

West Bengal Finance Act, 2013

1 of 2013

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An Act to amend the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, and the West Bengal Value Added Tax Act, 2003.

WHEREAS it is expedient to amend the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, 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-fourth 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, 2013.

(2) Save as otherwise provided, this section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates 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 West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 :-

(1) in section 2, in clause (f),-

(a) for the words "club or association, so engaged", the words "club or association, or a branch or office of such firm, company, corporation or other corporate body, any society, club or association, so engaged" shall be substituted;

(b) Explanation shall be renumbered as Explanation I, and after the Explanation, so renumbered, the following Explanation shall be inserted:-

"Explanation II.-For the purpose of this clause, every branch or office of a firm, company, corporation or other corporate body, any society, club or association shall be deemed to be separate person.";

(2) after section 5B, the following section shall be inserted:-

5C. "Special provision for registration and enrolment.

(1) Notwithstanding anything contained in sub section (1) and sub-section (2) of section 5, an employer or a person, other than a person earning salary or wages in respect of whom the tax is payable by his employer, who is liable to pay tax under section 3, or section 4, or both but has failed to apply for registration or enrolment or both under the Act, may, at his option, make an application for registration or enrolment or both in the prescribed form to the prescribed authority under section 5 within the 31st day of January, 2014, alongwith a declaration by such employer or person in such prescribed form together with the proof of payment of tax, for the amount as mentioned in sub-section (2):

Provided that the provisions of this sub-section shall not apply to any employer or person,-

(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 17; or

(b) if any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 17 on or after coming into force of this section.

(2) The amount of tax, depending on the fact whether tax is payable by the employer or a person, 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 employer or a person, shall be-

(a) in respect of an employer liable to deduct and pay tax under section 4, at such rate not exceeding rupees two hundred per month per employee, as may be prescribed, for a maximum period of two years;

(b) in respect of tax payable by a person under section 3, at such rate not exceeding rupees two thousand five hundred per annum, as may be prescribed, for a maximum period of two years.

(3) If the application referred to in sub-section (1) filed by an employer or a person is found to be in order and the tax according to the declaration have been paid, the prescribed authority shall grant registration or enrolment or both to such an employer or a person within thirty days from the date of receipt of such application.";

(3) after section 6, the following sections shall be inserted:-

6A. "Audit of accounts, etc. and raising of demand in certain cases

(1) Notwithstanding anything contained in section 7 and subject to such conditions, restrictions and in such manner, as may be prescribed, the Commissioner shall, from among registered employers, select, on a random basis or upon information or otherwise, such percentage, or such class or classes of employers, as may be prescribed, for audit of the accounts, registers or documents, including those in the form of electronic records, maintained or kept by such employers for any year or part thereof, not being a period which has ended four years previous to the date of selection.

(2) After a selection is made under sub-section (1), the Commissioner shall, with due notice to the employer so selected, proceed to audit the accounts, registers and documents, including those in the form of electronic records, maintained or kept by the employer to verify the correctness of the returns furnished and tax paid thereon, for the year or part thereof as referred to in sub-section (1).

(3) The Commissioner shall, after considering all the evidence produced in course of the proceedings or collected by him, or to the best of his judgement where the employer has failed to comply with the notice issued under sub-section (1), prepare a report stating his observation or findings therein, 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:

Provided that the Commissioner shall, before preparing the report, provide the employer an opportunity of being heard and incorporate his objections, if any, in such report.

(4) Any audit under this section shall be completed within a period not exceeding three months from the date on which the selection is made by the Commissioner:

Provided that where the Commissioner is satisfied that audit in respect of any employer cannot be completed within three months

from the date of selection, he may, upon giving the employer an opportunity of being heard and for the reasons to be recorded in writing, extend the period for another three months and shall immediately communicate the same to the employer.

(5) Where the employer accepts the findings in the report and pays the tax, interest or late fee as shown in the computation sheet stated in sub-section (3), the proceeding under this section shall automatically stand dropped.

