

**THE MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACTS, 1975.**

**1. Short title, extent and commencement:—**

(1) This Act may be called the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 1st day of April 1975.

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

(a) "Commissioner" means the Commissioner of Profession Tax appointed under section 12, and includes an Additional Commissioner of Profession Tax (if any) appointed under that section;

(b) "Corporation area" means an area within the limits of a municipal corporation constituted under the Bombay Municipal Corporation Act, the Bombay Provincial Municipal Corporations Act, 1949 or the City of Nagpur Corporation Act, 1958;

(ba) "Employee" means a person employed on salary or wages, and includes--

**3. Levy and charge of tax.—**(1) Subject to the provisions of article 276 of the Constitution of India and of this Act, there shall be levied and collected a tax on professions, trades, callings and employments for the benefit of the State.

(2) Every person *excluding firms (whether registered under the Indian Partnership Act, 1932, or not) and Hindu undivided family* engaged actively or otherwise in any profession, trade, calling or employment and falling under one or the other of classes mentioned in the second column of Schedule I shall be liable to pay to the State Government the tax at the rate mentioned against the class of such persons in the third column of the said Schedule:

Provided that, the tax so payable in respect of any one person shall not exceed two thousand and five hundred rupees in any year:

Provided further that, entry 23 in Schedule I shall apply only to such classes of persons as may be specified by the State Government by notification in the *Official Gazette*, from time to time.

**4. Employer's liability to deduct and pay tax on behalf of employees.—**The tax payable under this Act, by any person earning a salary or wage, shall be deducted by his employer from the salary or wage payable to such person, before such salary or wage is paid to him, and such employer shall, irrespective of whether

such deduction has been made or not, when the salary or wage is paid to such persons, be liable to pay tax on behalf of all such persons:

Provided that, if the employer is an officer of Government the State Government may, notwithstanding anything contained in this. Act; prescribe by rules the manner in which such employer shall discharge the said liability:

Provided further that, where any person earning a salary or wage -

- (a) is also covered by one or more entries other than entry 1 in Schedule I and the rate of tax under any such other entry is more than the rate of tax under entry 1 in that Schedule, or
- (b) is simultaneously engaged in employment of more than one employer, and such person furnishes to his employer or employers a certificate in the prescribed form declaring *inter alia*, that he shall get enrolled under sub-section (2) of section 5 and pay the tax himself, then the employer or employers of such person shall not deduct the tax from the salary or wage payable to such person and such employer or employers, as the case may be, shall not be liable to pay tax on behalf of such person.

## **5. Registration and enrolment.—**

(1) Every employer (not being an officer of Government liable to pay tax under section 4, or under sub-section (5) of section 10A shall obtain a certificate of registration from the prescribed authority in the prescribed manner.

(2) Every person liable to pay tax under this Act (other than a person earning salary or wages, in respect of whom the tax is payable by his employer), shall obtain a certificate of enrolment from the prescribed authority in the prescribed manner.

(2A) Notwithstanding anything contained in this section and the last preceding section, where a person is a citizen of India and is in employment of any diplomatic or consular office or trade commissioner of any foreign country situated in any part of the State, such person, if liable to pay tax, shall obtain a certificate of enrolment as provided in sub-section (2) and pay the tax himself.

(3) Every employer or person required to obtain a certificate of registration or enrolment shall, within thirty days from the date of first publication of this Act in the *Official Gazette*, or, if he was not engaged in any profession, trade, calling or employment on that date within thirty days of his becoming liable to pay tax, or, in respect of a person referred to in sub-section (2) or (2A), within thirty days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enrolment, apply for a certificate of registration or enrolment, or a revised certificate of enrolment, as the case may be, to the prescribed authority in the prescribed form, and the prescribed authority shall, after making such inquiry as may be necessary within thirty days of the receipt of the application (which period in the first year from the commencement of this Act shall be extended to ninety days), if the application is in order grant him such certificate.

Provided that, where on account of revision of rate of tax the person liable to pay tax is required to pay tax at a rate higher or lower than the one mentioned in the certificate of enrolment, the rate of tax mentioned in such certificate shall be deemed to have been revised accordingly on the date of such revision of rate of tax as aforesaid; and pending such person applying for a revised certificate of enrolment and grant of such certificate to him, such person shall, notwithstanding anything contained in this Act, be liable to pay tax at such revised rate.

