

# The Gujarat Motor Spirit Cess Act, 2001

GUJARAT

India

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### Act 13 of 2001

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The Gujarat Motor Spirit Cess Act, 2001 Gujarat Act No. 13 of 2001 (First published, after having received the assent of the Governor in the "Gujarat Government Gazette", on the 6th August, 2001). An Act to provide for levy of cess on turnover of sales of motor spirit in the State of Gujarat for the purpose of creating fund in order to compensate local authorities consequent on the abolition of octroi and for the matters connected therewith and incidental thereto. It is hereby enacted in the Fifty-second Year of the Republic of India as follows:-

## Chapter I Preliminary

### 1. Short title, extent and commencement.

(1) This Act may be called the Gujarat Motor Spirit Cess Act, 2001. (2) It extends to the whole of the State of Gujarat. (3) It shall be deemed to have come into force on the 1st May, 2001.

### 2. Definitions.

(1) In this Act, unless the context otherwise requires,- (a) "cess" means the cess on the turnover of sales of motor spirit levied under section 3; (b) "Collector" means the Collector appointed under section 10 and includes a Special Collector or an Additional Collector appointed under that section; (bb) [ "importer" means a person who carries on the trade of importing motor spirit into the State of Gujarat; ] [ Clause (bb) inserted by Guj 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006). ] (c) "local authorities" means- (i) a municipality constituted under the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964); (i) any inflammable hydro-carbon (including any mixture of hydro-carbons or any liquid containing hydro-carbons) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle or vessel or any kind of aircraft; and (ii) power alcohol, that is, ethyl alcohol or any grade (including such alcohol when

denatured or otherwise treated), which either by itself or in admixture with any such hydro-carbon, is capable of being used as aforesaid, but does not include such form of inflammable hydrocarbon materials as the State Government may by notification in the Official Gazette, specify in this behalf;](ii)a village panchayat constituted under the Gujarat Panchayats Act, 1993 (Gujarat 18 of 1993);(cc)[ "manufacturer" includes a trader preparing any kind of motor spirit by admixture of one or more kinds of motor spirits with or without other petroleum products or alcohol; [Clauses (cc) and (ccc) inserted by Guj 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).](ccc)"motor spirit" means -(d)"prescribed" means prescribed by rules;(e)"rules" means rules made under this Act;(ee)[ "sale" means a sale of motor spirit made within the State of Gujarat for cash or deferred payment or other valuable consideration, and includes any supply by a society or club or an association to its members on payment of a price or of fees or subscription, but does not include a mortgage, hypothecation, charge or pledge and the words "sell", "buy" and "purchase" with all their grammatical, variations and cognate expressions shall be construed accordingly. [Clause (cc) inserted by Gujarat 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).]Explanation. - For the purposes of this clause a sale within the State of Gujarat includes a sale determined to be within the State of Gujarat in accordance with the principles specified in sub-section (2) of section 4 of the Central Sales Tax Act, 1956 (LXXVI of 1956).](f)[ "tax" means tax levied on the sale of motor spirit under the Gujarat Value Added Tax Act, 2003 (Gujarat I of 2005), [Substituted by Gujarat 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).](g)"trader" means a person who carries on the trade or business of buying or selling motor spirit and includes-(i)a manufacturer,(ii)an importer, and(iii)a broker or commission agent working in connection with such business; and the word "trade" or "trading" shall be construed accordingly;(gg)"Tribunal" means the tribunal constituted under section 19 of the Gujarat Value Added Tax Act, 2003 (Gujarat I of 2005) and discharging functions of the Tribunal assigned to it by or under this Act;](h)"turnover of sales" means sales price including the amount of tax as defined in clause (f) of this section;(i)"year" means a financial year.[\*\*\*] [Sub-section (2) deleted by Gujarat 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).]

