

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XXIII of 1997

THE WEST BENGAL TAXATION LAWS (AMENDMENT) ACT, 1997.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 28th November, 1997.]

[28th November, 1997.]

An Act to amend the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, 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 West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, 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, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-eighth 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 (Amendment) Act, 1997.

Short title
and
commence-
ment.

(2) This section and section 6 shall come into force at once; section 2, section 4 and sub-clause (b) of clause (4) of section 5 shall be deemed to have come into force on the 18th day of September, 1997; clause (1), and clause (3), of section 5 shall come into force and shall be deemed to have come into force on the 1st day of May, 1995; clause (2) of section 5 shall be deemed to have come into force on the 1st day of May, 1997; and section 3 and sub-clause (a) of clause (4) of section 5 shall come into force on the 15th day of December, 1997.

(Sections 2, 3.)

Amendment
of West Ben.
Act XXI of
1972.

2. In the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972,—

- (1) in sub-section (1) of section 3, after the proviso, the following provisos shall be inserted:—

“Provided further that the State Government may, by notification published in the *Official Gazette*, direct that entertainment tax shall be payable—

- (a) by such class of persons, or
(b) in respect of entertainment provided in such class of hotels or restaurants,

at such rate lower than that fixed under this section, and subject to such restrictions and conditions, as may be specified in the said notification:

Provided also that subject to such restrictions and conditions as may be prescribed, no entertainment tax shall be payable—

- (a) by such class of persons, or
(b) in respect of entertainment provided in such class of hotels or restaurants and in such area or areas, as may be prescribed.”;

- (2) to section 4, the following proviso shall be added:—

“Provided that subject to such restrictions and conditions as may be prescribed, no luxury tax shall be charged, levied and paid under clause (b) in respect of daily charges realised or realisable for any occupied room provided with luxury from such class of persons as may be prescribed.”.

Amendment
of West Ben.
Act VI of
1979.

3. In the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, in section 7,—

- (1) in sub-section (4a),—

- (a) for the word “four”, the word “six” shall be substituted;
(b) in the first proviso, for the words, letters and figures “the 31st day of March, 1998:”, the words, letters and figures “the 31st day of March, 2002:” shall be substituted;
(c) in the second proviso, for the words “, or the Supreme Court”, the words “, the High Court or the Supreme Court” shall be substituted;

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(d) in the third proviso,—

(i) after the words “Supreme Court of India”, the words “, the High Court” shall be inserted;

(ii) for the word “four”, the word “six” shall be substituted;

(2) for sub-section (6), the following sub-sections shall be substituted:—

“(6) Notwithstanding anything contained in sub-section (2), where—

(a) an employer registered under this Act has furnished all the returns in respect of any year in accordance with the provisions of sub-section (2) of section 6, or has produced, on demand, for inspection by the prescribed authority by the 1st day of March, 1998, such corroborative evidence as may prove furnishing of such returns by such employer and payment of the tax made according to such returns,

(b) the assessment of tax of a registered employer in respect of the year referred to in clause (a) has not been made under sub-section (2) or has not been deemed to have been made under any provision of this section before the coming into force of the West Bengal Taxation Laws (Amendment) Act, 1997, and

(c) no accounts, registers or other documents referred to in sub-section (2) of section 17 of such registered employer have been seized under sub-section (3) of that section,

the assessment of tax payable by such registered employer in respect of all such years ending on or before the 31st day of March, 1996, shall be deemed to have been made on the 31st day of March, 1998, by the prescribed authority as per returns furnished:

Provided that where a fresh assessment is required to be made in pursuance of any order passed by any Court, Tribunal, Board or any other authority under this Act, provision of this sub-section shall not apply in respect of such assessment.

(Section 3.)

(6A) Where assessment of a registered employer for any year is deemed to have been made under sub-section (6), such registered employer shall check up whether the tax payable by him for such year has been duly paid, and if he finds that there is short payment of tax, he shall pay the balance amount of tax which is found to be payable by him under this Act and furnish by the 30th day of September, 1998, or by such date as the State Government may, by notification published in the *Official Gazette*, specify, notwithstanding anything contained in sub-section (2) of section 6, a revised return for such year accompanied by a receipted challan from a Government Treasury showing payment of the balance amount.