(4) The prescribed authority shall mention in every certificate of enrolment the amount of tax payable by the holder according to Schedule I, and the date by which it shall be paid, and such certificate shall, subject to the provisions of the proviso to sub-section (3), serve as a notice of demand for purposes of section 10.

(5) Where an employer or a person liable to registration or enrolment has failed to apply for such certificate within the required time, the prescribed authority may, after giving him a reasonable " opportunity of being heard, impose *penalty of rupees five for each day of delay in case of such employer and rupees two for each day of delay in case of such person.*

(6) Where an employer or a person liable to registration or enrolment has given false information in any application submitted under this section, the prescribed authority may, after giving him a reasonable opportunity of being heard, impose a *penalty equal to three times the tax payable under the Act.*

## **6. Returns.—**

(1) Every employer registered under this Act shall furnish to the prescribed authority ,a return in such form, for such periods and by such dates as may be prescribed, showing therein the salaries and wages paid by him and the amount of tax deducted by him in respect thereof --

(2) Every such return shall be accompanied by a treasury challan in proof of payment of full amount of tax due according to the return, and a return without such proof of payment shall not be deemed to have been duly filed.

(3) Where an employer has without reasonable cause failed to file such return within the required time, the prescribed authority may, after giving him a reasonable opportunity of being heard, impose upon him *a penalty of rupees three hundred per return.*

## **9. Consequences of failure to deduct or to pay tax:—**

(1) If an employer (not being an officer of Government) fails to pay the tax as required by or under this Act, he shall without prejudice to any other consequences and liabilities which he may incur, be deemed to be an assessee in default in respect of the tax.

(2) Without prejudice to the provisions of sub-section (1), an employer referred to in that sub-section shall be liable to pay simple interest at one and a quarter per cent of the amount of the tax payable for each month for the period, for which the tax remains unpaid.

(2A) Where the amount of tax as assessed under section 7 or as found payable in view of an order passed under section 13 or 14 is more than the amount of tax paid by the employer, then such employer shall be liable to pay simple interest on the amount of difference of tax at the rate and in the manner laid down in sub-section (2).

(3) If an enrolled person fails to pay the tax as required by or under this Act. He shall be liable to pay simple interest at the rate and in the manner laid down in sub-section (2).

(4) The Commissioner may, subject to such conditions and limitations as may be prescribed and for reasons to be recorded in writing remit the whole or any part of the interest payable in respect of any period under this section.

### **10. Penalty for non-payment of tax:—**

If an enrolled person or a registered employer fails, without reasonable cause, to make payment of any amount of tax, within the required time or date as specified in the notice of demand, the prescribed authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty equal to ten per cent, of the amount of tax due.

### **10A. Special provision regarding liability to pay tax in certain cases:—**

(1) Where an employer liable to pay tax under section 4 of this Act, dies then, his legal representative shall be liable to pay tax (including any penalty and interest) due from such employer under this Act, in the like manner and to the same extent as the deceased employer, whether such tax (including any penalty and interest) has been assessed before the death of the employer but has remained unpaid, or is assessed after the death of the employer.

Explanation.—In this sub-section, the expression "legal representative" has the same meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

(2) Where an employer liable to pay tax under section 4 of this Act, is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of the members then, each member or group of members shall be jointly or severally liable to pay the tax (including any penalty and interest) due from the employer under this Act upto the time of partition, whether such tax (including any penalty and interest) has been assessed before the partition but has remained unpaid, or is assessed after partition.

(3) Where an employer liable to pay tax under this Act, is a firm and the firm is dissolved then, every person who was a partner shall jointly or severally be liable to pay the tax (including any penalty and interest), due from the employer firm under this Act up to the time of dissolution, whether such tax (including any penalty and interest) has been assessed before such dissolution but has remained unpaid, or is assessed after such dissolution.

(4) Where an employer, liable to pay tax under this Act, transfers or otherwise disposes of his office or establishment or activity in whole or in part, or effects any change in employment in consequence of which he is succeeded in the office or establishment or activity or part thereof by an any other person then the employer and the person succeeding shall jointly or severally be liable to pay tax (including any penalty and interest) due from the employer under this Act upto the time of such transfer disposal or change, whether such tax (including any penalty and interest) has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

(5) Where an employer liable to pay tax under this Act is succeeded in the office or establishment for activity by any person in the manner described in sub-section (4) then, such person shall—

- (a) notwithstanding anything contained in section 3, be liable to pay tax in respect of the period from the date of such succession; and
- (b) within 30 days from the date of such succession, apply for certificate of registration, unless he already holds a certificate of registration.

