

WEST BENGAL LUXURY TAX ACT, 1994

15 of 1994

[4th April, 1994]

CONTENTS

1. Short title extent and commencement
2. Definitions
3. Taxing authorities
4. Incidence of luxury tax
5. Levy of luxury tax
6. Licence
7. Returns and payment of luxury tax
8. Interest
9. Assessment of luxury tax, imposition of penalty and determination of interest
- 9A. Special mode of recovery of luxury tax, penalty and interest by prescribed authority
10. Refunds
11. Accounts
12. Production and inspection of accounts and search of premises
13. Search and seizure of luxuries
14. Bureau
15. Appeal, revision and review
16. Statement of case to the Taxation Tribunal
17. Bar to certain proceedings
18. Power to take evidence
19. Offences, penalties and prosecution
20. Liability to prosecution
21. Compounding of offences
22. Power to make rules
23. Power to remove difficulties

SCHEDULE 1 :- SCHEDULE

WEST BENGAL LUXURY TAX ACT, 1994

15 of 1994

[4th April, 1994]

An Act to provide for the imposition of tax on luxuries and for matters connected therewith or incidental thereto. WHEREAS it is expedient to provide for the imposition of tax on luxuries and for

matters connected therewith or incidental thereto; It is hereby enacted as follows

1. Short title extent and commencement :-

(1) This Act may be called the West Bengal Luxury Tax Act, 1994.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may by notification appoint.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,

(a)¹"Bureau" means the Bureau of Investigation referred to in section 7 of the West Bengal Sales Tax Act, 1994;

(b) "licensed stockist" means a stockist to whom a licence has been granted under sub-section (4) of section 6;

(c) "luxuries" means the commodities, as specified in the Schedule, for enjoyment over and above the necessities of life;

(d) "luxury tax" means the tax payable under section 4;

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "Schedule" means the Schedule to this Act;

(h) "stock of luxuries" means the quantity of luxuries that a stockist receives in, or procures for, his stock, or records or accounts for in his books of account, in West Bengal during any prescribed period for stocking, vending, supplying or distributing to a wholesaler, dealer, retailer, distributor or any other person, but shall not include any quantity of such luxuries held by him in stock on the first day of such prescribed period;

(i) "stockist" means a person who has, in customary course of business, in his possession of, or control over, a stock of luxuries, whether manufactured, made or processed by him in West Bengal, or brought by him into West Bengal, either on his own account or on account of others, from any place outside West Bengal, for stocking, vending, supplying or distributing such luxuries in West

Bengal;

(j) "Taxation Tribunal" means the West Bengal Taxation Tribunal constituted under section 3 of the West Bengal Taxation Tribunal Act, 1987;

(k)² "Tribunal" means the West Bengal Commercial Taxes Appellate and Revisional Board constituted under section 6 of the West Bengal Sales Tax Act, 1994;

(I) "turnover of stock of luxuries", in relation to a stockist in respect of any prescribed period or part thereof, means the aggregate of the values of stock of luxuries;

(m) "value of stock of luxuries" means,

(i) in respect of any stockist, being a manufacturer of any of the luxuries, the value of such luxuries calculated at the ex-factory price at the time of receipt or entry thereof in his stock, and

(ii) in respect of any stockist, being an importer of any of the luxuries, the value of such luxuries calculated at the price thereof as per consignor's bill, invoice or consignment note or other document of like nature, and shall include

(A) excise duty and central sales tax, if any, paid or payable on such luxuries by the manufacturer or importer thereof, as the case may be, and

(B) transport charges and insurance charges, if any, for carrying such luxuries to any premises, godown, warehouse or any other place for delivery to a wholesaler, dealer, retailer, distributor or any other person;

(n) "year" means the year commencing on the first day of April.

1. Clause (a) subs. by W.B. Act 11 of 1995, which was earlier as under (a)"Bureau" means the Bureau of Investigation referred to in section 19A of the Bengal Finance (Sales Tax) Act, 1941;'.
.

2. Clause (k) subs. by W.B. Act 11 of 1995, which was earlier as under: '(k)"Tribunal" means the West Bengal Commercial Taxes Tribunal constituted under section 3B of the Bengal Finance (Sales Tax) Act, 1941:'.

