

भाग आठ

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधी व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2006 (Mah. Ord. VI of 2006), is hereby published under the authority of the Governor.

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

A. M. SHINDEKAR,
Secretary to Government,
Law and Judiciary Department.

(Translation in English of the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2006 (Mah. Ord. VI of 2006), Published under the authority of the Governor.)

FINANCE DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 20th June 2006.

MAHARASHTRA ORDINANCE No. VI OF 2006.

AN ORDINANCE

further to amend certain tax laws in operation in the State of Maharashtra.

WHEREAS both Houses of the State Legislature are not in session ;

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend certain tax laws in operation in the State of Maharashtra, for the purposes hereinafter appearing ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely :-

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2006.

(2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACT, 1975.

2. In section 2 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (hereinafter, in this Chapter, referred to as “ the Profession Tax Act ”), for clause (j), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005, namely :—

“ (j) “ Tribunal ” means the Maharashtra Sales Tax Tribunal constituted under section 11 of the Maharashtra Value Added Tax Act, 2002 and discharging the functions of the Tribunal assigned to it by or under this Act ; ”.

3. In section 3 of the Profession Tax Act, in sub-section (2), in the second proviso, for the word and figures “ entry 23 ” the word and figures “ entry 21 ” shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2006.

4. In section 6 of the Profession Tax Act, in sub-section (1), the following proviso shall be added, namely :—

“Provided that, the Commissioner may, subject to such terms and conditions, as may be prescribed, permit any employer to file separate returns,—

(a) for all or any of the places of business of the employer, whether or not situated within the jurisdiction of the same registering authority, or

(b) for different constituents of his business,
to such authority as he may direct.”.

5. In section 8 of the Profession Tax Act, after sub-section (3), the following sub-section shall be added, namely :—

“(4)(a) A registered employer furnishing returns as required by sub-section (1) of section 6 shall first pay into the Government Treasury, the amount of tax due from him for the period covered by a return alongwith the amount of interest payable by him under section 9 of the Act in such manner and at such intervals as may be prescribed.

(b) The amount of tax assessed under section 7 or found due under section 14 or 15 in respect of any period less any sum already paid by the employer or person in respect of such period shall be paid by the employer or person liable therefor into the Government Treasury within fifteen days from the date of service of notice of demand issued by the Commissioner in respect thereof :

Provided that, the Commissioner may, in respect of any particular employer or person and for reasons to be recorded in writing, allow him to pay tax, penalty or interest, if any, by installment, but such grant of installments to pay tax shall be without prejudice to levy of penalty or interest or both.”.

6. In section 11A of the Profession Tax Act, in sub-section (1),—

(a) in clause (iii), for the words “the Deputy Commissioner” the words “the Joint Commissioner” shall be substituted ;

(b) in clause (iv), for the words “the Assistant Commissioner” the words “the Deputy Commissioner” shall be substituted ;

(c) in clause (v), for the words “the Profession Tax Officer” the words “the Assistant Commissioner of Profession Tax and the Profession Tax Officer” shall be substituted.

7. In section 12 of the Profession Tax Act,—

(a) in sub-section (1),—

(i) in clause (a), for sub-clause (iii), the following sub-clause shall be substituted, namely :—

“(iii) such number of Joint Commissioners of Profession Tax, Deputy Commissioners of Profession Tax, Assistant Commissioners of Profession Tax, Profession Tax Officers and other officers and persons (with such designation) as the State Government thinks necessary. ” ;

(ii) for clause (b), the following clause shall be substituted, namely:—

“(b) Additional Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners and Profession Tax Officers shall within the limit of such area as the Commissioner may specify by notification in the *Official Gazette*, to be within their jurisdiction, exercise such powers and perform such duties of the Commissioner under this Act, as the Commissioner may, from time to time, by notification published in the *Official Gazette*, delegate to them either generally or as respects any particular matter or class of matters.” ;

(b) in sub-section (2), for the words and figures “The Tribunal constituted under section 21 of the Bombay Sales Tax Act, 1959” the words and figures “The Tribunal constituted under section 11 of the Maharashtra Value Added Tax Act, 2002” shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005.

8. In section 13 of the Profession Tax Act, in sub-section (1),—

(a) in clause (a), for the words “the Assistant Commissioner” the words “the Deputy Commissioner” shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely :—

“(b) the Joint Commissioner, if the order is passed by the Deputy Commissioner; and ”;

(c) in clause (c), for the words “ Deputy Commissioner ” the words “Joint Commissioner” shall be substituted.

9. In section 14 of the Profession Tax Act,—

(a) in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely :—

“(a) the Joint Commissioner, if the order is passed by the Deputy Commissioner ; ” ;

(ii) in clause (b), for the words “ Deputy Commissioner ” the words “ Joint Commissioner ” shall be substituted ;

(b) in sub-section (2), for the words “ Deputy Commissioner ” the words “Joint commissioner” shall be substituted.

10. In section 18 of the Profession Tax Act,—

(a) for the words “ Any authority under this Act ” the words “ The Commissioner ” shall be substituted ;

(b) in the proviso, for the words “ the said authority ” the words “ the Commissioner ” shall be substituted.