#### **11. Recovery of tax, etc.:-**

All arrears of tax, penalty, interest and fees under this Act shall be recoverable as arrears of land revenue.

#### **11A.Special powers of Profession Tax Authorities for recovery of tax as arrears of land revenue:--**

(1) For the purpose of effecting recovery of the amount of tax, interest and penalty, due and recoverable from any person by or under the provisions of this Act, as arrears of land revenue.

- (i) the Commissioner of Profession Tax shall have and exercise all the powers and perform all the duties of the Commissioner under the Maharashtra Land Revenue Code, 1966 (hereinafter in this section referred to as "the said Code");
- (ii) the Additional Commissioner of Profession Tax shall have and exercise all the powers and perform all the duties of the Additional Commissioner under the said Code;
- (iii) the Deputy Commissioner of Profession Tax shall have and exercise all the powers and perform all the duties of the Collector under the said Code;
- (iv) the Assistant Commissioner of Profession Tax shall have and exercise all the powers (except the powers of arrest and confinement of defaulter in a civil jail) and perform all the duties of the Assistant or Deputy Collector under the said Code;

- (v) the Profession Tax Officer shall have and exercise all the powers (except the powers of confirmation of sale and arrest and confinement of defaulter in a civil jail) and perform all the duties of the Tahsildar under the said Code.

(2) Every notice issued or order passed in exercise of the powers conferred by sub-section (1) shall, for the purposes of sections 13, 14, 15 and 25 be deemed to be a notice issued or an order passed under this Act.

## **12. Authorities for implementation of the Act:—**

(1)(a) For carrying out the purposes of this Act, the State Government may appoint—

- (i) an officer to be the Commissioner of Profession Tax for the whole of the State of Maharashtra;
- (ii) One or more officers to be the Additional Commissioner of Profession Tax as the State Government thinks necessary;
- (iii) Such number of Deputy Commissioners of Profession Tax, 1 Senior Assistant Commissioner of Profession Tax, Assistant Commissioners of Profession Tax and Profession Tax Officers and other officers and persons (with such designation) as the State Government thinks necessary.

(b) An officer appointed under paragraph (ii) or (iii) or clause (a) above shall, within the limits of such area as the State Government may specify, by notification in the *Official Gazette*, to be within his jurisdiction, exercise such powers and perform such duties as may be conferred or imposed upon him by or under this Act.

(c) The superintendence and control for the proper execution of the provisions of the Act and the rules made there under relating to the levy and collection of the tax shall vest in the Commissioner.

(2) The Tribunal constituted under section 21 of the Bombay Sales Tax Act, 1959, shall be the Tribunal for the purposes of hearing appeals and revision applications and discharging other functions of the Tribunal under this Act, and accordingly, the provisions of section 21 of that Act (including any regulations made hereunder with such modifications, if any, therein as circumstances may require) and other provisions relating to the Tribunal under that Act shall also apply to and in relation to such Tribunal for the purposes of this Act.

(3) For carrying out the purposes of this Act, the State Government may, at its discretion, appoint any Government Department or officer, or a Municipal Corporation, Municipal Council or Zillah Parishad *or any agency*, hereinafter called "the Collecting Agent" as its agent responsible for levy and collection of the tax under this Act from such persons or class of persons as may be prescribed, and thereupon, it shall be the duty of such Collecting agent to carry out in such manner as may be prescribed, such functions under this Act as may be prescribed, and to

render full and complete account of the tax levied and collected to the Commissioner in such manner and at such time as that officer may require.

(4) Any person authorised by the Collecting Agent in this behalf shall have for the purposes of levy and collection of the tax such powers as may be prescribed.

(5) A Municipal Corporation, Municipal Council or Zillah Parishad or agency appointed as agent to carry out the purposes of this Act under subsection (3) shall be paid such collection charges as may be determined by the State Government,

(6) It shall be lawful for the Commissioner, or an Officer duly authorised by him, to have access to, and to cause production and examination of books, registers, accounts or documents maintained or required to be maintained by the Collecting Agent for the purposes of this Act, and the Collecting Agent shall, whenever called upon to do so, produce such books, registers, accounts or documents for inspection by the Commissioner or by the authorised officer.