3. Taxing authorities :-

(1) The State Government shall prescribe an authority (hereinafter referred to as the prescribed authority), and shall appoint such

other persons, being the officers of the State Government, to assist the prescribed authority as the State Government may think fit, for carrying out the purposes of this Act, and may specify the area or areas over which such persons shall exercise jurisdiction.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) The prescribed authority and the persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(4) Subject to such restrictions and conditions as may be prescribed, the prescribed authority may, by order in writing, delegate any of its powers and duties under this Act, except those under sub-section (6) of section 19, to any person appointed under sub-section (1) to assist it.

(5) No suit, prosecution or other legal proceedings shall lie against the prescribed authority or the persons appointed under sub-section (1) to assist it, for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(6)¹ 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).

1. Sub-sec. (6) ins. by W.B. Act 23 of 1997.

4. Incidence of luxury tax :-

Every stockist shall be liable to pay a luxury tax on his turnover of stock of luxuries at such rate, not exceeding twenty per centum, as the State Government may by notification fix in this behalf, and different rates may be fixed for different class or classes of luxuries.

5. Levy of luxury tax :-

The luxury tax payable by a stockist under this Act shall be levied on that part of his turnover of stock of luxuries during any prescribed period which remains after deducting therefrom his such turnover during that period representing

(a) the value of such stock of luxuries as shown to the satisfaction of the prescribed authority to have been despatched to places outside West Bengal;

(b)¹the value of stock of luxuries of such class or classes or description as may be prescribed;

(c)¹ the value of stock of luxuries as shown to the satisfaction of the prescribed authority to have been supplied to such diplomatic mission or to the office of such diplomatic mission, subject to such conditions, as may be prescribed.

1. Clauses (b) and (c) subs. for original clause (b) by W. B. Act 1 of 2002. Original clause (b) was as under : "(b) the value of stock of luxuries of such class or classes or description as may be prescribed."

6. Licence :-

(1) No stockist shall, while being liable to pay luxury tax under section 4, hold any stock of luxuries in any premises, godown, warehouse or any other place in West Bengal unless he obtains, on application, a licence in the prescribed form.

(2) If a stockist fails to obtain a licence under sub-section (1) within a period of one month of the commencement of this Act or within a period of seven days from the date of his liability under section 4, whichever is later, the prescribed authority may, after giving him a reasonable opportunity of being heard, impose, by way of penalty, a sum being not less than five thousand rupees and not more ten thousand rupees, for each month of delay in obtaining the licence and direct the stockist by a notice to pay the amount of such penalty into a Government Treasury or the Reserve Bank of India within the date specified in the notice:

Provided that no penalty under this sub-section shall be imposed in respect of the same fact for which a prosecution under sub-section (2) of section 19 has been instituted and no prosecution would lie vice versa.

(3) Every stockist required to obtain a licence under sub-section (1) shall make an application in this behalf in the prescribed manner to the prescribed authority,

(4) If the prescribed authority is satisfied that the application for licence is in order, it shall, subject to such conditions and

restrictions and in such manner as may be prescribed, grant the applicant a licence in the prescribed form.

(5) Where a stockist makes an application for licence under sub-section

(6) Where a licence has been granted to a stockist under sub-section (4), the prescribed authority may, if it is of opinion that it is necessary or expedient so to do for the proper realisation or recovery of the luxury tax under this Act, at any time while such licence is in force, by an order in writing and for reasons to be recorded therein, require the stockist to furnish within such period and in such manner as may be prescribed, a security for the proper payment of the luxury tax payable by him under this Act:

Provided that no order shall be passed under this sub-section without giving the stockist an opportunity of being heard.

(7) The prescribed authority may, on application or otherwise, from time to time amend the licence of a stockist.

(8) Where the liability of a stockist to whom a licence has been granted under sub-section (4), to pay the luxury tax under this Act has ceased, such licence may, on application by him, be cancelled by the prescribed authority in the manner prescribed.

(9) A licence granted to a stockist under sub-section (4) may be cancelled by the prescribed authority after due notice to such stockist if it is satisfied that he has failed to pay the luxury tax, penalty or interest payable under this Act or to furnish the security under sub-section (6): Provided that the licence so cancelled may be restored if the stockist to whom the licence was granted pays the arrear luxury tax, penalty and interest and furnishes a receipted challan therefor.

