

Gujarat Tax on Sale of Electricity Act, 1985

GUJARAT

India

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Act 5 of 1985

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1. [Repealed by Tax on Sale of Electricity (Repeal) Act, 2002 (Act 8 of 2002) on 31 March 2002]

An Act to levy a tax on the sale of electricity in the State of Gujarat. It is hereby enacted in the Thirty-sixth Year of the Republic of India as follows:-* Received the Assent to by the Governor on the 12th April, 1985 is hereby published for general information.

1. Short title extent and commencement.- (1) This Act may be called the Gujarat Tax on Sale of Electricity Act, 1985.

(2) It extends to the whole of the State of Gujarat. (3) It shall be deemed to have come into force on the 1st October, 1984.

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

(a) "consumer" means any person (not being a licensee) who is supplied with energy, on payment of charges, by a licensee; (b) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message; (c) "licensee" means any person licensed under Part-II of the Indian Electricity Act, 1910 (IX of 1910), to supply energy and includes any person who has obtained the sanction of the State Government under section 28 of that Act, the State Government when it is engaged in a business of supplying energy and the State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (LIV of 1948); (d) "prescribed" means prescribed by rules made under this Act; (e) "sale" means sale of electricity made within the State, to a consumer for cash or deferred payment or other valuable consideration, and the word "sell" with all its grammatical variations and cognate expressions shall be construed accordingly; Explanation.- For the purposes of this clause, "sale" within the State includes a sale determined to be inside the State in accordance with the principles formulated in sub-section (2) of section 4 of the Central Sales Tax Act, 1956; (f) "sale price" means the amount of valuable

consideration paid or payable to a licensee for any sale made but does not include the amount of meter charges, interest on delayed payment or fuse off call charges and reconnection charges;(g)"tax" means a tax imposed under this Act;(h)"turnover of sales" means aggregate of the amount of sale price received and receivable by a licensee in respect of sale of electricity made during a given period after deducting the amount of sale price if any refunded by the licensee.

3. Levy of tax on sale of electricity.- Subject to the provisions of this Act, on and from the commencement of this Act, there shall be levied and collected a tax on the turnover of sales of electricity at such rate not exceeding five paise in the rupee, as the State Government may, by notification in the Official Gazette, specify and different rates may be specified for turnover of sales of electricity relating to different classes of consumers.

4. Incidence of tax.- Every licensee shall be liable to pay tax under this Act on his turnover of sales made on or after the commencement of this Act.

5. Taxes payable licence.- Subject to the provisions of this Act and to any rules made thereunder there shall be paid to the State Government by every licensee the tax leviable under section 3 at such intervals and in such manner as may be prescribed.

6. Exemption.- (1) Subject to such conditions as it may impose, the State Government may, if it considers it necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales from payment of the whole or any part of the tax payable under the provisions of this Act.

(2)Every notification issued under sub-section (1) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make, during the session in which it is so laid or the session immediately following. Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

7. Licensee to keep books of account and submit returns.- Every licensee shall keep books of account in the prescribed form and submit to the State Government or to an officer authorised by the State Government in this behalf, returns in such form and at such intervals as may be prescribed showing the units of energy sold by him, the sale price received by him and the amount of tax payable thereon and the amount of tax already paid by him.

8. Inspecting Officer.- (1) The State Government may, by notification in this Official Gazette, appoint any person having the prescribed qualifications to be Inspectors for the purposes of this Act.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

9. Power of Inspectors.- (1) Subject to the provisions of any rules made by the State Government in this behalf, an Inspector may-

(i) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of tax leviable under this Act; (ii) enter and search any premises where energy is, or is believed to be supplied for the purpose of- (a) verifying the statements made in the books of account kept, and returns submitted, under section 7, (b) testing the reading of meters, (c) verifying the particulars required in connection with the levy of the tax; (iii) exercise such other powers and perform such other duties as may be necessary for carrying out the purposes of this Act or the rules made thereunder. (2) All searches made under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

10. Recovery of tax.- Any sum due on account of tax if not paid at the intervals and in the manner prescribed shall be deemed to be in arrears, and thereupon such interest (not exceeding 12% per annum) which the State Government may, by general or special order fix shall be payable on such sum; and the sum together with interest thereon shall be recoverable through a Civil Court or as an arrear of land revenue at the option of the State Government, or any Officer authorised by the State Government in this behalf.

11. Refund of tax.- The State Government may, by rules prescribe the circumstances in which and conditions subject to which a refund of the whole or any part of the tax may be granted to a licensee.

12. Penalties.- If any person-

(a) fails to keep books of account, or to submit returns in accordance with the provisions of section 7 and the rules made in that behalf, or (b) willfully obstructs an Inspector in the exercise of the powers conferred, or in the discharge of duties imposed, upon him by or under this Act, he shall, on conviction, be punished with fine which may extend to one thousand rupees.

13. Offences by Companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time when 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 the 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 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 the 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.

14. Protection of action taken in good faith.- No suit, prosecution or other proceeding shall lie against any servant of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

15. 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-(a)prescribe under section 5 the rule if any, subject to which and the intervals at which and the manner in which, the tax leviable under section 3 shall be paid to the State Government by every licensee;(b)prescribe under section 7 the form in which books of account shall be kept, and the form in, and intervals at, which returns shall be submitted;(c)prescribe the qualifications of Inspectors under section 8;(d)prescribe the rules, if any, subject to which the Inspectors may exercise the powers under section 9;(e)prescribe the circumstances in which and conditions subject to which refund may be granted under section 11.(3)In making any rules under this section the State Government may direct that a breach thereof shall be punishable with fine not exceeding one thousand rupees, and when the offence is continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.(4)The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.(5)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to 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.

16. Savings.- For the avoidance of doubt, it is hereby declared that nothing in this Act shall be taken to impose, or authorise the imposition of, a tax on the sale of electricity (whether produced by Government or other persona) which is-

(a)sold to the Government of India for consumption by that Government, or(b)sold to the Government of India or any railway of the Government of India for consumption in the construction, maintenance or operation of any railway,(c)sold to any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river valley, for its consumption.Explanation.-For the purposes of this section the expression "existing law" shall have the meaning assigned to it in clause (10) of article 366 of the Constitution.

17. Repeal and savings.- The Gujarat Tax on Sale of Electricity Ordinance, 1934 (Guj. ??? 9 of 1984) 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.