tax payable. For the purpose of computing tax liability, such a taxable person shall not be entitled to claim any deduction on account of any trade discount or incentive in terms of quantity or cash discount that he may have given to the purchaser.

(3) The taxable person, who has opted under sub section (1), shall be at liberty to cancel his option by making an application to the designated officer, in such form and subject to such conditions as the State Government may specify in the notification.

(4) All subsequent taxable persons, purchasing goods on which tax on the basis of Maximum Retail Price (MRP) as provided under sub-section (1) has already been paid, shall be exempted from payment of tax on the sale of such goods, subject to such conditions as the State Government may specify in the notification.

8-D. Notwithstanding anything contained in this Act, the State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, grant tax incentives to such class of industries for such period and subject to such conditions, as may be prescribed, in the case of industries, which came into production for the first time, as and when notified in the Industrial Policy framed by the Department of Industries.

8-E. Notwithstanding anything contained in the Act, the State Government, may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, allow retention of tax collected to such class of industries subject to such conditions, as may be prescribed."

5. In the principal Act, in section 13,-

- (i) in sub-section (1), for the first proviso, the following proviso shall be substituted, namely:-

" Provided that the input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-State trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:";

- (ii) sub-section (1-A) shall be omitted;

- (iii) for sub-section (9), the following sub-section shall be substituted, namely:-

"(9) A person shall reverse input tax credit availed by him on goods which remained in stock at the time of closure of the business."; and

- (iv) for sub-section (12), the following sub-section shall be substituted, namely:-

"(12) Save as otherwise provided hereinafter, input tax credit shall be claimed only against the original VAT invoice and will be claimed during the period in which such invoice is received. The input tax shall be utilized in accordance with the conditions mentioned in this section, but in no case the amount of input tax credit on any purchase of goods shall exceed the amount of tax, in respect of the same goods or goods used in manufacture of same goods, actually paid, if any, under this Act, into the Government treasury."

Amendment in section 13 of Punjab Act 8 of 2005.

6. In the principal Act, in section 29,-

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

"(4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later:

Provided that the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.

Explanations.- (1) The limitation period of six years for an assessment under

Amendment in section 29 of Punjab Act 8 of 2005.

sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.

(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment."; and

(ii) after sub-section (10), the following sub-section shall be inserted, namely:-

"(10-A) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person."

7. In the principal Act, after section 39, the following new section shall be inserted, namely:-

"39-A. (1) There shall be constituted a fund to be called the Punjab VAT Refund Fund, which shall be maintained and operated by the Department of Excise and Taxation in such manner, as may be prescribed.

(2) The amount collected on account of advance tax under sub-section (7) of section 6, shall directly be credited into the Punjab VAT Refund Fund.

(3) After allowing refund claims from the Fund, the balance amount in the Fund, shall be deposited in the Consolidated Fund of the State, as may be prescribed."

8. In the principal Act, after section 46, the following new section shall be inserted, namely:-

"46-A. (1) Where a designated officer has, for the purpose of any proceeding under this Act, reasons to believe that any of the goods as notified by the State Government whether in stock or in transit, are underpriced as shown in a document or book of account produced before him, he may, with the

Power to purchase under priced goods. prior approval of the Commissioner or such other officer, as the Commissioner may, in writing, authorise for the purpose, make an offer to purchase such goods at the price shown in the document or book of account, increased by ten per cent plus freight and other expenses, if any, incurred by the owner in relation to the goods.

(2) If the owner of the goods accepts the offer, as provided under sub-section (1), he shall make delivery of the goods on a date, time and at such place, as specified by the officer making the offer and shall be paid the offered price with other expenses within a period of ten days of the delivery of the goods, but, if he rejects the offer, or after accepting the offer fails to deliver the goods on the specified date, time and at the specified place, it shall be construed as a conclusive proof that the owner has underpriced the goods and the price of the goods as determined by the designated officer to the best of his judgement shall be considered as the actual price of such goods.

Insertion of new section 39-A in Punjab Act 8 of 2005.

Insertion of new section 46-A in Punjab Act 8 of 2005.

(3) The goods purchased under sub-section (2), shall be sold by public auction in the manner, as may be prescribed, as early as possible, but, if the goods are of a perishable nature or subject to speedy and natural decay or are such as may, if held, lose their value or when the expenses of keeping them are likely to exceed their value, then, such goods shall be immediately sold or otherwise disposed of in the manner, as may be prescribed. The sale proceeds of the goods or the amount obtained by disposal of the goods shall be deposited in the Government treasury."

9. In the principal Act, in section 51,-

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

Amendment in section 51 of Punjab Act 8 of 2005.

"(b) If the owner or the person Incharge of the goods has not submitted the documents as mentioned in sub-sections (2) and (4) or has not submitted the information, as specified in the rules at the nearest check post or information collection centre, in the State, as the case may be, on his entry into or before exit from the State, such goods shall be detained along with the vehicle for a period not exceeding seventy two hours subject to orders under clause (c) of sub-section (7).

