



The Maharashtra Sales Tax on the Transfer of Property in Goods Involve in
the Execution of the Works Contracts (Re-Enacted) Act, 1989

Act 36 of 1989

Keyword(s):

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MAHARASHTRA ACT No. XXXVI OF 1989¹[THE MAHARASHTRA SALES TAX ON THE TRANSFER OF PROPERTY
IN GOODS INVOLVED IN THE EXECUTION OF WORKS CONTRACTS
(RE-ENACTED) ACT, 1989]

[This Act received the assent of the Governor on the 30th October 1989; assent[†] first published in the *Maharashtra Government Gazette*, Part IV, Extraordinary, on the 1st November 1989.]

Amended by Mah. 24 of 1990 (28-8-1990)^{†*} Amended by Mah. 12 of 1995 (8-6-1995)[†] ↑
 " " " 28 of 1991 (1-1-1992)[†] " " " 16 of 1995 (1-10-1995)[†] @@
 " " " 17 of 1993 (1-1-1992)

¹For Statement of Objects and Reasons, See *Maharashtra Government Gazette*, 1989, Part V, Extraordinary, p.

[†]This indicates the date of Commencement of the Act.

*Section 26 of Mah. 24 of 1990 reads as under :—

"26. (1) Notwithstanding anything contained in any law or any Judgment, decree or order of any Validation Court, Tribunal or any other authority, any assessment, re-assessment, levy or collection of tax or and savings.

Bom. all penalties and any interest payable, imposed, paid or realised, or purporting to have been levied, collected, imposed, paid or realised under the Bombay Sales Tax Act, 1959, the Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contracts (Re-enacted) Act, 1989, the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and the Maharashtra Tax on Luxuries (in Hotels and Lodging Houses) Act, 1987 (hereinafter, in this section, collectively referred to as "the said Acts"), which would have been validly levied, collected, imposed, payable, paid or realised if the amendments made to the said Acts by this Act were in force, during the period for which such tax is or such penalty or interest is levied, collected, imposed, payable, paid or realised under the said Acts shall, for all purposes, be deemed to be, and shall be deemed to, have always been levied, collected, imposed, payable, paid or realised in accordance with law; and accordingly,—

(a) all acts, proceedings or things done or taken by any authority or Tribunal in connection with the assessment, re-assessment, levy or collection of tax, or the imposition, collection or realisation of any penalty or interest shall, for all purposes be deemed to be, and to have always been done or taken in accordance with law ;

(b) no suit, appeal, application or other proceedings shall lie or be maintained or continued in any Court or before any Tribunal, or other authority, for the refund of any such tax, penalty or interest ;

(c) no Court, Tribunal or other authority shall enforce any decree or order directing the refund of any such tax, penalty or interest ;

(d) where any amount, which had been received or realised by way of such tax, penalty or interest, has been refunded before the commencement of this Act and such refund would not have been allowed if the provisions of the said Acts as amended by this Act had been in force on the date on which the order for such refund was passed, the amount so refunded may be recovered as an arrear of tax under the said Acts ;

(e) any proceeding, act or thing, which could have been validly taken, continued or done for levy, imposition or collection of such tax, penalty or interest at any time before the commencement of this Act if the provisions of the said Acts as amended by this Act had then been in force but which had not been taken, continued, done or imposed, may after such commencement be taken, continued, done or imposed, under the said Acts.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing a person,—

(a) from questioning in accordance with the provisions of the said Act, as amended by this Act, any assessment, re-assessment, levy, collection, imposition or realisation of tax, penalty or interest referred to in sub-section (1), or

(d) from claiming, subject to the provisions of sub-section (6A) of section 38 or sub-section (3) of section 43 of the Bombay Sales Tax Act, 1959, so far as may be applicable, refund of any tax, penalty or interest paid by him under the said Acts, in excess of the amount due from him by way of tax, penalty or interest under the said Acts, as amended by this Act.

(3) The applications made to the Tribunal under section 57 of the Bombay Sales Tax Act, 1959 and pending on the day immediately preceding the day on which this Act comes into force shall be disposed of by the Tribunal as if his Act had not been passed.

(4) Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done by him, before the commencement of this Act, if such act or omission was not an offence under the said Acts, but for the amendments made to the said Acts by this Act, nor shall any person in respect of such act or omission be subjected to a penalty for an offence greater than that which could have been inflicted on him under the law in force immediately before the commencement of this Act."