(6B) Where it appears to the prescribed authority that—

- (a) (i) a registered employer has, while furnishing return or returns under section 6 for any year or part thereof, paid the amount of tax less than what was payable by him under this Act,
 - (ii) assessment of tax payable by a registered employer has been deemed to have been made under sub-section (6) as per return or returns furnished by him in respect of such year or part thereof, and
 - (iii) such employer has not furnished revised return for such year or part thereof accompanied by a receipted challan from a Government Treasury showing payment of the balance amount of tax due from him under sub-section (6A) on or before the date specified therein, or
- (b) a registered employer has furnished revised return in respect of a year or part thereof in accordance with the provisions of sub-section (6A) and the prescribed authority has reasons to believe on information or otherwise that such registered employer has concealed any salaries or wages paid by him or has furnished incorrect particulars of salaries or wages in the return furnished under section 6, or has, while furnishing revised return

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under sub-section (6A) paid the amount of tax less than what was payable by him under this Act in respect of such year or part thereof,

the prescribed authority shall proceed to make a fresh assessment of the amount of tax due from such employer in respect of such year or part thereof in the prescribed manner, and in making such assessment, the prescribed authority shall give a reasonable opportunity to such employer of being heard, and if the prescribed authority is satisfied, it shall assess the amount of tax due from such employer in respect of such year or part thereof to the best of its judgement; and, in the case of failure by such employer to furnish under sub-section (6A) the revised return accompanied by a receipted challan showing payment of tax by the date specified in that sub-section, the prescribed authority, after giving such employer a reasonable opportunity of being heard, shall, in addition to the amount of tax assessed, impose a penalty not less than the amount equal to, but not exceeding thrice, the amount of tax assessed:

Provided that the prescribed authority shall not proceed to make fresh assessment under this sub-section unless, after such enquiry as it may consider necessary, it records in writing the reason to proceed for making such fresh assessment:

Provided further that no fresh assessment in respect of any registered employer shall be made under this sub-section after the expiry of six years from the date on which the assessment of tax payable by him is deemed to have been made under sub-section (6).

(6C) The amount of tax so assessed under sub-section (6B) together with the amount of penalty, if any, imposed under that sub-section shall be paid by the registered employer ordinarily within fifteen days of receipt of such notice of demand as may be prescribed from the prescribed authority.”;

- (3) sub-section (7) shall be omitted;
- (4) in sub-section (8), for the words, letters and figures “the 30th day of June, 1995,” the words, letters and figures “the 31st day of March, 1999,” shall be substituted;

(Section 4.)

- (5) after sub-section (8), the following sub-section shall be inserted:—

“(9) The provisions of appeal, revision and rectification of mistakes under section 14 shall apply to an assessment deemed to have been made under sub-section (6) as if such assessment has been made by the prescribed authority on the date on which such assessment is deemed to have been made.”.

Amendment
of West Ben.
Act XV of
1994.

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

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

“(6) Notwithstanding anything to the contrary contained in sub-section (1), the prescribed authority may transfer any case or matter from any person appointed under sub-section (1) to any other person so appointed, whether such other person has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise of the powers, or in performance of the duties, referred to in sub-section (2).”;

- (2) after section 9, the following section shall be inserted:—

“Special mode of recovery of luxury tax, penalty and interest by prescribed authority.

9A. (1) Notwithstanding any proceeding being initiated under sub-section (10) of section 9 for recovery of any amount due on account of luxury tax, penalty or interest as an arrear of land revenue, the prescribed authority may, at any time or from time to time, by notice in the prescribed form, require any person from whom money is due or may become due to a stockist or any person who holds or may subsequently hold money for, or on account of, such stockist, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due from such stockist in respect of the arrears of such luxury tax, penalty or interest or the whole of the money when such money is equal to or less than the amount due.

(Section 4.)

(2) A notice under this section may be issued to any person who holds or may subsequently hold any money for, or on account of, the stockist jointly with any other person, and, for the purposes of this section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(3) A copy of the notice shall be forwarded to the stockist at his last address known to the prescribed authority and, in the case of a joint account, to all the joint-holders at their last addresses known to the prescribed authority.

(4) Save as otherwise provided in this section, every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, when any such notice is issued to a post office, banking company or insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(5) Any claim with respect to any money, which is due or to become due or is being held or may subsequently be held and in relation to which a notice under this section has been issued, arising after the date of such notice, shall be void as against any demand contained in such notice.

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

(7) The prescribed authority may, at any time or from time to time, amend or revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice.

(8) The Government Treasury or the Reserve Bank of India shall grant a receipt for any amount paid in compliance with a notice issued under this section, and the person so paying the amount shall be fully discharged from his liability to the stockist to the extent of the amount so paid.

(Section 5.)

(9) Any person discharging any liability to the stockist after receipt of a notice under this section shall be personally liable to the prescribed authority to the extent of his own liability to the stockist so discharged or to the extent of the liability of such stockist for any amount due under this Act, whichever is less.

(10) If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be a stockist in default in respect of the amount specified in the notice, and further proceedings may be taken against him for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt.