## Chapter II

## Levy of Cess and Utilisation of Proceeds of Cess

### 3. Levy and collection of cess.

(1)For the purpose of providing fund for local authorities in the State of Gujarat, there shall be levied and collected a cess on the turnover of sales of motor spirit by a manufacturer or importer or trader, but after deducting therefrom such turnover on which cess has been paid on earlier turnover of sales of motor spirit;Provided that such cess shall not be levied at more than one stage.(2)The cess under sub-section (1) shall be levied in such manner and at such rate or rates not exceeding four per cent, of the turnover of sales of such motor spirit, as may be prescribed and different rates may be prescribed for different kinds of motor spirit.(3)The cess levied under sub-section (1) shall be payable by the trader.

#### **4. Local Authorities Fund.**

(1)The proceeds of the cess and interest (other than fines) 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 therefrom shall, under appropriation duly made by law in this behalf, be entered in, and transferred to a separate fund called the "Local Authorities Fund".(2)Any amount transferred to the Local Authorities Fund under sub-section (1) shall be charged on the Consolidated Fund of the State.(3)The amount transferred to the Local Authorities Fund shall be expended in such manner and subject to such conditions as may be prescribed for the purpose mentioned in section 3.

#### **5. Payment of cess.**

(1)The cess levied under section 3 shall be payable by trader in such manner as may be prescribed.(2)The trader liable to pay cess under section 3 shall furnish at such intervals and to such authority, returns in such form and in such manner as may be prescribed.

#### **6. Interest on delayed payment of cess.**

- Where a trader does not pay the amount of cess within the time prescribed for its payment, there shall be paid by such trader, for the period 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 of [eighteen per cent] [Substituted for 'twenty-four per cent' by Guj 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).], per annum on the amount of cess not so paid or any less amount thereof remaining unpaid during such period.

#### **7. Refund in certain circumstances.**

- Where cess under section 3 is levied and collected on the turnover of sales of motor spirit to a trader and such motor spirit is then sold by such trader in the course of inter-State trade or commerce or exported out of the territory of India within six months of such sales, the trader shall, upon an application made in this behalf and subject to such conditions as may be prescribed, be entitled to refund of cess in respect of the sale to him of the motor spirit.

### **Chapter III**

### **Registration**

#### **8. Registration.**

(1)Every trader [\* \* \*] [Words 'holding a licence under the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bombay LXV1 of 1958)' deleted by Gujarat 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).]shall be required to apply for and obtain a registration certificate:Provided that the Collector may, subject to such conditions as may be prescribed, grant exemption from the provisions

of registration to a trader who, by virtue of deduction from turnover of sales, does not become liable to pay cess under this Act.(2)The application for registration shall be made in such form, within such period and to such authority, as may be prescribed.(3)On receipt of an application for registration under sub-section (2), the authority on its satisfaction, may issue a certificate of registration in such form as may be prescribed.

## **9. Suspension or cancellation of registration.**

- The Collector may, subject to such conditions as maybe prescribed, suspend or cancel the registration if,-(a)any cess payable under section 5 is not duly paid by the trader;(b)there is any breach of conditions subject to which the registration is granted; or(c)the trader contravenes any of the provisions of this Act or the rules made thereunder.

## **Chapter IV Cess Authorities**

### **10. Cess Authorities.**

(1)For carrying out the purposes of this Act, the State Government may appoint-(a)a person to be the Collector of Motor Spirit Cess for the whole of the State of Gujarat;(b)a person to be the Special Collector of Motor Spirit Cess;(c)a person to be the Additional Collector of Motor Spirit Cess; and(d)such other persons to assist the Collector as the State Government may think fit.(2)A person appointed under clause (b), (c) or (d) of sub-section (1) shall, within the limits of such area as the State Government may specify, exercise such powers and perform such duties as may be conferred or imposed on him by or under this Act.

## **Chapter V Liability to Keep Accounts, Submit Statement and Powers of Inspection and Search**

### **11. Traders to keep accounts and submit statement.**

- Every trader shall keep and maintain accounts in such form as may be prescribed, of motor spirit manufactured, imported, sold or purchased by him, and shall submit to the officer authorised in this behalf by the Collector, the statement in such form, in such manner and for such period, as may be prescribed:Provided that where a trader has more than one place of business, the Collector may subject to such terms and conditions as may be prescribed, permit such trader to submit a consolidated statement relating to all or any of his places of business to such officer as the Collector may direct.

