

The Delhi Value Added Tax (Amendment) Bill, 2013

(As introduced in the Legislative Assembly of the
National Capital Territory of Delhi on 27th August, 2013)

THE DELHI VALUE ADDED TAX (AMENDMENT) BILL, 2013

A

BILL

to further amend the Delhi Value Added Tax Act, 2004.

BE it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Sixty-fourth year of the Republic of India as follows:-

1. **Short title, extent and commencement.**- (1) This Act may be called the Delhi Value Added Tax (Amendment) Act, 2013.
(2) It extends to the whole of the National Capital Territory of Delhi.
(3) It shall come into force on such date as the Government may by notification in the official Gazette, appoint.

2. **Amendment of section 2.**- In the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005), hereinafter referred to as 'the principal Act', in section 2, in sub-section (1) -

(i) for clause (e), the following shall be substituted, namely: -

(e) "business premises" includes -

- (i) the address of a dealer, registered with the Commissioner;
- (ii) any building or place used by a person for the conduct of his business, except for those parts of the building or place used principally as a residence;
- (iii) any place from where a dealer carries on business through an agent (by whatever name called), the place of business of such agent; and a warehouse, godown or such other place where a dealer stores his goods."

(ii) in clause(m), in sub-clause(ii), after the word 'movable' the words "or immovable" shall be inserted.

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

(2) "Where the net tax of a dealer calculated under sub-section (1) of this section amounts to a negative value, the dealer shall -

- (a) adjust the said amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 (74 of 1956), if any; and

(b) be entitled to carry forward the amount remaining after application under sub-section (2)(a) to next calendar month or tax period, as the case may be, of the same year, or

claim a refund of the amount remaining after application under sub-section (2)(a) at the end of a tax period of the same year and the Commissioner shall deal with the refund claim in the manner described in section 38 and section 39 of this Act.

Explanations-1. Refund can be claimed at the end of a tax period only.

2. Excess tax credit should not be carried forward to the next year.

3. Refund of excess tax credit carried forward from previous years should be claimed in any of the remaining tax periods of year 2013-2014 but not later than the last tax period ending on 31.03.2014.

4. Excess tax credit remaining at the end of a tax period can either be claimed as refund or carried forward to next tax period of the same year.

5. Excess payment made inadvertently shall also be treated as credit in a month or tax period as the case may be.”.

4. Amendment of section 25.- In the principal Act, in section 25, in sub-section (1),” after the words “under section 38 of this Act” and before the words “require a person”, the following shall be inserted, namely:-

“or as a condition of de-sealing or release under sub-section (4) of section 60,” .

5. Amendment of section 35.- In the principal Act, in section 35, for sub-section (2), the following shall be substituted, namely:-

(2) “Where a person has made an objection to an assessment or part of an assessment and has complied with the condition, if any, to entertain such objection in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of balance amount in dispute under that assessment until the objection is resolved by the Commissioner.”.

6. Amendment of section 48.- In the principal Act, in section 48, for sub-section (1), the following shall be substituted, namely:-

(1) “Every –

(a) Dealer;

(b) person on whom a notice has been served to furnish returns under section

27 of this Act;

shall prepare, maintain and retain sufficient records at the principal place of business as recorded in his certificate of registration to allow the Commissioner to readily ascertain the amount of tax due under this Act, and to explain all transactions, events and other acts engaged in by the person that are relevant for any purpose of this Act,;

PROVIDED that the dealer maintaining computerised books of accounts using a software should be able to readily provide soft and/or hard copy of the records at the principal place of business as recorded in his certificate of registration, as and when required by the Commissioner.

Explanation: The dealer may maintain and retain soft copy of the records as means of compliance with the requirement of this sub-section.”.

7. Amendment of section 58A.- In the principal Act, in section 58A, for sub-section (1), the following shall be substituted, namely:-

- (1) “If the Commissioner, having regard to. -
- (a) the nature and complexity of the business of a dealer; or
 - (b) the interest of the revenue; or
 - (c) volume of accounts; or
 - (d) doubts about the correctness of the accounts; or
 - (e) multiplicity of transactions in the accounts; or
 - (f) specialised nature of business activity; or
 - (g) non-production of all records and accounts; or
 - (h) non-filing of audit report under section 49 of this Act; or
 - (i) any other reason.

is of the opinion that it is necessary so to do, he may direct the dealer by a notice in writing to get his records including books of accounts, examined and audited by an accountant or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.”.

8. Amendment of section 60.- In the principal Act, in section 60, in sub-section (4), for the word “directed” the word “prescribed” shall be substituted.

9. Amendment of section 70.- In the principal Act, in section 70 of sub-section (5) shall be deleted.

10. Amendment of section 86.- In the principal Act, in section 86,-

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

(1) "In this section "tax deficiency" means the difference between the tax properly payable by the person in accordance with the provisions of this Act and the amount of tax paid by the person in respect of a calendar month.

Explanations-1 - "Tax properly payable" includes the amount of tax assessed under section 32 of the 'Act'.

2. Due tax paid after the period specified in sub-section (4) of section 3 of the Act, is also a tax deficiency."

(ii) the second proviso of sub-section (2) shall be deleted.

(iii) in sub-section (5), for the word 'one' the word 'five' and for the word 'five' the word 'ten' shall be substituted.

(iv) in sub-section (6) for the word 'hundred' the word 'thousand' and for the word 'five' the words "twenty five" shall be substituted.

