

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act XVI of 1999

**THE WEST BENGAL SALES TAX
(AMENDMENT) ACT, 1999.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 13th December, 1999.]

[13th December, 1999.]

An Act to amend the West Bengal Sales Tax Act, 1994.

West Ben.
Act XLIX of
1994.

WHEREAS it is expedient to amend the West Bengal Sales Tax Act, 1994, for the purposes and in the manner hereinafter appearing;

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

1. (1) This Act may be called the West Bengal Sales Tax (Amendment) Act, 1999.

Short title
and
commenc-
ment.

(2) It shall be deemed to have come into force on the 1st day of November, 1999.

2. In sub-section (1) of section 13 of the West Bengal Sales Tax Act, 1994 (hereinafter referred to as the principal Act),—

Amendment
of section 13
of West Ben.
Act XLIX of
1994.

(1) in clause (a), the words and figures “and goods specified in Schedule IV” shall be omitted with effect from the 1st day of November, 1999;

(2) in clause (c), the words and figures “and goods specified in Schedule IV” shall be omitted with effect from the 1st day of November, 1999.

3. In section 18 of the principal Act, in sub-section (1), for the words “, other than those”, the words “, including a sale” shall be substituted, and shall be deemed to have been substituted, with effect from the 1st day of April, 1999.

Amendment
of section
18.

4. In section 20 of the principal Act, in sub-section (2),—

Amendment
of section
20.

(1) in clause (a),—

(a) the words, letter and brackets “, or clause (c),” shall be omitted, and

(Section 5.)

(b) the word "and" shall be omitted,
with effect from the 1st day of November, 1999;

(2) after clause (a), the following clause shall be inserted with effect from the 1st day of November, 1999:—

“(aa) (i) four *per centum* of such purchase price in respect of purchases of goods, other than goods specified in Schedule IV, or
(ii) tax as applicable to a sale of any goods specified in Schedule IV fixed by notification under sub-section (1) of section 18 on such purchase price in respect of purchase of goods specified in Schedule IV,
as relates to purchases referred to in clause (c) of sub-section (1) of section 13, and”;

(3) after the proviso, the following proviso shall be added with effect from the 1st day of November, 1999:—

“Provided further that no tax shall be payable by a dealer under clause (a), or clause (c), of sub-section (1) of section 13 on purchase of any goods specified in Schedule IV where such dealer proves to the satisfaction of the Commissioner that on a prior sale of such goods in West Bengal, due tax payable under clause (c) of sub-section (1) of section 17 has been paid.”.

Insertion of
new Chapter
IVA.

5. In the principal Act, after Chapter IV, the following Chapter shall be inserted with effect from the 1st day of November, 1999:—

'CHAPTER IVA

Enrolment of transporter, carrier or transporting agent.

Enrolment of
transporter,
carrier or
transporting
agent.

29A. For carrying out the purposes of section 68, section 72, and section 73, every transporter, carrier or transporting agent operating his transport business in West Bengal of transporting any consignment of taxable goods into, or outside, or within, West Bengal shall obtain from the Commissioner a certificate of enrolment in such manner, and within such time, as may be prescribed.

Explanation.—For the purposes of this section or section 62A, the expression "taxable goods" shall mean all goods excluding those goods sales of which are tax-free under section 24, but including raw jute, purchases of which are liable to tax under section 12.'

(Section 6.)

6. After section 46 of the principal Act, the following section shall be inserted:—

"Assessment
deemed to be
made in
certain cases.

Insertion of
new section
46A.

46A. (1) Notwithstanding anything contained in sub-section (1) of section 45 or sub-section (1) of section 45A, returns furnished in accordance with the provisions of sub-section (4) of section 30 by a registered dealer having a gross turnover of sales, or gross contractual transfer price, or an aggregate of gross turnover of sales and gross contractual transfer price, in a year below three crore rupees in respect of the year or years comprising the period or periods commencing on and from the day immediately following the latest year or part of a year comprising the period or periods for which assessment under sub-section (1) of section 45 has been made and ending on or before the 30th day of June, 1999 (hereinafter referred to as the eligible period) shall be accepted as correct and complete, and all assessments in respect of such eligible period shall, subject to the provisions of sub-section (2), be deemed to have been made under sub-section (1) of section 45 on the 31st day of December, 1999:

Provided that the provisions of this sub-section shall not apply in respect of any such year or part of a year where—

- (a) a registered dealer has not furnished return together with received challan showing payment of tax and interest, if any, for any return period falling within the eligible period, or
- (b) any assessment made under sub-section (1) of section 45 in respect of a registered dealer relating to any year falling within the eligible period has been set aside under section 79, section 80, or section 82, with the direction to make fresh assessment, or
- (c) subsequent to any seizure made under section 66 of accounts, registers or documents of a registered dealer, any report indicating any evasion of tax by such registered dealer during any period falling within the eligible period has been received by the Commissioner prior to the date of coming into force of this sub-section,

(2) Where assessment is deemed to have been made under sub-section (1) in respect of a registered dealer relating to any year or part of a year falling within the eligible period and where it appears to the Commissioner on information or otherwise that in a return furnished by such registered dealer under section 30 in respect of any period of such year or part of a year,—

(Section 6.)

