

**GOVERNMENT OF WEST BENGAL**  
**LAW DEPARTMENT**  
**Legislative**

**West Bengal Act XI of 1995**

**THE WEST BENGAL TAXATION LAWS  
(SECOND AMENDMENT) ACT, 1995.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 21st August, 1995.]

[21st August, 1995.]

*An Act to amend the Bengal Agricultural Income-tax Act, 1944, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Luxury Tax Act, 1994 and the West Bengal Sales Tax Act, 1994.*

WHEREAS it is expedient to amend the Bengal Agricultural Income-tax Act, 1944, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Luxury Tax Act, 1994 and the West Bengal Sales Tax Act, 1994;

West Act IV  
of 1944.  
West Ben.  
Act VI of  
1979.  
West Ben.  
Act XV of  
1994.  
West Ben.  
Act XLIX of  
1994.

It is hereby enacted in the Forty-sixth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

**1.** (1) This Act may be called the West Bengal Taxation Laws (Second Amendment) Act, 1995.

Short title  
and  
commencement.

(2) It shall come into force on such date, or shall be deemed to have come into force on such date not earlier than the 1st day of May, 1995, as the State Government may, by notification in the *Official Gazette*, appoint, and different dates may be appointed for different provisions of this Act.

**2.** In the Bengal Agricultural Income-tax Act, 1944,—

(1) in section 2, for clause (2a), the following clause shall be substituted:—

Amendment  
of Ben. Act  
IV of 1944.

‘(2a) “Appellate Tribunal” means the West Bengal Commercial Taxes Appellate and Revisional Board constituted under section 6 of the West Bengal Sales Tax Act, 1994;’;

West Ben.  
Act XLIX of  
1994.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

**[West Ben. Act**

*(Section 2.)*

(2) in section 22,—

(a) in sub-section (2),—

(i) after the words and figures “All appeals under section 36”, the words and figures “, all proceedings under section 32 or section 39” shall be inserted;

(ii) for the words, figures and brackets “section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1990,” in the two places where they occur, the words, figures and brackets “section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995,” shall be substituted;

(b) in sub-section (3), for the words, figures, letter and brackets “amend its regulations made under sub-section (9) of section 3B of the Bengal Finance (Sales Tax) Act, 1941,”, the words, figures and brackets “make its regulations, or amend its regulations made, under sub-section (7) of section 6 of the West Bengal Sales Tax Act, 1994,” shall be substituted;

(c) for sub-section (4), the following sub-sections shall be substituted:—

“(4) All regulations made by the Appellate Tribunal before the date of coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, and continuing in force immediately before the said date shall, with effect from the date of coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, continue to be in force until they are made or amended by the Appellate Tribunal.

(5) Anything done or any action taken by the Appellate Tribunal on or after the 1st day of May, 1995, but before the publication of the notification bringing into force section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall be deemed to have been validly done or taken by it.”;

(3) in section 39, in sub-section (1), for the proviso, the following provisos shall be substituted:—

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

**XI of 1995.]**

*(Section 3.)*

“Provided that if any mistake is apparent from the record of the appeal in any order passed by the Appellate Tribunal before the coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, such mistake may, on the coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be rectified by the Appellate Tribunal at any time within four years from the date of passing of the said order:

Provided further that no such rectification having the effect of enhancing an assessment or reducing a refund shall be made unless the Commissioner, the Appellate Tribunal, the Assistant Commissioner or the Agricultural Income-tax Officer, as the case may be, has given notice to the assessee of his or its intention so to do and has allowed the assessee a reasonable opportunity of being heard.”.

3. In the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, in the Schedule, for serial No. 8 in column (1) and the entries relating thereto in column (2) and column (3), the following serial No. and entries shall be substituted in column (1), column (2) and column (3) respectively:—

Amendment  
of West Ben.  
Act VI of  
1979.

‘8. (a) Dealers liable to pay tax under the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994) or the Central Sales Tax Act, 1956 (74 of 1956):—

(i) such dealers other than those mentioned in sub-item (ii) whose annual gross turnover of sales is—

(A) less than Rs. 2,00,000 150 per annum.

(B) Rs. 2,00,000 or more,  
but not exceeding  
Rs. 7.5 lakhs 300 per annum.

