
West Bengal Taxation Laws (Amendment) Act, 1981

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West Bengal Taxation Laws (Amendment) Act, 1981

An Act to amend the Bengal Amusements Tax Act, 1922, the Bengal Finance (Sales Tax) Act 1941, the Bengal Agricultural Income-tax Act, 1944, the West Bengal Sales Tax Act, 1954, the West Bengal Primary Education Act, 1973, the West Bengal Rural Employment and Production Act, 1976, and the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979. WHEREAS it is expedient to amend the Bengal Amusements Tax Act, 1922, the Bengal Finance (Sales Tax) Act, 1941, the Bengal Agricultural Income-tax Act, 1944, the West Bengal Sales Tax Act, 1954, the West Bengal Primary Education Act, 1973, the West Bengal Rural Employment and Production Act, 1976, and the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, for the purposes and in the manner hereinafter appearing; It is hereby enacted in the Thirty-second 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 Taxation Laws (Amendment) Act, 1981. (2) It shall 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. Amendment Of Ben. Act V Of 1922 :-

In the Bengal Amusements Tax Act, 1922, in Chapter I, for section 8, the following section shall be substituted:- "8. Exemptions - The

State Government may, for social educational or scientific purposes, by general or special order, exempt fully or partly the entertainments tax, show tax, surcharge or additional surcharge payable under this Act for any entertainment or class of entertainments, subject to such conditions as may be laid down in such order."

3. Amendment Of Ben. Act Vi Of 1941 :-

In the Bengal Finance (Sales Tax) Act, 1941, - (1) in section 4, - (a) after sub-section (4), the following sub-section shall be inserted:- "(4a) The Commissioner after making such enquiry as he may think necessary and after giving the dealer an opportunity of being heard shall fix the date on and from which such dealer shall become liable to pay tax under sub-section (2) or sub-section (4)."; (b) in sub-section (5), - (i) in clause (a), for the word and figures "10,000 rupees;", the word and figures "20,000 rupees;" shall be substituted; (ii) in clause (aa), for the word and figures "25,000 rupees;", the word and figures "50,000 rupees;" shall be substituted; (iii) in clause (c), for the word and figures "50,000 rupees;", the word and figures "1,00,000 rupees;" shall be substituted; (2) in section 5, in sub-section (1), - (a) in clause (aaa), for the words "three per centum", the words "one per centum" shall be substituted; (b) in clause (bb), - (i) in sub-clause (i), for the words "three per centum", the words "one per centum" shall be substituted; (ii) in sub-clause (ii), for the words "three per centum", the words "one per centum" shall be substituted; (c) in clause (e), after the letters and brackets "(aaa)", the letters and brackets "(aaa)," shall be inserted and shall be deemed to have been inserted with effect from the 27th day of September 1979; (3) in section 7, - (a) in sub-section (2), for the word and figure "section 5.", the following shall be substituted:- "section 5 of this Act or sub-clauses (i) and (iii) of clause (2a) of section 23A of the West Bengal Sales Tax Act, 1954."; (b) in sub-section (3), for the word and figure "section 5.", the following shall be substituted:- "section 5 of this Act or sub-clauses (i) and (iii) of clause (2) of section 23A of the West Bengal Sales Tax Act, 1954."; (c) after sub-section (3), the following sub-section shall be inserted:- "(3a) Where the application for registration is made under this section or under section 8 and the said authority is satisfied the applicant has become liable to pay tax under sub-section (2) or sub-section 4, the certificate of registration shall be granted in such case with effect from the date of commencement of such liability or the date