7. Returns and payment of luxury tax :-

(1) Every licensed stockist shall furnish returns of turnover of stock of luxuries to such authority, in such manner, for such period or periods, and by such date or dates, as may be prescribed.

(2) Before any licensed stockist furnishes the returns under sub-section (1), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of luxury tax due from him under this Act according to such returns, and shall furnish along with each such return a receipt

from such Treasury or Bank showing the payment of such amount.

8. Interest :-

(1) If the amount of luxury tax payable under section 5 in respect of any period is not paid by the stockist referred to in section 7 by the date prescribed under that section, such stockist shall pay a simple interest at the rate of ¹[one per centum] for each English calendar month of default from the first day of such month next following the prescribed date to the last day of the month prior to the month in which such tax is fully paid or up to the month prior to the month of assessment under section 9 in respect of such period, whichever is earlier, upon so much of the

(2) Where a stockist fails to make payment of any luxury tax payable after assessment made under sub-section (1), or sub-section (2), by the date specified in the notice issued under sub-section (8), of section 9 for payment thereof, he shall pay a simple interest at the rate of 3b[one per centum] for each English calendar month of default from the first day of such month next following the date specified in such notice to the last day of the month prior to the month of full payment of such luxury tax, or up to the month prior to the month of commencement of proceedings under sub-section (10) of section 9, whichever is earlier, upon so much of the amount of luxury tax due from him according to such notice as remains unpaid at the end of each such month of default.

(3) Where as a result of an order under section 15, the amount of luxury tax on which interest was payable under this section is modified, the interest shall be payable on the modified amounts.

(4) A stockist liable to pay interest under sub-section (1) or sub-section (2), shall pay into a Government Treasury or the Reserve Bank of India the amount of such interest in such manner and by such date or dates as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2), no interest shall be payable in such cases or under such circumstances, and subject to such conditions, if any, as may be prescribed.

(6) The State Government shall, in the prescribed manner, pay a simple interest at the rate of ² [one per centum] for each English calendar month of delay in making refund of luxury tax paid in excess which arises out of an order passed under section 15, from

the first day of such month next following the expiry of three months from the date of passing of such order to the last day of the month prior to the month in which the refund is made upon the amount of tax refundable to him according to such order.

(7) In calculating the interest payable under this section, the amount of luxury tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

1. Words subs. for the words "three per centum" by W. B. Act 1 of 2002.

2. Words subs. for the words "three per centum" by W. B. Act 1 of 2002.

9. Assessment of luxury tax, imposition of penalty and determination of interest :-

(1) If no return is furnished by a licensed stockist in respect of any period by the prescribed date, or if the prescribed authority is not satisfied that the return furnished is correct and complete, the prescribed authority shall proceed in such manner as may be prescribed to assess to the best of its judgement the amount of luxury tax due from the

Provided that no penalty under this sub-section shall be directed to be paid in respect of the same fact for which a prosecution under clause (c) of sub-section (1) of section 19 has been instituted and no prosecution would lie vice versa.

(2) If, upon information, the prescribed authority is satisfied that any stockist who has been liable to pay luxury tax under section 4, has failed to obtain licence, or has not been granted licence, the prescribed authority shall proceed in such manner as may be prescribed to assess to the best of its judgement the amount of luxury tax due from such stockist in respect of any period or part thereof during which such stockist has either failed to obtain licence, or has not been granted licence, after giving him a reasonable opportunity of being heard.

(3). No assessment under sub-section (1) shall be made after the expiry of two years, and no assessment under sub-section (2) shall be made after the expiry of six years, from the end of the year in

respect of which or part of which the assessment is made.

(4) In computing the period limited by sub-section (3) for making any assessment under sub-section (1) or sub-section (2), the period during which the prescribed authority is restrained from commencing or continuing any proceeding for such assessment by an order of any Court or the Taxation Tribunal shall be excluded.

(5) Where the prescribed authority is satisfied that a stockist is liable to pay interest under section 8, it shall, in such manner as may be prescribed, determine the amount of interest payable by such stockist and if, on such determination, any additional amount is found to be payable by the stockist or any excess amount is found to be refundable to the stockist, the prescribed authority shall issue a notice, in the prescribed manner, to such stockist directing him to pay such additional amount or informing him of the amount of excess payment, as the case may be.