(6) Where the employer fails to pay the tax, interest, or late fee as stated in the computation sheet attached to the report within one month of receipt of such report and the computation sheet, the report shall, on expiry of the said one month, be deemed to be an order of assessment under section 7 and the computation sheet attached to the report shall be deemed to be a notice of demand and the amount mentioned therein, shall be payable within fifteen days thereafter

6B. Special provision for furnishing return

(1) Where a registered employer has not furnished return under sub-section (1) of section 6, for one or more periods ending on the 31st day of March, 2012, he may, without payment of interest or late fee, furnish the pending returns for the period of last two years within 31st January, 2014, enclosing a receipt showing payment of full amount of tax according to such returns: Provided that-

(1) the provisions of this section shall not apply to an employer whose accounts, registers or documents, including those in the form of electronic records have been seized from him under section 17 or where any assessment proceeding has been initiated under section 7;

(2) in a case where the registered employer has already paid any interest or late fee for the relevant period such interest or late fee shall neither be refundable to him nor be adjusted against any

liability, under any circumstances.";

(4) in section 7,-

(a) in sub-section (6), for 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", the words, figures and letters "on or before the 31st day of March, 2012, shall be deemed to have been made on the 31st day of March, 2013" shall be substituted;

(b) in sub-section (6A), for the words, figures and letters "30th day of September, 2012", the words, figures and letters "30th day of September, 2013" shall be substituted;

(c) in sub-section (8), for the words, figures and letters "31st day of December, 2012", the words, figures and letters "31st day of December, 2013" shall be substituted;

(5) after section 7A, the following section shall be inserted:-

7B. "Summary assessment of returns.

(1) A return furnished by a registered employer under section 6, shall be deemed to have been summarily assessed on the date of submission of such return if-

(a) the return furnished under the Act is complete and self consistent;

(b) the amount of tax, interest and late fee is paid in full according to such return; and

(c) no proceeding arising from seizure of accounts has been

initiated or is pending in respect of the year to which the return period relates, or for any period in respect of the preceding two years, by any authority under the Act.

(2) No assessment shall be made under section 7 in respect of any return summarily assessed under sub-section (1), unless such summary assessment is reopened under sub-section (3).

(3) A summary assessment under sub-section (1) may be reopened by the Commissioner by an order in writing, after granting the registered employer an opportunity of hearing, within six years from the end of the year in respect of which such summary assessment has been made, if he is satisfied that an assessment is required to be made under section 7 in the interest of State revenue or for any other reason.";

(6) in section 10, to the proviso, the following proviso shall be added:-

"Provided further that where a registered employer being a company, fails to make payment of tax under this section, any director, manager, secretary, or other officer of such company who was in charge of, and responsible to, the company for the conduct of business of such company and knowingly concerned with such non-payment of tax, shall be equally liable for the said penalty.";

(7) for section 26, the following section shall be substituted:-

26. "Power to exempt.

(1) The State Government may, by notification, make an exemption or reduction in the rate of tax payable by any specified class of persons subject to such restrictions and conditions as may be specified in the notification.

(2) The State Government may, by notification, cancel or vary a notification issued under sub-section (1).";

(8) in the Schedule to the Act, in serial No. 1,-

(a) in sub-serial (iii) in column (2), for the entry relating thereto in column (3), the word "Nil" shall be substituted;

(b) in sub-serial (iv) in column (2), for the entry relating thereto in column (3), the word "Nil" shall be substituted.

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

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

(1) in section 2,-

(a) in clause (18), in sub-clause (a), for the words, figures, letters and brackets "enjoying composition under sub-section (3), sub section (3A), sub-section (3B) or sub-section (6), of section 16", the words and figures "enjoying composition under any of the sub sections of section 16" shall be substituted;

(b) in clause (23), in sub-clause (c), for the words, figures, letters and brackets "under sub-section (3), sub-section (3A), or sub section (3B), or sub-section (6), of section 16", the words and figures "under any of the sub-sections of section 16" shall be substituted;

(c) in clause (26), for the words, figures, letters and brackets "under sub section (3) of section 16 or sub-section (3A), or sub-section (3B), of section 16", the words and figures "under any of the sub-sections of section 16" shall be substituted;

(2) in section 8,-

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

substituted:-

"(2) The Bureau shall consist of such numbers of operational units, and such numbers of Special Commissioners or Additional Commissioners (hereinafter referred to as Special Officers), as the State Government may deem fit to appoint and such number of other persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be required for discharging its functions under the Act.";

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

"(4) The Bureau may, for the purpose of carrying out any investigation or inquiry under sub-section (3), exercise all the powers under section 42, section 66, section 66A, section 66AA, section 67, section 68, section 69, section 70, section 71, section 72, section 74, section 75, section 76, section 77, section 78, section 79, section 80 and section 81.";

