

## GUJARAT

The State of Gujarat, which was reorganised on 1.5.1960 followed the pattern of the Bombay Sales Tax Act, 1959 till 5.5.1970. The levy of Sales Tax in the State under the Gujarat Sales Tax Act, 1969, on the recommendations of Maldevji Odedara Committee, came into force with effect from 6.5.1970 and has been amended by numerous amendments till now.

The State Sales Tax Department administers, apart from the Gujarat Sales Tax Act, 1969, the Gujarat Sales of Motor Spirit Taxation Act (on the lines of the Bombay Sales of Motor Spirit Taxation Act, 1958), the Central Sales Tax Act, 1956 and the Profession Tax Act 1976.

### 1. Structure

Tax is payable by lottery ticket sellers/importers/manufacturers/resellers/general dealers in the following turnover limits:

- i. Rs.10,000 (turnover covering sales of goods plus lottery tickets) in case of a dealer who is an importer of lottery tickets whose purchases of lottery tickets exceed Rs.1,000 in a year.
- ii. Rs.1,25,000 in the case of sales of lottery tickets exclusively during the year, whose imports exceeds Rs.5,000 in a year.
- iii. Rs.75,000 in the case of importers whose purchase or intake of taxable goods exceeds Rs.5,000 during the year.
- iv. Rs.75,000 in the case of manufacturers whose purchases of taxable goods from unregistered dealers goods each exceed Rs.5,000 during the year and also the value of taxable goods sold or purchased during the year exceeds Rs.5,000.
- v. Rs.75,000 in the case of such resellers whose purchases and sales of taxable goods each exceed Rs.5,000 during the year.

- vi. Rs.2 lakh in the case of such resellers of general class, whose purchases or sales of taxable goods each exceed Rs.5,000 during the year and also the value of taxable goods purchased from unregistered dealers do not exceed Rs.5,000.
- vii. The turnover limit in case of Works Contract has not been specified.
- viii. The turnover limit in case of transfer of the right to use goods, categorised as 'specified sales' is Rs.50,000 during the year and in certain special cases, Rs.5,000 in respect of goods specified in Schedule IV (Section 3(4) of the Act).

*Point of Levy:* The system of taxation is predominantly single point levy combined with double point taxation.

- i. The single point levy at the stage of first sale is called 'Sales Tax'.
- ii. The single point levy at the last point of sale is called 'General Sales Tax'.
- iii. The double point levy includes both Sales Tax and General Sales Tax.

*Rate Structure:* Schedules II and III indicate the goods subject to different tax rates.

Goods specified in Schedule II-part A are subject to 'Sales Tax' i.e. they are taxed at the first point of sale and broadly classified under five categories viz. (a) Industrial raw materials, fuels, lubricants, petroleum products, petrochemicals, fertilizers, chemicals etc. (b) Consumer durables and luxury goods. (c) excisable goods such as ganja, bhang, etc. (d) Goods declared to be of special importance under the Central Sales Tax Act, 1956. The rates vary from 2 per cent to 16 per cent (except in the case of foreign liquor in which case sales tax at the rate of 45 per cent is levied). (e) Certain other goods, the transactions of which pass through identifiable and controlled channels of trade.

Part B of Schedule II lists about 15 goods liable to general sales tax at the last point levy. The rates vary from 4 per cent to 8 per cent.

Schedule III specifies commodities which are subject to both sales tax and general sales tax i.e. Double point taxation which includes bullion and specie, articles of gold and silver, cosmetics etc. (which do not necessarily pass through controlled trade channels) and unscheduled goods. The rates vary from « per cent to 16 per cent, Bullion attracts general sales tax at the rate of < per cent. Most of the entries, however, are subject to sales tax at the rate of 4 per cent.

Schedule IV contains a list of commodities taxable on the lease rentals with the rate varying from 2 to 5 per cent.

Goods not specified in any of the schedules are subject to sales tax at 8 per cent and General Sales Tax at 4 per cent.

*Surcharge; Additional Tax; Turnover Tax:* Additional tax at the rate of 20 per cent of the amount of sales tax, general sales tax and purchase tax is leviable on every dealer. However, there is no additional tax on declared goods.

