

L. A. BILL No. XII OF 2021.

A BILL

further to amend the Maharashtra Goods and Services Tax Act, 2017.

(As passed by the Legislative Assembly on the 5th July, 2021.)

Mah. 5
XLIII of
2017.

WHEREAS it is expedient further to amend the Maharashtra Goods and Services Tax Act, 2017, for the purposes hereinafter appearing ; it is hereby enacted in the Seventy-second Year of the Republic of India, as follows:—

1. (1) This Act may be called the Maharashtra Goods and Services Tax (Amendment) Act, 2021.

Short title and commencement.

10 (2) Save as otherwise provided in this Act, this section shall come into force with immediate effect, and the remaining sections shall come into force on such date, with prospective or retrospective effect, as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different provisions of this Act and any reference
15 in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 7 of Mah. XLIII of 2017. **2.** In section 7 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as “the principal Act”), in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st July 2017, namely:— Mah. XLIII of 2017.

“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration. 5

Explanation.—For the purposes of this clause, 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, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another;”. 10

Amendment of section 16 of Mah. XLIII of 2017. **3.** In section 16 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:— 15

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

Amendment of section 35 of Mah. XLIII of 2017. **4.** In section 35 of the principal Act, sub-section (5) shall be deleted. 20

Substitution of section 44 of Mah. XLIII of 2017. **5.** For section 44 of the principal Act, the following section shall be substituted, namely:—

“**44.** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every Financial year electronically, within such time and in such form and in such manner, as may be prescribed: 25 30

Provided that, the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that, nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”. 35

Amendment of section 50 of Mah. XLIII of 2017. **6.** In section 50 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st July 2017, namely :— 40

“Provided that, the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”. 45

7. In section 54 of the principal Act, for sub-section (8A), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st September 2019, namely:—

Amendment of section 54 of Mah. XLIII of 2017.

5 “(8A) Where the Central Government has disbursed the refund of State Tax, the Government shall transfer an amount equal to the amount so refunded, to the Central Government.”.

8. In section 74 of the principal Act, in *Explanation 1*, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted.

Amendment of section 75 of Mah. XLIII of 2017.

10 9. In section 75 of the principal Act, in sub-section (12), the following *Explanation* shall be inserted, namely:—

Amendment of section 75 of Mah. XLIII of 2017.

15 “*Explanation.*—For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.”.

10. In section 83 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely :—

Amendment of section 83 of Mah. XLII of 2017.

20 “(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by an order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner, as may be prescribed.”.

25 11. In section 107 of the principal Act, in sub-section (6), the following proviso shall be inserted, namely :—

Amendment of section 107 of Mah. XLIII of 2017.

“Provided that, no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”.

30 12. In section 129 of the principal Act, —

Amendment of section 129 of Mah. XLIII of 2017.

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

35 “(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

40 (b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty; ”;

(ii) sub-section (2) shall be deleted;

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

“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure,

specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;

(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words “No penalty” shall be substituted; 5

(v) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed 10 under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time, as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that, the conveyance shall be released on payment by the 15 transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that, where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by 20 the proper officer.”.

Amendment
of section 130
of Mah. XLIII
of 2017.

13. In section 130 of the principal Act,—

(a) in sub-section (1), for the words “Notwithstanding anything contained in this Act, if”, the word “Where” shall be substituted;

(b) in sub-section (2), in the second proviso, for the words, brackets and 25 figures “amount of penalty leviable under sub-section (1) of section 129”, the words “penalty equal to hundred per cent. of the tax payable on such goods” shall be substituted;

(c) sub-section (3) shall be deleted.

Substitution
of section 151
of Mah. XLIII
of 2017.

14. For section 151 of the principal Act, the following section shall be 30 substituted, namely:—

Power to call
for information.

“**151.** The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”. 35

Amendment
of section 152
of Mah. XLIII
of 2017.

15. In section 152 of the principal Act,—

(a) in sub-section (i),—

(i) the words “of any individual return or part thereof” shall be omitted;

(ii) after the words “any proceedings under this Act”, the 40 words “without giving an opportunity of being heard to the person concerned” shall be inserted;

(b) sub-section (2) shall be deleted.

Amendment
of Schedule II
of Mah. XLIII
of 2017.

16. In Schedule II appended to the principal Act, paragraph 7 shall be deleted and shall be deemed to have been deleted with effect from the 45 1st July 2017.

STATEMENT OF OBJECTS AND REASONS

Various decisions have been taken by the Goods and Service Tax Council requiring amendments in the Goods and Services Tax Laws. Accordingly, the Central Goods and Services Tax Act, 2017(12 of 2017) and the Integrated Goods and Services Tax Act, 2017(13 of 2017) have been amended by the Parliament by the Finance Act, 2021 (13 of 2021). In order to maintain the uniformity and applicability of the provisions of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Act, 2017 (Mah. XLIII of 2017), it is expedient to amend the Maharashtra Goods and Services Tax Act, 2017.

2. The salient features of the proposed amendments to the Maharashtra Goods and Services Tax Act, 2017, are as follows:—

(i) *Insertion of new clause (aa) and Explanation in sub-section (1) of section 7.*—Sub-section (1) of section 7 is being amended with retrospective effect from the 1st July 2017, by inserting a new clause (aa), so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.

It is also proposed to insert an *Explanation* therein, to clarify that the person or its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one person to another.