## **12. Production and inspection of accounts and documents and search of premises.**

(1)The Collector may, for the purposes of this Act, at all reasonable times-(i)require any trader to produce before him accounts, registers or other documents or to furnish any other information; or(ii)inspect the accounts, registers and other documents and the stocks of any motor spirit manufactured, stored or kept in any shop, warehouse or place of business of any such trader; or(iii)enter and search any building, vessel, vehicle or place in which he has reason to believe that any motor spirit is stored or kept for the purpose of sale or manufacture or where the accounts, registers and other documents are kept.(2)All searches made under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

## **13. Seizure of any documents in certain circumstances.**

- If the Collector has reason to believe that any trader is attempting to commit an offence punishable under this Act, he may for reasons to be recorded in writing, seize such accounts, registers or other documents of such trader as may be necessary and shall grant a receipt for the same and retain the same only for so long as may be necessary for examination thereof or for prosecution.

# **Chapter VI**

## **Assessments, Appeals and Revision**

## **14. Assessment.**

(1)The amount of cess due from a trader shall be assessed by the Collector.(2)If the Collector is satisfied that the returns furnished by a trader are correct and complete, he shall assess the amount of cess due from the trader 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, and he thinks it necessary to require the presence of trader or the production of further evidence, he shall serve on such trader, in the prescribed manner, a notice requiring him on a date and a place specified therein, either to attend and produce or cause to be produced all evidence on which such trader relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Collector shall, after considering all the evidence which may be produced, assess the amount of cess due from the trader.(4)If a trader fails to comply with the terms of any notice issued under sub-section (3), the Collector shall assess, to the best of his judgement, the amount of cess due from him.

## **15. Bar of certain proceedings.**

- Save as provided by section 19, no assessment made and no order passed under this Act or the rules made thereunder by the Collector or any person appointed under section 10 to assist him, shall be called in question in any civil court, and save as provided by sections 16 and 17, no appeal or

application for revision shall lie against any such assessment or the order.

## **16. Appeal.**

(1) Any trader aggrieved by any order of the Collector, may file an appeal before such authority, within such time and in such manner, as may be prescribed. (2) No appeal against an order of the assessment shall be entertained by the said authority unless it is accompanied by satisfactory proof of the payment of the cess with interest, if any, in respect of which the appeal has been preferred: Provided that the said authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order, - (a) without payment of the cess or interest, if any, but on furnishing in the prescribed manner, security for such amount of cess and interest, as it may direct, or (b) on proof of payment of such smaller sum, with or without security in like manner for such amount of cess and interest which remains unpaid as it may direct. (3) Subject to such rules of procedure as may be prescribed, the said authority may pass such order on appeal as it may think just and proper. (4) Every order passed in appeal under this section shall, subject to the provisions of sections 17, 19 and 20 be final.

## **17. Revision.**

(1) Subject to such rules as may be prescribed, and for the reasons to be recorded in writing, the Collector may, upon application or of his own motion, revise any order passed under this Act or the rules made thereunder by a person appointed under section 10 to assist him and subject thereto the Tribunal may, upon application, revise any order passed by the Collector: Provided that no application under this sub-section shall be entertained if it is not made within a period of four months from the date of the order: Provided further that before rejecting any application for the revision of any such order, the Collector or as the case may be, the Tribunal, shall record reasons in writing for such rejection. (2) Before any order is passed under this section which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard. (3) Where an appeal lies under section 16 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon the application of such person.

## **18. Extension of period of limitation in certain cases.**

- The prescribed authority may admit an appeal under section 16 and the Collector and the Tribunal may admit an application under section 17 after the expiry of period of limitation laid down in the said sections, if the appellant or, as the case may be, the applicant, satisfies the prescribed authority, the Collector or, as the case may be, the Tribunal, that he had sufficient causes for not preferring the appeal, or making the application, within such period.