(C) above Rs. 7.5 lakhs  
but not exceeding  
Rs. 25 lakhs 600 per annum.

(D) above Rs. 25 lakhs 900 per annum.

*Explanation.*—For the purposes of this entry, “annual gross turnover of sales” shall mean the turnover of sales as defined in the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994) during the immediately preceding year;

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

[West Ben. Act

*(Section 4.)*

(ii) any dealer as occupier of a jute mill, or shipper of jute, as defined in the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994) 900 per annum.
(b) Occupiers, owners, lessees or licensees, as the case may be, of rice mills 900 per annum.”.

Amendment  
of West Ben.  
Act XV of  
1994.

West Ben.  
Act XLIX of  
1994.

4. In the West Bengal Luxury Tax Act, 1994,—

(1) in section 2,—  
(a) for clause (a), the following clause shall be substituted:—  
‘(a) “Bureau” means the Bureau of Investigation referred to in section 7 of the West Bengal Sales Tax Act, 1994;’;

(b) for clause (k), the following clause shall be substituted:—  
‘(k) “Tribunal” means the West Bengal Commercial Taxes Appellate and Revisional Board constituted under section 6 of the West Bengal Sales Tax Act, 1994;’;

(2) in section 14, after sub-section (6), the following sub-section shall be inserted:—

“(7) All investigations, enquiries or proceedings pending with the Bureau on the date immediately before the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall, with effect from the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be deemed to have been transferred to the Bureau”;

(3) in section 15, after sub-section (5), the following sub-section shall be inserted:—

“(6) All applications for revision of final appellate order or revisional order against an order of assessment of luxury tax, determination of interest, or imposition of penalty under section 9, and all applications under section 16 arising out of an order of the Tribunal, pending before the Tribunal on the date immediately before the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall, with effect from the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be deemed to have been transferred to the Tribunal.”.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

XI of 1995.]

(Section 5.)

5. In the West Bengal Sales Tax Act, 1994,—

(1) in section 2,—

(a) for clause (6), the following clause shall be substituted:—

(6) “casual trader” means a person, other than a registered dealer, who has no fixed place of business in West Bengal and who,—

(a) as a consignor or consignee, brings into West Bengal any goods, other than those specified in Schedule I or Schedule IV or those notified under sub-section (2) of section 10, from any place outside West Bengal for sale in West Bengal, or

(b) procures goods, other than those specified in Schedule I or Schedule IV, otherwise than by way of purchase from a person other than a registered dealer, for sale in West Bengal, or

(c) purchases any goods, other than those specified in Schedule I or Schedule IV, in West Bengal from any person, other than a registered dealer, for purposes other than his personal use or consumption of such goods in West Bengal,

and includes, whether he has a fixed place of business in West Bengal or not,—

(i) a transporter as defined in clause (a) of the *Explanation* to section 72, and who while carrying such goods in his goods vehicle fails to disclose the name and address of the consignor or consignee in West Bengal or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or

(ii) an owner or lessee of a warehouse where such goods are stored, and who fails to disclose the name and address of the owner of such goods or fails to satisfy the Commissioner that such goods are for his personal use or consumption,

and who, for such failure, shall be deemed to have brought such goods as specified in sub-clause (a) or procured such goods as specified in sub-clause (b) or purchased such goods as specified in sub-clause (c), as the case may be, on his own account; ;

Amendment  
of West Ben.  
Act XLIX of  
1994.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

[West Ben. Act

(Section 5.)

(b) for clause (35), the following clause shall be substituted:—

“(35) “tax” means tax payable under section 11, section 14, section 17, section 20, section 21 or section 23, and includes surcharge payable under section 16;”;

(c) in clause (40), for sub-clause (a), the following sub-clause shall be substituted:—

“(a) the sale prices or the parts of sale prices, if any, in respect of sale during such period of goods specified in Schedule IV which are shown to the satisfaction of the Commissioner to have been purchased by the dealer in West Bengal;”;

(2) in section 6, after sub-section (7), the following sub-sections shall be inserted:—

“(8) The Appellate and Revisional Board shall have the power to award costs in any matter decided by it for such amount as it may consider reasonably justified in the facts and circumstances of the case.

