

## ANDHRA PRADESH

The State of Andhra Pradesh was formed in 1956 with the merger of certain areas of the erstwhile Madras State and the Telengana region of the erstwhile princely state of Hyderabad.

The basic features of the Sales Tax Laws of these two regions were integrated in the Andhra Pradesh General Sales Tax Act (APGST) in 1957. Initially, the tax was a multi-point levy. Then there was a combination of single-point and multi-point levy. Subsequently, in 1963 on the recommendations of the expert committee of National Council of Applied Economic Research headed by Dr. P.S. Lokanathan and in 1977 on the basis of the S. Boothalingam Committee, the tax system was dominated by a single-point levy.

Presently the Sales Tax Levy in the State is covered under the Central Sales Tax Act, 1956 and the A.P.G.S.T. Act, 1957. Apart from this, the Department also administers, Entertainment Tax, Horse Racing and Betting Tax, Profession Tax, Entry Tax and Luxury Tax.

### **1. Structure**

With effect from March 30, 1989, every dealer, irrespective of his turnover is liable to pay tax at the rate and at the point of levy specified in the Act. However, in respect of goods mentioned in the Seventh Schedule i.e. goods other than those specified in the first Schedule to the Sixth Schedule, a dealer other than a casual trader and an agent of a non-resident dealer whose total turnover for a year is less than rupees two lakh shall not be liable to pay tax in respect of goods mentioned in that Schedule.

*Point of Levy:* The A.P.G.S.T. Act, 1957, envisages a single point levy with a few exceptions. The First Schedule enumerates 189 commodities subject to sales tax at the point of first sale and two commodities subject to tax at the point of last sale in the

State. The second Schedule gives 8 items subject to first point purchase tax and 9 items subject to last point purchase tax. In Schedule III (of declared goods) 9 items are subject to first point sales tax, 6 items subject to first point purchase tax and 3 items subject to last point purchase tax. Schedule V lists 'Jaggery' as an item subject to multi-point sales tax and under very special circumstances subject to first point purchase tax.

As per Schedule VI, liquor is subject to multi-point sales tax upto the last but one sale with a provision for set off of turnover subjected to tax at the immediately preceding point of sale excluding that at the first point of sale. There is also provision for levy of tax at the point of last sale at the rate of 5 per cent, that is on the retail sales of liquor.

Schedule VII, enumerates the residual category items which were being subjected to multi-point taxation, upto 31.3.1989 as items also subject to tax at the first point of sale at the rate of 6 per cent provided that a dealer other than a casual trader and an agent of a non-resident dealer whose total turnover for a year is less than Rs.2 lakh is not liable to pay tax in respect of these goods. Tax in respect of supply of articles of food and drink in restaurants or catering houses or hotels is levied under Section 5-C.

It is important to note here that out of ten rate categories (1 to 10 per cent), four rates, viz 4,5,6 and 10 per cent cover about 75 per cent of the 236 commodities enumerated in the schedules.

The other three rate categories viz., 12, 14, 18 and 25 per cent cover the rest.

*Additional Tax/Surcharge:*

- i. *Additional Tax:* Under Section 5-A of the Act, every liable dealer whose annual turnover is between Rs.3 lakh and Rs.50 lakh is liable to pay additional tax as turnover tax at the rate of 0.5 per cent, if it is between Rs.50 lakh to Rs.1 crore at the rate of 1.0 per cent and if it is Rs.1 crore or more at the rate of 1.5 per cent.
- ii. *Surcharge:* Surcharge at the rate of 10 per cent on the tax payable or paid on sale or purchase of goods except on declared goods by all liable dealers was introduced with effect from 6.5.1980.

Some of the goods are exempted from levy of surcharge.

*Purchase Tax:* Every dealer who purchases any taxable goods from a registered dealer under the circumstances in which no tax is payable under Section 5 (which levies tax on sales or purchases of goods), or under Section 6 (levy of tax in respect of declared goods) or purchases any taxable goods from a person other than a registered dealer and consumes such goods in the manufacture of other goods for sale or consumes them otherwise or disposes off such goods in any manner other than by way of sale in the State or despatches them on consignment and not in the course of inter-state trade or commerce has to pay tax on the purchase turnover of the goods at the same rates at which the tax would have become leviable under Section 5 or Section 5-A (Levy of additional tax on turnover) or Section 6 (Tax in respect of declared goods).

*Works Contract, Hire-purchase, Leasing:* The definition of 'dealer' (Section 2(e)) 'goods' (Section 2(h)), 'sale' (Section 2(n)), 'turnover' (Section 2(s)(iii)(a)(i)) have been enlarged. 'works contract', as spelt out by section 2(t) means any agreement for carrying out for cash or for deferred payment or for other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property.