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

(9) "If a person required to furnish a return under Chapter V or to comply with a requirement in a notification issued under section 70 of this Act -

(a) fails to furnish any return by the due date; or

(b) fails to furnish with a return any other document that is required to be furnished with the return; or

(c) being required to revise a return already furnished, fails to furnish the revised return by the due date; or

(d) fails to comply with a requirement in a notification issued under section 70;

the person shall be liable to pay, by way of penalty, a sum of five hundred rupees per day from the day immediately following the due date until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed fifty thousand rupees."

(vi) in sub-section (13), for sub-clause (c), the following shall be substituted, namely:-

(c) "retain prescribed or notified records or accounts;
and the person -

(i) fails to prepare the prescribed or notified records and accounts; or

(ii) fails to prepare prescribed or notified records and accounts in the prescribed manner; or

(iii) fails to retain the prescribed or notified records and accounts for the prescribed period; or

(iv) fails to retain and/or produce the prescribed or notified records at the principal place of business as recorded in his certificate of registration; or

(v) fails to comply with a direction issued or fails to produce prescribed or notified records and accounts, or cause them to be produced, on or before the date specified in any notice served on him by the Commissioner or by an accountant or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf under sub-section (1) of section 58A;

the person shall be liable to pay, by way of penalty, a sum of fifty thousand rupees or twenty per cent of the tax deficiency, if any, whichever is greater.”.

(vii) in sub-section (19), for the word ‘forty’, the word ‘twenty’ shall be substituted.

(viii) In sub-section (22), for the word ‘ten’, the words ‘twenty five’ shall be substituted.

(ix) after sub-section (23), the following shall be inserted, namely:-

“(24) Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided under the Act, shall be liable to pay a penalty of ten thousand rupees.”.

11. Amendment of section 89.- In the principal Act, in section 89,-

- (i) in sub-section (4), in clause (h), for the word and figure “section 59”, the word and figures “sections 58, 58A or 59” shall be substituted,
- (ii) for sub-section (7), the following shall be substituted, namely:-

“Notwithstanding anything contained in sub-sections (1) to (5) of this section, no person shall be proceeded under these sub-sections, if

(a) the total amount involved is less than two hundred rupees during the period of a year; or

(b) the person has voluntarily disclosed existence of tax deficiency under sub-section (6) of section 87 of the Act.”.

12. Amendment of section 102. – In the principal Act, in section 102, in sub-section (2), clause (zd), shall be deleted.

13. Insertion of new section 107.- In the principal Act, after section 106, the following shall be inserted, namely: -

“107. Amnesty Scheme(s).- Notwithstanding anything to the contrary contained in this Act and Rules thereto, the Government may by notification in the official Gazette, notify amnesty scheme(s) covering payment of tax, interest, penalty or any other dues under the ‘Act’, which relate to any period ending before 1st day of April, 2013, and subject to such conditions and restrictions as may be specified therein, covering period of limitation, rates of tax, tax, interest, penalty or any other dues payable by a class of dealers or classes of dealers or all dealers.”.

STATEMENT OF OBJECTS AND REASONS

Amendment in section 2 is proposed to amend the definition of 'place of business' and 'goods' to remove the ambiguity. Amendment in section 11 is proposed so that refund is mandatorily claimed at the end of each year instead of carrying forward the credit balance to next year without any time limit. The section 74(1) was amended w.e.f. 30.09.2011 thereby making provision for stay amount as a pre-condition for hearing the objection and thus a corresponding change in section 35(2) is proposed. Amendment in section 48 is proposed to ensure that the dealer maintains books of account at principal place of business as recorded in his certificate of registration. Amendment in section 58A(1), 86(13) and 89(4) is proposed to add more parameters for conducting special audit in line with the amendment in Income Tax Act and also for compliance by dealer for production of records at the time of special audit and during the course of survey. Amendment in section 60(4) and section 25(1) is proposed for strengthening of provisions relating to security. Amendment in section 70(5) and section 102(2)(zd) is proposed to replace the word 'fine' with the word 'penalty' under section 86(9) and also for increasing the penalty for not filing quarterly returns as the number of returns has been reduced from 12 monthly returns to 4 quarterly returns.

Certain changes in section 86, particularly, in sub-sections (5), (6) and (22) have been proposed to increase the penalty. At the same time, it is proposed that the penalty of sub-section (19) which was earlier equal to the amount of tax payable on seized goods from transporter was increased to 40 paise in a rupee w.e.f. 18.06.2012, is proposed to be decreased to 20 paise in a rupee in view of the hue and cry of the dealers and transporters in the recent past. The department has come across ambiguity in sub-section (1) with regard to 'tax deficiency' which is being clarified by giving an explanation in the said sub-section. Further, the second proviso of sub-section (2) is against the spirit of the Act because all calculations of penalties under section 86 are based on mathematical calculations and to put an end to the misuse of the said proviso and also to avoid unnecessary litigation. It is proposed to delete the second proviso.

A new sub-section (24) is added to section 86 to make provision for penalty for violation of such provisions of the act and rule, for which no penalty exists at present. Amendment in section 89(7) is proposed to give relief from prosecution to such dealers who declare and pay their tax deficiency during the course of survey under section 60 of the Act. A new section 107 is proposed to empower the government to bring amnesty scheme in near future so that more and more dealers become tax compliant.

The proposed Bill seeks to achieve these objectives.

(SHEILA DIKSHIT)
CHIEF MINISTER / FINANCE MINISTER
NEW DELHI
DATED:

FINANCIAL MEMORANDUM

The Delhi Value Added Tax (Amendment) Bill, 2013 does not involve any additional financial implications since no outgo on new posts is anticipated from the Consolidation Fund of the National Capital Territory of Delhi.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Delhi Value Added Tax (Amendment) Bill, 2013 does not make provision for the delegation of power in favour of any functionaries to make subordinate legislation.