(7) For carrying out the purposes of this Act, the Commissioner or an officer duly authorised by him may, appoint any person or persons, possessing such qualifications as may be prescribed, as his agent or agents (hereinafter referred to as the "recovery agent"). Such recovery agent shall be responsible for survey and recovery of the arrears of the tax (including interest and penalty) recoverable under this Act.

(8) It shall be the duty of the recovery agent to carry out such functions and in such manner, as may be prescribed, and to render full and complete account of the arrears recovered to the Commissioner or to the officer duly authorised by him, in such manner, and at such time, as that officer may require.

(9) The recovery agent shall have, for the purpose of survey and recovery of tax, interest and penalty, such powers as may be prescribed.

(10) The recovery agent shall be paid such incentive as may be determined by the Government.

(11) It shall be lawful for the Commissioner or an Officer duly authorised by him, to have access to, and to cause production and examination of, books registers, accounts or documents maintained or required to be maintained by the recovery agent for the purpose of this Act, and the recovery agent shall, whenever called upon to do so, produce such books, registers, accounts or documents for inspection by the Commissioner or by the authorised officer.

#### **12A. Determination of certain disputed questions:—**

(1) If any question arises, otherwise than in proceedings before a Court or before the prescribed authority has commenced assessment of an employer under section 7, about the interpretation or the scope of any expression defined in section 2, or of any entry in Schedule I, the Commissioner shall make an order determining such question.

Explanation.—for the purposes of this sub-section, the prescribed authority shall be deemed to have commenced assessment of an employer under section 7, when the employer is served with a notice under that section.

(2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, as respects the period prior to the determination.

(3) If any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this section, but such question may be raised in appeal against, or by way of revision of, such order.

### **13. Appeal:—**

(1) Subject to rules as may be made by the State Government, any person or employer aggrieved by any order made under sections 5, 6, 7, 9, 10, 15 or 16 may appeal against such order to,—

- (a) The Assistant Commissioner, if the order is passed by any prescribed authority or officer subordinate to him;
- (b) The Deputy Commissioner, if the order is passed by the Assistant Commissioner; and
- (c) The Tribunal, if the order is passed by any officer not below the rank of Deputy Commissioner.

(2) No appeal shall be entertained after the expiry of sixty days from the date of receipt of demand notice or receipt of the order:

Provided that, the appellate authority may admit the appeal after the expiry of the above period, if he is satisfied that there was sufficient cause for the delay.

(3) No appeal against an order of assessment with or without penalty or interest, or against an order imposing penalty or interest shall ordinarily be entertained by an appellate authority, unless such appeal is accompanied by satisfactory proof of the payment of tax with or without penalty or interest or, as the case may be, of the payment of penalty or interest, in respect of which appeal has been preferred:

Provided that, an appellate authority may, if it thinks fit, for reason to be recorded in writing, entertain an appeal against such order on payment of not less than twenty-five per cent of the amount of tax, penalty or interest, in respect of which appeal has been preferred, as it may direct.

(4) The appellate authority in disposing of an appeal may—

- (i) confirm, annul, reduce, enhance, or otherwise modify the assessment or penalty or interest, or



- (ii) Set aside the assessment or penalty or interest and direct the authority which made the assessment or imposed the penalty or charged the interest to pass a fresh order after further inquiry on specified points.

(5) No order under this section shall be passed without giving the appellant or his representative, and, where the appellate authority is the Tribunal, without giving the authority whose order or directions is the subject of the appeal or his representative, a reasonable opportunity of being heard.

#### **14. Revision:—**

(1) Any order passed in appeal under section 13 may, on an application being made in this behalf, be revised by—

(a) The Deputy Commissioner, if the order is passed by the Assistant Commissioner.

(b) The Tribunal, if the order is passed by the Deputy Commissioner.

(2) Any order passed by the Deputy Commissioner under sub Section (1) or by the Commissioner under sub-section (4) of this section, or any order made by the Commissioner under section 12A may, on an application being made to the Tribunal against such order, be revised by the Tribunal.

(3) No revision shall be entertained under sub-section (1) or (2) after the expiry of sixty days from the date of the receipt of the order.

(4) The Commissioner may, of his own motion, revise any order passed by any authority other than the Tribunal under this Act:

Provided that, no order shall be revised by the Commissioner under this sub-section after the expiry of three years from the passing of the impugned order.

(5) No order under this section shall be passed without giving the applicant or the assessee a reasonable opportunity of being heard.