CHAPTER III

AMENDMENTS TO THE MAHARASHTRA TAX ON LUXURIES ACT, 1987.

11. In section 2 of the Maharashtra Tax on Luxuries Act, 1987 (hereinafter, in this Chapter, referred to as “the Luxuries Tax Act”),—

(a) in clause (b), sub-clauses (iii), (iv) and (v) shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(b) in clause (k), sub-clauses (ii) and (iii) shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(c) for clause (l), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 20th January 2005, namely :—

“(l) “ registered hotelier ” means a hotelier registered under section 8 of this Act ; ” ;

(d) clause (n-1) shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(e) in clause (o), the words “ and tax levied by way of cess on other facilities, services, enjoyments, utilities, consumption, etc. ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(f) clauses (o-1A), (o-1B), (o-1) and (o-2) shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(g) in clause (p), sub-clauses (ii) and (iii) shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(h) in clause (q), in sub-clause (ii), the words “ the registered textile trader or, as the case may be, registered tobacconist ” ; and the words “ the textile trader or tobacconist ”, shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

12. In section 3 of the Luxuries Tax Act, in sub-section (6), for the words and figures “ Bombay Sales Tax Act, 1959 ” the words and figures “ Maharashtra Value Added Tax Act, 2002 ” shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005.

13. Sections 3A, 3B, 3C, 3D, 3E, 3F and 3G of the Luxuries Tax Act shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

14. In section 4 of the Luxuries Tax Act,—

(a) in sub-section (1), the words “every textile trader and every tobacconist” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(b) in the marginal note, the words “ textile trader and tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

15. Sections 4A and 4B of the Luxuries Tax Act shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

16. In section 5 of the Luxuries Tax Act, in the marginal note, the words “ textile trader and tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

17. In section 7 of the Luxuries Tax Act, in sub-section (1), in clause (b), for sub-clause (ii), the following sub-clause shall be substituted, namely :—

“ (ii) such number of Joint Commissioners of Luxury Tax, Senior Deputy Commissioners of Luxury Tax, Deputy Commissioners of Luxury Tax, Assistant Commissioners of Luxury Tax and Luxury Tax Officers and other Officers and persons with such designation as it thinks necessary.”.

18. In section 8 of the Luxuries Tax Act,—

(a) in sub-section (1),—

(i) the words “ or tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(ii) in the proviso, the words “ or, as the case may be, tobacconist ” ; and the words “ or the tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(b) in sub-section (2), the words “ and every tobacconist ” ; and the words “ or, as the case may be, tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005 ;

(c) in sub-section (5), the words “ or tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005;

(d) in sub-section (6),—

(i) the words “or, as the case may be, registered tobacconist”; and the words “or tobacconist” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005;

(ii) in the proviso, the words “or tobacconist” in both the places where they occur, shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

19. After section 8 of the Luxuries Tax Act, the following section shall be inserted, namely :—

“ **8A.** (1) Every registered hotelier who holds, on such date as the Commissioner may by notification in the *Official Gazette*, specify, a certificate of registration, which is valid on the said date (hereinafter,

in this section, referred to as “the existing certificate of registration”), shall obtain, in lieu of the existing certificate of registration, a fresh certificate of registration as provided in this section.

(2) Every hotelier, who is required to obtain a fresh certificate under sub-section (1), shall apply in such form, manner and time and to such authority, as may be prescribed; and such application shall be accompanied by the existing certificate of registration together with all additional copies thereof, if any, issued to him.

(3) On receipt of such application, the prescribed authority shall, subject to the rules, issue a fresh certificate of registration, in the prescribed form to the applicant; and thereupon the fresh certificate of registration, so issued, shall, for all the purposes of the Act, be deemed to be a certificate of registration issued under section 8.

(4) Without prejudice to the other provisions of this Act, all the existing certificates of registration shall stand cancelled with effect from such date as the Commissioner may notify in the *Official Gazette*.

(5) The Commissioner may, by the notification issued under sub-section (1) or (4), also provide that such notification shall apply only to such class of registered dealers as are specified in the said notification and such notification may be issued by him, from time to time.

(6) The provisions of this section shall *mutatis mutandis* apply in respect of any other certificate issued by or under the provisions of this Act as they apply in respect of the certificate of registration.”.

20. Section 15A of the Luxuries Tax Act shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

21. In section 20 of the Luxuries Tax Act, in sub-section (1),—

(a) in clause (iii), for the words “ the Deputy Commissioner of Luxury Tax” the words “ the Joint Commissioner of Luxury Tax ” shall be substituted;

(b) in clause (iv), for the words “ the Assistant Commissioner of Luxury Tax” the words “the Deputy Commissioner of Luxury Tax ” shall be substituted;

(c) in clause (v), for the words “ Luxury Tax Officer ” the words “ Assistant Commissioner of Luxury Tax and Luxury Tax Officer ” shall be substituted.