(6) No determination under sub-section (5) of interest payable under subsection (1) of section 8 shall be made after the expiry of one year from the date of assessment of luxury tax under sub-section (1) in respect of the period for which such determination is made.

(7) Where there is an apparent mistake in the determination of interest under sub-section (5), the prescribed authority may, on its own motion, or upon application made by a stockist within six months from the date of determination, rectify the amount of interest payable by such stockist and issue a fresh notice in the prescribed manner.

(8) The amount of luxury tax due from a stockist upon assessment made under sub-section (1) or sub-section (2), as the case may be, shall, together with any penalty directed to be paid under sub-section (1), be paid by the stockist into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the prescribed authority for this purpose, and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(9) The amount of interest that may become due from a stockist upon determination under sub-section (5) shall be paid by the stockist into a Government Treasury or the Reserve Bank of India by such date as may be specified in the notice issued under that sub-section by the prescribed authority, and the date to be so

specified shall not ordinarily be less than thirty days from the date of service of such notice.

(10) Any amount of luxury tax, penalty or interest which remains unpaid after the date specified in the notice under sub-section (8) or sub-section (9) shall be recoverable as an arrear of land revenue, as if it were payable to the Collector.

9A. Special mode of recovery of luxury tax, penalty and interest by prescribed authority :-

1

(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.

(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.

(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.

1. Sec. 9A ins. by W.B. Act 23 of 1997.

10. Refunds :-

The prescribed authority shall, in the prescribed manner, refund to a stockist any amount of luxury tax, penalty or interest paid by such stockist in excess of the amount due from him under this Act, either by cash payment or by deduction from or adjustment in, the amount of luxury tax, penalty or interest due in respect of any other period.

11. Accounts :-

Every stockist shall maintain and keep true and up to date account of the quantity and value of luxuries held in stock by him and vended, supplied or distributed by him during the prescribed period and also keep documents in support of other charges, duties and tax, paid or payable by him, and if the prescribed authority considers that such account is not sufficiently clear or intelligible to enable him to make a proper check of the return referred to in section 7, he may require such stockist to keep such accounts as he may direct.

12. Production and inspection of accounts and search of premises :-

(1) The prescribed authority may, subject to such conditions as may be prescribed, require any person

(a) to produce any accounts, registers or documents before it and explain them;

(b) to furnish any information in relation to manufacture, import, use or sale and stock of luxuries and relating to any other matter, as may be deemed necessary for the purposes of this Act.

(2) All accounts, registers and documents and luxuries kept in any place of business of a stockist shall, at all reasonable times, be open to inspection by the prescribed authority.

(3) If the prescribed authority, or any person appointed under sub-section (1) of section 3 to assist it, has reasons to suspect that any stockist is attempting to evade payment of luxury tax, it or he may enter into and search any place of business and, for reasons to be recorded in writing, seize such accounts, registers or documents of the stockist as may be necessary, for determination of liability to pay luxury tax by such stockist or for assessment of such tax or for determination of interest or for any other purposes as may be required by or under this Act.

(4) The prescribed authority, or any person appointed under sub-section (1) of section 3 to assist it, shall grant a receipt for any accounts, registers or documents seized by it or him and shall retain any of such accounts, registers or documents only for a period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act:

Provided that no accounts, registers or documents seized by the prescribed authority shall be retained for any period exceeding one year from the date of seizure unless such authority records, in writing, reasons therefor, but where seizure is made by any person appointed under sub-section (1) of section 3 to assist the prescribed authority, such person shall not retain any of the accounts, registers or documents seized by him under sub-section (3) for any period exceeding one year from the date of seizure unless he records, in writing, the reasons for further retention and obtains sanction, of the prescribed authority in writing in this behalf.

13. Search and seizure of luxuries :-

(1) If the prescribed authority, or any person appointed under sub-section (1) of section 3 to assist it, has reasons to believe that a person is holding a stock of any of the luxuries manufactured by him in West Bengal or brought by him into West Bengal from any place outside West Bengal in any premises and that he is attempting to evade payment of luxury tax, such authority, or the person appointed under sub-section (1) of section 3 to assist it, may, subject to such restrictions and conditions as may be prescribed, enter into such premises and conduct search therein and seize such luxuries to secure payment of luxury tax that may become payable on assessment under section 9.