## **19. [ Appeal to High Court. [Section 19 substituted by Guj 4 of 2006, dated 2nd March 2006 (w.e.f. 01-04-2006).]**

(1)An appeal shall lie to the High Court from every order passed in appeal by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law.(2)In any appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.(3)Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.(4)The appeal shall be heard on the question so formulated and the respondent shall, in the hearing of the appeal, be allowed to argue that the case does not involve such question:Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.(5)The High Court, upon hearing of such case, shall decide the question so formulated or involved and deliver the judgement thereon containing the grounds on which such decision is founded.(6)An appeal under this section may be filed within ninety days from the date of communication of the order of the Tribunal and shall be accompanied with a fee of rupees two hundred.(7)In respect of such matters not provided in this section, the provisions of Code of Civil Procedure, 1908 (5 of 1908), which applies to the second appeal to High Court under section 100 of the said Code shall, so far as may be, apply to the appeal under this section.]

## **20. Rectification of mistakes.**

(1)The Collector may at any time within two years from the date of any order passed by him, either on his own motion or on an application made by any person affected by such order rectify any mistake of fact apparent from the record:Provided that no such rectification shall be made if it has the effect of enhancing the cess or reducing the amount of refund, unless the Collector has given notice in writing to such trader of his intention to do so and has allowed such trader a reasonable opportunity of being heard.(2)The provisions of sub-section (1) shall apply to the rectification of mistake by the Tribunal or the prescribed authority under section 16 as they apply to the rectification of a mistake by the Collector.(3)Where any such rectification has the effect of reducing the amount of cess, the Collector shall in the prescribed manner refund any due, to such trader.(4)Where any such rectification has the effect of enhancing the amount of cess or reducing the amount of refund, the Collector shall recover the amount due from such trader in the manner provided in section 32.

## **Chapter VII**

### **Offences, Penalties and Procedure**

#### **21. Penalty for carrying on business without registration.**

- Whoever contravenes the provisions of section 8 shall, on conviction, be punished with fine which may extend to twenty thousand rupees and in the case of a continuing contravention, with an additional fine which may extend to one thousand rupees for each day during which such contravention continues after conviction for the first such contravention.

## **22. Penalty for failure to keep accounts or submit statements.**

- If any trader liable under section 11 to keep accounts or to submit statements, fails without sufficient cause to keep or submit the same in the manner and at the period prescribed or keeps false accounts or submits false statements, he shall, on conviction, be punished with fine which may extend to twenty thousand rupees and in the case of a continuing failure, with an additional fine which may extend to one thousand rupees for each day during which such failure continues, after conviction for the first such failure.

## **23. Penalty for failure to comply with requirements of section 12 or for obstructing officer in discharging his duties.**

- Whoever-(a) fails to comply with any requirement made to him under sub-section (1) of section 12, or (b) produces false accounts, registers or documents, or knowingly furnishes false information, or (c) obstructs any officer making an inspection, search or seizure under the provisions of 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 twenty thousand rupees and in the case of a continuing contravention, with an additional fine which may extend to one thousand rupees for each day during which such contravention continues after conviction for the first such contravention.

## **24. Offences by companies.**

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purpose of this section-(a) "company" means a body corporate and includes a firm or other association of individuals; and (b) "director" in relation to a firm means a partner in the firm.

## **25. Cognizance of offences.**

- No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Collector.



## **26. Power of entry and search.**

(1) Any officer specially empowered by the State Government in this behalf may enter and search, at any time any building, vessel, vehicle or place in which he has reason to believe that motor spirit is kept for the purpose of sale contrary to the provisions of this Act or any rules made thereunder. (2) All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

## **27. Powers of investigation.**

(1) Every officer not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act. (2) Every such officer shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer in-charge of police station for the investigation of a cognisable offence.