The turnover limit has not been specified in the case of works contract. So far as the taxable event is concerned, Explanation II(a) to Section 2(n) indicates that a sale or purchase of goods shall be deemed to have taken place in the State of Andhra Pradesh, wherever the contract of sale or purchase might have been made, if the goods are within the State. Further Explanation VI to Section 2(n) explains that the transfer of property takes place irrespective of the fact that the value of the goods involved in the execution of Works Contract is shown or otherwise and whether the same can be separated from the contract for the service and the work done, with certain exclusions for labour and other service charges and tax suffered tax free goods involved in the works contract.

*Leasing:* With regard to taxation of 'Leasing', the definition of Dealer' (Section 2(e)(iii-b), 'goods', 'sale' (Section 2(n). Explanation IV)), 'turnover' (Section 2(s)(iii)(d)) have been enlarged. The taxable event, as per explanation II(a), is when the goods are within the State irrespective of the place of contract for transfer of the right to use the goods. The turnover, as per Section 2(s)(d), is the aggregate of amounts charged under Section 5-E (Tax on the amount realised in respect of any right to use goods). That is, the total amount realised or realisable by the transferor (dealer) of the right to use any goods for any purpose, whatsoever, whether or not for a specified period, from the lessee by way of payment of cash or otherwise on such transfer or transfers is the taxable turnover. The rate of tax is 5 per cent on the annual turnover.

*Exemptions:* Schedule IV enumerates exempted goods like salt, electrical energy, toddy and neera, husk of pulses, textiles, tobacco, sugar etc.

Exemptions, under Section 9(1) of the A.P.G.S.T. Act through special notifications are also granted.

Some goods have been exempted from tax to encourage and assist certain institutions, societies and industries.

Certain sales of Atomic minerals to the Department of Atomic Energy, sales of films sponsored by the National Institute of Audio Visual Education, New Delhi, transfer of the right to use films to Government and Doordarshan are also free from tax.

*Taxation of Inputs:* A very broad based levy of concessional tax has been introduced with effect from 30.3.1989 vide Act, No. 4 of 1989 i.e. the A.P.G.S.T (Amendment) Act, 1989.

After the introduction of the principal Act of 1957, component parts etc. were being taxed at the rate of 4 per cent with effect from 1.3.1974. Since 1987, however, the concession has been extended to all inputs such as raw materials, component parts, sub-assembly parts, intermediate parts, consumables, packing materials used in the production of certain goods specified in a notified scheme. But by amendment Act, No. 4 of 1989, the Act has been amended to extend the facility to all industries including those making consignment sales or branch transfers. Set off provision is accorded to packing material that has already suffered tax.

*Incentives to Industries:* The Andhra Pradesh Government has introduced tax deferment scheme in respect of new industries both large and medium and other industries. The investment in fixed assets for the former is upto Rs.10 crore for the industries located in such industrially backward areas which have been termed as 'Intensive Industrial Development Areas'. The monetary benefits available are to the extent of 15 per cent of fixed capital investment, the overall monetary benefit being Rs.100 lakh or Rs.30 lakh annually. The tax is permitted to be paid in five equal instalments (interest free) after 5 years of the commencement of production.

Other new industries - located in 'Intensive Industrial Development Areas' have the deferment of tax upto 15 per cent of fixed capital investment or Rs.50 lakh in gross or Rs.20 lakh annually. The conditions of repayment of tax are the same.

In the case of new industries, located in such industrially backward areas which have been termed as 'Identified Growth Area', the tax deferment benefit is limited to 15 per cent of investment in fixed capital or overall Rs.45 lakh or Rs.10 lakh annually. The conditions of repayment of tax are the same as in the case of the industries in the 'Intensive Industrial Development Areas'.

## **2. Registration**

As per Section 12 every dealer with an annual turnover of Rs.50,000 is to get himself registered under the Andhra Pradesh General Sales Tax Act.

Section 5, however, fixes the liability of the dealers to pay tax in respect of each year, irrespective of the quantum of the turnover as per the different Schedules (Schedules I, II, III, V and VI). But in respect of goods mentioned only in Schedule VII, i.e. a residual entry with single point levy, the dealer, other than a casual trader and an agent of a non-resident dealer, should have an annual turnover of Rs.2 lakh and above to be liable to pay tax at the point of first sale in the State at the rate of 6 per cent.

## **3. Assessment**

- Returns:*
- i. Every dealer (other than casual trader) whose turnover is not less than Rs.50,000 is required to submit a return of estimated turnover within 30 days of the commencement of business to the assessing authority concerned.
  - ii. Every casual trader has to submit a return of estimated turnover within 24 hours of his arrival in any place and give relevant information about the nature of the goods and the period of stay in the State before the appropriate assessing authority and also has to submit his final return for the period of his business.
  - iii. Every liable dealer has to submit a return of annual turnover (in duplicate) within 30 days of the close of the year concerned to the appropriate assessing authority.