#### **15. Rectification of mistakes:--**

(1) any authority under this Act may, of his own motion or on an application being made in this behalf, rectify any mistake apparent on the face of the record.

(2) Any authority under this Act, may review his own order, if any employer has been under-assessed for any period:

Provided that, if an order under this section has an adverse effect on an employer or a person, no such order shall be passed unless a reasonable opportunity of being heard has been given to such employer or person:

Provided further that, no order under this section shall be passed after the expiry of three years from the passing of the impugned order.

## **16. Accounts:—**

(1) If the Commissioner is satisfied that the books of account and other documents maintained by an employer in the normal course of his business are not adequate for verification of the returns filed by the employer under this Act, it shall be lawful for the Commissioner to direct the employer to maintain the books of account or other documents in such manner as he may in writing direct, and thereupon the employer shall maintain such books of account or other documents accordingly.

(2) Where an employer willfully fails to maintain the books of accounts or other documents as directed under sub-section (1), the Commissioner may, after giving him a reasonable opportunity of being heard, impose a penalty not exceeding rupees five for each day of delay.

## **17. Special mode of recovery:—**

(1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time, or from time to time, by notice in writing, a copy of which shall be forwarded to the assessee at his last address known to the Commissioner, require-

- (a) any person from whom any amount of money is due, or may become due, to an assessee on whom notice of demand has been served under this Act, or
- (b) Any person who holds or may subsequently hold money for or on account of such assessee,

to pay the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (but not before the money becomes due or is held as aforesaid), so much of the money as is sufficient to pay the amount due by the assessee in respect of the arrears of tax, penalty and interest under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.—For the purposes of this section, the amount of money due to an assessee from, or money held for or on account of an assessee by, any person shall be calculated after deducting there from such claims (if any) lawfully subsisting, as may have fallen due for payment by such assessee to such person.

(2) The Commissioner may, at any time or from time to time amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the assessee, and the receipt of the Commissioner shall constitute a good and sufficient discharge of the liability of such person, to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the assessee after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged, or the extent of the liability of the assessee for tax, penalty and interest, whichever is less.

(5) Where a person whom a notice under this section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for on account of the assessee, then nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Commissioner.

(6) Any amount of money which a person is required to pay to the Commissioner or for which he is personally liable to the Commissioner under this section, shall if it remains unpaid be recoverable as an arrear of land revenue.

### **18. Production and inspection of accounts and documents and search of premises:—**

Any authority under this Act may inspect and search any premises, where any profession, trade, calling or employment liable to taxation under this Act is carried on or is suspected to be carried on and may cause production and examination of books, register, accounts or documents relating thereto and may seize such books, registers, accounts or documents as may be necessary:

Provided that, if the said authority removes from the said premises any book, register, account or document, he shall give to the person in charge of the places, a receipt describing the book, register, account or document so removed by him and retain the same only for so long as may be necessary for the purposes of examination thereof or for a prosecution.

### **19. Refunds of excess payments.—**

The prescribed authority shall refund to a person the amount of tax, penalty, interest and fees (if any) paid by such person in excess of the amount due from him. The refund may be made either by cash payment or, at the option of the person, by deduction of such excess from the amount of tax, penalty, interest and fee due in respect of any other period:

Provided that, the prescribed authority shall first apply such excess towards the recovery of any amount due in respect of which a notice under section 7 has been served, and shall then refund the balance, if any.

### **19A. Interest on amount of refund:—**

Where, in pursuance of any order under this Act, in respect of any period of assessment commencing on or after the 1st April 2004, refund of any tax becomes due to an employer or person he shall, subject to the rules, if any, be entitled to receive, in addition to the refund, simple interest at the rate of six per cent per annum for the period commencing on the date next following the last date of the period of assessment to which such order relates and ending on the date of such

order or for a period of eighteen months, whichever is less. The interest shall be calculated on the amount of refund due to the employer or any person in respect of the said period after deducting there from the amount of penalty and interest, if any, charged in respect of the said period and also the amount of refund, if any, adjusted towards any recovery under this Act. If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, as the case may be; such interest shall be enhanced or reduced accordingly.

Explanation – For the purposes of this section, where the refund of tax, whether in full or in part, includes any amount of refund on any payment of tax made after the date prescribed for filing of the last return for the period of assessment, then the interest, in so far as it relates to the refund arising from such payment, shall be calculated from the date of such payment to the date of such order.