22. Section 23A of the Luxuries Tax Act shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

23. In section 24A of the Luxuries Tax Act,—

(a) for the words “ registered tobacconist, hotelier or, as the case may be, textile trader ” the words “ registered hotelier ” shall be substituted and shall be deemed to have been substituted with effect from the 20th January 2005 ;

(b) for the words “ tobacconist, hotelier or, as the case may be, the textile trader ” the words “ hotelier ” shall be substituted and shall be deemed to have been substituted with effect from the 20th January 2005.

24. In section 31 of the Luxuries Tax Act, including in the marginal note, the words “ and tobacconist ” shall be deleted and shall be deemed to have been deleted with effect from the 20th January 2005.

25. In section 36 of the Luxuries Tax Act, in sub-section (1),—

(a) for clauses (a), (b) and (c), the following clauses shall be substituted, namely :—

“ (a) if the order is made by the Assistant Commissioner of Luxury Tax, or Luxury Tax Officer, or any other officer subordinate to him, to the Deputy Commissioner ;

(b) if the order is made by the Deputy Commissioner, to the Joint Commissioner;

(c) if the order is made by the Joint Commissioner, to the Commissioner.” ;

(b) in sub-section (2), for the words “ an Assistant Commissioner or by a Deputy Commissioner,” the words “ the Deputy Commissioner or by Joint Commissioner,” shall be substituted.

26. In section 48 of the Luxuries Tax Act,—

(a) in sub-section (2), for the words “ Deputy Commissioner” the words “Joint Commissioner” shall be substituted;

(b) in sub-section (5), for the words “Deputy Commissioner” the words “ Joint Commissioner” shall be substituted.

CHAPTER IV

AMENDMENTS TO THE MAHARASHTRA TAX ON ENTRY OF MOTOR VEHICLES INTO LOCAL AREAS ACT, 1987.

27. In section 2 of the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 (hereinafter, in this Chapter, referred to as “ the Motor Vehicles Entry Tax Act ”),—

(a) in sub-section (1),—

(i) in clause (c), for the words and figures “ section 21 of the Bombay Sales Tax Act ” the words and figures “ section 11 of the Maharashtra Value Added Tax Act ” shall be substituted ;

(ii) for clause (e), the following clause shall be substituted, namely :—

“ (e) “ Maharashtra Value Added Tax Act ” means the Maharashtra Value Added Tax Act, 2002; ” ;

(iii) in clause (i), for the words, brackets and figures “ clause (18) of section 2 of the Motor Vehicles Act, 1939 ” the words, brackets and figures “ clause (28) of section 2 of the Motor Vehicles Act, 1988 ” shall be substituted ;

(iv) in clause (1), for the words "insurance, excise duties, countervailing duties, sales tax, transport fee, freight charges and all other charges incidentally levied on the purchase of a motor vehicle" the words "excise and countervailing duties" shall be substituted and shall be deemed to have been substituted with effect from the 1st January 2006;

(b) in sub-section (2), for the words “Bombay Sales Tax Act” the words “Maharashtra Value Added Tax Act” shall be substituted.

28. In section 3 of the Motor Vehicles Entry Tax Act, in sub-section (1),—

(a) for the words and figures “ Motor Vehicles Act, 1939 ”, in both the places where they occur, the words and figures “ Motor Vehicles Act, 1988 ” shall be substituted;

(b) for the words “ Bombay Sales Tax Act ” the words “Maharashtra Value Added Tax Act” shall be substituted.

29. In section 4 of the Motor Vehicles Entry Tax Act, sub-section (1) shall be deleted and shall be deemed to have been deleted with effect from the 1st April 2005.

30. For section 5 of the Motor Vehicles Entry Tax Act, the following section shall be substituted and shall be deemed always to have been substituted, namely :—

“ **5.** (1) The officer appointed by the State Government to be the Commissioner of Sales Tax may, from time to time, by notification in the *Official Gazette*, appoint such officers to be the assessing officers, revising officers and appellate officers for the purposes of this Act and may assign to them jurisdiction over the whole of the State or such local area or areas as may be specified in the notification.

(2) No order passed by any of the aforesaid officers before the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2006 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that the said notification was issued after the passing of the said order. "

31. Section 6 of the Motor Vehicles Entry Tax Act shall be deleted and shall be deemed to have been deleted with effect from the 1st April 2006.

32. After section 9A of the Motor Vehicles Entry Tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st April 2006, namely :—

“ **9B.** The revising authority may either on the basis of information received or on its own motion call for and examine the record of any order passed including an order passed in appeal and pass such order thereon as it thinks just and proper within five years from the date of the order to be revised.”.

CHAPTER V

AMENDMENTS TO THE MAHARASHTRA TAX ON ENTRY OF GOODS INTO LOCAL AREAS ACT, 2002.