Every dealer except a works contractor is liable to pay turnover tax at the following rates on his taxable turnover:

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| i. Where taxable turnover does not exceed Rs.50 lakh.                           | Nil  |
| ii. Where taxable turnover exceeds Rs.50 lakh but does not exceed Rs.2 crore.   | 1 per cent of the taxable turnover in excess of Rs.50 lakh.                      |
| iii. Where taxable turnover exceeds Rs.4 crore but. does not exceed Rs.4 crore. | Rs.1.50 lakh plus 1.25 per cent on the taxable turnover in excess of Rs.2 crore. |
| iv. Where taxable turnover exceeds Rs.4 crore.                                  | Rs.4 lakh plus 1.5 per cent on the taxable turnover in excess of Rs.4 crore.     |

Total turnover is taken into consideration for the purpose of fixing the liability. However, turnover tax is levied only on the taxable turnover. No TOT is leviable on declared goods. Interstate sales/purchases and sales against declarations.

*Purchase Tax:* Purchase Tax is leviable on the following conditions:

- i. If the liable dealer purchases goods listed in Schedules II and III from unregistered dealers and the goods so purchased are not resold in the State but used in the manufacture or consigned outside the State, purchase tax at the rates specified in the schedules is leviable.
- ii. Purchase Tax under Section 15A is payable by a registered dealer purchasing goods other than prohibited goods as mentioned in the Act and by a Commission agent purchasing goods other than prohibited goods at the rate of 2 per cent.
- iii. Purchase Tax under Section 15 B is levied on a dealer purchasing directly or through a commission agent any goods other than declared goods purchased and used as raw or processing material or consumable store in the manufacture of taxable goods and the rate is 4 per cent. Further tax paid on purchases would be set off if the manufactured taxable goods are sold within the State or inter-State or exported.
- iv. Purchase tax under Section 16 is a compensatory levy in case of violation of provisions of Section 12 or of provisions of Section 13 that is after having purchased the goods against certificate without payment of tax and the goods are used for other purposes or are not resold or despatched in the manner and within the period undertaken, the purchasing dealer is liable to purchase tax under Section 16.
- v. Purchase tax is also levied on the purchases of sugarcane by sugar manufacturers and on purchases of oil cakes, groundnuts which are not for sale to registered dealers.

*Works Contract:* In respect of works contract with effect from 5.8.1985, the Gujarat Sales Tax Act, enlarged the meaning of 'Sales' under Section 2(28) (c) in accordance with the 46th Constitutional amendment. The turnover limit for taxation has not been specified.

The rate of tax and the taxable event have not been specified separately. The prevalent rates of sales tax and general sales tax were being applied on the deemed sales and w.e.f. 6.8.1988, contractors were given the option to pay composition tax at the rate of 2 per cent on the total contract value.

*Leasing:* Tax is payable on the turnover of hiring charges received for transfer of right to use goods specified in Schedule IV i.e. on shamiana, furniture etc.

*Exemptions:* Under Section 5 of the Act, Schedule I gives the list of commodities which are exempt from tax and they include goods of mass consumption such as bread, cereals and pulses, eggs, fresh vegetables, edible tubers, milk etc. are exempt. Agricultural implements, poultry, educational instruments, educational films etc. Conditional exemptions also are granted like in the case of handloom fabrics of all varieties, patola sarees, silk khadi and ready-made khadi garments if sold by producers or institutions duly certified by the Commissioner of Sales Tax etc.

*Taxation of Inputs:* Industrial inputs are divided into two categories for this purpose, that is, prohibited goods and non-prohibited goods. A manufacturer purchasing goods other than those specifically prohibited for this purpose, declared goods and tax free goods for the manufacture of taxable goods for sale is allowed a set off of tax on such purchases; this is also allowed to a manufacturer purchasing goods from unregistered dealers for use in the manufacture. Set off is allowed subject to certain conditions.

*Incentives to Industries:* In Gujarat, there are two types of incentives available for new industries in backward areas falling under the location categorised as I to IV. The tax holiday and deferment of tax for five to nine years from the date of commencement of production on the basis of location of industries in category I to IV, is available. The incentives are determined as percentage of fixed capital investment with certain monetary limits.

## **2. Registration**

Under Section 29 of the Act, dealers liable to pay tax have to get themselves registered. There is a provision for voluntary registration under certain conditions despite their total turnover being below taxable quantum as required under Section 3, the charging section, provided the dealer has a fixed or regular place of business and their purchases or sales exceed or are likely to exceed the limit of Rs.5,000 in the year. On an application of a registered dealer, a licence is issued under circumstances of export or despatch exceeding Rs.30,000 in the year.

Registered dealers-manufacturers whose sales turnover of manufactured taxable goods exceed Rs.5,000 in a year get recognition for certain exemptions in respect of purchase of non-prohibited goods as raw materials etc.

A registered dealer - a commission agent - whose purchases on behalf of his principal exceed Rs.30,000 limit in a year is entitled to get a 'Permit' for enjoying certain exemptions/concessions.