(2) While making seizure, the prescribed authority, or the person

who seizes luxuries, shall grant a receipt thereof in the prescribed manner: Provided that when the prescribed authority, or the person appointed under sub-section (1) of section 3 to assist it, thinks it necessary not to seize such luxuries for the time being, it or he shall seal in the prescribed manner any room, godown or warehouse or any container found within such premises.

(3) Until the amount of luxury tax that may be assessed under sub-section (2) of section 9 is paid together with penalty, if any, that may be directed to be paid under sub-section (2) of section 6, the luxuries so seized shall be retained:

Provided that where a stockist furnishes a security or bank guarantee to secure payment of the luxury tax pending determination of such tax under sub-section (2) of section 9, the luxuries, so seized shall be released.

(4) If a stockist fails to pay the amount of luxury tax as may become payable under section 5 or due from him under section 9 and penalty payable under sub-section (2) of section 6, if any, within such period as may be prescribed, the luxuries so seized shall, subject to such conditions and restrictions and in such manner as may be prescribed, be sold in open auction or otherwise by the prescribed authority, and the sale proceeds thereof shall be remitted to a Government Treasury or the Reserve Bank of India after deducting therefrom the incidental expenses, if any.

(5) The amount of luxury tax due from a stockist after assessment under section 9 together with penalty, if any, that may be directed to be paid under sub-section (2) of section 6, shall be recovered out of the sale proceeds of the luxuries sold under sub-section (4), and the balance amount of the sale proceeds, if any, shall be refunded to such stockist in the prescribed manner on application made by him within the prescribed period.

14. Bureau :-

(1) Notwithstanding anything contained elsewhere in this Act, the Bureau may, on information or on its own motion, or on direction given by the State Government or the prescribed authority, carry out investigation or made enquiry into any case of alleged or suspected evasion of luxury tax under this Act and into any malpractices connected therewith.

(2) The Bureau may, for the purpose of carrying out any

investigation or making any enquiry referred to in sub-section (1), exercise all the powers referred to in sections 12 and section 13.

(3) After a case of alleged or suspected evasion of luxury tax has been investigated or enquired into, the Bureau shall send a report thereon to the prescribed authority of such action as may be deemed necessary for the levy, collection, assessment and recovery of luxury tax.

(4) On receipt of a report from the Bureau, the prescribed authority may require the Bureau to transfer to it any accounts, registers or documents seized by the Bureau and such accounts, registers or documents shall be retained for further period, if necessary, subject to the provisions of subsection (4) of section 12.

(5) The prescribed authority shall assign such functions of the Bureau to such officers of the Bureau as it may deem fit, and any person appointed under sub-section (1) of section 3 to assist the prescribed authority shall, when appointed in the Bureau, be competent to exercise all the powers which are exercisable by such person under this Act and the rules made thereunder.

(6) The officers appointed in the Bureau shall have jurisdiction over the whole of West Bengal.

(7)¹ All investigations, enquiries or proceedings pending with the Bureau on the date immediately before the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall, with effect from the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be deemed to have been transferred to the Bureau.

1. Sub-sec. (7) ins. by W.B. Act 11 of 1995.

15. Appeal, revision and review :-

(1) Any stockist may, in the prescribed manner, appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority) against any order of assessment of luxury tax, determination of interest, or imposition of penalty, under section 9 within such time as may be prescribed: Provided that no appeal shall be entertained by the appellate authority unless it is satisfied that such amount of luxury tax, interest or penalty, as the case may be, as the appellant may admit to be due from him has been paid.

(2) Subject to such rules of procedure as may be prescribed and for reasons to be recorded in writing, the appellate authority, in disposing of any appeal under sub-section (1), may by order,

(a) confirm, set aside or annul the assessment, or

(b) reduce or enhance the amount of luxury tax, or

(c) modify any order pertaining to interest or penalty.

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing,

(a) the prescribed authority may, on its own motion, revise any assessment made or order passed by a person appointed under subsection (1) of section 3 to assist it;

(b) the prescribed authority may, upon application, revise any order, other than an order referred to in clause (c) and an order against which an appeal lies under sub-section (1), passed by a person appointed under sub-section (1) of section 3 to assist it ;

(c) the Tribunal may, upon application, revise a final appellate or revisional order from an order of assessment of luxury tax, determination of interest, or imposition of penalty, under section 9.