Note:- (1) "Person in-charge of the goods" shall include carrier of goods or agent of a transport company or booking agency or any other bailee for transportation and in-charge or owner of a bonded warehouse or of any other warehouse.

(2) "information collection centre" shall include Virtual information collection centre."; and

(ii) after sub-section (12), the following sub-section shall be inserted, namely:-

"(12-A) Where a goods vehicle is found transporting the goods on an escape route and a penalty exceeding rupees two lacs has been imposed upon the owner of the goods under clause (c) of sub-section(7) and if the officer imposing the penalty is satisfied that the owner of the goods vehicle or the transporter is also involved in committing the aforesaid offence, then the owner of the goods vehicle or the transporter, as the case may be, shall also be liable to pay a penalty of rupees twenty five thousands for the first time of occurrence of such an offence and if the same vehicle is again found to be involved in such like an offence and a penalty exceeding rupees two lac is again imposed, then such officer shall order the confiscation of the goods vehicle. The goods vehicle so confiscated, shall be sold by public auction in the prescribed manner.

Note:- An 'escape route' shall mean the route on the way of which no information collection centre is located."

10. In the principal Act, in section 56, in the last line, for the sign ".", the sign ":" shall be substituted and thereafter, the following proviso shall be added, namely:-

Amendment in section 56 of Punjab Act 8 of 2005.

"Provided that in case a person, who has availed of a refund under a star rating/ fast track refund scheme, as may be prescribed, is subsequently found to have willfully or fraudulently claimed refund which was not due to him, he shall be liable to pay penalty subject to the maximum of five times the refund amount so claimed, as may be

prescribed by State Government, in addition to the payment of refund amount so claimed and interest payable thereon."

Amendment in section 66 of Punjab Act 8 of 2005,

11. In the principal Act, in section 66, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) The Tribunal may *suo-moto* or on a reference from the affected person or the Commissioner or any other officer so authorized by the Commissioner may, consider rectification of a mistake or an error apparent from the record in an order within a period of five years from the date of passing of such order:

Provided that no such rectification shall be made, if it has the effect of enhancing the tax or reducing the amount of refund without affording an opportunity of being heard to the affected person.

Explanation.- Error apparent from the record in an order shall include an order that has become erroneous as a result of amendment of this Act."

#### STATEMENT OF OBJECTS AND REASONS

1. **Amendment in section 4 of Punjab VAT Act, 2005:-**

In order to undo the effect of the judgment of the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 2626 of 2013, it has become necessary and expedient to amend sub section (2) of section 4 of Punjab VAT Act, 2005, so as to appoint the members as per requirement.

2. **Amendment in Section 6 of the Punjab VAT Act, 2005:-**

A large number of taxable persons import goods into the State and then sell them or use them in manufacture. Some of these taxable persons are subsequently not traceable at the place of business and escape from a payment of tax due to the State. In order to indulge in such malpractices, firms or associations of persons are specifically constituted by unscrupulous elements and no trace is left regarding them or their members after the goods have been disposed off. It has also been found that certain unscrupulous persons indulge in Benami transactions by floating concerns in other persons' names. In such cases, by the time assessment is framed or likely to be framed, either the persons who import the goods are not traceable or in case if they are traceable, it is almost impossible to recover the tax due from them, as many a times, imports are made in the name of persons with no means.

To combat a similar situation, Sections 44AC and 206C in the Income Tax Act 1961, which have been upheld by the Hon'ble Supreme Court of India in the case of Union of India & Another vs A. Sanyasi Rao & Others (February 13, 1996) ( 219 ITR 330), were enacted by Government of India so as to facilitate the collection of tax of that income which was bound to arise or accrue, at the very inception itself or at an anterior stage. These provisions are akin to advance tax. Similarly, in order to prevent the evasion of tax legitimately due to the State of Kerala, in exercise of the powers conferred under Section 47(16-A) in VAT Act, the Commissioner passed a circular No. 50 of 2006, which has been upheld by the Hon'ble Kerala High Court in case of Fantasy Sales Corporation Vs. Sales Tax Inspector, Walayar and others, (2007) 7 VST 323(Ker).

In the light of above, it has become necessary and expedient to accordingly strengthen it by amending a similar machinery provision namely sub-section (7) of section 6 of the Punjab Value Added Tax Act, 2005 to combat evasion of tax by unscrupulous dealers and collect the tax in advance when a dealer brings any goods into the State presuming that he does so for the purpose of sale or use in manufacture of goods for sale.