## **3. Assessment**

*Returns and Payment of Tax:* All registered dealers, except oil millers and dealers to whom documents are granted for the first time, are required to file quarterly returns along with challans as proof of payment of tax. All returns have to be filed generally within one and a half months from the end of the quarter.

Dealers generally falling in the following categories have to file returns and pay taxes as detailed here under:

- i. Dealers whose annual tax in the previous year exceeded Rs.25,000 are required to pay the tax every month, within 1 month 7 days of the end of the month concerned, along with a declaration, within 1 month 15 days of the end of the month concerned, file the quarterly return along with a computer annexure and file annual return.

- ii. Dealers whose turnover of sales or purchases in the previous year exceeded Rs.5 lakh and the annual tax ranged between Rs.10,000 to Rs.25,000 have to file quarterly return, pay tax once in a quarter and file annual return within 90 days of the end of the year.
- iii. Dealers whose turnover of sales or purchases in the previous year did not exceed Rs.5 lakh and annual tax ranged between Rs.10,000 to Rs.25,000 have to file quarterly return, annual return within 60 days of the end of the year and pay tax once in a quarter.
- iv. Dealers whose turnover of sales or purchases in the previous year did not exceed Rs.5 lakh and annual tax did not exceed Rs.10,000 have to file return annually within 60 days of the end of the year, pay tax once in a quarter. Registered dealers who have been granted licence for the first time under the Act have to file monthly return within 1 month and 15 days of the end of the month and for 12 months in continuation from the date of grant of licence. Oil millers have to file annual return within 90 days of the end of the year in cases where their turnover of sales or purchases exceeded Rs.5 lakh in the previous year.

Similar provisions for other liable dealers under Section 3A or other sections have been provided in Section 40.

*Mode of Assessment:* Assessment of dealers is concluded annually. A dealer can request for the assessment for a period more than a year. However, if a dealer fails to furnish any return, assessment may be made in respect of part or parts of the year.

If the assessing officer is satisfied that the declarations/returns filed are correct and complete, the assessments are completed on the basis of the turnover disclosed in the return. The facility is specially available by way of simple assessment to dealers whose turnover does not exceed Rs.5 lakh. However, 20 per cent of them are subjected to random scrutiny.

If the assessing officer is not satisfied, with the return filed, the assessment under section 41 is completed only after the assessee has been heard. Failure to comply with the requirements or failure to file returns would result in assessment to the best of

judgement. Limitation of time is extended either by the Commissioner or the Government in cases where the dealers have defaulted in maintaining proper books of account.

In accordance with Section 42 of the Act, the time limit for completion of assessment is two years from the close of the year in which the last return is filed. However in the case of non-filing of return there is no time limit for assessment.

In the event of any turnover escaping assessment, reassessment proceedings may be initiated within 8 years (and in any other case within 5 years) from the close of the period concerned, and completed within three years from the date of service of notice in respect thereof.

Recently a provision is made for deemed assessments in respect of dealers whose tax liability does not exceed Rs.5,000 and the turnover does not exceed Rs.5 lakh per annum if he has filed the return in time and has paid the taxes due.

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

*Penalties:* Penalty amounting to one and one half times the amount of tax in case of contravention of terms of certificate relating to reduced tax rate and terms of notice under section 41 (relating to assessment) is leviable.

A penalty of Rs.2,000 is leviable in case of non-presentation of licence etc. for cancellation, of Rs.2,000 is also imposed for non-filing of declaration or return required to be filed under section 40, when the assessed tax exceeds the tax paid by 20 per cent, penalty by way of simple interest at the rate of 24 per cent per annum on the difference between the tax paid actually and the assessed or reassessed tax is imposed and failure without sufficient cause to furnish information regarding change of business calls for



penalty amounting to Rs.2,000. For failure to issue cash memorandum of sales or purchases, penalty to the extent of 10 per cent of the bill or cash memoranda value is imposable (Section 45(8)).

If any person collects tax in contravention of the provision relating to exemption from all tax, he is liable to pay penalty of an amount not less than or more than double the amount of tax wrongly collected where it is reasonably believed that the contravention was wilful. If there is no evidence of wilful contravention, a penalty equal to the amount wrongly collected is imposable. Failure to maintain accounts in accordance to the relevant section of the Act also attracts penalty of an amount not exceeding Rs.2,000 or double the amount of tax which would have been payable had there been no such contravention, which ever is less.