33. In section 2 of the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 (hereinafter, in this Chapter, referred to as “the Entry Tax on Goods Act”),—

(1) in sub-section (1),—

(a) in clause (a),—

(i) in sub-clause (i), for the words “the assessing authority under the Sales Tax Act;” the words “the registering authority under the Value Added Tax Act;” shall be substituted;

(ii) in sub-clause (ii), for the words “the assessing authority under the Sales Tax Act;” the words “the registering authority under the Value Added Tax Act;” shall be substituted ;

(b) clause (j) shall be deleted ;

(c) after clause (m), the following clause shall be inserted, namely :—

“ (m-1) “ Value Added Tax Act ” means the Maharashtra Value Added Tax Act, 2002 and includes the Maharashtra Value Added Tax Rules, 2005 ; ” ;

(2) in sub-section (2), for the words and figures “ Sales Tax Act or the Bombay Sales Tax Rules, 1959 ” the words and figures “ the Value Added Tax Act, or the Maharashtra Value Added Tax Rules, 2005 ” shall be substituted.

34. In section 3 of the Entry Tax on Goods Act,—

(a) in sub-section (1), in the first proviso, for the words and figures “ Sales Tax Act, the Bombay Sales of Motor Spirit Taxation Act, 1958 ” the words “ the Value Added Tax Act ” shall be substituted ;

(b) in sub-section (5), for the words “ Sales Tax Act ” the words “ the Value Added Tax Act ” shall be substituted.

35. In section 6 of the Entry Tax on Goods Act,—

(1) in sub-section (1),—

(a) for the word “ re-assess ”, in both the places where it occurs, the word “ review ” shall be substituted ;

(b) for the words “ Sales Tax Act ”, in both the places where they occur, the words “ Value Added Tax Act ” shall be substituted ;

(c) for the words “ re-assessment, revisions ” the word “ review ” shall be substituted ;

(2) in sub-section (2),—

(a) for the word “ re-assessment ”, in both the places where it occurs, the word “review” shall be substituted ;

(b) for the words “ Sales Tax Act ” the words “ Value Added Tax Act ” shall be substituted.

36. For the Schedule appended to the Entry Tax on Goods Act, the following Schedule shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005, namely:—

“ SCHEDULE

[See section 2 (I) (k) and 3(I)]

Sr. No. (1)	Description of goods (2)	Rate of tax (3)
1	High Speed Diesel Oil,— (a) imported into local area of the Municipal Corporations of the Brihan Mumbai, Thane and Navi Mumbai ; and (b) imported into local area other than mentioned in clause (a) above.	34% + one rupee per litre. 31% + one rupee per litre.
2	Aviation Turbine Fuel (Duty paid) (other than that covered by entry 3).	25%
3	Aviation Turbine Fuel (Bonded)	30%
4	Aviation Gasoline (Duty Paid)	10%
5	Aviation Gasoline (Bonded)	24%
6	Any other kind of motor spirit,— (a) imported into local area of the Municipal Corporations of the Brihan Mumbai, Thane and Navi Mumbai ; and (b) imported into local area other than mentioned in clause (a) above.	30% + one rupee per litre. 29% + one rupee per litre.
7	Bitumen	12.5%
8	Light diesel oil	-- do --
9	Naphtha	-- do --
10	Low Sulpher Heavy stock	-- do --
11	Kerosene non-PDS	-- do --
12	Furnace Oil including heavy furnace oil and residual furnace oil.	-- do --”.

CHAPTER VI

AMENDMENTS TO THE MAHARASHTRA VALUE ADDED TAX ACT, 2002.

37. In section 2 of the Maharashtra Value Added Tax Act, 2002 (hereinafter, in this Chapter, referred to as “the Value Added Tax Act”),—

(a) after clause (3), the following clause shall be inserted, namely :—

“(3-a) “brand name” when used in the Schedule means a brand name, (whether registered or not), that is to say, a name or a mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person ;” ;

(b) in clause (20), after *Explanation III*, the following *Explanation* shall be added and shall be deemed to have been added with effect from the 1st April 2005, namely :—

“*Explanation IV*.—The amount of valuable consideration paid or payable by a dealer for the purchase of drugs specified in entry 29 of Schedule C shall be the maximum retail price printed on the package containing the drugs ;” ;

(c) in clause (24), in the *Explanation*, in clause (b), in sub-clause (ii), for the words “works contract” the words “works contract namely, an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property” shall be substituted.

38. In section 3 of the Value Added Tax Act,—

(1) in sub-section (3), for the word, brackets and figure “sub-section (7),” the word “sub-section” shall be substituted ;

(2) in sub-section (4), for the word “turnover”, wherever it occurs, the words “turnover of sales” shall be substituted ;

(3) in sub-section (5),—

(a) for clause (a), the following clause shall be substituted, namely,—

“(a) except as otherwise expressly provided, the turnover of all sales shall be taken, whether such sales are of taxable goods or not ;” ;

(b) for the word “turnover” wherever it occurs, the words “turnover of sales” shall be substituted ;

(4) sub-section (7) shall be deleted.

39. In section 8 of the Value Added Tax Act,—

(a) in sub-section (3), in the *Explanation*, after clause (d), the following clauses shall be added, namely :—

“(e) a developer of the Special Economic Zone means a developer,—

(i) undertaking development, repairs, maintenance and improvement of the Special Economic Zone, and

(ii) who has been certified by the Commissioner ;

(f) a unit includes an establishment situated within the Special Economic Zone.” ;

(b) after sub-section (3), the following sub-sections shall be inserted, namely :—

“(3A) The State Government may, by general or special order, published in the *Official Gazette*, and subject to such conditions, exceptions and restrictions as may be specified in the said order, exempt from payment of tax any class or classes of sales of goods made by any registered dealer to any class of dealers specified in the Import and Export Policy notified from time to time, by the Government of India.