(c) in sub-section (7), for the words "assess or re-assess net tax or any other tax, impose penalty, determine interest, or collect or enforce payment of tax, penalty or interest", the words "make assessment including provisional assessment or re-assessment of net tax or any other tax or net tax credit, determine interest or late fee, impose penalty, or collect or enforce payment of tax, interest, late fee or penalty" shall be substituted;

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

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"(8) A Special Officer may assign such functions of the Bureau to such other persons referred to in sub-section (2), as he may think fit.";

(e) in sub-section (10), for the words "the Special Officer", the

words "a Special Officer" shall be substituted;

(f) in sub-section (11), for the words "the Special Officer", the words "a Special Officer" shall be substituted;

(3) in section 12, for sub-section (2), the following sub-section shall be substituted:-

"(2) Every registered dealer enjoying composition under any of the sub-sections of section 16 or under sub-section (4) of section 18, shall, in addition to tax payable under any of the provisions of the Act, be also liable to pay tax on turnover of purchases, where his turnover of sales or contractual transfer price, as the case may be, in the previous year, or in the case of a dealer registered in a year, from the start of that year, is more than rupees fifty lakh.";

(4) in section 16,-

(a) in sub-section (2),-

(i) in clause (b), for the words "four per centum", the words "five per centum" shall be substituted;

(ii) in clause (ba), for the words "thirteen decimal five zero per centum", the words "fourteen decimal five zero per centum" shall be substituted;

(b) in sub-section (3), for the words "compounded rate not exceeding one per centum of the total turnover of sales of such dealer in the year for which such option is required to be exercised, and subject to such conditions and restrictions as may be prescribed", the words "compounded rate not exceeding one per centum of the total turnover of sales of such dealer in the year for which such option is required to be exercised, or a fixed amount, and subject to such conditions and restrictions, as may be prescribed" shall be substituted;

(c) for sub-section (5), the following sub-section shall be substituted:-

"(5) Any registered dealer, who intends to opt for payment of tax at the compounded rate under sub-section (3) or under sub section (3A) or under sub-section (3B) of this section, shall exercise his option for a year, or a part of the year in which he gets himself registered, by making an application to the Commissioner in such manner, and within such time, as may be prescribed, and an option exercised by a registered dealer to pay tax at the compounded rate in terms of any of the sub-sections of this section, shall be deemed to be final and irrevocable for that year or part of that year, as the case may be, for which such an option has been exercised, subject to the conditions mentioned in sub-section (3).";

(d) in sub-section (7), for the words "as may be prescribed", the words ", as may be prescribed, and such an option exercised by a registered dealer shall be deemed to be final and irrevocable for that year or part of that year, as the case may be, for which such option has been exercised, subject to the conditions mentioned in sub-section (6)" shall be substituted;

(5) in section 18,-

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

(i) in clause (a), for the words "four per centum", the words "five per centum" shall be substituted;

(ii) in clause (aa), for the words "four per centum", the words "five per centum" shall be substituted;

(iii) in clause (b), for the words "thirteen decimal five zero per centum", the words "fourteen decimal five zero per centum" shall be substituted;

(b) in sub-section (4), after the first proviso, the following proviso shall be inserted:-

"Provided further that an option exercised by a registered dealer under this sub-section, shall be deemed to be final and irrevocable for that year or part of that year for which such an option has been exercised.";

(6) in section 22,-

(a) sub-section (11) shall be omitted;

(b) in sub-section (12), in clause (a), for the words, figures, letters and brackets "under sub-section (3), or sub-section (3A), or sub-section (3B), or sub-section (6), of section 16", the words and figures "under any of the sub-sections of section 16" shall be substituted;

(7) in section 24, in sub-section (1), after the first proviso, the following proviso shall be inserted:-

"Provided further that the provisions of the first proviso may be waived by the Commissioner on prayer of a dealer, by an order in writing.";

(8) in section 25,-

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

(i) for the words "every transporter, carrier or transporting agent", the words "every transporter, carrier or transporting agent, including those who are already in possession of a certificate of enrolment," shall be substituted;

(ii) for the words "a certificate of enrolment", the words "a certificate of enrolment or a fresh certificate of enrolment, as the case may be," shall be substituted;

(iii) for the words "as may be prescribed", the following words shall be substituted:-

"as may be prescribed, and a transporter, carrier or transporting agent to whom a certificate of enrolment or a fresh certificate of

enrolment has been issued shall-

(a) display the certificate of enrolment or copies thereof at a conspicuous place of his head office and branch office(s) and warehouse(s);

