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PART V

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules :-

THE GUJARAT GREEN CESS BILL, 2011.

GUJARAT BILL NO. 20 OF 2011.

A BILL

to provide for levy of cess on generation of electricity other than renewable energy for creation of a fund for protecting environment and promoting the generation of electricity through renewable sources in the State of Gujarat and for the matters connected therewith and incidental thereto.

It is hereby enacted in the Sixty-second Year of the Republic of India as follows :-

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Gujarat Green Cess Act, 2011.
- (2) It extends to the whole of the State of Gujarat.
- (3) This section shall come into force at once and the remaining provisions shall come into force on such date as the State Government may, by notification in *Official Gazette*, appoint.

Short title,
extent and
commencement.

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

- (a) “cess” means a Green cess levied on generation of electricity in the State under section 3;
- (b) “Collector” means the Collector of Green Cess appointed under section 8;
- (c) “captive generating plant” shall have the meaning as defined in clause (8) of section 2 of the Electricity Act, 2003;
- (d) “electricity” means the electrical energy generated;
- (e) “fund” means the Green Energy Fund established under sub-section (1) of section 5;
- (f) “generating company” means any company or body corporate or association or body of individuals, whether incorporated or not, or any individual or artificial juridical person, which owns or operates or maintains a generating station or a captive generating plant or stand-by generating plant;
- (g) “generation of energy” means gross generation of electricity including auxiliary consumption and the electricity lost due to technical or any other fault in any generating station, captive generating plant or stand-by generating plant in the State;
- (h) “generating station” means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, use for that purpose and the site thereof; a site intended to be used for a generating station and any building used for housing the operating staff of a generating station;
- (i) “Inspector” means the person appointed as such under section 8;
- (j) “prescribed” means prescribed by rules made under this Act;
- (k) “renewable energy” means the electricity generated from the solar, wind, bio-energy, liquid-solid wastes, hydro power plants or by the use of baggass or agro-wastes or electricity generated from such other sources as the State Government may by notification in the *Official Gazette*, specify;
- (l) “rules” means rules made under this Act.

36 of 2003.

CHAPTER II

LEVY OF GREEN CESS

- 3.** (1) There shall be levied and collected a cess for the purposes of this Act, on generation of electricity except on generation of renewable energy by the generating company at the generating station or at the captive generating plant or the stand by generating plant. **Levy and collection of cess.**
- (2) Such cess under sub-section (1) shall be levied and payable on the electricity generated in the State of Gujarat irrespective of the fact whether such electricity is consumed within the State or not.
- (3) Such cess under sub-section (1) shall be levied in such manner and at such rate not exceeding twenty paise per unit of the electricity generated as may be prescribed.
- (4) The State Government may by notification in the Official Gazette, exempt from payment of the cess, the generating company having aggregate installed capacity of not more than one thousand kilowatts.
- (5) The cess levied under sub-section (1) shall be payable by the generating company.
- 4.** The proceeds of the cess, interest and penalty recovered under this Act shall first be credited to the Consolidated Fund of the State, and after deduction of the expenses of collection and recovery there from shall, under appropriation duly made by law in this behalf, be entered in and transferred to a separate fund called the Green Energy Fund, for being utilized exclusively for the purposes of this Act. **Crediting of proceeds to Consolidated Fund of State.**
- 5.** (1) There shall be established a fund called "Green Energy Fund" for the purpose of this Act. **Establishment of Green Energy Fund.**
- (2) The Fund shall be under the control of the State Government and there shall be credited therein-
- (a) any sums of money paid under section 4;
 - (b) the sums by way of any grant by the State Government.
- 6.** (1) The Fund shall be utilised for - **Management of Fund.**
- (a) promoting the generation of electricity through renewable energy,
 - (b) purchase of non-conventional energy, and
 - (c) taking initiatives for protecting environment in the State.
- (2) The State Government shall have the power to administer the Fund and shall take such decisions as may be required for the proper utilization of the Fund.

(3) The State Government shall also have the power to allocate and disburse such sums from the Fund as it considers necessary to the concerned Departments responsible for achieving the objects of this Act.

CHAPTER III REGISTRATION

Registration.

7. (1) Whoever generates electricity in the State shall be required to apply for and obtain a registration certificate from the Collector of Green Cess:

Provided that the collector may, subject to such conditions as may be prescribed, grant exemption from obtaining the registration to a person or to a class of persons having regard to the provisions of sub-section (4) of section 3.