(9) The amount of cost awarded by the Appellate and Revisional Board against a dealer shall be recoverable from him as if it were the tax due from him under this Act and, in case of default by him, such dues shall be recovered as an arrear of land revenue:

Provided that the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913, shall not apply to a proceeding for recovery of any cost awarded under this sub-section.

(10) On the cost being awarded by the Appellate and Revisional Board against the State Government, the Commissioner shall arrange for the payment of such cost.”;

(3) in section 11,—

(a) for sub-section (1), the following sub-section shall be substituted:—

“(1) Notwithstanding anything contained elsewhere in this Act, a casual trader shall be liable to pay tax on all his sales in West Bengal of goods, other than those specified in Schedule I or Schedule IV or those notified under sub-section (2) of section 10, brought by him into West Bengal from any place outside West Bengal, or on

Ben. Act III  
of 1913.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

**XI of 1995.]**

*(Section 5.)*

all his sales in West Bengal of goods, other than those specified in Schedule I or Schedule IV, procured by him otherwise than by way of purchase from a person other than a registered dealer:

Provided that no tax shall be levied on sales of goods which are effected on or after the date on which he becomes liable to pay tax under section 9 or sub-section (3) of section 27 and is registered under section 26 or section 27.

*Explanation.*—Where a transporter, or an owner or a lessee of a warehouse, deemed to be a casual trader in respect of any goods referred to in sub-section (1), is found to have disposed of such goods, the disposal of such goods shall be deemed to have been made by way of sale by him in West Bengal, unless he proves it otherwise with satisfactory evidence.”;

- (b) in sub-section (2), for the words, letter and brackets “or clause (d),” the words, letters and brackets “, clause (d), clause (e), clause (f), clause (g) or clause (h),” shall be substituted;
- (c) sub-section (4), sub-section (5) and sub-section (6) shall be renumbered as sub-section (7), sub-section (8) and sub-section (9) respectively, and before sub-section (7) as so renumbered, the following sub-sections shall be inserted:—

“(4) No person shall, except in accordance with the restrictions and conditions provided in sub-section (5), bring into West Bengal any goods, other than those specified in Schedule I or Schedule IV or those notified under sub-section (2) of section 10.

(5) Every person transporting in a road vehicle,—

- (a) goods, other than those specified in Schedule I or Schedule IV or those notified under sub-section (2) of section 10, brought by him into West Bengal, or
- (b) goods, other than those specified in Schedule I or Schedule IV, procured by him otherwise than by way of purchase from a person, other than a registered dealer,

*(Section 5.)*

shall, on interception by any person appointed under sub-section (1) of section 3 and authorised by the Commissioner in this behalf (hereinafter referred to in this section as the authorised officer), stop the vehicle and produce, on demand, before such authorised officer invoice, challan, transport receipt, consignment note or document of like nature in respect of such goods and shall also furnish the name, address and number of the certificate of registration of the consignor or consignee, if registered, and thereafter,—

- (i) if it appears to the authorised officer that such goods are being transported by a person who is not a casual trader liable to pay tax under this section, he shall immediately allow movement of such vehicle, or
- (ii) if it appears to the authorised officer that the goods are being transported by a casual trader or by some person on his behalf, he may detain such vehicle ordinarily for a period not exceeding twenty-four hours for the purposes of sub-section (7) and sub-section (8).

(6) For the purposes of this section or section 14, the owner or lessee of a warehouse where goods are stored, shall furnish, on demand, before the Commissioner or the authorised officer,—

- (a) if he is the owner of such goods, the invoice, challan or other documents in support of the manner of securing such goods, or
- (b) if he declares that the goods are being stored by another person, name and address of the person who has stored the goods and evidence in support of occupancy of the warehouse by that person,

and, in the event of failure to furnish such particulars or evidence within a reasonable time, the authorised officer may seal such warehouse for a period ordinarily not exceeding twenty-four hours from the time of enquiry or search for the purposes of sub-section (7) and sub-section (8).";

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

XI of 1995.]

(Section 5.)