(ii) *Insertion of new clause (aa) in sub-section (2) of section 16.*—Section 16 is being amended by inserting a new clause (aa) in sub-section (2) thereof, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

(iii) *Deletion of sub-section (5) of section 35.*—This amendment seeks to delete sub-section (5) of section 35 so as to remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.

(iv) *Substitution of section 44.*—This amendment seeks to substitute section 44, so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further empowers the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.

(v) *Amendment to sub-section (1) of section 50.*—This amendment seeks to substitute the proviso to sub-section (1) of section 50 so as to charge interest on net cash liability retrospectively with effect from the 1st July 2017.

(vi) *Amendment to sub-section (8A) of section 54.*— This amendment seeks to substitute sub-section (8A) of section 54 so as to enable the Government to transfer an amount to the Central Government equal to the amount of state tax refunded by the Central Government, retrospectively with effect from the 1st September 2019.

(vii) *Amendment to section 74.*—Section 74 is being amended so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.

(viii) *Insertion of Explanation in sub-section (12) of section 75.*—An *Explanation* is being inserted in sub-section (12) of section 75, to clarify that “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

(ix) *Amendment in sub-section (1) of section 83.*—Sub-section (1) of section 83 is being substituted so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

(x) *Amendment to sub-section (6) of section 107.*—This amendment seeks to insert a new proviso in sub-section (6) of section 107 so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129 unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.

(xi) *Amendment to section 129.*—Section 129 is being amended so as to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

(xii) *Amendment to section 130.*—Section 130 is being amended, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

(xiii) *Substitution of section 151.*—Section 151 is being substituted so as to empower the commissioner or an officer authorised by him to call for information from any person relating to any matters dealt with in connection with the Act.

(xiv) *Amendment to sub-section (1) of section 152.*—Sub-section (1) of section 152 is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

(xv) *Amendment to Schedule II.*—This amendment seeks to delete paragraph 7 of Schedule II, with retrospective effect from the 1st day of July 2017, consequent to the amendments made in section 7.

3. The Bill seeks to achieve the above objectives.

Mumbai,
Dated the 29th June, 2021.

AJIT PAWAR,
Deputy Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative power, namely:—

Clause 1(2).—Under this clause, power is taken to the State Government to bring into force the remaining sections of the Act with prospective or retrospective effect, as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different provisions of this Act.

Clause 5.—Under this clause, which seeks to amend section 44 of the Maharashtra Goods and Services Tax Act, 2017, power is taken to the State Government to provide by rules the time within which and the form and manner in which every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return.

Clause 10.—Under this clause, which seeks to substitute sub-section (1) of section 83 of the Maharashtra Goods and Services Tax Act, 2017, power is taken to the State Government to provide by rules the manner in which the Commissioner may attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122.

Clause 12(v).—Under this clause, which seeks to substitute sub-section (6) of section 129 of the Maharashtra Goods and Services Tax Act, 2017, power is taken to the State Government to provide by rules the manner in which and the time within which the goods or conveyance detained or seized under that section shall be sold or disposed of.

2. The above-mentioned proposals for delegation of legislative power are of normal character.

FINANCIAL MEMORANDUM

The Bill proposes to amend sections 7,16,35,44,50,54,74,75,83,107,129,130, 151 and 152 and Schedule II of the Maharashtra Goods and Service Tax Act, 2017 (Mah. XLIII of 2017), with a view to maintain the uniformity and applicability of the provisions of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Act, 2017. Thus 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 Consitution of India, the Governor of Maharashtra is pleased to recommend to the Maharashtra Legislative Assembly, the Introduction of the Maharashtra Goods and Services Tax (Amendment) Bill, 2021.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax alongwith interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax alongwith interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section, — (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132 ;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

75. (1) to (11)

** ** *

General provisions relating to determination of tax.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13)

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76. to **82**

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83. (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

Provisional attachment to protect revenue in certain cases.

	(2)	**	**	**
	84. to 106.	**	**	**
Appeals to Appellate Authority	107. (1) to (5)	**	**	**
	(6) No appeal shall be filed under sub-section (1), unless the appellant has paid			
	(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him ; and			
	(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty Five Crore rupees in relation to which the appeal has been filed.			
	(7) to (16)	**	**	**
	108. to 128.	**	**	**
Detention, seizure and release of goods and conveyances in transit.	129. (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—			
	(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty ;			
	(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty ;			
	(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed :			
	Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.			
	(2) The provisions of sub-section (6) of section 67 shall, <i>mutatis mutandis</i> , apply for detention and seizure of goods and conveyances.			
	(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).			
	(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.			
	(5)	**	**	**
	(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within Fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130 :			

Bar on
disclosure of
information

152. (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

(2) Except for the purposes of prosecution under this Act or any other law for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

(3)	**	**	**
153. to 174.	**	**	**
SCHEDULE I	**	**	**

SCHEDULE II

(see section 7)

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

(1) to (6)	**	**	**
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(7) Supply of Goods.—The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III	**	**	**
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**MAHARASHTRA LEGISLATURE
SECRETARIAT**

[L. A. BILL No. XII OF 2021.]

**[A Bill further to amend the Maharashtra
Goods and Services Tax Act, 2017.]**

[SHRI AJIT PAWAR,
Deputy Chief Minister.]

**[As passed by the Legislative Assembly on
the 5th July, 2021.]**

RAJENDRA BHAGWAT,
Secretary,
Maharashtra Legislative Assembly.