

West Bengal Finance Act, 2012**2 of 2012**

CONTENTS

1. Short title and commencement
2. Application and amendment of Act 2 of 1899
3. Amendment of West Ben. Act VI of 1979
4. Amendment of West Ben. Act XLIX of 1994
5. Amendment of West Ben. Act XXXVII of 2003

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An Act to amend the Indian Stamp Act, 1899, in its application to West Bengal, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003.

Whereas it is expedient to amend the Indian Stamp Act, 1899, in its application to West Bengal, the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Sixty-third Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. Short title and commencement :-

(1) This Act may be called the West Bengal Finance Act, 2012.

(2) Save as otherwise provided, it shall come into force on such date, or shall be deemed to have come into force on such date 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. Application and amendment of Act 2 of 1899 :-

(1) The Indian Stamp Act, 1899 (hereinafter referred to as the principal Act), shall, in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided.

(2) In Schedule IA to the principal Act,-

(a) in article 5, after clause (e) in the first column and the entry relating thereto in the second column, the following clause in the first column and entries relating thereto in the second column shall be inserted:-

"(f) if relating to an agreement giving authority to a promoter or developer, by whatever name called, for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property-

(i) where the market value of the property does not exceed rupees thirty lakh; Rupees five thousand.

(ii) where the market value of the property exceeds rupees thirty lakh but does not exceed rupees sixty lakh; Rupees seven thousand.

(iii) where the market value of the property exceeds rupees sixty lakh but does not exceed one crore; Rupees ten thousand.

(iv) where the market value of the property exceeds rupees one crore but does not exceed rupees one and half crore; Rupees twenty thousand.

(v) where the market value of the property exceeds rupees one and half crore but does not exceed rupees three crore; Rupees forty thousand.

(vi) where the market value of the property exceeds rupees three crore; Rupees seventy-five thousand.";

(b) article 23A in the first column under the heading "Description of Instruments" shall be renumbered as article 23AA;

(c) in article 48, for clause (g) in the first column and the entry relating thereto in the second column, the following clause in the first column and entries relating thereto in the second column shall be substituted:-

"(g) when given to a promoter or developer, by whatever name called, for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property-

(i) where the market value of the property does not exceed rupees thirty lakh; Rupees five thousand.

(ii) where the market value of the property exceeds rupees thirty lakh but does not exceed rupees sixty lakh; Rupees seven thousand.

(iii) where the market value of the property exceeds rupees sixty lakh but does Rupees ten thousand. not exceed one crore;

(iv) where the market value of the property exceeds rupees one crore but does and exceed rupees one and half crore; Rupees twenty thousand.

(v) where the market value of the property exceeds rupees one and half crore but does not exceed rupees three crore; Rupees forty thousand.

(vi) where the market value of the property exceeds rupees three crore; Rupees seventy-fivethousand.

Explanation.-Where the Proper Stamp-duty is paid under clause (f) of article 5 on a promoters or Developers agreement between the same parties in respect of the same property, the Proper Stamp-duty under this clause shall be rupees fifty."

3. Amendment of West Ben. Act VI of 1979 :-

In the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979,-

(1) in section 7,-

(a) in sub-section (6), for the words, figures and letters "on or before the 31st day of March, 2010, shall be deemed to have been made on the 31st day of December, 2010", the words, figures and letters "on or before the 31st day of March, 2011, shall be deemed to have been made on the 31st day of March, 2012" shall be substituted;

(b) in sub-section (6A), for the words, figures and letters "30th day of June, 2011", the words, figures and letters "30th day of September, 2012" shall be substituted;

(c) in sub-section (8), for the words, figures and letters "31st day of December, 2011", the words, figures and letters "31st day of December, 2012" shall be substituted;

(2) in the Schedule, in serial No. 1, for the entry in column (3) against sub-serial (ii) in column (2), the word "Nil" shall be substituted.