(11) The prescribed authority may apply to the court in whose custody there is money belonging to the stockist for payment to it of the entire amount of such money or, if it is more than the amount of luxury tax, penalty or interest due, an amount sufficient to discharge the liability of the amount of luxury tax, penalty or interest:

Provided that any dues exempt from attachment in execution of a decree of a civil court under section 60 of Code of Civil Procedure, 1908, shall be exempt from any payment required to be made under this section.”

5 of 1908.

Amendment
of West Ben.
Act XLIX of
1994.

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

(1) in clause (c) of sub-section (2) of section 17, for the words “manufactured by him in West Bengal for sale,” the words “imported into West Bengal, or manufactured by him in West Bengal, for sale,” shall be substituted;

(2) after section 17A, the following section shall be inserted:—

Exemption
from the
operation of the
provisions of
section 17A.

17B. (1) Notwithstanding anything contained in section 17A, if the State Government is, at any time, of opinion that it would be in the public interest so to do, it may, by notification, exempt retrospectively, or prospectively, the operation of section 17A in respect of sales of all or any of the goods specified in Schedule II or in respect of such class or classes of sales of the goods referred to in clause (a) of sub-section (2) of section 17A.

(Section 5.)

(2) Where the operation of section 17A is exempted under sub-section (1)—

(a) in respect of sales of all or any of the goods specified in Schedule II, the State Government shall, in accordance with the provisions of sub-section (1) of section 25, transfer such goods to such other Schedule to this Act as it may deem fit, and, thereupon, the provisions of section 17 shall apply in respect of sale of the goods so transferred, or

(b) in respect of the class or classes of sales of the goods referred to in clause (a) of sub-section (2) of section 17A, such sales shall be subject to the provisions of section 17, and notwithstanding anything contained elsewhere in this Act, tax shall be levied on the taxable turnover of such sales at the rate specified in column (3), against the corresponding entry of the goods as aforesaid in column (2), of Schedule II for the purposes of sub-section (1) of section 17, and the concessions as provided in sub-section (2), or sub-section (3), of section 17 shall apply in respect of such goods,

with effect from the date on which the notification under sub-section (1) of section 25 or sub-section (1) of this section, as the case may be, comes into force.

(3) Where any amount of tax has been paid under section 17A by a dealer in respect of the sales of goods or class or classes of sales of goods referred to in the notification under sub-section (1) of section 17B in respect of the period commencing from the date of effect of the said notification to the date of publication of the said notification, the amount of tax so paid shall be adjusted with the amount of tax that may become payable by such dealer under section 17 in respect of the said period in such manner and within such time as may be prescribed:

Provided that where consequent upon the coming into force of the notification under sub-section (1) of section 17B, the amount of tax payable by a dealer under section 17 in respect of the sales referred to in sub-section (1) of section 17B during the period commencing on the date of coming

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into force of the said notification and ending on the date immediately before the date of publication of the said notification is higher than the amount of tax which would have been payable under section 17A and such dealer proves to the satisfaction of the Commissioner that he has charged and collected separately the amount of tax payable on such sales in accordance with the provisions of section 17A, the balance amount of tax payable under section 17 shall, subject to such restrictions and conditions as may be prescribed, be remitted.”;

- (3) in Schedule I, after serial No. 14 in column (1) and the entries relating thereto in column (2), the following serial No. and entries relating thereto shall be inserted in column (1) and column (2) respectively:—

“14A. Puffed rice, commonly known as *Muri*, flattened or beaten rice, commonly known as *Chira*, parched rice, commonly known as *Khoi*, parched paddy or rice coated with sugar or *Gur*, commonly known as *Murki*.”;

- (4) in Schedule IV, in PART A,—

- (a) in serial No. 28 in column (1), for the entry relating thereto in column (2), the following entry shall be substituted:—

“Fertilizer including basic slag.”;

- (b) for the entries in column (2) against serial No. 89 in column (1), the following entries shall be substituted:—

“Boulder, ballast and stone-chips.”.

Repeal and
saving.

6. (1) The West Bengal Taxation Laws (Amendment) Ordinance, 1997, is hereby repealed.

West Ben.
Ord. II of
1997.

(2) Notwithstanding such repeal, anything done or any action taken under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, or the West Bengal Luxury Tax Act, 1994, or the West Bengal Sales Tax Act, 1994, as amended by the said Ordinance, shall be deemed to have been validly done or taken under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, or the West Bengal Luxury Tax Act, 1994, or the West Bengal Sales Tax Act, 1994, as the case may be, as amended by this Act.

West Ben.
Act XXI of
1972.
West Ben.
Act XV of
1994.

West Ben.
Act XLIX of
1994.