**3. Insertion of a section 8-C in Punjab VAT Act, 2005:-**

In order to prevent tax evasion at stages of sale subsequent to Manufacturer/First Importer's stage, it has become necessary and expedient to insert a section 8-C in Punjab VAT Act, 2005, so as to introduce an optional scheme in Punjab on the same pattern which is already existing in Rajasthan and West Bengal, under which Manufacturer/First Importer will pay the tax on Maximum Retail Price (MRP) on notified goods and at the subsequent stages, such goods would be tax free.

**4. Insertion of Sections 8(D) and 8(E) in the Punjab VAT Act, 2005:-**

To grant incentives to the new industries and give momentum to the Industrial development in the State, it has become necessary and expedient to insert Sections 8(b) and 8(e) by making amendment in the Punjab VAT Act, 2005.

**5. Amendment in section 13 of Punjab VAT Act, 2005:-**

In order to curb ingenuine claims of Input Tax Credit on falsely shown stock of goods resulting in wrong refunds, and to allow Input Tax Credit commensurate with the amount of actual tax paid in the treasury on the item involved and further, in order to give the full credit, without any reversals, of tax collected in advance under the provisions of section 6(7) of the Punjab VAT Act, 2005, it has become necessary and expedient to amend sub sections (1), (9) and (12) and to omit (w.e.f. 04.10.2014) sub-section (1-A), of Section 13 of the Punjab VAT Act, 2005.

**6. Amendment in section 29 of Punjab VAT Act, 2005:-**

Due to the provision of self- assessment in Punjab Value added Tax act, 2005, cases are selected by the Departmental Officers for the assessment on the basis of certain risk parameters or in which revenue is involved. According to section 29(4), the assessment of a case has to be framed within 3 years of filing the Annual Statement. It is pertinent to mention here that due to heavy work load and shortage of staff in the Department, by the time the Designated Officer detects a tax due in a particular case, the limitation period of 3 years is near to end. The Commissioner has the power to extend the period of assessment upto 6 years. By exercising this power, limitation periods were extended by the Commissioner in respect of various years which led to a lot of litigation. The Hon'ble High Court and the Hon'ble VAT Tribunal have quashed many such extension orders on technical ground of no prior service of notice to the concerned person before passing an order of such extension of limitation period and not passing individual orders, resulting in a huge revenue loss. Therefore, in order to safeguard the Revenue on account of cases becoming time- barred and to undo the effect of judgement dated 01.09.2009 of the Hon'ble High Court in case of A.B sugars Limited, it has become necessary and expedient to amend sub-section (4) of section 29 and insert sub section (10-A) in section 29, of the Punjab VAT Act, 2005.

7. **Insertion of Section 39-A in Punjab VAT Act :-**

In order to resolve the problem of refunds being faced by industrialists/traders, it has become necessary and expedient to create a dedicated Corpus named "The Punjab VAT Refund Fund", to be maintained and operated by the department of Excise & Taxation by inserting a section 39-A in the Punjab VAT Act.

8. **Insertion of a section 46-A in Punjab VAT Act, 2005:-**

In order to curb evasion on account of goods shown as under-priced, it has become necessary and expedient to insert a section 46-A in the Punjab VAT Act, 2005.

9. **Amendment in Section 51 of the Punjab VAT Act, 2005:-**

In order to curb evasion of tax happening due to non-reporting at Information Collection Centre of a huge quantum of goods imported on dry ports and delivered at the warehouses and also to prevent the evasion of tax by the unscrupulous traders in connivance with transporters/owners of goods vehicles, it has become necessary and expedient to amend clause (b) of sub-section (6) of section 51 and insert sub-section (12-A) in section 51, of Punjab VAT Act, 2005.

10. **Amendment in Section 56 of Punjab VAT Act :-**

In order to deter a person from applying a wrong refund under the Star Rating/Fast Track scheme of refunds, it has become necessary and expedient to amend the existing section 56 of the Punjab VAT, 2005, prescribing penalties upto five times of a wrong refund, if a wrong refund is claimed under the aforesaid scheme.

11. **Amendment in Section 66(2) of the Punjab VAT Act, 2005 :-**

The Hon'ble VAT Tribunal have quashed many orders of the Commissioner passed under section 29(4) of the Act extending limitation period of assessment on technical ground of no prior service of notice to the concerned person before passing such an order, resulting in a huge revenue loss. Therefore, in order to empower the Hon'ble Tribunal to review such cases so as to safeguard the Revenue, it has become necessary and expedient to amend sub-section (2) of section 66 of the Punjab VAT Act, 2005.

**SUKHBIR SINGH BADAL,**  
Deputy Chief Minister, Punjab.

**FINANCIAL MEMORANDUM**

By insertion of the proposed sections and making proposed amendments in the existing sections, it is expected that there will be increase in the State's revenue to the tune of Rs 500 Crores.

CHANDIGARH:  
THE 29TH OCTOBER, 2013

**VED PARKASH**  
SECRETARY.

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