4. Amendment of West Ben. Act XLIX of 1994 :-

In the West Bengal Sales Tax Act, 1994,-

(1) in section 2,-

(a) after clause (28), the following clause shall be inserted:-

(28a) "return period" means a period, as may be prescribed, for which a return is due under the Act;;

(b) after clause (35), the following clause shall be inserted:-

(35a) "tax period" means such period, as may be prescribed, for which tax is payable under the Act;;

(2) in section 31,-

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

"(1) Where a registered dealer, or a dealer required to furnish return under sub-section (3) of section 30, furnishes return in respect of any return period but fails to make full payment of the tax payable under sub-section (4) of that section in respect of any tax period within such return period by the prescribed date for payment of tax, he shall pay a simple interest at the rate of twelve per centum per annum for the period commencing on the date immediately following the prescribed date for payment of tax and upto the date prior to the date of payment of such tax or, upto the date preceding the date of commencement of proceeding under section 52 or, upto the date prior to the date of assessment under section 45, or section 46, as the case may be, whichever is earlier, in respect of such return period upon so much of the amount of tax payable by him according to such return as remains unpaid:

Provided that where such dealer admits in writing that the amount of tax payable in respect of any such tax period within the return period is an amount which is either more or less than what has

been originally shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of tax payable for such tax period according to such admission as remains unpaid.";

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

"(2) Where a registered dealer, or a dealer required to furnish return under sub-section (3) of section 30, fails to furnish such return by the prescribed date or thereafter in respect of any return period before the assessment under section 45, or section 46, as the case may be, and on such assessment full amount of net tax payable for such period is found not to have been paid by him by the prescribed date for payment of tax, he shall pay a simple interest at the rate of twelve per centum per annum for the period commencing on the date immediately following the prescribed date of payment of such tax in respect of such tax period and upto the date prior to the date of assessment under section 45, or section 46, as the case may be, in respect of such return period upon so much of the amount of tax payable by him according to such assessment as remains unpaid:

Provided that where the assessment under section 45, or section 46, as the case may be, is made for more than one return period and such assessment does not show separately the tax payable for the tax periods within such return periods in respect of which interest is payable under this sub-section, the Commissioner shall apportion the tax payable for the tax periods within such return periods on the basis of such assessment.";

(3) in section 32, in sub-section (1), for the words and figures "pay a simple interest at the rate of one per centum for each British calendar month of default from the first day of the month next following the date specified in such notice upto the month preceding the month of full payment of such tax or upto the month preceding the month of commencement of proceedings under section 52, whichever is earlier, upon so much of the amount of tax

payable by him according to such notice as remains unpaid at the end of each such month of default", the words and figures "pay a simple interest at the rate of twelve per centum for the period of default, calculated from the date next following the date specified in such notice upto the date of full payment of such tax or upto the date preceding the date of commencement of proceedings under section 52, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid" shall be substituted;

(4) in section 48, for sub-section (4), the following sub-section shall be substituted:-

"(4) Notwithstanding anything contained in sub-section (1), subsection (2), sub-section (2A), or sub-section (3),-

(a) when a fresh assessment is required to be made in pursuance of an order under section 79, section 80, section 81 or section 82, or section 82A, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within two years from the date of such order, and

(b) when the dealer in respect of whom an assessment is required to be made for any period under this Act is also registered under the West Bengal Value Added Tax Act, 2003, and an assessment is required to be made for that period also under that Act, the assessment including a fresh assessment under this Act may be made at any time up to the date on which an assessment for that period may be made under that Act or within the date mentioned in subsection (2), or sub-section (3), or clause (a) of this sub-section, whichever is later.";

(5) in section 79, in the Explanation, for the words and figures "or section 82", the words and figures "or section 80 or section 81 or section 82 or section 82A or section 83" shall be substituted.

