

L. A. BILL No. XXXII OF 2024.

A BILL

further to amend the Maharashtra Value Added Tax Act, 2002.

Mah. IX 5 **WHEREAS** it is expedient further to amend the Maharashtra Value Added
of 2005. Tax Act, 2002, for the purposes hereinafter appearing; it is hereby enacted in
the Seventy-fifth Year of the Republic of India as follows :-

1. This Act may be called the Maharashtra Value Added Tax (Amendment and Validation) Act, 2024. Short title.

Amendment
of section 2
of Mah. IX of
2005.

2. In section 2 of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as “the principal Act”),–

Mah. IX
of 2005.

(i) after clause (22), the following clauses shall be inserted and shall be deemed to have been inserted with effect from the 1st April 2005, namely :–

“(22A) “retail outlet” means filling station in which one or more dispensing pumps have been provided for retail sale of motor spirit.

Explanation.–For the purposes of this clause, the expression “retail sale” means sale of motor spirit not exceeding 2500 liters to any one customer at a time;”;

(ii) in clause (24), in the *Explanation*, in para (b), in sub-para (v), the following *Explanation* shall be added and shall be deemed to have been added with effect from the 1st April 2005, namely :–

“*Explanation.*– For the purposes of this sub-para, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, any association or body of persons, incorporated or not, and its member shall be deemed to be two separate persons and the supply of goods *inter se* shall be deemed to take place from one such person to another;”.

Amendment
of section 37
of Mah. IX of
2005.

3. In section 37 of the principal Act, in sub-section (1), for the words “any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force,” the words “any law for the time being in force, or any contract to the contrary” shall be substituted and shall be deemed to have been substituted with effect from the 1st April 2005.

Validation
and savings.

4. (1) Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal to the contrary, any assessment, appeal, review, levy or collection of tax in respect of sales or purchases effected by any dealer or person, or any action taken or thing done in relation to such assessment, appeal, review, levy or collection of tax under the provisions of the Maharashtra Value Added Tax Act, 2002 (hereinafter in this section referred to as “the Value Added Tax Act”) and the Government Notification, Finance Department, No. VAT.1506/CR-135-B/Taxation-1, dated the 30th November 2006, issued under clause (b) of sub-section (4) of section 41 of the Value Added Tax Act, during the period commencing on the 1st April 2005 and ending on the date immediately preceding the date of commencement of the Maharashtra Value Added Tax (Amendment and Validation) Act, 2024 (hereinafter referred to as “the said Act”) shall be deemed to be valid and effective, as if such assessment, review, levy or collection or action or thing had been duly made, taken or done under the Value Added Tax Act, as amended by the said Act, and accordingly,–

Mah. IX
of 2005.

Mah.
..... of
2024.

(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, appeal, review, 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 the 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,–

5 (a) from questioning in accordance with the provisions of the Value Added Tax Act, as amended by the said Act, any assessment, appeal, review, levy or collection of tax referred to in sub-section (1), or

 (b) from claiming of refund of any tax paid by him in excess of the amount due from him by way of tax under the Value Added Tax Act, as amended by the said Act.

STATEMENT OF OBJECTS AND REASONS

The dealers of "Bunker Supplies" claimed exemption under the Government Notification, Finance Department, No. VAT.1506/CR-135-B/ Taxation-1, dated the 30th November 2006, issued by the Government of Maharashtra under clause (b) of sub-section (4) of section 41 of the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005) (hereinafter referred to as "the said Act"), with effect from 1st April 2005, from payment of whole of Value Added Tax on the sale of Motor Spirit to the Shipping Vessels claiming that such sale is retail sale from retail outlet.

The Department is of the view that such sale of motor spirit is not the retail sale from retail outlet as contemplated under the said notification and therefore, the Value Added Tax is being levied on such sale. The Department rejected claim of exemption of such dealers on the ground that such dealers do not fall within the definition of "retail outlet" defined in the Petroleum Product (Maintenance of Production, Storage and Supply) Order, 1999.

2. The Maharashtra Sales Tax Tribunal, Mumbai in the case of Ms. Bhambhani Shipping Co. Ltd. Vs. State of Maharashtra, has *vide* its judgment dated 12.12.2022 upheld the said claim of the dealers and held that the said definition of "retail outlet" defined in the said Order cannot be used for the purposes of the said Act.

Therefore, it is proposed to incorporate definition of the term "retail outlet", with explanation of "retail sale" in the said Act specifically by amending section 2 thereof, with retrospective effect from 1st April 2005 in order to levy value added tax on such retail sale and to provide for validating provisions therefor.

3. In order to bring more clarity in the provisions regarding the supply of goods by any association or body of persons, incorporated or not, to its members for the purpose of levy of value added tax, a suitable Explanation on the lines of Explanation contained in the Maharashtra Goods and Services Tax Act, 2017 (Mah. XLIII of 2017), is proposed to be inserted in clause (24) of section 2 of the said Act.

4. It is also considered expedient to amend section 37 of the said Act which provides for dues payable under the said Act as a first charge on the property of dealer with a view to safeguard the recovery of such dues.

5. The Bill seeks to achieve the above objectives.

Nagpur,

Dated the 16th December, 2024.

DEVENDRA FADNAVIS,

Chief Minister.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for amendment of section 37 of the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005) with a view to create first charge on the property of dealer who is liable to pay tax.

There is no provision in the Bill which would involve the recurring or non-recurring expenditure from the Consolidated Fund of the State on its enactment as an Act of the State Legislature.

GOVERNOR'S RECOMMENDATION UNDER ARTICLE 207 OF
THE CONSTITUTION OF INDIA

(Copy of Government of Maharashtra Order, Law and Judiciary Department)

In exercise of the power conferred upon him by clause (1) of Article 207 of the Constitution of India, the Governor of Maharashtra is pleased to recommend to the Maharashtra Legislative Assembly, the Introduction of the Maharashtra Value Added Tax (Amendment and Validation) Bill, 2024.

ANNEXURE TO THE L.A. BILL No. XXXII OF 2024
THE MAHARASHTRA VALUE ADDED TAX (AMENDMENT AND
VALIDATION) BILL, 2024

(Extracts from the Maharashtra Value Added Tax Act, 2002)

(Mah IX of 2005)

1. * * * *

2. In this Act, unless the context otherwise requires,—

Definitions.

(3) to (23) * * * *

(24) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration 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;

Explanation.—For the purposes of this clause,—

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956 (74 of 1956);

(b) (i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including 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 moveable or immoveable property;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any association or body of persons incorporated or not, to a member thereof for cash, deferred payment or other valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of alcoholic liquor for human consumption where such supply or service is made or given for cash, deferred payment or other valuable consideration;

shall be deemed to be a sale;

(25) to (35) * * * *

3. to 36. * * * *

37. (1) Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person

Liability under this Act to be the first charge.

under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

(2)	*	*	*	*
38. to 98.	*	*	*	*
SCHEDULES	*	*	*	*

**MAHARASHTRA LEGISLATURE
SECRETARIAT**

[L. A. BILL No. XXXII OF 2024.]

**[A Bill further to amend the Maharashtra
Value Added Tax Act, 2002.]**

**[SHRI DEVENDRA FADNAVIS,
Chief Minister.]**

**JITENDRA BHOLE,
Secretary (1) (I/C),
Maharashtra Legislative Assembly.**