(d) for sub-section (9), the following sub-sections shall be substituted:—

“(9) For the purposes of this section, if—

- (a) production and inspection of accounts, registers and documents, and seizure thereof,
- (b) entry, search and sealing of warehouse,
- (c) interception, detention and search of any road vehicle, and
- (d) seizure of any goods,

are required by the authorised officer, the provisions of section 65, section 66, section 67, section 69 and section 70 shall apply *mutatis mutandis*.

(10) Where the Commissioner or the authorised officer has reason to believe that a person transporting goods has contravened the restrictions and conditions provided in sub-section (4) or sub-section (5) or an owner or a lessee of a warehouse fails to comply with the conditions provided in sub-section (6), and if such person, owner or lessee, as the case may be, fails to comply with the provisions of sub-section (8), the Commissioner or the authorised officer, as the case may be, shall seize the goods with containers or other packing materials, if any.

(11) Where the goods are seized by the Commissioner or the authorised officer under sub-section (10), he may, by an order in writing, impose upon the owner of such goods, where particulars of the owner of such goods are available and the owner is a casual trader, or upon the person from whom goods are seized after giving such owner or person, as the case may be, a reasonable opportunity of being heard, a penalty of a sum not exceeding twenty-five *per centum* of the value of goods so seized, and, for the purposes of demand and payment of penalty and release of the seized goods, the provisions of sub-section (1), sub-section (2) and sub-section (3) of section 71 shall apply *mutatis mutandis*.

(Section 5.)

(12) If the penalty is not paid, the seized goods may be sold in open auction and sale proceeds thereof shall be applied in the manner, and subject to the conditions, provided in sub-section (4), sub-section (5), sub-section (6), sub-section (7), and sub-section (8), of section 71 as may be applicable for the purposes of this section.”;

(4) in section 12, in sub-section (2), after the word “dealer”, the words “who is an occupier of a jute-mill or a shipper of jute and” shall be inserted;

(5) in section 14,—

- (a) in sub-section (2), for the words, letter and brackets “or clause (d).”, the words, letters and brackets “clause (d), clause (e), clause (f), clause (g), or clause (h).” shall be substituted;
- (b) sub-section (4), sub-section (5), sub-section (6), sub-section (7) and sub-section (8) shall be renumbered as sub-section (6), sub-section (7), sub-section (8), sub-section (9) and sub-section (10) respectively, and before sub-section (6) as so renumbered, the following sub-sections shall be inserted:—

“(4) Every person transporting in a road vehicle goods, other than those specified in Schedule I or Schedule IV, purchased by him in West Bengal on his own account or on behalf of any other person shall, on interception by any person appointed under sub-section (1) of section 3 and authorised by the Commissioner in this behalf (hereinafter referred to in this section as the authorised officer), stop the road vehicle and produce, on demand, before such authorised officer, invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods and shall also furnish the name, address and number of certificate of registration of the consignor or consignee, if registered, and thereafter,—

  - (a) if the authorised officer is satisfied that the person transporting the goods is not liable to pay tax under sub-section (1), he shall immediately allow movement of the road vehicle, or

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

XI of 1995.]

*(Section 5.)*

(b) if the authorised officer is satisfied that the goods are being transported by a casual trader or a person on behalf of a casual trader, he may detain the road vehicle for a period ordinarily not exceeding twenty-four hours for the purposes of sub-section (6).

(5) If the owner or lessee of a warehouse furnishes the invoices or other evidence referred to in sub-section (6) of section 11, and it is found on verification by the Commissioner or the authorised officer referred to in sub-section (4) that such owner or lessee is a casual trader liable to pay tax under this section, he may seal such warehouse for a period ordinarily not exceeding twenty-four hours from the time of enquiry or search for the purposes of sub-section (6).";

(c) for sub-section (7), the following sub-section shall be substituted:—

“(7) for the purposes of this section, if—

- (a) production and inspection of accounts, registers and documents or seizure thereof,
- (b) entry, search and sealing of warehouse,
- (c) interception, detention and search of road vehicles, and
- (d) seizure of goods, other than those specified Schedule I or Schedule IV,

are required by the authorised officer, the provisions of section 65, section 66, section 67, section 69 and section 70 shall apply *mutatis mutandis*.";

