

# 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 Govt. Gazette on the 6th August, 2001.)

### AN ACT

*to provide for levy of cess on 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 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;
  - (c) “**Local authorities**” means --
    - (i) a municipality constituted under the Gujarat Municipalities Act, 1963; (Guj. 34 of 1964)
    - (ii) a village panchayat constituted under the Gujarat Panchayats Act, 1993; (Guj. 18 of 1993)
  - (d) “**Prescribed**” means prescribed by rules;
  - (e) “**Rules**” means rules made under this Act;
  - (f) “**Tax**” means tax, additional tax and turnover tax levied under the Bombay Sales of Motor Spirit Taxation Act, 1958; [Bom. LXVI of 1958]
  - (g) “**Tribunal**” means the Gujarat Sales Tax Tribunal constituted under section 28 of. The Gujarat Sales Tax, Act, 1969, and discharging functions of the Tribunal assigned to it by or under this Act; [Guj. 1 of 1970]
  - (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.
- (2) Words and expressions used and not defined in this Act but defined in the Bombay Sales of Motor Spirit Taxation Act; 1958 shall have the meanings respectively assigned to them in that Act. [Bom. LXVI of 1958]

**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 for the prescribed period, in the prescribed 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 twenty-four per cent. 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 holding a license under the Bombay Sales of Motors Spirit Taxation Act, 1958 shall be required to apply for and obtain a registration certificate. [Bom. LXVI of 1958]

*Provided* that the Collector may, subject to the 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 within such period, and in such form and to such authority, as may be prescribed.
- (3) On receipt of the application for registration under sub-section (2), the authority on its satisfaction, may issue certificate of registration in such form as may be prescribed.

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

The Collector may, subject to such conditions as may be prescribed, suspend or cancel the registration; if -

- (a) any cess payable under section 5 is not duly paid by the trader; or
- (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 the form prescribed, of motor spirit manufactured, imported, sold or purchased by him, and shall submit to the officer authorized in this behalf by the Collector, 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, register 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.

#### 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 a 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 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 evidences 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 or 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 the Tribunal, as the case may be, 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 any 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 the applicant, as the case may be, 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. Statement of case to High Court.**

- (1) Within ninety days from the date of passing of any order under sub-section (3) of section 16 or sub-section (1) of section 17 affecting any liability of any trader to pay cess, such trader or the Collector, may by application in writing require the Tribunal to refer to the High Court any question of law arising out of such order, and where the Tribunal agrees it shall draw up a statement of the case and refer it to the High Court.
- (2) If, for reasons to be recorded in writing, the Tribunal refuses to make such reference, the applicant may within thirty days of such refusal apply to the High Court against such refusal.
- (3) If upon the receipt of an application under clause (b) of sub-section (2), the High Court is not, satisfied that such refusal was justified, it may require the Tribunal to state a case and refer it to the High Court; and on receipt of such requisition, the Tribunal shall state and refer the case to the High Court accordingly.
- (4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alternations therein as the High Court may direct in that behalf.
- (5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the

grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgement under the seal of the High Court and the signature of the Registrar, and the Tribunal shall dispose of the case accordingly.

- (6) The payment of the amount, if any, of the cess due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the excess cess paid shall be refunded.

## **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 a 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 the 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 the 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 reports.**

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 obstructing officer in discharge of 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 specifically 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 made under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

**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 upon an officer in-charge of police station for the investigation of a cognizable 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 arrears of land revenues**

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 arrears 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 authorize the imposition of a cess on any turnover of sales of motor spirit where such sales takes place -

- (a) Outside the State of Gujarat, or
- (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.

### **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;
  - (h) The form in which certificate of registration shall be issued under sub-section (3) of section 8;
  - (i) The conditions subject to which the Collector may suspend or cancelled 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, a 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 sub-section (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 section 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 is hereby repealed. (Guj. Ord. 7 of 2001)
- (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.