(3B) The State Government may, by general or special order, published in the *Official Gazette*, and subject to such conditions, exceptions and restrictions, as may be specified in the said order, exempt fully or partly, from payment of tax any class or classes of sales of goods made by,—

(a) any registered dealer to the Canteen Stores Department or the Indian Naval Canteen Services,

(b) the Canteen Stores Department or the Indian Naval Canteen Services to the unit run canteens or members of the armed forces,

(c) the unit run canteens to the members of the armed forces.” ;

(c) after sub-section (4), the following sub-section shall be added, namely :—

“(5) The State Government may, by general or special order, published in the *Official Gazette*, and subject to such conditions and restrictions, if any, as may be specified in the said order, exempt fully or partly, from payment of tax, any sales or classes of sales of goods made by any registered dealer to,—

(a) the State Government,

(b) the Central Government,

(c) a generating company, as defined in the Electricity Act, 2003, for use in generation of electricity,

(d) a registered dealer, holding a licence for transmission under the Electricity Act, 2003, for use in transmission of electricity,

(e) a registered dealer, holding a licence for distribution of electricity under the Electricity Act, 2003, for use in distribution of electricity,

(f) the Mahanagar Telephone Nigam Limited,

(g) the Bharat Sanchar Nigam Limited,

(h) any telephone service provider, holding a licence granted under the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933, to establish, maintain and operate telephone services upto subscribers terminal connection.”.

40. In section 16 of the Value Added Tax Act, in sub-section (6),—

(a) the words “ or the place of such business is changed to a different local area ” in both the places where they occur, shall be deleted;

(b) the *Explanation* shall be deleted.

41. In section 20 of the Value Added Tax Act,—

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

“(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, subject to such terms and conditions, as may be prescribed, permit any dealer to file separate return,—

(a) for all or any of the places of business of the dealer, whether or not situated within the jurisdiction of the same registering authority, or

(b) for different constituents of his business to such authority as he may direct.” ;

(b) in sub-section (4), for the words “ expiry of a period of six months ” the words “ expiry of a period of eight months ” shall be substituted ;

(c) after sub-section (4), the following sub-section shall be added, namely :—

“(5) Where a dealer is required to file a fresh return or, as the case may be, a revised return, he shall file such fresh or revised return with the authority prescribed and if any amount of tax is required to be paid in accordance with such fresh or revised return, then he shall pay such amount in the Government Treasury and attach a self attested true copy of the receipted challan with the fresh or revised return.”.

42. In section 21 of the Value Added Tax Act, in sub-section (3), for the words “four years” the words “six years” shall be substituted .

43. In section 22 of the Value Added Tax Act, in sub-section (3), for the words “ On the appointed day or, as the case may be, at any time within the aforesaid period ” the words “ On or after the appointed day ” shall be substituted.

44. In section 23 of the Value Added Tax Act, after sub-section (10), the following sub-sections shall be added, namely :—

“(11) Where a dealer has been assessed under sub-section (2), (3) or (4) and he makes an application in the prescribed form to the Commissioner within thirty days of the date of service of the assessment order, for cancellation of the assessment on the ground that he had not been able to attend or remain present before the Commissioner at the time of hearing when the assessment order had been passed, the Commissioner shall, after verifying that the contention of the applicant is correct and that the prescribed conditions have been fulfilled, cancel, by order in writing, the said assessment including any penalty or interest levied in relation to or in consequence of the said assessment and shall make a fresh assessment in accordance with the provisions of sub-section (2), (3) or (4), including levy of interest or penalty, as the case may be :

Provided that, only one application for cancellation shall be entertained under this sub-section in respect of any period of assessment.

(12) Notwithstanding anything contained in sub-section (2), (3) or (4), the fresh order of assessment as provided under sub-section (11) may be passed before the expiry of a period of eighteen months from the date of service of the cancellation order.”.

45. In section 29 of the Value Added Tax Act, after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) Where a dealer has sold any goods and the sale is exempt, fully or partly, from payment of tax by virtue of any provision contained in sub-section (3), (3A), (3B) or (5) of section 8, and the purchaser fails to comply with the conditions or restrictions subject to which the exemption is granted, then the Commissioner may, after giving the said purchaser a reasonable opportunity of being heard, impose penalty on him equal to one and a half times the tax which would have become payable on the sale if the said exemption was not available on the said sale.”.