(d) for sub-section (8), the following sub-section shall be substituted:—

“(8) Where the casual trader or transporter or owner or lessee of a warehouse, as the case may be, fails to make payment of tax determined under sub-section (6) within the period prescribed for such payment, the authorised officer may seize such goods.”;

(e) for sub-section (9), the following sub-section shall be substituted:—

“(9) If the goods seized under sub-section (8) are not claimed by the casual trader of such goods on payment of tax determined under sub-section (6), the

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

[West Ben. Act

(Section 5.)

seized goods may be sold in open auction and the sale proceeds thereof shall be applied in the manner, and subject to the conditions, provided in sub-section (4), sub-section (5), sub-section (6), sub-section (7), and sub-section (8), of section 71 as may be applicable for the purposes of this section.”;

(6) in section 17,—

(a) in sub-section (2),—

(i) for clause (a), the following clause shall be substituted:—

“(a) (i) one *per centum* of such part of his taxable turnover of sales as represents sales to a registered dealer of tea specified in the certificate of registration of such dealer, as being intended for resale by him in West Bengal, and of containers and other materials for the packing of tea so specified;

(ii) two *per centum* of his taxable turnover of sales as represents sales to a registered dealer of goods, other than—

- (A) bicycles and spare parts, accessories and components thereof,
- (B) foreign liquor as specified in serial No. 7 of Schedule II,
- (C) gold and silver,
- (D) gold and silver ornaments, whether set with stone or other materials or not, including gold and silver filigree,
- (E) gold and silver utensils,
- (F) mustard oil, rape oil and mixture of mustard oil and rape oil,
- (G) tea,
- (H) goods referred to in section 14 of the Central Sals Tax Act, 1956,
- (I) goods specified in Schedule IV, or
- (J) such other goods as the State Government may, by notification, specify under clause (i), of the class or classes specified in the certificate of registration of such dealer, as being intended for resale [including a sale referred to in sub-clause (c) of clause (30) of section 2 but excluding a sale

74 of 1956.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

XI of 1995.]

(Section 5.)

referred to in section 15] by him in West Bengal, and of containers and other materials for the packing of goods of the class or classes so specified;”;

(ii) for clause (b), the following clause shall be substituted:—

“(b) (i) two *per centum* of such part of his taxable turnover of sales as represents sales to a registered dealer of the class or classes of goods specified in the certificate of registration of such dealer, as being intended for use by him directly in the manufacture by way of blending in West Bengal of tea for sales by him in West Bengal, and of containers and other materials for the packing of goods of the class or classes so specified;

(ii) three *per centum* of such part of his taxable turnover of sales as represents sales to a registered dealer of goods, other than—

(A) gold and silver,

(B) mustard oil, rape oil and mixture of mustard oil and rape oil,

(C) rice and wheat, or

(D) goods, specified in Part B of Schedule IV, of the class or classes specified in the certificate of registration of such dealer, as being intended for use by him directly in the manufacture in West Bengal of taxable goods or newspapers, other than the manufacture by way of blending in West Bengal of tea referred to in sub-clause (i), for sales, other than the sale referred to in section 15, by him in West Bengal, and of containers and other materials for the packing of goods of the class or classes so specified;”;

(b) in sub-section (3), in clause (a),—

(i) in sub-clause (vii), the words and figures “referred to in Schedule VI” shall be omitted;

(ii) in sub-clause (ix), for the figures “13”, the figure “7” shall be substituted;

(iii) in sub-clause (x), for the figures “13”, the figure “7” shall be substituted;

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

[West Ben. Act

*(Section 5.)*

- (7) in section 21, in sub-section (1),—
  - (a) for the words, “twelve *per centum*”, the words “four *per centum*” shall be substituted;
  - (b) the proviso shall be omitted;
- (8) in section 22, for sub-section (3), the following sub-section shall be substituted:—