(4) Subject to such rules as may be prescribed and for reasons to be recorded in writing,

(a) any order of assessment or other order passed under this Act or the rules made thereunder by the prescribed authority or any person appointed under sub-section (1) of section 3 to assist it, may be reviewed by it or the person passing such order, upon application or of its or his own motion, and

(b) the Tribunal may review any order passed by it, either on its own motion or on application.

(5) Before any order is passed under this section, any person who is likely to be affected thereby adversely, shall be given a reasonable opportunity of being heard.

1 (6) All applications for revision of final appellate order or revisional order against an order of assessment of luxury tax, determination of interest, or imposition of penalty under section 9, and all applications under section 16 arising out of an order of the

Tribunal, pending before the Tribunal on the date immediately before the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall, with effect from the date of coming into force of section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be deemed to have been transferred to the Tribunal.

1. Sub-sec. (6) ins. by W.B. Act 11 of 1995.

16. Statement of case to the Taxation Tribunal :-

(1) Within sixty days from the date of passing by the Tribunal of any order under clause (c) of sub-section (3), or clause (b) of sub-section (4), of section 15 affecting any liability of any stockist to pay luxury tax, penalty or interest under this Act, such stockist, by application in writing accompanied by a fee of one hundred rupees, or the prescribed authority by application in writing, may require the Tribunal to refer to the Taxation Tribunal any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Tribunal refuses to make such reference, the applicant may, within thirty days of such refusal, either

(a) withdraw his application (and if he does so, the fee paid shall be refunded), or

(b) apply to the Taxation Tribunal against such refusal.

(3) If, upon the receipt of an application under clause (b) of sub-section (2), the Taxation Tribunal is not satisfied of the correctness of the decision of the Tribunal, it may require the Tribunal to state the case and refer the same to it, and on receipt of such requisition from the Taxation Tribunal, the Tribunal shall state the case and refer the same accordingly.

(4) If the Taxation Tribunal is not satisfied that the statements in a case referred to it under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto, or alterations therein, as the Taxation Tribunal may direct in that behalf.

(5) The Taxation Tribunal, upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such

judgement under the seal of the Taxation Tribunal and the signature of the Registrar, and the Tribunal shall dispose of the case accordingly.

(6) Where a reference is made to the Taxation Tribunal under this section, the cost (including the disposal of the fee) shall be in the discretion of the Taxation Tribunal.

(7) The payment of the amount, if any, of luxury tax, penalty and interest due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as a result of such reference, the excess luxury tax, penalty or interest paid shall be refunded in accordance with the provisions of section 10.

17. Bar to certain proceedings :-

Save as otherwise provided in section 16, no assessment made and no order passed under this Act or the rules made thereunder by the prescribed authority or any person appointed under sub-section (1) of section 3 to assist it, and no order passed under this Act or the rules made thereunder by the Tribunal, shall be called in question in any civil court, and save as otherwise provided in section 15, no appeal or application for revision or review shall lie against any such assessment or order.

18. Power to take evidence :-

The Tribunal, the prescribed authority or any person appointed under sub-section (1) of section 3 to assist the prescribed authority shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

and any proceeding under this Act before the Tribunal, the prescribed authority or any person appointed under sub-section (1) of section 3 to assist the prescribed authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purposes of section 196, of the Indian Penal Code.

19. Offences, penalties and prosecution :-

(1) Whoever (a) fails to furnish the security demanded under sub-section (6) of section 6, (b) fails to pay the full amount of luxury tax payable for any period in accordance with the provisions of section 7, (c) fails without reasonable cause to furnish return under section 7, (d) submits false return, (e) fails to make payment of interest payable under sub-section (1) of section 8, (f) fails to comply with the provisions of section 11, or (g) refuses to comply with any requirements under sub-section (1) of section 12, shall be punishable with simple imprisonment which may extend to six months or with fine 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.

(2) Whoever holds a stock of luxuries in contravention of the provisions of sub-section (1) of section 6 shall be punishable with simple imprisonment which may extend to one year or with minimum fine of five 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.