(b) mention the enrolment number as appearing in the certificate of enrolment issued to him on every consignment note and goods receipt issued by him and on every other document as may be prescribed;

(b) in sub-section (2),-

(i) for the words "to make an application for enrolment within the prescribed time", the words, letter, figure and brackets "to make an application for issue or amendment of the certificate of enrolment or a fresh certificate of enrolment, as the case may be, within the prescribed time, or fails to comply with clause

(ii) of sub-section (1)" shall be substituted;

(ii) for the words "a penalty of a sum not exceeding one thousand rupees for each month of default", the words, letters, figure and brackets "a penalty, of a sum not exceeding one thousand rupees for each month of default in making application for issue or amendment of certificate of enrolment, or for failure to comply with the provisions of clause (ii) of sub-section (1) for each such failure" shall be substituted;

(9) in section 28A, in sub-section (1),-

(a) for the words, figures and brackets "under sub-section (2) of section 25", the words, figures and brackets "under sub-section (1) of section 25" shall be substituted;

(b) for the words "has ceased to exist", the words, figures and letter "has ceased to exist, or has obtained such certificate on the

basis of documents or representations which have subsequently been found to be false, or has failed to comply with any requirement under section 66A" shall be substituted;

(10) in section 30E, in sub-section (1A), for the words "turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees three crore in a year", the words "turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees five crore in a year" shall be substituted;

(11) section 31 shall be renumbered as sub-section (1) of that section and after sub-section (1) so renumbered, the following sub-section shall be inserted:-

"(2) Where the payment under sub-section (1) is required to make electronically and the dealer makes such payment by any other means, the Commissioner may direct the dealer to pay by way of penalty an amount not exceeding rupees one thousand for each such payment: Provided that the Commissioner may waive such penalty if it is proved to him that the circumstances under which the payment was made by the dealer other than by electronic means was beyond his control.";

(12) in section 32,-

(a) in sub-section (2),-

(i) in the third proviso, for the words "whichever is earlier.", the words "whichever is earlier:" shall be substituted;

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

"Provided also that no late fee shall be payable under the third proviso, if the total amount of net tax, interest and late fee paid in short does not exceed rupees one thousand:

Provided also that where a dealer having his principal place of business in sub-divisions of Darjeeling, Kalimpong or Kurseong in Darjeeling district, required to furnish returns under sub-section (1), has not furnished returns for the period commencing from the 1st day of April, 2008 and ending on the 30th day of June, 2011, such dealer shall furnish returns for such period on or before the 30th day of June, 2013 and shall pay full amount of net tax without payment of interest and late fee for such period:

Provided also that no refund of interest and late fee shall be made, if any dealer mentioned in the foregoing proviso has already paid the amount of interest or late fee pertaining to the period mentioned in such proviso.";

(13) in section 33, in sub-section (1), to the proviso, the following proviso shall be added:-

"Provided further that no interest shall be payable by a dealer having his principal place of business in sub-divisions of Darjeeling, Kalimpong or Kurseong in Darjeeling district, for the period commencing from the 1st day of April, 2008 and ending on the 30th day of June, 2011, where such a dealer furnishes the returns for such period under sub-section (1) of section 32, on or before the 30th June, 2013.";

(14) in section 40, in sub-section (1), in proviso,-

(a) in item (ii), for the words "works contract.", the words "works contract; or" shall be substituted;

(b) after item (ii), the following item shall be inserted:-

"(iii) where the amount mentioned in the tax invoice, invoice or bill in a single transaction or multiple transactions with a dealer during a year relating to transfer of property in goods (whether as goods or in some other form) in the execution of works contract does not exceed rupees ten thousand.";

(c) after sub-section (3), the following sub-section shall be inserted:-

"(3A) Where the person who has sent a copy of the account statement as referred to in sub-section (3) discovers any omission or error in it which is apparent and honest in nature, he may, within six English Calendar months beginning from the month immediately following the month in which such statement is to be sent, send a revised statement, and if the revised statement shows a greater amount of tax deducted, or late fee than what was shown

in the original statement, it shall be accompanied by a receipt showing payment of the extra amount of deducted tax or late fee in the manner as provided in section 31.";

(15) in section 43A, for sub-section (2), the following sub-sections shall be substituted:-

"(2) The special audit may be made, notwithstanding the provisions of section 47 or section 47A or section 47AA, for any period or part thereof within six years from the end of the year to which such period relates.