46. In section 31 of the Value Added Tax Act,—

(a) in sub-section (1), in clause (b),—

(i) in sub-clause (i), for the brackets and the words “(excluding the amount of tax, if any, separately charged by the contractor)” the brackets and the words “(excluding the amount, if any, separately charged as tax or service tax levied by the Government of India, by the contractor)” shall be substituted;

(ii) for sub-clause (ii), the following shall be substituted, namely :—

“(ii) Where on an application being made by any contractor in this behalf, the Commissioner is satisfied that the contract under reference is not a works contract and therefore justifies no deduction at all, he shall grant him such certificate :

Provided that, the Commissioner may, after giving the contractor a reasonable opportunity of being heard, reject such application or cancel or modify such certificate :

Provided further that, nothing in the said certificate shall affect the tax liability of the contractor.”;

(b) sub-section (3) shall be deleted ;

(c) for sub-section (4), the following sub-section shall be substituted, and shall be deemed always to have been substituted, namely :—

“(4) Any amount or any sum deducted in accordance with the provisions of this section and paid to the State Government may be claimed as a payment of tax by the person making the said supply and credit for the payment may be claimed by the said person in the period in which the certificate for payment is furnished to him by the person deducting tax in accordance with the provisions of this section.”;

(d) sub-sections (8) and (10) shall be deleted.

47. In section 41 of the Value Added Tax Act, for sub-section (4), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005, namely :—

“ (4) Subject to such conditions as it may impose, the State Government may, by notification in the *Official Gazette*, provide for exemption from the payment of full or part of the tax payable,—

(a) on the sales of motor spirits and petroleum products made by an oil company to another oil company;

(b) on sales at retail outlets of motor spirits, other than aviation turbine fuel and aviation gasoline.

Explanation.—For the purposes of this sub-section, motor spirits and petroleum products shall mean such products as the State Government may, notify from time to time, in the *Official Gazette*.”.

48. In section 42 of the Value Added Tax Act,—

(a) in sub-section (1),—

(i) in clause (b), for the words “ this section ” the words “ this sub-section ” shall be substituted;

(ii) in clause (c), after the words “ Country Liquor ” the words, brackets and figure “ except as provided in sub-section (2) ” shall be inserted ;

(b) in sub-section (2), after the words “ selling motor vehicles ”, the following shall be added, namely :—

“ or vendors selling Indian Made Foreign Liquor or Country Liquor at retail and holding licence in Form FL II appended to the Bombay Foreign Liquor Rules, 1953 or in Form CL III or in Form CL/FL/TOD/III appended to the Maharashtra Country Liquor Rules, 1973, framed under the Bombay Prohibition Act, 1949. ” ;

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

“ (3) Where a dealer is liable to pay tax on the sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, he may subject to such restrictions and conditions as may be prescribed, in lieu of the amount of tax payable by him under this Act, whether in respect of the entire turnover of sales effected by way of works contract or in respect of any portion of the turnover corresponding to individual works contract, pay lump-sum by way of composition,—

(a) equal to five per cent. of the total contract value of the works contract in the case of a construction contract, and

(b) eight per cent. of the total contract value of the works contract in any other case,

after deducting from the total contract value of the works contract, the amount payable towards sub-contract involving goods to a registered sub-contractor.

Explanation.—For the purposes of this sub-section,—

(i) “ construction contract ” shall mean construction contract as may be notified by the State Government in the *Official Gazette*, from time to time, and

(ii) “ the amount payable towards sub-contract involving goods ” means the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub-contractor or the sub-contract value on which tax by way of composition is paid by the sub-contractor, as the case may be.

(4) Where a dealer is liable to pay tax on sales effected by way of the transfer of the right to use *mandap* or tarpaulin (whether or not for a specified period), then he may, subject to such conditions and restrictions, as may be prescribed, pay in lieu of the amount of tax payable by him a sum equal to one and half per cent. of the turnover of sales effected by him.

Explanation.—For the purposes of this sub-section, the transfer of the right to use *mandap* includes the transfer of the right to use *mandap*, *pandal*, *shamiana* or the decoration of such *mandap*, *pandal* or *shamiana* and the transfer of the right to use furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a *mandap*, *pandal* or *shamiana*.”.

49. In section 50 of the Value Added Tax Act,—

(a) in sub-section (1), for the words “ the Commissioner shall refund ” the words “ the Commissioner shall, by order refund ” shall be substituted ;

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

“ (2) If a registered dealer has filed any returns, fresh returns or revised returns in respect of any period contained in any year and any amount is refundable to the said dealer according to the return, fresh return or revised return, then subject to rules, the dealer may adjust such refund against the amount due as per any return, fresh return or revised return for any subsequent period contained in the said year, filed under this Act or the Central Sales Tax Act, 1956 or the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.”.

50. For section 51 of the Value Added Tax Act, the following shall be substituted, namely :—

“ **51.** (1) Where a registered dealer has in any return, fresh return or revised return shown any amount to be refundable and has not undertaken to adjust such amount against the amount due as per any subsequent return in accordance with section 50, the Commissioner shall, on an application made by the dealer and subject to rules, and the other provisions of this Act, grant refund of such amount to the said dealer.

(2) (a) The Commissioner shall, grant the dealer refund of the amount claimed refundable as aforesaid within six months of the end of the year to which the return, fresh return or revised return relates and the refund relating to all the periods contained in one year may be granted by a single order :

Provided that, where the return, fresh return or, as the case may be, revised return is filed after the date prescribed for filing the last return of the said year, then the period of six months shall be counted from the date of filing of the said return, fresh return or revised return.