# **Chapter VIII**

## **Miscellaneous**

## **28. Delegation of powers.**

- Subject to the general or special orders of the State Government, the Collector may delegate any of the powers conferred upon him by or under this Act to any person appointed to assist him under section 10.

## **29. Powers to transfer proceedings.**

- The Collector may, after due notice to the trader, by order in writing, transfer any proceedings or class of proceedings under any provisions of this Act or the rules made thereunder, from himself to any other officer and he may likewise transfer any such proceedings (including proceeding already transferred under this section) from one such officer to another officer or to himself.

## **30. Officers to be public servants.**

- The Collector, all officers and other employees appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. (XLV of 1860)

## **31. Protection of action taken in good faith.**

- 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 the rules made thereunder.

### **32. Recovery as arrear of land revenue.**

- All sums payable as cess or interests (other than fines) under this Act shall, if not paid within the prescribed period or, as the case may be, before such date as the Collector may direct, be recoverable as an arrear of land revenue.

### **33. Certain sales not liable to cess.**

- Nothing in this Act or the rules made thereunder, shall be deemed to impose or authorise the imposition of a cess on any turnover of sales of motor spirit where such sales takes place-(a)outside the State of Gujarat,(b)in the course of the import of such motor spirit into the territory of India or the export of the goods out of such territory, or(c)in the course of inter-State trade or commerce.Explanation. - For the purpose of this section, whether a sale takes place-(i)outside the State of Gujarat, or(ii)in the course of import of the goods into the territory of India or the export of the goods out of such territory, or(iii)in the course of inter State trade or commerce shall be determined in accordance with the principle specified in sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (LXXIV of 1956).

### **34. Power to make rules.**

(1)The State Government may, by notification in the Official Gazette, make rules 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, namely:-(a)the stage at which, the rate at which and the manner in which, the cess shall be levied and collected under section 3;(b)the manner in which and conditions subject to which the Local Authorities Fund shall be expended under section 4;(c)the manner in which the cess shall be payable by trader under sub-section (1) of section 5;(d)the intervals at which, the authority to which, the form in which and the manner in which the return shall be furnished under sub-section (2) of section 5;(e)the conditions subject to which a trader shall be entitled to refund of cess under section 7;(f)the conditions subject to which the exemption from the provisions of registration may be granted by the Collector under sub-section (1) of section 8;(g)the form in which, period within which and the authority to which the application for registration shall be made under sub-section (2) of section 8;(h)the form in which certificate of registration shall be issued under subsection (3) of section 8;(i)the conditions subject to which the Collector may suspend or cancel registration under section 9;(j)the form in which accounts shall be maintained by the trader under section 11;(k)the form in which, the manner in which and the period for which statements shall be submitted under section 11;(l)terms and conditions subject to which the trader may be permitted to submit a consolidated statement under the proviso to section 11;(m)the manner in which a notice shall be served by the Collector on a trader under sub-section (3) of section 14;(n)the manner in which, the time within which and the authority to which an appeal may be preferred under sub-section (1) of section 16;(o)the manner in which the security shall be furnished under the proviso to sub-section (2) of section 16;(p)the rules of procedure subject to which the authority may pass an order on appeal under sub-section (3) of section 16;(q)the rules subject to which the Collector or the Tribunal may revise an order under sub-section (1) of section 17;(r)the manner in which the Collector may refund the amount of cess under

sub-section (3) of section 20;(s)the rank of officer who shall have power to investigate offences under subsection (1) of section 27.(3)Any rule made under this section may provide that any person contravening any such rule shall be liable, on conviction, to be punished with a fine which may extend to one thousand rupees and in the case of a continuing contravention with an additional fine which may extend to fifty rupees for each day during which such contravention continues after conviction for the first such contravention.(4)The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication: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.(5)All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as they are made and shall be subject to rescission 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.(6)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

### **35. Repeal and savings.**

(1)The Gujarat Motor Spirit Cess Ordinance, 2001 (Gujarat Ordinance 7 of 2001) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.