(3) The provisions of sub-section (3) and sub-section (5A), of section 43 shall apply mutatis mutandis in respect of audit under this section.";

(16) in section 46, for sub-section (1), the following sub-sections shall be substituted:-

"(1) The Commissioner may, after giving a notice to a registered dealer in such manner as may be prescribed, assess to the best of his judgement the amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or part thereof, where-

(a) no return has been furnished by the registered dealer for all or any of the return periods of such year or part thereof; or

(b) the Commissioner deems it fit and proper to assess the registered dealer, as he is prima facie satisfied that there has been short payment of net tax or excess claim of net tax credit by such dealer, or that the State Government has suffered loss of revenue on account of such dealer, or for any other reason to be recorded in writing, including for the purpose of refund of tax: Provided that-

(a) no assessment shall be made under this section for the period for which a provisional assessment has been made under sub-section (2) of section 45 but has not been revoked under sub-section (3) or sub section (4) of that section, or appeal is pending under section 84 or application for revision is pending under section

87 or section 87A, in respect of such assessment;

(b) no assessment shall be made under this section in respect of a return period, where a notice under sub-section (2) of section 43 has been issued for the purpose of auditing the accounts, registers and documents of the dealer for a period containing that return period;

(c) no fresh assessment proceedings under this sub-section shall be made, where the report together with the computation sheet arising from an audit under section 43, are deemed to be an order of assessment and a notice of demand, respectively, under sub-section (5A) of that section;

(d) no assessment may be made under this Act in respect of any return period starting on or after the 1st day of April, 2010, if assessment under the Central Sales Tax Act, 1956, is required to be made only for non-furnishing of declaration and certificates prescribed under the said Act, and the Commissioner deems it fit and proper not to make such assessment;

(e) no assessment may be made for any return period starting on or after the 1st day of April, 2010, in respect of a registered dealer who has closed his business where the Commissioner deems it fit and proper:

Provided further that if on appeal or revision, a provisional assessment order under section 45 in respect of a year or a return period is set aside with a direction to make fresh assessment, no further action shall be taken under section 45 and assessment for the year or part thereof containing that return period shall be made afresh under this section and such assessment shall be completed within two years from the date of order made in appeal or revision;

(1A) Nothing in sub-section (1) shall be construed to restrict the power of the Commissioner, or of any person appointed under sub-section (1) of section 6 to assist him, to make an assessment under this section in respect of any return period ending on or before the

31st day of March, 2012 where the proceeding for such assessment, or for audit under section 43 for such period, is or has been initiated on or before the 30th June, 2013.";

(17) in section 49, in sub-section (1), after the sixth proviso, the following proviso shall be inserted:-

"Provided also that a dealer who has furnished return under the fifth proviso to sub-section (2) of section 32, assessment under section 46 may, notwithstanding anything contained in this section, be made on or before the 31st day of December, 2013.";

(18) in section 64, in sub-section (1), for the words, figures, letters and brackets "Subject to the first proviso to sub-section (3), first proviso to sub-section (3A), first proviso to sub-section (3B), of section 16 and first proviso to sub-section (4) of section 18," the words, figures and brackets

"Subject to the provisions relating to dealers paying tax at compounded rate under any of the sub-sections of section 16 or under sub-section (4) of section 18," shall be substituted;

(19) in section 84, in sub-section (1), in the first proviso, for the words "in disposing of any appeal", the words "in disposing of such appeal" shall be substituted;

(20) in section 87, in sub-section (1), after the second proviso, the following proviso shall be inserted:-

"Provided also that where such application relates to an order passed by the appellate forum constituted by the Commissioner under the first proviso to sub-section (1) of section 84, such order shall not be revised unless the appellant produces the document relating to-

(a) proof of payment of ten per centum of the amount of the disputed tax or rupees five lakh, whichever is less, and

(b) proof of payment of the full amount of tax, interest and late fee, as the appellant may admit to be due from him.";

(21) in section 88, after the first proviso, the following proviso shall be inserted:-

"Provided further that any order passed under section 87A or by the appellate forum constituted by the Commissioner under the first proviso to sub-section (1) of section 84, may be reviewed, either on its own motion or upon an application by the authority

which has passed such order or by a similar authority to which the matter has been assigned to by the Commissioner.";

(22) in Schedule C, for the words and figures "List of goods taxable at 4%", the words and figures "List of goods taxable at 5%" shall be substituted;

(23) in Schedule CA, for the words and figures "List of goods taxable at 13.5%", the words and figures "List of goods taxable at 14.5%" shall be substituted.