(b) Notwithstanding anything contained in clause (a), where a dealer has obtained a registration certificate as provided under this Act, then the refund in respect of the returns, fresh returns or revised returns in respect of the year containing the date of effect of registration shall be granted within six months of the end of the year succeeding the said year :

Provided that, the said dealer may apply in the prescribed form to the Commissioner at any time after the end of the year to which the refund relates for grant of the said refund and the Commissioner may subject to rules including rules relating to bank guarantees grant such refund:

Provided further that, where the return, fresh return or, as the case may be, revised return is filed at any time after the date prescribed for filing the last return of the said year, then the refund shall be granted within eighteen months of the date of filing of the return, fresh return or revised return.

(3) (a) Notwithstanding anything contained in sub-section (2), if a dealer is,—

(i) an exporter within the meaning of sub-section (1) or sub-section (3) of section 5 of the Central Sales Tax Act, 1956 ; or

(ii) a unit specified in the *Explanation* to sub-section (3) of section 8 ; or

(iii) a holder of a Certificate of Entitlement under any Package Scheme of Incentives except the New Package Scheme of Incentives for Tourism Projects, 1999,

then he may apply in the prescribed form to the Commissioner after filing the return for grant of refund relating to the period covered by a return, fresh return or revised return.

(b) The Commissioner, within one month of the receipt of the said application,—

(i) may require the dealer to furnish such bank guarantees for such amounts from such banks, for such periods and to such authorities as may be prescribed; and

(ii) may call for such additional information as he may think necessary.

(4) Where in any period covered by a return, the dealer has made a sale in the course of inter-State trade or commerce and in the return, fresh return or revised return filed in respect of the said period, he has shown any amount to be refundable, then he may apply in the prescribed form to the Commissioner, after filing the return as may be due, for grant of refund relating to the period covered by the return, fresh return or revised return. He shall furnish a bank guarantee on or after making the said application for such amount, from such banks, for such periods and to such authorities as may be prescribed.

(5) The Commissioner shall, within one month of the receipt of bank guarantee, where it is required to be furnished under sub-section (2), (3) or (4), grant the dealer a refund of the amount claimed as refundable in the return.

Where the Commissioner has not required the dealer to furnish a bank guarantee or in any case, the Commissioner has called for additional information, then the Commissioner shall grant the dealer a refund of the amount found due. The refund shall be granted within a period of three months from the date of receipt of the application or, as the case may be, the date of receipt of the additional information whichever is later.

(6) (a) If before the grant of refund under this section, a notice for assessment covering the period to which the return relates is issued or if any proceedings under sub-section (3) or sub-section (4) of section 64 are initiated in respect of the period to which the return relates, then,—

(i) if the dealer has not furnished a bank guarantee then no refund under this section shall be granted ; and

(ii) if the dealer has furnished a bank guarantee then an amount equal to the guaranteed amount shall be refunded.

(b) If it is found as a result of any order passed under this Act that the refund granted under this section is in excess of the refund, if any, determined as per the said order, then the excess amount shall be recovered as if it is an amount of tax due from the dealer and the dealer shall be liable to pay simple interest at the prescribed rate per month or part thereof from the date of the grant of refund.

(7) No refund under this section shall be granted unless an application as provided is made and no application under this section shall be entertained unless it is made within three years from the end of the year containing the period to which the return relates.”

51. In section 52 of the Value Added Tax Act, in the proviso, the word “provisional” shall be deleted.

52. In section 53 of the Value Added Tax Act, in sub-section (1), for the portion beginning with the words “ Where an amount required to be refunded ” and ending with the words “ date of the refund : ”, the following shall be substituted, namely :—

“ Where an amount required to be refunded by the Commissioner to any person, by virtue of the provisions contained in section 51 or by virtue of an order passed under any other provision of this Act, is not so refunded to him within ninety days of the end of the respective period provided in section 51 or, as the case may be, of the date of the said order, the Commissioner shall pay such person simple interest at the prescribed rate on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund : ”.

53. In section 86 of the Value Added Tax Act, for sub-section (5), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005, namely :—

“ (5) Any dealer may apply to the Commissioner to permit him to maintain the records of the bills or cash memorandum on such electronic system as may be approved by the Commissioner. On such permission being granted, the dealer shall stand exempted for the purposes of sub-section (3) regarding keeping counterfoils or duplicates of the said bills or cash memoranda and of signing the bill or cash memorandum.”.

54. In section 96 of the Value Added Tax Act, in sub-section (I), for clause (g), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005, namely :—

“(g) where a dealer registered under the Maharashtra Sales Tax on Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989, is liable to pay tax under this Act, and has at any time prior to the appointed day entered into any works contract and the execution of the said works contract has started before the appointed day and has continued thereafter, then such dealer shall pay tax in respect of the said contract in accordance with the provisions of the Maharashtra Sales Tax on Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989, without however claiming set-off on the purchases corresponding to the contract effected on or after the appointed day to which he would have been entitled under the provisions of this Act.”.