(2) The application for the registration shall be made in such form and within such period as may be prescribed.

(3) On receipt of an application for registration under sub-section (2), the Collector on its satisfaction, may issue a certificate of registration in such form as may be prescribed.

CHAPTER IV CESS AUTHORITIES

**Cess
authorities.**

8. (1) For carrying out the purpose of this Act, the State Government shall appoint a person to be the Collector of Green Cess for the whole of the State of Gujarat and such other officers and employees to assist the Collector as the State Government may think fit who shall exercise such powers and perform such duties as may be conferred or imposed on them by the Collector.

(2) The State Government may by notification in the *Official Gazette*, appoint any persons as it thinks fit to be Inspectors for the purposes of this Act who shall exercise such powers and perform such duties as may be conferred or imposed on them by or under this Act within the limits of such area as the State Government may specify therein.

**Powers and
duties of
Cess
Authorities.**

9. (1) The Collector or the Inspector may for the purposes of this Act-

- (i) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of Cess leviable under this Act;
- (ii) enter and search any premises where electricity is or is believed to be generated for the purpose of-
 - (a) verifying the statements made in the books of account kept, and returns submitted,

- (b) reading and getting tested the various meters and generator panels in the prescribed manner,
- (c) verifying the particulars required in connection with the levy of cess,
- (iii) exercise such other powers and perform such other duties as may be necessary for carrying out the purposes of this Act or the rules made thereunder.

2 of 1974.

(2) All searches made under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

CHAPTER V BOOKS OF ACCOUNTS, RETURNS AND ASSESSMENT

10. (1) Each generating company shall install a meter for recording gross generation of electricity as provided in Central Electricity Authority (Installation and Operation of meters) Regulations, 2006 and same shall be maintained and operated in a manner as may be prescribed.

Accounts.

(2) Each generating company liable to pay cess as per the provisions of this Act, shall keep and maintain books of account in the prescribed form and shall submit to the Collector, returns in such form and at such times as may be prescribed, showing the units of energy generated, the amount of cess payable and that paid, fuel used and such other details as may be prescribed.

11. (1) The amount of cess due from a generating company shall be assessed by the Collector in the manner as may be prescribed.

Assessment.

(2) If the Collector is satisfied that the returns furnished by a generating company are correct and complete, he shall assess the amount of cess due from the generating company on the basis of such returns.

(3) If the Collector is not satisfied that the returns furnished in respect of any period are correct and complete, he shall serve on such generating company a notice requiring it to produce or caused to be produced all evidences on which such generating company relies in support of his returns. The Collector shall after considering all the evidences which may be produced, assess the amount of cess due from the generating company.

(4) If a generating company fails to respond to the notice within the time limit as stated in the notice issued under sub-section (3), the Collector shall assess, to the best of his judgment, the amount of cess due from it.

CHAPTER VI RECOVERY

12. (1) Where a generating company, which is liable to pay cess in the time-limit as prescribed, does not pay such amount of cess within such time-limit, there shall be paid by such generating company, for the period

Recovery.

commencing on the date of expiry of the aforesaid period and ending on the date of payment of the amount of cess, simple interest at the rate as may be prescribed, not exceeding eighteen per cent. per annum.

(2) All sums payable as cess or interest under this Act, if not paid within the prescribed period shall be deemed to be in arrears, and thereupon the amount of cess along with amount of interest to be levied under this Act, shall be recoverable as an arrear of land revenue.

(3) Where any generating company is liable to pay any amount on account of this cess, penalty or interest, and it pays amount less than amount due, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards penalty and thereafter the balance, if any, towards the amount of cess.

CHAPTER VII PENALTIES

Penalty. 13. If any generating company fails to obtain the registration certificate as required under section 7 shall on conviction be punished with fine which may extend to rupees one lakh per one Megawatt of the aggregate installed capacity of such generating company and shall also be liable to pay such cess alongwith interest referred to in section 12 for the generation of electricity as is otherwise payable.

Penalty for failure to keep books of accounts, etc.

14. If any generating company-

- (a) fails to keep books of account or to submit returns in accordance with the provisions of this Act and rules made there under, or
- (b) produces false accounts, registers or documents, or knowingly furnishes false information, or
- (c) wilfully obstructs the Collector or any inspector in the exercise of the powers conferred upon him by or under this Act, or
- (d) aids or abets any person in the commission of any act specified in clause (a), (b) or (c) of this section,

shall on conviction, be punished with fine which may extend to ten thousand rupees.