5. Amendment of West Ben. Act XXXVII of 2003 :-

In the West Bengal Value Added Tax Act, 2003,-

(1) in section 2, in clause (41), in sub-clause (c), for the words "and cess levied", the words and figures ", tax levied under the West Bengal Motor Vehicles Tax Act, 1979 and cess levied" shall be substituted;

(2) in section 16, in sub-section (6),-

(a) in clause (b), for the words "in the preceding year commencing on or after the date of coming into force of this sub-section does not exceed fifteen lakh rupees", the words "in the preceding year does not exceed twenty five lakh rupees" shall be substituted;

(b) in clause (c), for the words "fifteen lakh rupees", the words "twenty-five lakh rupees" shall be substituted;

(c) in the second proviso, for the words "fifteen lakh rupees", the words "twenty-five lakh rupees" shall be substituted;

(3) in section 18, for sub-section (1), in clause (aa), for the words "where goods represents those involved in printing of materials", the words "where goods represents those involved in printing of materials including lamination thereon" shall be substituted;

(4) in section 22, in the NEGATIVE LIST, for the entry in column (3) against serial No. 2 in column (1), the following entry shall be substituted:-

"When the registered dealer is a works contractor and uses such goods in the execution of works contract, or when the registered dealer is in the business of dealing in such goods.";

(5) in section 24A,-

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

"(1) Notwithstanding anything contained in sub-section (1) and sub-section (2) of section 24, a dealer who is liable to pay tax under section 10, or section 14, or both but has failed to apply for registration under the Act, may, at his option, make an application for registration in the prescribed form to the prescribed authority under section 24 within the 31st day of December, 2012, along with a declaration by such dealer giving particulars of turnover of sales, or contractual transfer price, or both, or part thereof, and proof of payment of tax, in lieu of tax payable under sub-section (2) of section 16, or sub-section (1) of section 18, or both, as the case may be, at the rate and for the year or years or part thereof as specified in sub-section (1A):

Provided that the provisions of this sub-section shall not apply to any dealer,-

(a) if any notice for determination of his liability to pay tax under any of the provisions of the Act has been issued to him under section 66; or

(b) if any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 67 on or after the appointed day.

(1A) The rate of tax, depending on the fact whether tax is payable by the dealer under sub-section (2) of section 16 or subsection (1) of section 18 or both, as the case may be, and the year or years or part thereof for which tax is to be paid under this section in lieu of the tax otherwise payable by such dealer, shall be as follows:-

(a) in lieu of tax payable under sub-section (2) of section 16, at the rate not exceeding two per centum as the State Government may by notification specify, on the turnover of sales on which tax is payable under sub-section (2) of section 16, for the year or years

or part thereof commencing from the date of acquiring liability to pay tax till the date preceding the date of filing of the application under this section;

(b) in lieu of tax payable under sub-section (1) of section 18, at the rate not exceeding four per centum as the State Government may by notification specify, on the contractual transfer price, for the year or years or part thereof commencing from the date of acquiring liability to pay tax till the date preceding the date of filing of the application under this section.";

(6) in section 29, in sub-section (4),-

(a) in the first proviso, for the words and figures "as may be prescribed.", the words and figures "as may be prescribed:" shall be substituted;

(b) after the first proviso, the following proviso shall be inserted:-

"Provided further that where an application for restoration of certificate of registration is moved by the dealer after six months from the date of its cancellation and the appropriate authority considering his prayer intends to restore his registration from the date of cancellation of such certificate, he shall, before passing any order to this effect, obtain the approval of the Commissioner.";

(7) in section 30E,-

(a) in sub-section (1A), for the words "turnover of sales or contractual transfer price or both exceeds rupees one crore and fifty lakh in a year", the words "turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees three crore in a year or part of a year" shall be substituted;

(b) after sub-section (1B), the following sub-section shall be

inserted:-

"(1C) Every registered dealer, other than those mentioned in sub-section (1A) or sub-section (1B), whose turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees one crore and fifty lakh in a year or part of a year, shall, within such date as may be prescribed, submit before the prescribed authority a copy of the Profit and Loss Account and Balance Sheet for such year, along with a self-audit statement in the prescribed form.";