of filing of such application, whichever is later."; (4) in section 11, - (a) in sub-section (1), - (i) in the proviso, for the words "this sub-section", the words, brackets, letter and figure "this sub-section or sub-section (2d)" shall substituted; (ii) after the existing proviso, the following proviso shall be inserted:- "Provided further that different procedures for assessment in respect of different classes of dealers may be prescribed."; (b) in sub-section (2a), for the words, brackets and figure "sub-section (1) shall", the words, brackets, figures and letters "sub-section (1) or sub-section (2c) or sub-section (2d) shall" shall be substituted; (c) in sub-section (2b), for the words, brackets and figure "or sub-section (2),", the words, brackets, figures and letters "or sub-section (2) or sub-section (2c) or sub-section (2d)," shall be substituted; (d) after sub-section (2b), the following sub-section shall be inserted:- "(2c) If the Commissioner is satisfied in prescribed cases that the returns in respect of any period furnished by a registered or certified dealer by the prescribed date or otherwise are correct and complete, he shall, without requiring the presence of the dealer or the production of evidence by him, assess the amount of the tax due from the dealer on the basis of such returns. (2d) If a registered or certified dealer fails to submit in respect of any period a return accompanied by a receipt from a Government treasury or the Reserve Bank of India, as required under sub-section (3) of section 10, by the prescribed date, the Commissioner may, if is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of the tax assessed under sub-section (2c) a sum not exceeding one and a half times that amount: Provided that the Commissioner shall give the dealer an opportunity of being heard before imposition of such penalty. (2e) The powers under sub-section (2c) or sub-section (2d) may be exercised by the Commissioner even in cases where a notice for the purpose of making an assessment under sub-section (1) has been issued, but such assessment has not been made. (2f) Where the assessment of a dealer for any period is made under sub-section (2c), sub dealer shall within six months from the receipt of intimation of such assessment - (i) either collect all the declaration forms referred to in the proviso to clause (aa) or clause (aaa) or clause (bb) of sub-section (1) or clause (a) of sub-section (2) of section 5 in respect of his sales claimed under the said clauses in the returns for such period or pay tax on sales which may remain unsupported by such forms, though claimed under the said clauses, at the appropriate rates of taxes at which such sales are

taxable in the absence of such forms, less the amount of tax, if any, already paid on such sales at the preferential rates of taxes under the said clauses at the time of submission of returns for such period, and (ii) check up that the figures shown in the returns for the period under assessment are in agreement with those as per books of account and relevant documents maintained by him and if he finds any discrepancy in such figures, other than that referred to in clause (i), which has the effect of increasing the amount of tax payable by him during such period over the amount of tax earlier paid by him as per returns for such period, he shall pay the balance amount of tax which is found to be payable by him under this Act, and furnish, notwithstanding anything contained in sub-section (4) of section 10, a revised return for the entire period under assessment accompanied by a receipt from a Government treasury or the Reserve Bank of India showing payment of tax under this sub-section. (2g) Whether the Commissioner is satisfied that any dealer who has been liable to pay tax under sub-section (2f) in respect of any period has defaulted to make payment of such tax, the Commissioner may proceed in such manner as may be prescribed to assess the amount of tax payable under the said sub-section and may, if is satisfied that the default in payment of tax by the dealer under the said sub-section was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of such tax assessed a sum not exceeding that amount: Provided that no penalty under this sub-section be imposed in respect of the same fact for which a prosecution under sub-section (8a) of section 22 has been instituted and no prosecution would lie vice versa."; (e) in sub-section (3), - (i) in clause (c), for the word, brackets and figure "sub-section (2)", the words, brackets and figure "sub-section (2), or "shall be substituted; (ii) after clause (c), the following clause shall be inserted:- "(d) assessed under sub-section (2c) or (2g), less the sum, if any, already paid by the dealer in respect of the said period,"; (iii) for the words, brackets and figure "provisions of sub-section (1)", the words, brackets, figures and letter "provisions of sub-section (1) or any penalty that may be directed to be paid under sub-section (2d)" shall be substituted; (5) In section 14, in sub-section (1), for the word "dealer", in the two places whether it occurs, the word "person" shall be substituted; (6) in section 22, - (a) after sub-section (8), the following sub-section shall be inserted:- "(8a) Whoever fails without reasonable cause to pay the full amount of tax payable by him and furnish a revised return in

accordance with sub-section (2f) of section 11 shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both."; (b) in sub-section (11), for the word, brackets and figure "and (7)", the word, brackets, letter and figures", (7) and (8a)" shall be substituted; (7) in Schedule I, in column 1, after item 53, the following item shall be inserted:- "54. Lac and shellac."