- (a) certain sale price or part thereof, contractual transfer price or part thereof, or specified purchase price or part thereof, has not been disclosed in such return, or has escaped levy of tax thereon at the appropriate rate, erroneously or otherwise, or
- (b) the deductions from the gross turnover of sales were claimed under sub-section (3) of section 17 in such return, erroneously or otherwise, in excess of what is admissible under sub-section (3) of that section, or the deductions so claimed in such return are not supported by evidence referred to in sub-section (3) of that section, or
- (c) claim for lower rate of tax has been preferred in such return under sub-section (2), or sub-section (2A), of section 17 in respect of any turnover of sales without any valid evidence referred to therein,

which has resulted in reduction of the amount of tax payable by such registered dealer or the State Government has suffered loss of revenue on any of the grounds referred to in clause (a), clause (b), or clause (c), of this sub-section on account of such registered dealer in respect of such year or part of such year, the Commissioner shall, within a period of four years from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1), after giving such registered dealer a reasonable opportunity of being heard, reopen such assessment by an order in writing in the prescribed manner for making a fresh assessment of tax under sub-section (1) of section 45:

Provided that the fresh assessment under sub-section (1) of section 45 for such year shall be made, notwithstanding the provisions of section 48, on any date within two years from the date of passing the order in writing for reopening the assessment in respect of such year, which is deemed to have been made in accordance with the provisions of sub-section (1) of this section.

(3) Where an assessment in respect of a registered dealer has been deemed to have been made in accordance with the provisions of sub-section (1) for any year or part of a year falling within the eligible period, such registered dealer shall verify the related returns with his books of accounts and documents required to be furnished for substantiating his gross turnover of sales, claims for exemption from payment of tax or for payment of tax at a lower rate, as mentioned in such return, and if he finds that there is any short payment of tax or interest, he shall furnish a declaration in the prescribed form on or before the 30th day of June, 2000, together with a receipted challan showing payment of such balance amount of tax or interest.

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(Section 7.)

(4) Where a dealer brings to the notice of the Commissioner by making an application to him within six months from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1) in respect of any year that due to his error in fact or in law, an amount of tax or interest has been paid by him in excess of what was payable in respect of any return period falling within such year, the Commissioner may, if he is *prima facie* satisfied about such error, within one year from the date of receipt of such application, reopen such assessment, by an order in writing, in the prescribed manner, for making a fresh assessment of tax for such year under sub-section (1) of section 45:

Provided that the fresh assessment of tax under sub-section (1) of section 45 for such year shall be made, notwithstanding the provisions of section 48, on any date within two years from the date of passing of the order in writing for reopening of the assessment deemed to have been made in accordance with the provisions of sub-section (1) of this section in respect of such year.

(5) The Commissioner shall, while making the fresh assessment in pursuance of sub-section (2) in respect of any registered dealer for any period, direct such dealer to pay, in addition to the tax so assessed and penalty imposed, if any, under sub-section (1) of section 45, a sum not less than twice, but not exceeding thrice, the amount of tax assessed by way of further penalty:

Provided that no penalty under this sub-section shall be imposed where such registered dealer furnishes a declaration in accordance with the provisions of sub-section (3).".

7. After section 62 of the principal Act, the following section shall be inserted with effect from the 1st day of November, 1999:—

Insertion of
new section
62A.

"Maintenance
of accounts
by trans-
porter, carrier
or transport-
ing agent, and
inspection,
search and
seizure of
such accounts
and goods
transported.

62A. (1) Notwithstanding anything contained in any other law for the time being in force, any transporter, carrier or transporting agent, to whom the provisions of section 29A apply, shall maintain, in the prescribed form, proper account of taxable goods transported by him into, or outside, or within, West Bengal on account of any person, casual trader or dealer, beign a consignee or consignor, as the case may be, and shall, on demand by the Commissioner, furnish such information to the Commissioner as may be required by the Commissioner in relation to transport of such goods by such transporter, carrier or transporting agent.