“(3) A re-roller who intends to claim set off of tax under sub-section (1) shall, for the purpose of determining the amount of tax to be set off, maintain accounts, records or evidence in respect of the value or quantity of the item of iron and steel purchased by him in West Bengal for re-rolling and also in respect of the value or quantity of the item of iron and steel manufactured therefrom and sold by him in West Bengal.”;
- (9) in section 23, in sub-section (1),—
  - (a) for the words “four *per centum*”, the words “two *per centum*,” shall be substituted;
  - (b) in the proviso, for the words “five lakh”, the words “fifteen lakh” shall be substituted;
- (10) in section 25, in sub-section (2), in clause (a), for the words, letter and brackets “or clause (d)”, the words, letters and brackets “, clause (d), clause (e), clause (f), clause (g) or clause (h), as the case may be,” shall be substituted;
- (11) in section 38, in sub-section (1),—
  - (a) in clause (e), for the figures and word “1983, or”, the figures “1983,” shall be substituted;
  - (b) in clause (f), for the word “institution,”, the words “institution, or” shall be substituted;
  - (c) after clause (f), the following clause shall be inserted:—

“(g) a promoter”;
  - (d) in the first proviso, for clause (i), the following clause shall be substituted:—

“(i) the payment is made as advance prior to the commencement of the execution of such works contract;”;
  - (e) after the second proviso, the following *Explanation* shall be inserted:—

*‘Explanation.—For the purposes of this sub-section, “promoter” means a person who constructs, reconstructs, converts, renovates or extends or causes to be*

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

**XI of 1995.]**

*(Section 5.)*

constructed, reconstructed, converted, renovated or extended, a building (including a flat or apartment or a block of flats or apartments or a resort) on a plot of land for the purpose of transfer of such building by sale or otherwise to any other person or to a company, firm, co-operative society or any association of persons, and includes—

- (i) his assignee, if any,
- (ii) the person who develops or reclaims the land, the person who constructs, reconstructs, converts, renovates or extends, and the person who transfers, such building, if such persons are different,
- (iii) a society registered under the West Bengal Societies Registration Act, 1961, or
- (iv) any firm, board or other association of persons, established by or under any law for the time being in force,

but excluding those referred to in clauses (a) to (f) of this sub-section.;

(12) section 39 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted:—

“(2) A registered dealer shall not be eligible for exemption from payment of tax under this section in respect of any sale of goods manufactured in his newly set up small scale industrial unit, if he once opts for deferment of payment of tax or remission of tax under section 40, section 41, section 42 or section 43, as the case may be, in respect of sale of such goods manufactured in such industrial unit.”;

(13) in section 40,—

- (a) the proviso to sub-section (3) shall be omitted;
- (b) in clause (d) of the *Explanation*,—

- (i) in sub-clause (i), for the words “the date of first commercial production in such unit”, the words “the date on which tax becomes payable for a return period by the dealer in respect of sales of goods manufactured in such unit,” shall be substituted;
- (ii) in sub-clause (ii), for the words “the date of first commercial production”, the words “the date on which tax becomes payable for a return period by the dealer in respect of sales of goods manufactured” shall be substituted;

(Section 5.)

(14) in section 42,—

(a) in sub-section (1), for clause (a), the following clause shall be substituted:—

“(a) the ownership of the business relating to such unit is transferred, by sale or otherwise, to such dealer or person who—

- (i) has been registered before such transfer, or
- (ii) is deemed to be registered under section 99, or
- (iii) gets himself registered on a date subsequent to such transfer, and”;

(b) for the *Explanation*, the following *Explanation* shall be substituted:—

‘*Explanation*.—The expression “gross value of fixed capital assets”, in relation to a closed industrial unit, shall, for the purposes of section 40 or section 41, mean,—

(a) where the ownership of the business of such unit is transferred by sale, price paid by the transferee as the value of land, freehold or leasehold, office building excluding residential portion, factory shed, plant and machinery including productive equipments, or

(b) where the ownership of the business of such unit is transferred, otherwise than by way of sale, the value of land, freehold or leasehold, office building excluding residential portion, factory shed, plant and machinery including productive equipments as they stand on the date of such transfer,

and the cost of new plant and machinery including productive equipments, if any, purchased and installed by the transferee after transfer of such closed industrial unit.’;

(15) in section 43,—

(a) for sub-section (2), the following sub-section shall be substituted:—

“(2) The benefit of deferment of payment of tax under section 40 or remission of tax under section 41 shall be available to a new owner of the business relating to such unit if—

