

BILLS INTRODUCED IN THE LEGISLATIVE ASSEMBLY OF THE STATE OF TAMIL NADU

Under Rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 10th May 2012 is published together with Statement of Objects and Reasons for general information:—

L.A. Bill No. 25 of 2012

A Bill further to amend the Tamil Nadu Value Added Tax Act, 2006.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2012.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

Amendment of section 2.

2. In the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the principal Act), in section 2, after clause (4), the following clause shall be inserted, namely:—

Tamil Nadu
Act
32 of 2006.

“(4-A) “Assessment” means an assessment made or deemed to have been made under this Act and includes a re-assessment or revision of assessment.”.

Substitution of section 21.

3. For section 21 of the principal Act, the following section shall be substituted, namely:—

“**21. Filing of Returns.**—Every dealer, registered under this Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with prescribed documents and proof of payment of tax. The tax under this section shall become due without notice of demand to the dealer on the last date of the period for filing return as prescribed.”.

Amendment of section 22.

4. In section 22 of the principal Act,—

(1) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Deemed assessment and procedure to be followed by assessing authority.”;

(2) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year:

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012.”;

(3) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.”;

(4) for sub-section (5) including the proviso thereunder, the following sub-section including the proviso and the Explanation shall be substituted, namely:—

“(5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, one hundred and fifty per cent of the difference of the tax assessed and the tax already paid as per the returns:

Provided that no penalty under this sub-section shall be imposed after the period of six years from the date of assessment order unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation.—For the purpose of levy of penalty under this sub-section, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed under sub-section (4):—

(i) Any turnover representing additions to the turnover as per the returns made by the assessing authority without reference to any specific concealment of turnover;

(ii) Any turnover estimated by the assessing authority with reference to any specific concealment of turnover as per the returns;

(iii) Any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration but where such declaration could not be furnished at the time of assessment.”.

5. In section 25 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 25.

“(1) If any dealer who is liable to pay tax under this Act fails to submit return within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquiry as it considers necessary, determine provisionally the tax payable by the dealer to the best of its judgment.”.

6. In section 27 of the principal Act,—

Amendment of section 27.

(1) in sub-section (1),—

(i) in clause (a), for the expression “five years from the date of assessment order by the assessing authority”, the expression “six years from the date of assessment” shall be substituted;

(ii) in clause (b), for the expression “five years from the date of order of assessment by the assessing authority”, the expression “six years from the date of assessment” shall be substituted;

(2) in sub-section (2), for the expression "five years from the date of order of assessment", the expression "six years from the date of assessment" shall be substituted;

Amendment of section 28.

7. In section 28 of the principal Act, in sub-section (1), for the expression "five years from the date of order of assessment by the assessing authority", the expression "six years from the date of assessment" shall be substituted.

Amendment of section 40.

8. In section 40 of the principal Act, in the first proviso to sub-section (2), for the expression "five years from the date of order of the assessment", the expression "six years from the date of assessment" shall be substituted.

Amendment of section 53.

9. In section 53 of the principal Act,—

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

"(1) The Joint Commissioner may, of his own motion, call for and examine any assessment deemed to have been made under sub-section (2) of section 22 or an order passed or proceeding recorded by the appropriate authority under sub-sections (4), (5) and (6) of section 22 or sections 24, 25, sub-sections (1), (2), (3) and (4) of section 27, section 28 or section 29, and if such assessment or order or proceeding recorded is prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such assessment or order or proceeding and may pass such order thereon as he thinks fit.";

(2) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

"(c) more than six years have expired after the date of assessment:".

Amendment of section 55.

10. In section 55 of the principal Act,—

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

"(1) The Additional Commissioner may, of his own motion, call for and examine any assessment deemed to have been made under sub-section (2) of section 22 or an order passed or proceeding recorded by the appropriate authority under sub-sections (4), (5) and (6) of section 22 or sections 24, 25, sub-sections (1), (2), (3) and (4) of section 27, section 28 or section 29 or an order passed by the Joint Commissioner under sub-section (1) of section 53 or sub-section (3) of section 54, and if such assessment or order or proceeding recorded is prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such assessment or order or proceeding and may pass such order thereon as he thinks fit.";

(2) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

"(c) more than six years have expired after the date of assessment:".

STATEMENT OF OBJECTS AND REASONS.

The white paper on State-Level Value Added Tax by the Empowered Committee of State Finance Ministers, published on the 17th January, 2005, envisaged that there will be no compulsory assessment at the end of each year; and that the dealer will be deemed to have been self-assessed on the basis of returns submitted by him. However, as per the existing provisions under sub-section (2) of section 22 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

2. In the Value Added Tax Acts of many other States, such requirement of passing an assessment order is not found and instead deemed assessment on filing of returns by the dealers is being followed, so that at any time, within the period of limitation without loss of time, the escaped revenue is assessed by way of revision.

3. In tune with the general principles of Value Added Tax and the provisions contained in the Value Added Tax Acts of other States, the Government have decided to dispense with the existing procedure of passing an assessment order by the assessing authority and to replace it with a system of deemed assessment. Under the proposed system of deemed assessment, a dealer shall be deemed to have been assessed if the returns are filed as prescribed. The Government have also decided to treat the returns filed for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 as deemed to have been assessed on the 30th June, 2012, if they had been filed, as prescribed.

4. The Government have, therefore, decided to amend the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) for the purpose.

5. The Bill seeks to give effect to the above decision.

C.Ve. SHANMUGAM,
*Minister for Commercial Taxes and Registration,
Law, Courts and Prisons.*

A.M.P. JAMALUDEEN,
Secretary.