- iv. Every dealer whose annual turnover exceeds Rs.10 lakh and/or total tax payable in a year exceeds Rs.12,000 and every newly registered dealer, irrespective of quantum of yearly turnover has to submit returns every month on or before the 25th day of the following month.
- v. Every Government department liable to pay tax should also file a monthly return.
- vi. Every liable dealer should submit a return - in respect of exempted purchases or sales.
- vii. Every dealer with a turnover of less than Rs.10 lakh or if the tax payable is Rs.12,000 should submit an annual return by 30th of April. There is a provision for provisional assessment if the monthly return filed is found to be incomplete or prima facie incorrect.

*Mode of Assessment:* There are three types of assessments (1) provisional assessment (2) summary assessment (3) final assessment. Dealers with a turnover of less than Rs.10 lakh and tax payable being not more than Rs.12,000 are assessed provisionally in advance on the basis of estimated turnover or actual turnover, during the year in 12 equal monthly instalments.

If the monthly returns filed by the dealer with a turnover of more than Rs.10 lakh or the total tax payable in a year being more than Rs.12,000 is incomplete or prima facie found to be incorrect, tax payable by such dealer would be provisionally assessed after providing the dealer an opportunity of proving the completeness and correctness of the return submitted by him.

*Summary Assessment:* Dealers with an annual total turnover of less than, Rs.10 lakh if the return filed by them is prima facie correct are assessed without their appearance before the assessing authority subject to certain conditions.

*Final Assessment:* All dealers other than casual traders are assessed to quantify their liability to pay taxes at the end of the financial year. The limitation of time prescribed to conclude the assessment is 4 years from the year to which the assessment relates. However, in cases of failure of a dealer to submit returns in time or produce accounts after inspection, the same is 6 years.

The assessing authority is empowered to make best judgement assessment in cases of turnovers escaping assessment, under assessed or assessed at a rate lower than the rates applicable.

Casual traders are assessed finally on their completing the business transactions.

#### **4. Penalty and Prosecution**

- Penalties:*
- i. If any dealer who is liable to pay tax under the A.P.G.S.T. Act, fails to submit a return as required by the provisions of the Act, the assessing authority may, after giving the dealer a reasonable opportunity of being heard, levy a penalty not exceeding Rs.500 (Section 13-A).
  - ii. If the return wilfully submitted by a registered dealer is incorrect or is belated or accounts, registers etc are produced after inspection or the turnover has escaped assessment or has been under assessed or assessed at a lower rate, in addition to the tax assessed, a penalty ranging from three times to five times the tax due can be imposed. In case where it is not wilful, the penalty shall not exceed one half of the tax due (Section 14).
  - iii. There is also a provision for imposition of penalty for failure to keep and maintain true accounts as per notice or directions (Section 25) - (Section 30-A), at Rs.2,000 or double the amount of tax which would have been payable had there been no such lapse, whichever is less.

*Prosecution:* The following offences, described under Section 30, are punishable on conviction, with fine or fine and simple imprisonment both depending upon the gravity of the offence:



| <i>Offence</i>   | <i>Punishment</i>   |
|--|---|
| I. i. Failure to pay any assessed tax or penalty imposed in time.  | Punishable with fine ranging from Rs.500 upto Rs.2,000.   |
| ii. Failure to get registered even though liable.  | -do-  |
| iii. Wilful contravention of the provisions of the Act.  | -do-  |
| II. i. Prevention of or obstruction to inspection, entry, search or seizure (Section 28).  | Punishable with simple imprisonment for a period ranging from 3 months to one year and with fine between Rs.500 to Rs.2,000.  |
| ii. Or of inspection of any goods vehicle or boat carrying goods by Officer-Incharge of Check-post, barrier - (Section 29).  |   |
| III. i. Failure to file a return or filing of untrue return.   | 1st offence - fine ranging from Rs.500 to Rs.2,000. 2nd offence - Simple imprisonment upto one year with fine ranging from Rs.500 to Rs.2,000                       |
| ii. Fraudulent evasion of payment of tax etc. (upto Rs.1 lakh).  | 3rd/subsequent offence (or the offence under (ii)) - simple imprisonment for the period ranging from 3 months to one year with fine ranging from Rs.500 to Rs.2,000 |
| iii. Deliberate production of false/incorrect Accounts/Registers/documents or furnishing of false/incorrect information.   | punishable with simple imprisonment upto 1 year & with fine between Rs.500 to Rs.2,000.   |
| iv. Wilful failure to issue a bill or cash memo for sales.   |   |
| v. Preventing inspection/wilful failure to produce documents or to give information.   |   |
| vi. Any violation of the provisions of Section 5-B with regard to levy of concessional tax in respect of certain goods on the strength of declaration for certain purchases as raw material etc. |   |