CHAPTER VII

VALIDATION AND SAVINGS

55. (1) Notwithstanding anything contained in any judgement, decree or order of any Court or Tribunal to the contrary, any assessment, re-assessment, levy or collection of tax in respect of sales or purchases effected by any dealer or person, engagement by any person in a profession, trade or calling, provision by a hotelier of luxuries made or purporting to have been made or entry effected by any importer or any action taken or thing done in relation to such assessment, re-assessment, levy or collection under the provisions of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, the Maharashtra Tax on Luxuries Act, 1987, the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 and the Maharashtra Value Added Tax Act, 2002, before the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2006 (hereinafter, in this Chapter, referred as “the Amendment Ordinance”), shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been duly made, taken or done under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, the Maharashtra Tax on Luxuries Act, 1987, the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 and the Maharashtra Value Added Tax Act, 2002, as amended by the Amendment Ordinance, and accordingly,—

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, re-assessment, levy or collection of any such tax, 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, officer or other authority, for the refund of any tax so paid ; and

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

(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 Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, the Maharashtra Tax on Luxuries Act, 1987, the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 and the Maharashtra Value Added Tax Act, 2002, as amended by the Amendment Ordinance, any assessment, re-assessment, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, Maharashtra Tax on Luxuries Act, 1987, the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 and the Maharashtra Value Added Tax Act, 2002, as amended by the Amendment Ordinance.

(3) Nothing in the Amendment Ordinance 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 the Amendment Ordinance, if such act or omission was not an offence under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, the Maharashtra Tax on Luxuries Act, 1987, the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 and the Maharashtra Value Added Tax Act, 2002, but for the amendments made by the Amendment Ordinance; nor shall any person in respect of such act or omission be subject to a penalty greater than that which could have been inflicted on him under the law in force immediately before the commencement of the Amendment Ordinance.

STATEMENT

It is proposed to amend the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Mah. XVI of 1975), the Maharashtra Tax on Luxuries Act, 1987 (Mah. XLI of 1987), the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 (Mah. XLII of 1987), the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 (Mah. IV of 2003) and the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005), with a view to augmenting the revenues of the State, to streamline the tax structure, to give effect to or to meet the contingencies, which have arisen on account of certain decisions of the Court or Tribunal, and for effective implementation of these Tax Laws.

2. Some of the important provisions, which are proposed to be made are explained broadly as follows :—

I. Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, is being amended,—

(i) to provide for the facility to file consolidated returns ;

(ii) for streamlining provisions for recovery of tax including grant of installments therefor ;

(iii) for changing references to the Bombay Sales Tax Act, 1959 since repealed and the designations of officers appointed thereunder to the Maharashtra Value Added Tax Act, 2002 and officers appointed thereunder.

II. Maharashtra Tax on Luxuries Act, 1987, is being amended,—

(i) to give effect to the judgment of the Supreme Court in the case of *M/s. Godfrey Philips India Ltd. Vs. the State of Uttar Pradesh (139 STC 537)* regarding levy of tax on Tobacco and to make certain changes consequential to the introduction of the Maharashtra Value Added Tax Act, 2002 in place of the Bombay Sales Tax Act, 1959 ;

(ii) to provide for a scheme of fresh registration of hoteliers.

III. Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, is being amended,—

(i) for changing references to the Bombay Sales Tax Act, 1959 and the Motor Vehicles Tax Act, 1939 to the Maharashtra Value Added Tax Act, 2002 and the Motor Vehicles Act, 1988;

(ii) to introduce the concept of revision and to provide for the appointment of assessing officers, revising officers and appellate officers and the powers of the revising officers.

IV. Maharashtra Tax on Entry of Goods into Local Areas Act, 2002, is being amended,—

(i) for changing references to the Bombay Sales Tax Act, 1959 and the Bombay Sales Tax Rules, 1959 to the Maharashtra Value Added Tax Act, 2002 and the Maharashtra Value Added Tax Rules, 2005 and deleting the reference to the Bombay Sales of Motor Spirit Taxation Act, 1958 since repealed;

(ii) for substitution of Schedule.

V. Maharashtra Value Added Tax Act, 2002, is being amended,—

(i) to provide that the purchase price of drugs shall be the maximum retail price printed on the package containing the drugs ;

(ii) to provide that the turnover of purchases will not be taken into account while deciding the liability of a dealer for registration ;

(iii) to provide for extension of the benefits available to units in the Special Economic Zone, etc., to developers of the Special Economic Zone ;

(iv) for effecting changes in the procedure regarding registration and fresh registration and to provide that it will not be necessary for the dealer to apply for fresh registration merely on account of shifting of the place of business ;

(v) for effecting changes in procedure for filing of returns and assessments ;

(vi) to provide for amplification and clarification regarding the powers of the appellate officers ;

(vii) for effecting changes in the provisions dealing with deduction of tax at source ;

(viii) to clarify that tax on Motor Spirits will be collected at a single stage ; and

(ix) for effecting changes in the Composition Scheme and to introduce new Schemes for composition.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action, for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,
Dated the 20th June 2006.

S.M. KRISHNA
Governor of Maharashtra.

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

SUBODH KUMAR
Principal Secretary to Government.