

THE DELHI VALUE ADDED TAX (THIRD AMENDMENT) BILL, 2015

A

BILL

to further amend the Delhi Value Added Tax Act, 2004 (3 of 2005).

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

- 1. Short title, extent and commencement.-** (i) This Act may be called the Delhi Value Added Tax (Third Amendment) Act, 2015.

(ii) It extends to the whole of the National Capital Territory of Delhi.

(iii) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act.

- 2. Amendment of section 3.-** In the Delhi Value Added Tax Act, 2004 (hereinafter referred to as the principal Act), in section 3, after sub-section (10), the following sub-section shall be inserted, namely:-

“(11) Notwithstanding anything contained in this Act to the contrary, the Government may by notification specify the goods on which a person shall pay tax in advance at the rates notified by the Government but not exceeding the rates applicable on such goods under this Act, when he imports such goods into the National Capital Territory of Delhi from a place outside India, subject to such conditions as may be specified in the notification. The aforesaid payment of tax in advance shall be counted towards the final tax liability of the taxable person:

Provided that the Government may by notification exempt any person or class of persons from payment of tax in advance or reduce the rate

of payment of tax in advance subject to such conditions as may be notified:

Provided further that if on an application made by a person the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduce for such person, he may do so and impose such terms and conditions on such person as he may deem fit.

Explanation.- The person, who imports goods into the National Capital Territory of Delhi, shall pay tax in advance, on the presumption that such goods are meant for the purpose of sale or for use in manufacture or processing of goods meant for sale, unless, it is proved otherwise by such person. It is further presumed, unless it is proved otherwise by such person, that such goods or any product manufactured therefrom shall not be sold below the price at which such goods have been purchased and imported.”.

3. Amendment of section 29.- In the principal Act, in section 29, after sub-section (1), and before the Explanation 1 clause, the following sub-section shall be inserted, namely:-

“(2) The Commissioner may by notification in the official gazette, require any dealer or class of dealers to file the returns only through electronic mode appending digital signatures or any other electronic identification process and with effect from such date as may be specified therein.”.

4. Insertion of new section.- In the principal Act, after section 50, the following new section shall be inserted, namely:-

“ **50A electronic communication of sale information.-**(1) the Government may by notification in the official gazette require any dealer or class of dealers to install such physical compliance devices or software, as may be considered necessary for instantaneous communication of the information of sale invoices to the Commissioner.

(2) The cost of equipment and installation of the device and software, as may be required under sub-section (1), shall be borne by the dealer.”

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

(i) in sub-section (1), the concluding words “ with a fine”, shall be substituted with the words “ with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved”;

(ii) in sub-section (2), the concluding words “ with a fine”, shall be substituted with the words “ with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved”;

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

“(3) Whoever, willfully attempts, in any manner whatsoever, to evade payment of tax, penalty or interest or all of them under this Act, shall, on conviction, be punished-

(a) in any case where the amount involved exceeds one crore rupees during the period of a year, with rigorous imprisonment for a term which may extend from a minimum period of six months to two years, and with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved ;

(b) in any case where the amount involved exceeds fifty thousand rupees but does not exceed one crore rupees during the period of a year, with rigorous imprisonment for a term which may extend to six months, and with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved; and

(c) in any other case, with rigorous imprisonment for a term which may extend to three months and with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved. ”;

(iv) in sub-section (4), the concluding words “ with a fine”, shall be substituted with the words “ with a fine of not less than the amount equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved”;

(v) in sub-section (5), the concluding words “ with a fine”, shall be substituted with the words “ with a fine of not less than the amount

equal to tax deficiency involved or fifty thousand rupees, whichever is higher but not exceeding four times of the amount of tax deficiency involved"; and

(vi) in sub-section (6), the words " one hundred rupees", shall be substituted with the words " five hundred rupees".

6. Insertion of new section.- In the principal Act, after section 91, the following new section shall be inserted, namely:-

"91A Special Courts and Public Prosecutor .- (1) Notwithstanding anything contained in this Act to the contrary, the Government may, if considers expedient or necessary, constitute, by notification in the Official Gazette, a Special Court with the concurrence of the Chief Justice of the Delhi High Court for the purposes of the trial of offences under this Act.

(2) For the Special Court, the Government shall appoint a person to be the Public Prosecutor and may appoint more than one person to be the Additional Public Prosecutors."

7. Amendment of section 92.-In the principal Act, in section 92,-

(i) in sub-section (2), after the concluding words "a cognizable offence", the words "and all provisions of the Code of Criminal Procedure, 1973, shall be applicable *mutatis-mutandis*" shall be inserted; and

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:-

"(3) If in a series of acts, so connected, as to form same transaction, any cognizable offence under the Indian Penal Code, 1860 appears to have been committed in addition to offence under this Act, the officers so authorized shall be competent to investigate such cognizable offence under the Indian Penal Code, 1860.