4. Amendment Of Ben. Act Iv Of 1944 :-

In the Bengal Agricultural Income-tax Act, 1944, - (1) in sub-section (1) of section 26B, for the words "he may, at his option," the words "he shall" shall be substituted; (2) in section 38, - (1) for sub-section (2), the following sub-section shall be substituted and shall be deemed always to have been substituted:- "(2) No order of assessment under section 25 or of assessment or reassessment under sub-section (1) shall be made at any time after the expiry, - (a) in any case in which - (i) section 8 or clause (c) of sub-section sub-section (1) of section 32 applies, or (ii) the agricultural income is derived from tea grown in West Bengal and sold by the grower himself or his agent after manufacture, of six years and, (b) in other case of four years from the end of the year which the agricultural income was first assessable: Provided that nothing contained in this sub-section shall apply to a reassessment made in pursuance of an order under section 31, section 35, section 36, section 37 section 63 or section 64. Explanation I - In computing the period of limitation for the purpose of this section, the period during which an assessment proceeding under this Act or an assessment under the Income-tax Act, 1961, having a bearing on the assessment under this Act is stayed by injunction or order of any court shall be excluded. Explanation II - The provisions of sub-section (2) shall not apply to an assessment, reassessment or recomputation, which may be completed at any time, where such assessment, reassessment or recomputation is made on an assessee or any person in consequence of, or for giving effect to, any finding or direction contained in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act."

5. Amendment Of West Ben. Act Iv Of 1954 :-

In the West Bengal Sales Tax Act, 1954, - (1) after section 4AAA, the following section shall be inserted:- "4AAA. Penalty for unauthorised use of goods by registered dealers - (1) If any registered dealer, after purchasing any goods (including notified commodities) for the purpose referred to in section 23A, makes use

of the same for any other purpose, the prescribed authority may, after giving such registered dealer an opportunity of being heard, by an order in writing direct that he shall pay by way of penalty a sum not exceeding double the amount of the tax which could have been levied under this Act or the Bengal Finance (Sales Tax) Act, 1941, as the case may be, in respect of the sale of the goods concerned. (2) Any penalty imposed under sub-section (1) shall be paid by the registered dealer into a Government treasury or the Reserve Bank of India, by such date as may be specified by the prescribed authority in a notice issued in this behalf and the date to be so specified shall not be less than fifteen days from the date of service of such notice: Provided that the prescribed authority may, for reason to be recorded in writing, extend the date of such payment or allow such registered dealer to pay the penalty imposed in such number of instalments as the prescribed authority may determine. (3) Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) shall be recoverable as an arrear of land revenue payable to the Collector. (4) No penalty under this section shall be imposed in respect of purchases on which tax is payable under sub-section (2) of section 4."; (2) in section 5, in sub-section (4), in clause (c), for the words "payment of tax.", the words "payment of tax or for the proper use and safe custody of the forms referred in the proviso to section 23A, where obtained from the appropriate authority or furnished by the registered dealer to whom the goods (including notified commodities) have been sold." shall be substituted; (3) in section 9, - (a) for sub-section (1), the following sub-section shall be substituted:- "(1) If the prescribed authority is satisfied in prescribed case that the returns of turnover and specified purchase price in respect of any period furnished by a registered dealer by the prescribed date or otherwise are correct and complete, he shall, without requiring the presence of the dealer or the production of evidence by him, assess and determine the amount of tax due from the dealer on the basis of such returns. (1A) If a registered dealer fails to submit in respect of any period a return accompanied by a receipt from a Government treasury or the Reserve Bank of India, as required under sub-section (2) of section 8, by the prescribed date, the prescribed authority may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of tax assessed under sub-section (1) a sum not exceeding that amount: Provided that the prescribed authority shall give the dealer an