(c) in sub-section (2), for the words, figure and letter "or subsection (1B)", the words, figures and letters ", sub-section (1B) or sub-section (1C)" shall be substituted;

(8) in section 40, Explanation to sub-section (1) shall be renumbered as Explanation I to that sub-section and after Explanation I so renumbered, the following Explanation shall be inserted:-

Explanation II.-For the purpose of this section, the expression "any person responsible for paying any sum", in respect of contract between such dealer and company, or educational institution, or promoter, or non-public sector bank, or non-Government hospital, or nursing home, or diagnostic centre, or partnership firm, or joint-venture company, or limited liability partnership as referred to above, shall include the proprietor, partner, director, manager, principal, or person in charge at the time of such payment, as the case may be.;

(9) in section 43,-

(a) in sub-section (3), for the words "prepare a report stating his observation therein regarding the correctness of returns, admissibility of various claims of the dealer for the period for which such audit is made", the words "prepare a report stating his observation or findings therein regarding the correctness of returns,

admissibility of various claims of the dealer for the period for which such audit is made, and also prepare a computation sheet, in the form and manner as may be prescribed, to be attached with the report showing quantification of tax, interest, or late fee payable by him" shall be substituted;

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

"(5A) Notwithstanding anything contained in sub-section (5), where the dealer fails to pay the tax, interest, or late fee as stated in the computation sheet attached to the report drawn under subsection (3), within one month of receipt of such report and the computation sheet, such report shall, on expiry of one month, be deemed to be an order of assessment and the computation sheet attached to the report shall be deemed to be a notice of demand and such amount shall be payable within fifteen days thereafter:

Provided that the provision of this sub-section shall not be applicable in respect of assessment required to be made under any of the clauses of sub-section (1) of section 46, other than clause (ca) of sub-section (1) of section 46.";

(10) in section 46,-

(a) in sub-section (1),-

(i) after clause (ec), the following clauses shall be inserted:-"(ed) where a registered dealer fails to submit the audit report or the self-audit statement as mentioned in section 30E; or

(ef) where a certificate of registration of dealer is restored upon an order passed in accordance with the provisions of sub-section (4) of section 29; or";

(ii) in the seventh proviso, for the word "dropped.", the word "dropped:" shall be substituted;

(iii) after the seventh proviso, the following proviso shall be inserted:-

"Provided also that where the report together with the computation sheet as referred to in sub-section (5A) of section 43, on expiry of the time specified therein, are deemed to be an order of assessment and a notice of demand, respectively, no fresh assessment proceedings under this subsection shall be made.";

(b) sub-section (2) shall be omitted;

(c) in sub-section (3),-

(i) in clause (a), for the words, figures and brackets "in making the assessment under sub-section (1) and imposing the penalty under sub-section (2), give the dealer", the words, figure and brackets "in making the assessment under sub-section (1), give the dealer" shall be substituted;

(ii) in clause (b),-

(A) for the words "after making such assessment or imposing such penalty", the words "after making such assessment" shall be substituted;

(B) for the words "dealer has carried forward in the return for the next return period, and penalty imposed upon such assessment in such manner as may be prescribed", the words "dealer has carried forward in the return for the next return period" shall be substituted;

(11) in section 47A,-

(a) for sub-section (1), the following sub-section shall be deemed to have been substituted with effect from the 1st day of September, 2011:-

"(1) The returns furnished by a registered dealer, other than those covered by clause (a) or clause (b) or clause (c), of subsection (1) of section 116, shall, notwithstanding the provisions of sub-section (1) of section 46 and subject to the provisions of subsection (2) and sub-section (4), be accepted as correct and complete for the year(s) [hereinafter referred to as the eligible period(s)] as mentioned in column (2), and having total turnover of sales as mentioned in column (3), of the Table below and the assessment in respect of such eligible period(s) shall be deemed to have been made under sub-section (1) of section 47 on the date as mentioned in column (4) of the Table:-