(Section 7.)

(2) The accounts referred to in sub-section (1), and goods referred to in that sub-section and stored in a godown or warehouse in West Bengal, shall be open to inspection by the Commissioner at all reasonable time.

(3) Where any transporter, carrier or transporting agent fails to maintain proper account in the prescribed form or fails to furnish information to the Commissioner as required by sub-section (1), the Commissioner may enter and search any place of transporting business or any other place where such transporter, carrier or transporting agent for the time being keeps any records or documents in relation to transport of goods, and the Commissioner may, for reasons to be recorded in writing, seize such records or documents.

(4) Where any transporter, carrier or transporting agent has—

(a) received any consignment of taxable goods from any person, casual trader or dealer in West Bengal for transport of such consignment to any place outside, or within, West Bengal, or

(b) transported into West Bengal any consignment of taxable goods on account of any person, casual trader or dealer, and the Commissioner has information that such person, casual trader or dealer is not in existence at the address given in the way bill, invoice, consignment note or any document of like nature in respect of any consignment of goods referred to in clause (a) or clause (b), the Commissioner may direct the transporter, carrier or transporting agent, by an order in writing, that—

(i) the consignment of goods referred to in clause (a) shall not be transported outside, or within, West Bengal, or

(ii) the consignment of goods referred to in clause (b) shall not be delivered,

till the matter is investigated into by the Commissioner or till a period of fifteen days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881) expires from the date of communication of such direction to the transporter, carrier or transporting agent, whichever is earlier.

26 of 1881.

(5) Where the Commissioner, after giving the person, casual trader or dealer referred to in clause (a) or clause (b), as the case may be, of sub-section (4), a reasonable opportunity of being heard or after causing an enquiry about the existence of such person, casual trader or dealer, is satisfied that such person, casual trader or dealer—

(a) is in existence at the address given in the way bill, invoice, consignment note or any document of like nature, the Commissioner shall forthwith withdraw, by an order in writing, his direction issued under sub-section (4) to the transporter, carrier or transporting agent; or

(Section 8.)

(b) is not in existence at the address given in the way bill, invoice, consignment note or any document of like nature, the transport of the consignment of taxable goods by such person, casual trader or dealer to any place outside, or within, or into, West Bengal, shall be deemed to be in contravention of the provisions of section 68 or section 73, as the case may be, and the Commissioner shall seize such consignment of goods under section 70.

8. In section 88 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of November, 1999:—

“(2A) Whoever, being a transporter, carrier or transporting agent, operates in contravention of section 29A, his transport business in West Bengal of transporting any consignment of taxable goods into, or outside, or within, West Bengal without obtaining a certificate of enrolment, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.”;

(b) after sub-section (3), the following sub-section shall be inserted with effect from the 1st day of November, 1999:—

“(3A) Whoever, being a transporter, carrier or transporting agent, fails or neglects to comply with the provisions of section 62A, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.”;

(c) in sub-section (8), after the words “other actions under”, the word, figures and letter “section 62A,” shall be inserted with effect from the 1st day of November, 1999;

(d) in sub-section (9),—

(i) after the word, figure and brackets “sub-section (2),”, the word, figure, letter and brackets “sub-section (2A),” shall be inserted with effect from the 1st day of November, 1999,

Amendment
of section 88.

(Sections 9, 10.)

- (ii) after the word, figure and brackets "sub-section (3)," the word, figure, letter and brackets "sub-section (3A)," shall be inserted with effect from the 1st day of November, 1999;
- (e) in sub-section (10),—
 - (i) after the word, figure and brackets "sub-section (2)," the word, figure, letter and brackets "sub-section (2A)," shall be inserted with effect from the 1st day of November, 1999;
 - (ii) after the words "while that punishable under", the word, figure, letter and brackets "sub-section (3A)," shall be inserted with effect from the 1st day of November, 1999.

Amendment
of section 90.

9. In sub-section (1) of section 90 of the principal Act,—

- (a) after the word, figure and brackets "sub-section (2)," the word, figure, letter and brackets "sub-section (2A)," shall be inserted with effect from the 1st day of November, 1999;
- (b) after the word, figure and brackets "sub-section (3)," the word, figure, letter and brackets "sub-section (3A)," shall be inserted with effect from the 1st day of November, 1999.

Repeal and
saving.

10. (1) The West Bengal Sales Tax (Amendment) Ordinance, 1999, is hereby repealed.

West Ben.
Ord. II of
1999.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been validly done or taken under the principal Act as amended by this Act.