(3) Whoever obstructs the prescribed authority or any person appointed under sub-section (1) of section 3 to assist it or the Bureau making inspection, search or seizure under section 12 or section 13, shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever abets any of the offences referred to in sub-section (2) or sub-section (3) shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

(5) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such culpable mental state until the contrary is proved. Explanation. For the purposes of this sub-section, "culpable mental state" shall include intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(6) No court shall take cognizance of any offence under sub-section (1), sub-section (2), sub-section (3) or sub-section (4) or the rules made under this Act except with the previous sanction of the prescribed authority and no court inferior to the court of a

Metropolitan Magistrate or a Judicial Magistrate of the first class shall try such offence.

(7) The offence punishable under sub-section (1), sub-section (2) or subsection (4) shall be cognizable and bailable and the offence punishable under sub-section (3) shall be cognizable and non-bailable.

20. Liability to prosecution :-

(1) Where an offence under this Act has been committed by a stockist, every person who, at the time the offence was committed, was in charge of the business of the stockist and was responsible to the stockist for the conduct of the business of the stockist as well the stockist, shall be deemed to be guilty of the offence and shall be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a stockist, being a company within the meaning of the Companies Act, 1956, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, as the case may be, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

21. Compounding of offences :-

(1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence referred to in clause (f) or clause (g) of sub-section (1), or sub-section (2), of section 19, may, either before or after the commencement of any proceedings in respect of such offence, at his option, compound such offence by paying to the prescribed authority such sum, not exceeding twenty thousand rupees, as may be determined by the prescribed authority.

(2) On full payment of such sum as may be determined by the

prescribed authority under sub-section (1),

(a) no proceedings shall be commenced against the person as aforesaid, or

(b) if any proceedings have already been commenced against such person, such proceedings shall not be proceeded with, if such person undertakes to comply with the requirements of the provisions contained in sub-section (1) of section 6, section 11 or sub-section (1) of section 12, as the case may be, within such period as the prescribed authority may direct.

22. Power to make rules :-

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any the following matters, namely;

(a) the procedure for, and other matters (including provisions for payment of fees) incidental to, the disposal of appeal, revision and review under section 15;

(b) any other matter which may be, or is required to be, prescribed under this Act.

(3) In making any rule, the State Government may direct that a breach thereof shall be punishable with fine not exceeding five hundred rupees, and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.

23. Power to remove difficulties :-

If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, do anything which appears to it to be necessary or expedient for the purposes of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

SCHEDULE 1

SCHEDULE

[See clause (c) and clause (g) of section 2.]

SCHEDULE 1

[See clause (c) and
clause (g) of section
2.]

1. Cheroots.
2. Cigarettes.
3. Cigar.
4. Pan masala,
perfumed or treated
otherwise, of any form
or description, that is
to say,
combination of powder

or broken form or otherwise of two or more of the following substances, or combination of two or more of the following substances with any other substance, whether mixed with tobacco or not, and sold under various trade names or descriptions such as Pan Bahar, Pan Pasand, Pan Parag, Pan Tarang, Talab,

Prem Ranjan or any other name or description:

(a) betel nuts, locally known as supari;

(b) cardamom, locally known as elach;

(c) cloves, locally known as labanga;

(d) aniseed, locally known as mauri;

(e) cassia, locally known as darchini;

(f) menthol.

5. Smoking mixtures

f o r pipes and
cigarettes.

6. Mill-made textile
fabrics priced at [Rs.
800]or more per
metre.

7. Crystal items, cut-
glass items and
chandeliers.

8. Footwear priced at
Rs. 700 or more per
pair.

9. Trousers and
Jeans priced at Rs. 700
or more per unit.

10. Shirts and T-shirts priced at Rs. 500 or more per unit.

11. Coat, jacket, Blazer and Suit priced at Rs. 4000 or more per unit.

12. Watches priced at Rs. 4000 or more per unit.

14. All types of bathroom fittings including bath-tubs priced at Rs. 1000 or more per piece.

15. Electric switches on plates of any type priced at Rs. 800 or more per unit.

16. Sun-glass priced at Rs. 1000 or more per unit.

17. Fountain-pen and dot pen priced at Rs. 1000 or more per unit.

19. Home theatre equipment priced at Rs. 20,000 and above.

20. Music system priced at Rs. 20,000 and above.

21. Video camera
priced at Rs. 20,000
and above.