### **19B. Interest on delayed refund: -**

Where an amount required to be refunded by the Commissioner to any employer or person by virtue of an order issued under this Act is not so refunded to him within ninety days from the date of the order, the State Government shall, pay such employer or person a simple interest at the rate of six per cent. Per annum on the said amount from the date immediately following the expiry of the period of ninety days from the date of such order:

Provided that, where the amount becomes refundable by virtue of an order of the Tribunal, the interest under the provisions of this section shall be payable from the date immediately following the expiry of the period of ninety days from the date of receipt of the order of the Tribunal by the officer whose order forms the subject of the appeal or revision proceedings before the Tribunal.

### **20. Offences and penalties:—**

Any person or employer who, without sufficient cause, fails to comply with any of the provisions of this Act or the rules framed hereunder shall, on conviction, be punished with fine not exceeding five thousand rupees, and, when the offence is a continuing one, with fine not exceeding fifty rupees per day during the period of the continuance of the offence.

### **21. 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 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, if he proves that the offence was committed without his knowledge or that he had exercised all the due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any 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 be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—for the purposes of this section-

- (a) "Company" means any 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.

## **22. Power to transfer proceedings:—**

The Commissioner may, after giving the parties a reasonable opportunity of being heard, wherever it is possible to do so, and after recording his reason for doing so, by order in writing transfer any proceeding or class of proceedings under any provision of this Act, from himself to any other officer, and by may likewise transfer any such proceedings (including a proceeding pending with any officer or already transferred under this section) from any officer to any other officer or to himself:

Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both are situated in the same city, locality or place.

Explanation.—In this section, the word "proceedings" in relation to any assessee whose name is specified in any order issued thereunder means all proceedings under this Act in respect of any year, which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such cases.

## **23. Compounding of offences:—**

(1) Subject to such conditions as may be prescribed, the Commissioner may, either before or after the institution of proceedings for an offence under this Act, permit any person charged with the offence to compound the offence on payment of such sum, not exceeding double the amount of tax to which the offence relates, as the Commissioner may determine.

(2) On payment of such sum, as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the person in respect of the same offence.

## **24. Powers to enforce attendance, etc:—**

All authorities under this Act shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 while trying

a suit, in respect of enforcing the attendance of and examining any person on oath or affirmation or for compelling the production of any document.

**25. Bar to proceedings:—**

(1) No suit shall lie in any Civil Court to set aside or modify any assessment made or order passed under this Act.

(2) No suit, prosecution, or other legal proceedings shall lie against any authority under this Act or against any employer for anything done or intended to be done in good faith under this Act or the rules framed thereunder.

**26. Power to delegate:—**

The Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing delegate to the authorities subordinate to him, either generally or as respects any particular matter or class of matter any of his powers under this Act.

**27. Power to make rules:—**

(1) The power to make all rules under this Act shall be exercisable by the State Government by notification in the *Official Gazette*.

(2) Generally to carry out purposes of this Act and to prescribe fees payable in respect of any applications to be made, forms to be supplied, certificates to be granted and appeals and applications for revision to be made under this Act and also any applications for certified copies of documents filed and orders made under this Act.

(3) Rules made under this Act shall be subject to the condition of 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 rules to be made under this Act.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

**27A. Exemptions:—** Nothing contained in section 3 and other provisions of this Act shall apply to--

- (a) the members of the Forces as defined in the Army Act, 1950 or the Air Force Act, 1950 and the members of Indian Navy as defined in the Navy Act, 1957 serving in any part of the State and drawing pay and allowances as Army or Air Force or Navy, as the case may be, including the members of auxiliary forces or reservists, or reserve and auxiliary services serving in any part of the State and drawing pay and allowances as such auxiliary forces or reservists, or reserve and auxiliary services, as the case may be, under the budgetary allocations of the Defence Services.

Explanation.—It is hereby declared for the removal of doubts that nothing in this clause shall apply or shall be taken to have applied during any period starting on or after the 1st May, 2000 to persons drawing pay and allowances from the establishments of the Defence Ordnance Factories situated in any part of the State.

- (b) The badli workers in the textile industry.

(c) Any person suffering from a permanent physical disability (including blindness), being a permanent physical disability specified in the rules made in this behalf by the State Government, which is certified by a physician, a surgeon or an oculist, as the case may be, working in a Government Hospital and which has the effect of reducing considerably such individual's capacity for normal work or engaging in a gainful employment or occupations:

Provided that such individual or, as the case may be, employer produces the aforesaid certificate before the prescribed authority in respect of the first assessment year for which he claims deduction under this sub-section :

Provided further that the requirement of producing the certificate from a physician, a surgeon or an oculist, as the case may be, working in a Government Hospital shall not apply to an individual who has already produced a certificate before the prescribed authority under the provisions of this sub-section as they stood immediately before the 1st day of April 1995.