TABLE			
Sl. No.	Eligible period(s)	Total turnover of sales (in rupees)	Date on which it shall be deemed to be assessed
(1)	(2)	(3)	(4)
1.	Year commencing from the 1st day of April, 2009, and ending on the 31st day of March, 2010	Below three crore	15th day of February, 2012
2.	Year commencing from the 1st day of April, 2010, and ending on the 31st day of March, 2011	Below five crore	30th day of June, 2012"

(b) in sub-section (6), for the words, figures and brackets "subsection (4), and sub-section (5)", the words, figures and brackets "and sub-section (4)" shall be substituted;

(12) in section 49,-

(a) in sub-section (1)-

(i) in the fifth proviso, for the words and figures "is later.", the

words and figures "is later:" shall be substituted;

(ii) after the fifth proviso, the following proviso shall be inserted:-

"Provided also that where an assessment under section 46 is required to be made after restoration of certificate of registration of a dealer under sub-section (4) of section 29, such assessment may be made, notwithstanding the provision of this sub-section, within a year from the date of order passed for the restoration of the certificate of registration.";

(b) in sub-section (3), for the words and figures "section 86 or section 87", the words, figures and letter "section 86, section 87 or section 87A" shall be substituted;

(13) in section 76, in sub-section (1),-

(a) for the words and figures "has reason to believe that any goods are being transported in contravention of the provisions of section 73, or section 81, he shall first detain the vehicle carrying such goods for a period not exceeding forty-eight hours and, if the person bringing, importing or receiving or carrying such goods fails to furnish such particulars in such form, or such document, as may be prescribed under section 73, or section 81, shall thereafter seize such goods together with any container or other materials for the packing of such goods", the following words and figures shall be substituted:-

"has reason to believe that any goods are being transported in contravention of the provisions of section 73, or section 81, he shall-

(a) if no document in respect of the consignment of goods is produced at the time of such interception or search, seize such goods forthwith;

(b) if he is not satisfied about the correctness of the particulars furnished in a form, as may be prescribed under section 73, or section 81, as the case may be, in respect of the description or quantity or weight or value of such goods, seize such goods forthwith;

(c) if the documents except such form as may be prescribed under section 73, or section 81, as the case may be, in respect of the consignment of goods are produced at the time of such interception or search, first detain the consignment of such goods, whether carried in a vehicle or not, for a period not exceeding twenty-four hours, and if the person bringing, importing, receiving or carrying such goods fails to furnish within such period of detention such particulars in such form as may be prescribed under section 73, or section 81 which is required to be already in possession of such person before entry of the goods into West Bengal, seize such goods, together with any container or other materials for the packing of such goods";

(b) in the first proviso, for the words "not exceeding forty-eight hours", the words "not exceeding twenty-four hours" shall be substituted;

(14) in section 77,-

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

"(1) If any goods are seized under section 76, the Commissioner may, by an order in writing, impose upon the transporter, carrier or transporting agent or any other person from whom such goods are seized or the owner of such goods, where particulars of the owner of such goods are available, or where there is no claimant of such goods at the time of such seizure, any person who subsequently establishes his claim of ownership or possession of such goods, after giving such transporter, carrier or transporting agent or person or owner, as the case may be, a reasonable opportunity of being heard, a penalty of an amount calculated on the basis of the

percentage as specified in column (3) of the Table below, on the fair market value of such goods in respect of the nature of the seized goods as specified in column (2), against the corresponding serial number in column (1), of the said Table:-

TABLE		
Sl. No.	Nature of seized goods	Amount of penalty
(1)	(2)	(3)
1.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods does not exceed four per centum	Fifteen per centum of the fair market value of the seized goods
2.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods exceeds four per centum but does not exceed fifteen per centum	Twenty-five per centum of the fair market value of the seized goods
3.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods exceeds fifteen per centum	Forty per centum of the fair market value of the seized goods
4.	Goods seized are raw jute	Twenty per centum of the fair market value of the seized goods:

Provided that where the Commissioner is satisfied that the seizure of goods has been made for any contravention due to clerical error in the form as may be prescribed under section 73, or section 81, as the case may be, furnished at the time of interception or search under section 74, except any material discrepancy in the description of goods or the quantity or weight or the value disclosed in such form, he may authorise imposition of penalty for an amount equivalent to five per centum of the fair market value of the seized goods or rupees twenty-five thousand, whichever is lower:

Provided further that where no form as may be prescribed under section 73, or section 81, as the case may be, is furnished even at the time of imposition of penalty under this section, the Commissioner may demand for payment of security for an amount equivalent to the amount of tax calculated on the basis of the rate of tax as specified under sub-section (2) of section 16, in respect of the sale of such goods on the fair market value of the seized

taxable goods as may be determined by him in accordance with the rules made under this Act, notwithstanding the fact that no sale of such goods may be made or no tax may be payable subsequently on the sale of such goods:

Provided also that for the purpose of imposition of penalty for contravention of section 81, the provisions of this sub-section shall, mutatis mutandis, apply:

Provided also that the provisions of this section shall be applicable in respect of any penalty imposed on or after the 1st day of April, 2012, irrespective of the date of seizure under section 76.";

(b) in sub-section (3), for the words, figure and brackets "on payment of the penalty imposed under sub-section (1)", the words, figures and brackets "on payment of the penalty imposed under subsection (1) along with submission of proof of payment of security, if any, demanded under sub-section (1)" shall be substituted;

(15) in section 84,-

(a) to sub-section (1), the first proviso shall be renumbered as second proviso and before second proviso so renumbered, the following proviso shall be inserted:-

"Provided that where the total amount of tax, interest, late fee or penalty in dispute in an appeal is in excess of rupees twenty lakh, such appeal may lie before an appellate forum as may be constituted by the Commissioner, consisting of one or more Special Commissioner or Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner, and the appellate forum shall act as the appellate authority in disposing of any appeal under this section:";

(b) in Explanation, in clause (b),-

(i) in sub-clause (i), for the words and figures "under section 46 and section 48", the words, figures and brackets "under section 46, or section 48, or assessment deemed to have been made under sub-section (1) of section 47" shall be deemed to have been substituted with effect from the 1st day of April, 2005";

(ii) after sub-clause (ia), the following sub-clauses shall be inserted:-

"(ib) assessment deemed to have been made under section 47A, or

(ic) summary assessment under section 47AA, or";

(16) in Schedule A,-

(a) after serial No. 3B in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:-

"3C. Balloon.";

(b) after serial No. 13 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:-

"13A. Empty domestic Liquefied Petroleum Gas (LPG) cylinder.";

(17) in Schedule C,-

(a) in Part I,-

(i) in the entry in column (2) against serial No. 9 in column (1), for

the words "split bamboo and", the words "split bamboo, kite sticks and" shall be substituted;

(ii) item (xxviii) and the entry relating thereto in column (2) against serial No. 54B in column (1), shall be deemed to have been omitted with effect from the 1st day of April, 2005;

(iii) in the entry in column (2) against serial No. 58 in column (1), for the words "and cottage cheese", the words ", cottage cheese and paneer" shall be substituted;

(b) in Part III, in the entry in column (4) against serial No. 169 in column (1), for the words "crates, tea chests", the words "crates, boxes and tea chests" shall be substituted;

(18) in Schedule D, after serial No. 2 in column (1) and the entry relating thereto in column (2), the following serial numbers in column (1) and the entries relating thereto in column (2) shall be inserted:-

"3. Air conditioner with capacity above one ton.

4. Motor car, price of which exceeds rupees ten lakh.

5. Television of any type, maximum retail price of which exceeds rupees twenty-five thousand.

6. Mobile phone of any type, maximum retail price of which exceeds rupees twenty thousand.

7. Watches, maximum retail price of which exceeds rupees fifteen thousand."