↑ Mah. Ord. VIII of 1995 was repealed by Mah. 12 of 1995.

@@ This Act came into force on 1st October 1995 vide G.N., F.D., No. STA-1195/C.R. 57/ Taxation-1, dated 15th September 1995.

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10890 *Maharashtra Sales Tax on the Transfer of Property in Goods Involved in the Execution of Works Contracts (Re-enacted) Act, 1989* [1989 : Mah. XXXVI]

An Act to levy and collect the tax on the Transfer of Property in goods (whether as goods or in some other form) involved in the execution of works contracts in the State of Maharashtra.

WHEREAS the Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contracts Act, 1985, provided for the levy and collection of tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of Works Contracts in the State of Maharashtra; Mah. XIX of 1985

AND WHEREAS the Supreme Court of India, in Writ Petition No. 1060 of 1987 Builders Association of India and others *versus* Union of India and Others (with many other writ petitions) decided on the 31st March 1989, held *inter alia* that the sales tax laws passed by the Legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clauses of Article 286 of the Constitution;

AND WHEREAS the Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contracts Act, 1985, in force in the State of Maharashtra needs to be brought in conformity with the decision of the Supreme Court; Mah. XIX of 1985.

AND WHEREAS it is, therefore, expedient to maintain continuity and for that purpose to enact a new Act, in place of the Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contracts Act, 1985, with retrospective effect from the 1st October 1986, being the date on which the Maharashtra Act No. XIX of 1985 was brought into force and to levy and collect a tax on the transfer of property in goods involved in the execution of Works Contracts with effect from the 1st October 1986, and to make certain incidental and consequential provisions; It is hereby enacted in the Fortieth Year of the Republic of India as follows :— Mah. XIX of 1985.

CHAPTER I

PRELIMINARY

Short title, extent and commencement. 1. (1) This Act may be called the Maharashtra Sales Tax on the Transfer of property in goods involved in the execution of Works Contracts (Re-enacted) Act, 1989.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 1st October 1986.

Definitions. 2. In this Act, unless the context otherwise requires,—

(1) (a) “appointed day” means the 1st of day October 1986;

(b) “Bombay Sales Tax Act” means the Bombay Sales Tax Act, 1959;

(c) “Commissioner” means the person appointed to be the Commissioner of Sales Tax under the Bombay Sales Tax Act; Bom. LI of 1959.

(d) “dealer” means any person who, whether for valuable consideration commission, remuneration or otherwise, transfers property in goods involved in the execution of works contracts and includes any State Government and the Central Government which so transfers such property in goods, and any society, club, or association of persons which so transfers the property in goods to its members;

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(e) "declared goods" means declared goods as defined in the Central Sales Tax Act, 1956:

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(g) "person" includes any company or body of individuals whether incorporated or not, a Hindu undivided family, a firm, a local authority and also a corporation, company, body or authority owned or set-up by, or subject to administrative control of the Central Government or any State Government;

(h) "prescribed" means prescribed by rules;

(i) "purchase price" means the amount of valuable consideration paid or payable by a person for purchase of any goods in relation to execution of works contract, effected in the State or in the course of inter-State trade or commerce or in the course of import including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof and will also include the cost of freight, transit or insurance and any taxes, duties, cesses and fees paid or payable in respect of such goods, whether charged separately or not;

(j) "registered dealer" means a dealer registered under section 8;

(k) "rules" means rules made under this Act;

(l) "sale" means a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract in the State; and the word "sell" with all its grammatical variation and cognate expressions shall be construed accordingly.

Explanation.—For the purposes of this clause, the transfer of property in the goods involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods so transferred are within the State at the time of their use, application or, as the case may be, appropriation in the execution of the works contract, irrespective of the place where the agreement for works contract is made and whether the consent of the other party is prior or subsequent to such use, application or appropriation;

²[(m) "sale price" means,—

(i) the amount of purchase price of the goods or, as the case may be, the value of the goods, brought or transferred from a place outside the State where such goods are sold in the same form in which they were purchased, brought or transferred; and

(ii) where the goods have been sold in the form other than the form in which they were purchased or, as the case may be, brought or transferred from a place outside the State, then the purchase price of the goods or, as the case may be, the value of the goods brought or transferred from a place outside the State, and so sold;]

³[(m-1) "Schedule" means the Schedule to this Act;]

(n) "State" means the State of Maharashtra;

⁴[(n-1) "tax" means the tax payable under this Act and includes a lump sum amount by way of composition payable in lieu of the amount of tax;]

¹ Clause (f) was deleted by Mah. 12 of 1995, s. 13(a).