(4) Every officer or person so authorized shall, upon investigation of the offence, submit a report to the Commissioner with the recommendations for sanctioning prosecution or otherwise and the Commissioner, shall, then take a decision as to whether prosecution is essentially required in the matter and if so, the authorized officer shall launch prosecution before the Metropolitan Magistrate having jurisdiction over the area or before a court specially designated by the government for the purpose."

8. Amendment of section 93.- In the principal Act, in section 93, in subsection (1) the following proviso shall be inserted, namely:-

“ Provided that the composition of offence shall not apply in case of second and subsequent offence of the same nature.”.

STATEMENT OF OBJECTS AND REASONS

The Delhi Value Added Tax Act, 2004 is proposed to be amended to incorporate some specific provisions which are necessitated by a variety of compulsive reasons varying from – removal of some discrepancies/anomalies noticed by the department or brought to its notice by the stakeholders from time to time, making the tax administration more efficient and for making some changes required in the public interest.

The proposed amendment in section 3 aim at introducing provisions for levy and collection of advance tax from persons importing goods from outside India and to minimize the chances of evasion of tax by importers thereby making the tax administration more efficient.

The proposed amendment in section 29 will facilitate the dealers in filing the returns through digital signatures or other electronic options, thereby dispensing with the requirement of filing Form DVAT 56 in person in the Department.

Insertion of new section 50A aim at capturing the data of sales made by dealers instantly through electronic communication thereby minimizing the chances of manipulation of any sale data afterwards and evasion of tax thereof.

The proposed amendments in section 89 to make the provisions more deterrent by increasing the punishment for potential offenders including increase of the amount of minimum fine which can be imposed under the provisions of the Delhi Value Added Tax Act, 2004.

The proposal for insertion of new section 91A is to make enabling provisions for setting up of Special Courts for speedy trials of the offences.

The proposed amendment of section 92 aims to empower investigation under the Indian Penal Code, 1860 where commission of an offence under the Delhi Value Added Tax Act, 2004, involves commission of an offence punishable under the Indian Penal Code, 1860 and to incorporate the process to be opted by an authorized officer for prosecution after investigation of an offence.

The amendment in section 93 is to disallow compounding of offences to a habitual offender

The Bill seeks to achieve the aforesaid objectives.

(MANISH SISODIA)
DEPUTY CHIEF MINISTER / FINANCE MINISTER

FINANCIAL MEMORANDUM

The Delhi Value Added Tax (Third Amendment) Bill, 2015 does not involve any additional financial implications since no outgo on new posts is anticipated from the Consolidation Fund of the National Capital Territory of Delhi.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Delhi Value Added Tax (Third Amendment) Bill, 2015 does not make provision for the delegation of power in favour of any functionaries to make subordinate legislation except-

- (i) the delegation under section 2 of this Act for specifying the good and rates of advance tax thereof, terms and conditions and the manner of levy of advance tax.
- (ii) the delegation under section 3 of this Act regarding requirement of filing returns in electronic mode through digital signatures or any other electronic identification process.
- (iii) the delegation under section 4 of this Act for seeking instantaneous information of sale invoices through physical compliance devices or software.
- (iv) the delegation under section 6 of this Act for constitution of Special Courts.

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(ii) mi /kkjk 1/21/2 ea vflure 'kCn ^vFkzhM ds l kFk** dks ^, d k vFkzhM ftl dh jkf'k dj U; wurk ds cjkcj jkf'k l s de ugha gksxh ; k i pl g tkj #i ; § tks vf/kd gk§ ijUrq dj U; wurk dh jkf'k l s pkj xqkk l s vf/kd ugha gksxhA**

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i R; k; kstu fo/kku I s I a/ kh Kki u

e/; I of/kr dj 1/rh; I a kks/ku½ fo/ks d] 2015 ea fuEufyf[kr ds vykok dkbZ v/khuLFk fo/kku cukus ds fy; s fdl h vf/kdkjh dks 'kfdR; ka ds i R; k; kstu dk i ko/kku ugha j [kk x; k g&

¼i½ bl vf/kfu; e dh /kkjk 2 ds v/khu oLr/ka dk fofunZ ku rFkk mu ij vfxæ dj dh nj; vfxæ dj dh ol yh dh 'krā rFkk i) fr ds fy; s i R; k; kstuA

¼ii½ bl vf/kfu; e dh /kkjk 3 ds v/khu fMftVy gLrk{kjka ; k fdl h vU; byDVkud i gpku i fØ; k ds ek/; e I s byDVkud i) fr I s fjVU Hkjus dh vi s k I a/ kh i R; k; kstuA

¼iii½ bl vf/kfu; e dh /kkjk 4 ds v/khu fQftdy dEiyk; d fMokbZ ; k I kVos j ds ek/; e I s fcØh blOkbl dh rjUr I puk i klr djus ds fy; s i R; k; kstuA

¼iv½ bl vf/kfu; e dh /kkjk 6 ds v/khu fo'kSk U; k; ky; ka dh LFkki uk ds fy; s i R; k; kstuA