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| vii.  | Failure by owners etc. of boats, goods - vehicles to carry the required records/documents. (Section 26, Section 27).  | -do- |
| viii. | Driver/other person incharge of boat, goods vehicle refusing to give information regarding self, owner, consignor, consignee or giving false information to officer-incharge of checkpost, barrier (Section 29(2)). | -do- |
| ix.   | Any person fraudulently evading or abetting evasion of any tax payable.   | -do- |

## **5. Administrative Organisation**

The Commissioner of Commercial Taxes is the Head of the Department. Apart from a Secretary and other sectional heads, the Commissioner is assisted by three Joint Commissioners, one in-charge of legal matters and revision orders passed by Appellate Deputy Commissioners, the other in-charge of the Intelligence and Enforcement Wing and the third incharge of revenue audit, Public Account Committee and internal audit. There are two Deputy Commissioners respectively in-charge of statistics and legal Wings and seven Assistant Commissioners and their complementary staff at the headquarters.

One Joint Commissioner Commercial Taxes is posted in the State Secretariat in the revenue department as Joint Secretary to Government.

The Sales Tax Appellate Tribunal consisting of a Chairman, a Judicial Officer of the rank of District and Sessions Judge, a Departmental Member of the rank of Joint Commissioner Commercial Taxes (kept independent of the administrative set up), an

Accounts Member, a Chartered Accountant or a member of the I.A. and A.S or of the Indian Revenue Service or Finance or Accounts Members of a public sector undertaking, works as the second appellate authority in the Department.

A Special Appellate Tribunal as a forum for revision on points of law has been proposed to be set up.

For administrative convenience the State is divided into 17 divisions each headed by a Deputy Commissioner with an Assistant Commissioner, (Audit). The Deputy Commissioner (Administration) is in overall charge of administration of his division and exercises powers of revision of orders passed by subordinate officers. Each division is sub-divided into circles of which Commercial Tax Officer is the head and handles assessments of the turnover above Rs.15 lakh and can take up cases of any dealer irrespective of quantum of turnover. He can suo moto revise the orders passed by the Deputy Commercial Tax Officers and Assistant Commercial Tax Officers. The Commercial Tax Officer also works as a Luxury Tax Officer and Entry Tax Officer.

The Deputy Commercial Tax Officer is the head of the Unit Office in a Circle and handles cases of dealers having turnover upto Rs.15 lakh. He is incharge of Profession Tax too. He is also vested with powers under the Revenue Recovery Act.

The Assistant Commercial Tax Officer assesses cases transferred to him by Deputy Commercial Tax Officer. By administrative arrangement, cases of turnover upto Rs.2 lakh are transferred to him. He is also the Entertainment Tax Officer.

## **6. Appeal/Revision (Remedial Measures)**

The Act provides for two stages of appeals. The first Appellate Authority to hear appeals against the orders passed by Assistant Commercial Tax Officers, Deputy Commercial Tax Officers and Commercial Tax Officers is the Appellate Deputy Commissioner of Commercial Taxes.

The second stage of appeal is the Appellate Tribunal (Section 21, Rule 38, Rule 39 and Rule 43) which not only hears appeals against orders passed under Section 19 by the first appellate authority but also against the orders of revision under Section 20 passed by the Deputy Commissioner and Joint Commissioner (Legal). As per the Second Amendment to the Principal Act, vide Act No. 26 of 1988, Revision to Special Appellate Tribunal (instead of the High Court) has been provided for in Section 22 (revised). The questions only on points of law can be raised against the orders of the second appellate authority. However, the Special Appellate Tribunal is yet to be constituted.

Section 20 of the Act and Rule 34, 35 and 36 detail the provision for 'suo moto' revision by the Commissioner or Joint Commissioner, or Deputy Commissioner or the C.T.O. Under this provision, the revising authority may suo moto call for and examine the record of any order passed by any authority subordinate to it and in cases where it finds that the order in question suffers from any illegality, impropriety or irregularity and prejudicial to the interest of revenue, revise the said order.

## **7. Checkposts**

With a view to prevent or check evasion of tax, the State Government has set up 40 checkposts. The driver or other person incharge of the goods vehicle is required to get the prescribed documents examined by the officer in charge of the checkpost and if the officer finds that the tax has not been paid or with a view to prevent evasion, may demand the tax to be paid or a security of five times the tax so payable. In case of non-payment of tax or non-payment of security, the officer in-charge has powers to detain the goods for 3 days and collect the tax payable, and in addition impose penalty upto five times the tax due - (Section 29). There are five integrated checkposts also set up in the State. These are jointly manned by the Sales Tax and other departments of the State Government.