² Clause (m) was substituted by Mah. 12 of 1995, s. 13(b).

³ Clause (m-1) was inserted by Mah. 28 of 1991, s. 2.

⁴ Clause (n-1) was inserted by Mah. 17 of 1993, s. 9.

(o) "turnover of purchases" means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of purchase of any goods in relation to the execution of works contract, made by him during any period, after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period ;

(p) "turnover of sales" means the aggregate or the amount of sale price received or receivable by a dealer in respect of any transfer of property in goods involved in the execution of any works contract whether executed fully or partly during any period ;

(q) "Year",—

(i) means the financial year ;

(ii) in relation to any particular registered dealer for the purposes of this Act (except sections 3 and 8), means the year by reference to which the accounts of that dealer are ordinarily maintained in his books, but the dealer may by written declaration made by him in this behalf opt for the financial year :

Provided that, where an option has once been exercised by a registered dealer, he shall not, except with the consent of the Commissioner and upon such condition as the Commissioner may determine, make any variation in respect thereof.

(2) Words used in this Act but not defined shall have the same meaning as assigned to them under the Bombay Sales Tax Act.

CHAPTER II

INCIDENCE AND LEVY OF TAX

3. (1) Every dealer whose turnover either of all purchases or of all sales, made during— Incidence
of tax.

(a) the year ending on the 31st day of March 1986, or

(b) the year commencing on the 1st day of April 1986,

has exceeded or exceeds the limits of rupees two lakhs, shall; until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales made on or after the appointed day :

Provided that, a dealer to whom sub-clause (a) does not apply but sub-clause (b) applies and whose turnover either of all purchases or of all sales first exceeds the limit of rupees two lakhs after the appointed day shall not be liable to pay tax in respect of such sales which take place upto the time when his turnover of purchases, or his turnover of sales as computed from the 1st day of April 1986 does not exceeds such limit.

(2) Every dealer whose turnover either of all purchases or of all sales made, during any year commencing on the 1st day of April, being a year subsequent to the years mentioned in sub-section (1), first exceeds the limit specified in that sub-section, shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the date on which such limit so first exceeds :

Provided that, a dealer shall not be liable to pay tax in respect of such sales as take place during the period commencing on the first day of April of the said year upto the time when his turnover of purchases or, turnover of sales as computed from the first day of April of the said year does not exceed such limit.

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(3) Every dealer who becomes liable to pay tax under this Act, shall continue to be so liable until his registration certificate is duly cancelled; and upon such cancellation his liability to pay tax, other than tax, already levied or livicable, shall, until his turnover of all purchases or turnover of all sales again first exceeds the limit specified in sub-section (1), cease :

Provided that, where the dealer becomes liable to pay tax again in the same year in which he ceased to be liable as aforesaid, then in respect of such purchases and sales as take place during the period commencing on the date of cessation of liability to tax and upto the time when his turnover of all purchases or of all sales does not exceed such limit, no tax shall be payable.

Liability of dealer. 4. Subject to the provisions of this Act and the rules made thereunder, a tax shall be leviable, on the turnover of sales involving transfer of property in goods in the execution of the works contract commenced or continued for execution on or after the appointed day, whether such contract was entered into prior or subsequent to the appointed day.

Tax payable by dealer. 5. Subject to the provisions of this Act and the rules made thereunder, there shall be paid by every dealer who is liable to pay tax under this Act, the tax leviable in accordance with the provisions of the Act on the turnover of sales.

¹[6A. ²[(1) The Commissioner may, in such manner and subject to such conditions as may be prescribed, permit any registered dealer, to pay at his option, in lieu of the amount of tax payable by him under the provisions of this Act a lump sum by way of composition, an amount not exceeding 20 per cent. of the total contract value of the works contract as the State Government may, having regard to the nature of goods involved in the execution of a works contract by notification in the *Official Gazette*, specify, from time to time.