Explanation.—For the purpose of this sub-section, the expression "Government Hospital" includes a departmental dispensary whether full time or part time established and run by a Department of the Government for the medical attendance and treatment of a class or classes of Government servants and members of their families, a hospital maintained by a local authority and any other hospital with which arrangements have been made by the Government for the treatment of Government servants;

- (d) Women exclusively engaged as agents under the Mahila Pradhan Kshetriya Bachat Yojana of Directorate of Small Savings.
- (e) Parents or Guardian of any person who is suffering from mental retardation specified in the rules made in this behalf, which is certified by a psychiatrist working in a Government Hospital :

Provided that such individual produces such certificate before the prescribed authority in respect of the first, assessment year for which he claims deduction under this sub-section.

Explanation.—For the purpose of this clause, the expression "Government Hospital" will have the same meaning as assigned to it in clause (c);

(f) the person who have completed the age of sixty-five years.

Provided that such mental retardation shall be duly certified by a registered medical practitioner.

(g) parents or guardians of a child suffering from a physical disability as specified in clause (c),

provided that such physical disability shall be duly certified by a registered medical practitioner.

## **28. Amendment of certain enactments:—**

(1) The enactments specified in the second column of Schedule II are hereby amended in the manner and to the extent specified in the third column thereof:

Provided that, nothing in the said amendments shall affect or be deemed to affect;

- (i) any right, obligation or liability already acquired, accrued or incurred for anything done or suffered, in respect of any period preceding the date of coming into force of these amendments;
- (ii) any legal proceeding or remedy whether initiated or availed of before or after the date of coming into force of these amendments, in respect of any such right, obligation or liability.

(2) The levy, assessment or recovery of any tax or the imposition or recovery of any penalty, in respect of such period, under the provisions of the relevant enactments and all proceedings under them, in respect of all matters aforesaid, shall be initiated and disposed of, or continued and disposed of, as the case may be, as if this Act had not been enacted.

## **29. Grants to local authorities for loss of revenue:—**

Out of the proceeds of the tax and penalties and interest and fees recovered under this Act there shall, under appropriation duly made by law, be paid annually to such local authorities as were levying a tax on professions, trades, callings and employments immediately before the commencement of this Act, and whose power to levy such tax has been withdrawn under the provisions of this Act, such amounts on the basis of the highest collection made by them in any year during the period of three years immediately preceding the commencement of this Act, as may be determined by the State Government in this behalf.



### **30. Establishment of a Fund and utilisation of the Fund for Employment Guarantee Scheme of State Government.-**

(1) Amount equal to net proceeds of tax and matching contribution to be paid into the Fund established under the Maharashtra Employment Guarantee Act, 1977.—(1)On the commencement of this Act, there shall be established a Fund to be called the Employment Guarantee Fund. The proceeds of the tax levied and collected under this Act, together with penalties and interest and fees recovered thereunder, shall first be credited to the Consolidated Fund of the State, and after deducting the expenses of collection and recovery as determined by the State Government and the amounts of grants made to the local authorities under section 29, the remaining amount shall, under appropriation duly made by law in this behalf, be entered into, and transferred to, the Employment Guarantee Fund established under the Maharashtra Employment Guarantee Act, 1977.

(2) Under appropriation duly made by law in this behalf, the State Government shall contribute annually to the Employment Guarantee Fund an amount equal to the amount transferred to that Fund under sub-section(1).

(3) Any amount transferred to the Fund shall be charged on the Consolidated Fund to the State.

(4) From and out of the Employment Guarantee Fund establishment under sub-section (1), no sum shall be paid or applied, except in the manner and for the purpose hereinafter provided.

(5) The amount standing to the credit of the Employment Guarantee Fund shall be expended, in such manner and subject to such conditions as may be prescribed for the purpose of implementing the Employment Guarantee Scheme of the State Government.

(6) The Employment Guarantee Fund shall be held and administered on behalf of the Government of Maharashtra by an officer not below the rank of a Secretary to the Government of Maharashtra, subject to such general or special directions as may be given by the State Government, from time to time.