*Prosecution:* Offences as enumerated below are punishable with simple imprisonment or with fine or both under the Act: (i) carrying on business without being registered (ii) knowingly furnishing false declaration or false return (iii) not being registered or voluntarily registered or (iv) not being a Licence holder. Recognised dealer or Permit holder, taking advantage of the provisions (v) taking advantage of reduced tax deduction etc. on deliberate submission of false certificate (vi) taking advantage of exemptions on deliberate submission of false certificate (vii) failure to keep accounts in accordance with rules despite direction (viii) Non-compliance of provisions regarding production and inspection of accounts and documents and search of premises, inspection of goods in transit special powers for reconstitution of records in certain circumstances. (ix) deliberate furnishing of false accounts, registers/documents or incorrect information, (x) obstructing any officer in inspection or search or seizure.

The punishment is simple imprisonment which may extend to 6 months or fine not exceeding Rs.2,000 or both. When the offence is a continuing one, a daily fine of not exceeding Rs.100 during the period of offence is imposable. Managers of the defaulting dealers are also liable to the punishment for offences (ii), (iv), (v), (vi), (vii), (viii) or (ix) mentioned above.

## **5. Administrative Organisation**

The Department is headed by the Commissioner of Sales Tax, an I.A.S Officer in the super time scale at the state headquarters at Ahmedabad. He is assisted by one special Commissioner (enforcement) looking after anti-evasion activities, two Additional Commissioners one incharge of administration and policy and the other incharge of vigilance (relating to allegations of corrupt malpractices against officers), four Deputy Commissioners in charge of Audit, Enforcement, Legal and Profession Tax Officers in the Headquarters with four flying squad units under the charge of Deputy Commissioners. At the state level, statistical data compiled from the returns of dealers are processed in the computer unit under the charge of an Assistant Commissioner. The state has been divided into four divisions viz. Ahmedabad Division I (comprising of Ahmedabad City), Ahmedabad Division II, Vadodra Division, Rajkot Division under the administrative control of Deputy Commissioners of Sales Tax, and each Division is further divided into 2 to 3 ranges which are administered by Assistant Commissioners of Sales Tax Administrators who supervise the work of a number of Sales Tax Officers of their jurisdiction and who are incharge of registration, assessments, recovery of tax etc.

The Deputy Commissioners in the Divisional units have Assistant Commissioners one each incharge of administration, appeals, audit and enforcement. The Appellate Assistant Commissioner at the range level entertains appeals filed by dealers against the orders of the Sales Tax Officers.

There is a departmental training institute which imparts training to new entrants as also conducts refresher courses for its officials.

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

The first appellate authority in Gujarat State is the Assistant Commissioner (Appeals), who hears appeals filed by dealers against the orders of Sales Tax Officers. Deputy Commissioner (Appeals) is the Appellate Authority for the order passed by Assistant Commissioners and on the orders passed by the Deputy Commissioner, the first appeal lies to the Tribunal.

In the case of an order passed in an appeal by an Assistant Commissioner, a second appeal lies at the option of the appellant, either to the Commissioner or to the Tribunal.

The Commissioner has powers of suo moto revision.

The Tribunal also hears cases of revision against the orders of the Commissioner other than those orders passed by him in second appeal or in revision.

There is also a provision for rectification of mistakes of facts.

Reference or statement of a case lies to the High Court only on questions of law.

## **7. Checkposts**

With the objective of prevention of tax evasion, 33 checkposts and barriers have been set up out of which four are permanent for keeping close watch on incoming and outgoing goods.

The driver/person incharge of any vehicle/boat/animal should stop the same at every check post or barrier, set up or erected to enable the officer-in-charge to examine the contents carried, and to scrutinise the documents.

The documents, record of substance of inquiry (in case of tax evasion) are to be sent to the Sales Tax Officer concerned by the check-post incharge to enable the Sales Tax Officer to finally assess the tax which was being evaded.

## **8. Study Team**

The Study team set-up under the Chairmanship of Dr. V.V. Ram Subbarao, the present Commissioner of Sales Tax, has unanimously made the following recommendations:

- i. Single tier assessment system should be introduced.
- ii. Single point of levy of Sales Tax at the first stage except in few commodities like oilseeds and oil cakes on which it should be at last stage.
- iii. Deemed assessment of small dealers.
- iv. One time mass disposal of assessment cases of small dealers pending upto 1989-90 paying Rs.5,000 or less tax per year.
- v. Reduction of Schedule and tax rates.
- vi. Simplification of Sales Tax structure.
- vii. Opening of Sales Tax Office at Taluka Headquarters.
- viii. Computerisation of Checkposts.
- ix. Opening of Grievance Cell in Commissioners' Office for attending the grievances of Public against Department.
- x. Reduction of rate of interest under Section 47(4)(A) under certain circumstances etc.