

Andhra Pradesh Excise (Second Amendment) Act, 1994

20 of 1994

[20 May 1994]

CONTENTS

1. Short Title
2. Amendment Of Section 2
3. Amendment Of Section 37A
4. Insertion Of New Section 37B
5. Amendment Of Section 42
6. Substitution Of New Sections For Section 45
7. Insertion Of New Section 50A
8. Amendment Of Section 53
9. Amendment Of Section 60
10. Amendment Of Section 62

Andhra Pradesh Excise (Second Amendment) Act, 1994

20 of 1994

[20 May 1994]

AN ACT FURTHER TO AMEND THE ANDHRA PRADESH EXCISE ACT, 1968. BE it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty-fifth Year of the Republic of India as follows:- * Received the assent of the Governor on the 13th May, 1994. For Statement of objects and Reasons, Please see Andhra Pradesh Gazette, Part IV-A, Extraordinary, dated the 12th May, 1994 at Page 3.

1. Short Title :-

This Act may be called the Andhra Pradesh Excise (Second Amendment) Act, 1994.

2. Amendment Of Section 2 :-

In the Andhra Pradesh Excise Act, 1968(Act 17 of 1968) (hereinafter referred to as the principal Act), in section 2,-

(i) for clause (9), the following clause shall be substituted,

namely;-

"(9) "excisable article" means any alcoholic liquor for human consumption; or any intoxicating drug"-;

(ii) in clause 20, in sub-clause (d) for the expression "Dangerous Drugs Act, 1930", the expression "Narcotic Drugs and Psychotropic Substances Act, 1985" and in the margin for the expression "Central Act 2 of 1930", the expression "Central Act 61 of 1985" shall respectively be substituted.

3. Amendment Of Section 37A :-

In section 37A of the principal Act, in sub-section (1), in the explanation, for the words "this section", the expression "this section and section 37B" shall be substituted.

4. Insertion Of New Section 37B :-

After section 37A, of the principal Act, the following section shall be inserted, namely:-

37B. "Order to pay Compensation.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the court when passing the judgement in a case falling under section 37A may, if it is satisfied that death or grievous hurt or disability has been caused to any person or persons by consumption of liquor or intoxicating drug sold in any place, order the persons who sold the liquor or intoxicating drug, whether or not he is convicted of an offence under section 37A to pay, by way of compensation, such amount as it deems just, to the legal representatives of the deceased or to the person or persons to whom grievous hurt or disability has been caused (Central Act 2 of 1974)

Provided that where the liquor or intoxicating drug is sold in a licenced shop, the liability to pay the compensation under this section shall be on the licensee.

(2) Any person aggrieved by an order under sub-section (1) may, within ninety days from the date of the order, prefer an appeal to the High Court:

Provided that no such appeal shall lie unless the amount ordered to be paid under sub-section (1) is deposited in the court which passed such order:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from preferring the

appeal in time."

5. Amendment Of Section 42 :-

In section 42 of the principal Act, after the expression "section 34" the expression "sections 37 and 37A" shall be substituted.

6. Substitution Of New Sections For Section 45 :-

For section 46 of the principal Act, the following sections shall be substituted, namely:-

46. "Confiscation by Excise Officers in certain cases.--

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under section 45 is seized or detained under the provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Excise who has jurisdiction over the area.

(2) On production of the said seized property under sub-section (1) the Deputy Commissioner of Excise if satisfied that an offence under this Act has been Committed, may, whether or not a prosecution is instituted for the Commission of such an offence, order, confiscation of such property.

(3) While making an order of confiscation under sub-section (2), the Deputy Commissioner of Excise may also order that such of the properties to which the order of confiscation relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed.

(4) Where the Deputy Commissioner of Excise after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part there of to be sold by public auction or dispose of departmentally.

(5) The Deputy Commissioner of Excise shall submit a full report of all particulars of confiscation to the Commissioner of Excise within twenty-four hours of such confiscation.

(6) The Deputy Commissioner of Excise shall, for the purposes of this Act (Central Act 5 of 1908.) have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when making enquiries under this section in respect of the following matters, namely:-

(a) receiving evidence on affidavits;

(b) summoning and enforcing the attendance of any person and examine him on oath; and

(c) compelling the production of documents.

46A. Issue of show cause notice.---

No order of confiscation of any property shall be made under section 46 unless the person from whom the said property is seized,-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; and

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice.

46B. Appeal.--

When an offence under this Act has been committed, but the offender is not known or cannot be found, or when anything liable to confiscation under this Act, and not in the possession of any person cannot be satisfactorily accounted for, the Excise Superintendent may by order confiscate such property:

Provided that no such order shall be made until the expiration of one month, from the date of seizing the goods intended to be confiscated.

46C. Order of confiscation not to---

Any person aggrieved by an order passed by Deputy Commissioner of Excise under section 46 may, within sixty days from the date of passing such order, appeal to the Commissioner of Excise, who may after giving reasonable opportunity to the appellant pass such orders as he deems fit.

46D. interfere with other punishments--

The order of confiscation under sub-section (2) of section 46 or section 46B shall not prevent from initiation of criminal proceedings against the accused under this Act. The result of criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act, will have no bearing on the order of confiscation passed under this Act.

46E. Bar of jurisdiction.--

Notwithstanding anything contained in the code of Criminal Procedure, 1973 when the Deputy. Commissioner of Excise or the appellate authority is seized with the matter under this Act, no court shall entertain any application in respect of excisable articles any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Excise or the appellate authority with regard to

the disposal of the same shall be exclusive.

46F. Property confiscated when to vest in Government.--

When an order for confiscation of any property has been passed under section 46 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in Government free from all encumbrances."

7. Insertion Of New Section 50A :-

After section 50 of the principal Act, the following section shall be inserted, namely:-

50A. "Penalty for assault.--

Notwithstanding anything contained in the Indian Penal Code, 1860 (Central Act 45 of 1860) whoever assault or threatens to assault or obstructs or attempts to obstruct any Excise Officer in the discharge of his official duties in the matter of detection, seizure, arrest, investigation, prosecution of the offences under the Act or attempts to use criminal force on such Excise Officer shall be punished with imprisonment for a term which may extend to three years and with fine which may extend to rupees fifty thousands."

8. Amendment Of Section 53 :-

In section 53 of the principal Act, in sub-section (1),-

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

"(a) arrest without warrant any person for an offence punishable under section 27 or section 34 or section 35 or section 36 or section 37 or section 37A or section 40A or section 50 or section 50A";

(ii) in sub-section (2) after the expression "or section 37", the expression "section 37A or section 50" shall be inserted;

9. Amendment Of Section 60 :-

In section 60 of the principal "Act,-

(i) in sub-section (4), for the expression "sections 499 to 502, section 513, section 514 and section 515 of the Code of Criminal Procedure, 1898" the expression "sections 441 to 446 and section 449 of the Code of Criminal Procedure, 1973", shall be substituted;

(ii) after sub-section (4), the following sub-section shall be added, namely:-

"(5) Notwithstanding anything contained in the Code of Criminal

Procedure, 1973, no person accused of an offence under clauses (a) and (h) of section 34 or section 37, section 37A, section 40A, section 50 and section 50A of this Act (Central Act 2 of 1974) the court shall not grant any bail, unless the prosecuting officer is given an opportunity to oppose the application, and the court shall record reasons while granting the bail".

10. Amendment Of Section 62 :-

In section 62 of the principal Act, for the expression "section 32 of the Code of Criminal Procedure, 1898", the expression "section 29 of the Code of Criminal Procedure, 1973", shall be substituted.