*(Section 5.)*

- (a) the ownership of such business is taken over by, and is transferred to, the new owner who—
  - (i) is deemed to be registered as a transferee under section 99, or
  - (ii) has been a registered dealer prior to such transfer, or
  - (iii) gets himself registered on a date subsequent to such transfer, and
- (b) such unit is rehabilitated or revived by such new owner on or after the appointed day under any scheme approved by the State Government in this behalf.”;
- (b) in sub-section (4), for the words figures “by the transferee-dealer on transfer of the ownership of business relating to such unit according to section 99,”, the words, figure and brackets “by the new owner on transfer of the ownership of business relating to such unit under sub-section (2),” shall be substituted;
- (c) in sub-section (5), for the words and figures “according to section 99,”, the words, figure and brackets “under sub-section (2),” shall be substituted;

(16) for section 44, the following section shall be substituted:—

“Power of  
the State  
Government  
to relax  
certain  
provisions of  
the Act  
relating to  
deferment of  
payment of  
tax or  
remission of  
tax.

44. Notwithstanding anything contained in section 40, section 41, section 42 or section 43 or the rules made thereunder, where the State Government considers it necessary so to do in the public interest, it may, after due consideration of (i) size of investment in the industrial unit, (ii) special nature of the industry, (iii) employment potentiality, (iv) down-stream effect of the industry, (v) ancillarization effect of the industry, and (vi) export potentiality,—

- (a) relax the ceiling of one hundred *per centum* of gross value of fixed capital assets, or the amount of fifty crore rupees, referred to in sub-section (3) of section 40 or sub-section (1) of section 41, in respect of any newly set up industrial unit or the expanded portion of any existing industrial unit, and raise, by notification, such ceiling as may be specified therein; or

(Section 5.)

(b) relax, by notification, any other restrictions and conditions provided in section 40, section 41, section 42 or section 43 and the rules made thereunder in such manner, to such extent, and on such terms and conditions, as may be specified in such notification.”;

(17) in section 53, in sub-section (2), for the word and figures “Schedule VI”, the word and figure “Schedule X” shall be substituted;

(18) in section 69, in clause (b), the words, figure and brackets “of sub-section (1)” shall be omitted;

(19) in section 70,—

(a) in sub-section (1),—

(i) the words, figure and brackets “of sub-section (1)” shall be omitted;

(ii) the words, figure and brackets “sub-section (2) of” shall be omitted;

(b) in sub-section (2), the words, figure and brackets “of sub-section (1)” shall be omitted;

(20) in section 82, in sub-section (2), for the words, figures and brackets “for disposal in accordance with the provisions of this section and the rules made thereunder or the regulations made under sub-section (7) of section 6.”, the words “, and the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply, for disposal of such applications, as if this Act had not been passed.” shall be substituted;

(21) in section 84, in the marginal note, for the word and figures “Schedule VI”, the word and figure “Schedule X” shall be substituted;

(22) in section 100, in sub-section (2), for the word and figures “Schedule VI” in the two places where they occur, the word and figure “Schedule X” shall be substituted;

(23) in section 107, in clause (i), for the words, figures and letters “on the 30th day of June, 1993, under any of the Acts”, the words, figures and letters “under section 11E of the Bengal Finance (Sales Tax) Act, 1941, or under section 9A of the West Bengal Sales Tax Act, 1954,” shall be substituted;

Ben. Act I of  
1899.

Ben. Act VI  
of 1941.  
West Ben.  
Act IV of  
1954.

*The West Bengal Taxation Laws (Second Amendment)  
Act, 1995.*

**XI of 1995.]**

*(Section 5.)*

(24) in Schedule I,—

- (a) in the entry in column (2) against serial No. 81 in column (1), for the words “carpets and druggets.”, the words “carpets and druggets, when such textile fabrics are manufactured or made in India.” shall be substituted;
- (b) for the entry in column (2) against serial No. 82 in column (1), the following entry shall be substituted:

“Tobacco, as referred to in the First Schedule to the Central Excise and Salt Act, 1944, including cigarette, cigar, cheroot, smoking mixture for pipe and cigarette, *biri*, chewing tobacco, snuff and tobacco for *hookah*, that is to say, tobacco paste, ready for use in *hookah*, when all such items are manufactured or made in India.”.

---