(2) Permission granted under sub-section (1) shall be operative in respect of all works contracts executed during the period commencing on the date of granting of such permission and ending on which such permission is cancelled under sub-section (6)].

(3) ³[* * * * *

(4) A dealer to whom permission is granted under this section shall not recover from the person from whom the works contract is or is being executed, any amount in excess of a lump sum amount paid or payable by him by way of composition under this section.

(5) If any dealer has recovered any excess amount in contravention of sub-section (4), and has not paid the same into a Government Treasury, he shall be liable to pay the same and if he has paid the same to the Government Treasury no refund in respect of such excess amount paid by him shall be granted; and such excess amount recovered in contravention of sub-section (4) shall be deemed to be a tax collected under this Act, and such excess amount shall be liable to be forfeited to the State Government and the procedure as laid down in section 37 and the provisions of sub-sections (4), (6) and (6A) of section 38 of the Bombay Sales Tax shall *mutatis mutandis* apply to such forfeiture, if any.

¹ Section 6A was inserted, by Mah. 28 of 1991, s. 5.

² Sub-sections (1) and (2) were substituted by Mah. 16 of 1995, s. 63(a).

³ Sub section (3) was deleted *ibid* s. 63(b).

¹[(6) The permission granted under sub-section (1) may be cancelled by the Commissioner, if a dealer has,—

- (a) applied for cancellation of the permission granted to him; or
- (b) contravened any rules or conditions subject to which such permission was granted.]

7. (1) Notwithstanding anything contained in any agreement to the contrary, Joint and where the contractor executes the works contract awarded to him, through sub-several contractor directly or otherwise, then the relationship between the contractor and the person who has actually executed the works contract or part of it as a sub-principal contractor shall be deemed to be that for the principal and agent.

²[(1A) Where such principal assigns the execution of the works contract to different such agents resulting into the distribution of the turnover of sales amongst the principal and the agents or wholly amongst the agents whereby the principal escapes the liability to pay tax on the whole or part of the turnover of sales under this Act by virtue of such distribution of the turnover of sales, then, having regard to the total turnover of sales (including the total turnover of sales in respect of execution of such contract) of the principal in the year of assessment being such that the principal would have been liable to pay tax under this Act if such works contract had been executed by himself alone, the liability to pay tax on such total turnover of sales shall be that of the principal.]

(2) Where such agent executes such works contract on behalf of a principal and each or either of them is liable to pay tax under this Act, then notwithstanding anything contained in this Act, the principal and the agent shall be jointly and severally liable to pay tax in respect of transfer of property in goods involved in the execution of such works contract.

(3) If the principal shows to the satisfaction of the Commissioner that the tax has been paid by the agent on the turnover of sales, the principal shall not be liable to pay tax again in respect of the same turnover of sales on which the agent has paid tax.

(4) If the agent shows to the satisfaction of the Commissioner that the tax has been actually paid by his principal on the turnover of sales on which he is liable to pay tax under the provisions of this Act, then the agent shall not be liable to pay tax again on the same turnover of sales on which the principal has paid tax.

(5) No deduction from payment of tax under sub-section (3) or (4) shall be given to the principal or to the agent, unless a certificate containing such particulars as may be prescribed is produced.

CHAPTER III

REGISTRATION

8. (1) No dealer shall, while being liable to pay tax under this Act, execute or Registration. continue to execute a works contract, unless he possesses a valid certificate of registration as provided by this Act :

Provided that, it shall be lawful for the dealer to execute or continue to execute a works contract if the dealer has applied for registration within the prescribed time,

¹ Sub-section (6) was substituted by Mah. 16 of 1995, s. 63(c).

² Sub-section (1A) shall be deemed always to have been added by Mah. 24 of 1990, s. 2.

(2) Every dealer required to possess a certificate of registration shall apply in such manner and to such authority as may be prescribed.

(3) If the authority, after such inquiry as it deems fit, is satisfied that an application for registration is in order, it shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4) The authority may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time, the certificate of registration.

(5) If any person, upon an application made by him, has been registered as a dealer, and thereafter it is found that he ought not to have been so registered under the provisions of this section, he shall be liable to pay tax on his sales made from the date on which his registration certificate took effect until it is cancelled, notwithstanding that he may not be liable to pay tax under section 3.