Penalty for tempering with meters, etc.

15. (1) Whoever, dishonestly,-

- (i) tampers with a meter, installs or uses a tampered meter, installs or uses current reversing transformer, loop connection or resorts to any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity generated is not correctly recorded; or

- (ii) damages or destroys an electric meter, apparatus, equipments or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering and recording of electricity for the purpose of this Act, or
- (iii) uses such means which can lead to the obstruction of the correct reading of the electricity generated,

shall be punishable with fine which shall not be less than on the first detection, the financial gain on account of such transgression and in the event of second or subsequent detection the fine imposed shall not be less than two times the financial gain on account of such transgression.

(2) For calculation of such financial gain, it shall be presumed that such generating company has been generating electricity continuously for a period of-

- (a) 1 year in case where aggregate installed capacity is less than 10 MW, and
- (b) 2 years in other cases,

immediately preceding the date of inspection or detection, whichever is earlier, unless contrary is proved. It shall also be presumed that such generating company was generating electricity at full installed capacity throughout such period.

CHPATER VIII APPEAL AND REVISION

16. (1) Any generating company or a person aggrieved by the decision of the Collector under sections 11, 13, 14 and 15 may prefer an appeal to the State Government within sixty days from the date of such decision :

**Appeal and
revision.**

Provided that no appeal against an order of assessment under section 11 shall be entertained by the State Government unless such appeal is accompanied by satisfactory proof of payment of fifty per cent. of cess directed to be paid by the Collector in respect of which an appeal has been preferred.

(2) Where no appeal is preferred against a decision of the Collector, the State Government may of its own motion or otherwise within one year from the date of any order passed by the Collector call for and examine the record of any proceedings of the Collector for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of the Collector and pass such order thereon as it thinks fit.

(3) The order passed by the State Government in appeal or revision shall be final and shall not be called in question in any court of law.

CHPATER IX
PENALTIES NOT TO AFFECT OTHER LIABILITIES

**Penalties not
to affect
other
liabilities.**

17. The penalties imposed under this Act shall be in addition to, and not in derogation of, any offence or liability in respect of any contravention of the provisions of any other Act.

CHPATER X
MISCELLENEOUS

**Officers and
employees to
be public
servants.**

18. The Collector, Inspectors and other officers and employees appointed under this Act shall be deemed to be the public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Indemnity.

19. No suit, prosecution or other legal proceedings shall lie against any officer or employee appointed under this Act for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rules made there under.

**Power to
make rules**

20. (1) The State Government may make by notification in the *Official Gazette*, rules generally for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:-

- (a) manner and rate for levy and collection of cess under sub-section (3) of section 3;
- (b) conditions for grant of exemption for obtaining registration under sub-section (1) of section 7;
- (c) form of application for registration and period under sub-section (2) of section 7;
- (d) form of certificate of registration under sub-section (3) of section 7;
- (e) other powers and duties of cess authorities under section 9;
- (f) manner and form for maintaining books of accounts and returns and submission of returns under section 10;
- (g) manner in which the assessment shall be made by the Collector;
- (h) rate of simple interest payable under sub-section (1) of section 12; or
- (i) such other matters which is to be or may be, prescribed under this Act.

(3) The rules made under this section shall, subject to the condition of previous publication, be published in the *Official Gazette*:

Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to recession by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.

21. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removal of difficulty:

**Power to
remove
difficulties.**

Provided that no such order shall be made under this section after the expiry of two years from the date of the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

The Finance Minister in his Budget speech on 25th February, 2011 for the year 2011-2012 in the Gujarat Legislative Assembly, had observed that the conventional energy affects the environment and as such it is essential to promote “clean and green energy” in the State of Gujarat and for that purpose generation of clean and green energy should be given fillip and for providing funding for purchase of non-conventional energy and protection of environment, the State Government intends to set-up “Green Energy Fund” and for that purpose has proposed to levy cess on the generation of electricity except generated through renewable sources. This Bill seeks to achieve the aforesaid object.

The following notes on clauses explain the important provisions of the Bill: -

Clause 1.- This clause provides for short title, extent and commencement.

Clause 2.- This clause defines certain terms used in the Bill.

Clause 3.- This clause provides for levy of cess on generation of electricity except renewable energy from generating company. It also provides for grant of exemption from payment of cess to the generating company, by the State Government whose installed capacity is not more than 1000 KW.

Clause 4.- This clause provides for the proceeds of the cess and interest to be credited into Consolidated Fund of the State and thereafter to be transferred to Green Energy Fund.

Clauses 5 and 6.- These clauses provide for the establishment of the Green Energy Fund and utilisation of the fund specified therein.

Clause 7.- This clause provides for obtaining the certificate of registration by the generating company and the exemption therefrom.

Clauses 8 and 9.- These clauses provide for the appointment of cess authorities and their powers and duties.

Clause 10.- This clause provides for maintenance of books of accounts and submission of returns by the generating company.

Clause 11.- This clause provides for the assessment of the cess due from a generating company.

Clause 12.- This clause provides for levy and collection of cess and interest thereon if any.

Clause 13.- This clause provides for penalty for failure to obtain certificate of registration.

Clauses 14 and 15.- These clauses provide for consequences for breach of the provisions of the Act and rules and also provide for penalty of dishonest acts of the generating company.

Clause 16.- This clause provides for appeal to the State Government against the decision of the Collector under clauses 11, 13, 14 and 15 and the revisional powers of the State Government.

Clause 17.- This clause provides that penalty imposed under this Act shall be in addition to and not in derogation of the provisions of other Acts.

Clause 18.- This clause provides that the officers and employees appointed under this Act shall be public servants.

Clause 19.- This clause provides for usual indemnity for acts done in good faith.

Clause 20.- This clause empowers the State Government to make, by notification in the Official Gazette, rules, subject to previous publication, generally for carrying out the purposes of this Act and particularly for the matters as specified therein.

Clause 21.- This clause empowers the State Government to remove difficulties arising within two years from the commencement of the Act.

SAURABH PATEL,

FINANCIAL MEMORANDUM

Clause 8 of the Bill empowers the State Government to appoint the Collector of Green Cess, Inspectors and other officers and employees for the purposes of this Act. At present, the officers and the employees of the office of Collector of Electricity Duty as well as the office of the Chief Electrical Inspector will act as the cess authorities and therefore, the provisions of the Bill if enacted and brought into force would not involve any additional expenditure on the Consolidated Fund of the State.

SAURABH PATEL,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects, namely :-

Clause 1.- Sub-clause (3) of this clause empowers the State Government to appoint by notification in the *Official Gazette*, the remaining provisions of the Act shall come into force.

Clause 2.- Sub-clause (i) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the other sources of renewable energy.

Clause 3.- (i) Sub-clause (3) of this clause empowers the State Government to prescribe by rules, the manner and the rate at which the cess shall be levied;

(ii) sub-clause (4) of this clause empowers the State Government to exempt from the payment of cess by notification in the *Official Gazette*, the generating company whose aggregate installed capacity is not more than 1000 KW.

Clause 7.- (i) Proviso to sub-clause (1) of this clause empowers the State Government to prescribe by rules, the conditions subject to which the Collector may grant exemption for obtaining the registration;

(ii) sub-clauses (2) and (3) of this clause empower the State Government to prescribe by rules, the form of application for registration and the period within which the application shall be made and the form of the certificate of registration.

Clause 8.- This clause empowers the State Government to appoint the Collector, Inspectors and other officers and employees for the purposes of this Act.

Clause 9.- This clause empowers the State Government to prescribe by rules, the manner in which the meters and the generator panels would be got tested.

Clause 10.- This clause empowers the State Government to prescribe by rules, the forms of accounts and returns and the manner in which the same shall be maintained and submitted.

Clause 11.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules the manner in which the amount of cess due from a generating company shall be assessed.

Clause 12.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the rate of simple interest payable in case where the cess is not paid within the time limit.

Clause 20.- This clause empowers the State Government to make, by notification in the *Official Gazette*, rules, subject to previous publication, generally for carrying out the purposes of this Act and particularly for the matters as specified therein.

Clause 21.- This clause empowers the State Government to remove difficulties arising within two years from the commencement of the Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Gandhinagar,
Dated the 17th March, 2011.

SAURABH PATEL.

By order and in the name of the Governor of Gujarat,

Gandhinagar,
Dated the 18th March, 2010.

C. J. GOTHI,
Secretary to the Government of Gujarat,
Legislative and Parliamentary
Affairs Department.