opportunity of being heard before imposition of such penalty. (1B) The powers under sub-section (1) or sub-section (1A) may be exercised by the prescribed authority even in cases where a notice for the purpose of making an assessment under sub-section (2) or sub-section (3) has been issued, but such assessment has not been made. (1C) Where the assessment of a dealer for any period is made under sub-section (1), such dealer shall within six months from the receipt of intimation of such assessment - (i) either collect all the declaration referred to in the proviso to section 23A in respect of his sales claimed under the said section in the returns for such period, or pay tax on sales which may remain unsupported by such declarations, though claimed under the said section, at the appropriate rates of tax at which such sales are taxable in the absence of such declarations, less the amount of tax, if any, already paid on such sales at the concessional rate of tax under the said section at the time of submission of returns for such period; and (ii) check up that the figures shown in the returns for the period under assessment are in agreement with those as per books of account and relevant documents maintained by him and if he finds any discrepancy in such figures which has the effect of increasing the amount of tax payable by him during such period over the amount of tax already paid by him as per returns for such period, he shall pay the balance amount of tax which is found to be payable by him under this Act, and furnish a revised return for the entire period under assessment accompanied by a receipt from a Government treasury or the Reserve Bank of India showing payment of tax under this sub-section. (1D) Where the prescribed authority is satisfied that any dealer who has been liable to pay tax under sub-section (1C) in respect of any period has defaulted to make payment of such tax, the prescribed authority may proceed in such manner as may be prescribed to assess the amount of tax payable under the said sub-section and may, if he is satisfied that the default in payment of tax by the dealer under the said sub-section was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of such tax assessed a sum not exceeding that amount."; (b) in sub-section (3), - (i) in the proviso, for the words "this sub-section", the words, brackets, letters and figures "this sub-section or sub-section (1A) or sub-section (1D)" shall be substituted; (ii) after the existing proviso, the following proviso shall be inserted:- "Provided further that different procedures for assessment in respect of different classes of dealers may be prescribed."; (c) in sub-section (3A), in

explanation II, for the word, brackets and figure "sub-section (3).", the words, brackets, figures and letters "sub-section (1A) or sub-section (1D) or sub-section (3)." shall be substituted; (4) in section 10, in sub-section (1), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letters "sub-section (1A) or sub-section (1D) or sub-section (3)" shall be substituted; (5) in section 11, for sub-section (1) and the proviso thereto, the following sub-section shall be substituted:- "(1) The prescribed authority shall, in the prescribed manner, refund to a dealer any amount of tax or penalty paid by such dealer in excess of amount due from him under this Act, either by cash payment or by deduction or adjustment of such excess from the amount of tax or penalty due in respect of other period."; (6) in section 16, in sub-section (1), - (a) in clause (d), for the word and figure "section 8,", the words, brackets, figures and letter "section 8, sub-section (1C) of section 9," shall be substituted; (b) in the first proviso, for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letters "sub-section (1A) or sub-section (1D) or sub-section (3)" shall be substituted; (7) in section 23A, - (a) for the words beginning with "Notwithstanding anything contained" and ending with "sub-section (1) of section 5 of that Act:", the following shall be substituted:- "Notwithstanding anything contained in sub-section (1) of section 4 or else where in this Act, - (1) sales to a dealer, registered under this Act, of notified commodities taxable under this Act or of goods taxable under the Bengal Finance (Sales Tax) Act, 1941, as the case may be, required for use by him directly in manufacturing, making, processing or packing in West Bengal of notified commodities for sale in West Bengal shall be taxable, - (a) in the case of notified commodities under this Act at the rate of one per centum on the turnover, or (b) in the case of goods taxable under the Bengal Finance (Sales Tax) Act, 1941, at the rate specified in clause (aaa) of sub-section (1) of section 5 of that Act; (2) the tax payable by a registered dealer under this Act shall be levied on his sales of notified commodities at the rate of - (i) one per centum of such part of his turnover as resents sales to a dealer, registered under the Bengal Finance (Sales Tax) Act, 1941, of notified commodities of the class or classes specified in the certificate of registration of such dealer as being intended for use by him directly in the manufacture in West Bengal of taxable goods, newspapers or motor spirit for sale in West Bengal and of other notified commodities for the packing of notified commodities of the class or classes so specified; (ii) one per centum of such part

of his turnover as represents sales to a dealer, registered under the Bengal Finance (Sales Tax) Act, 1941, of notified commodities intended for use by him in the packing in West Bengal of taxable goods, newspapers or motor spirit manufactured by him in West Bengal for sale in West Bengal. Explanation. - For the purposes of sub-clause (i) and sub-clause (ii), the expressions taxable goods and motor spirit shall have the meanings respectively assigned to them in the explanation below sub-clause (ii) of clause (bb) of sub-section (1) of section 5 of the Bengal Finance (Sales tax) Act, 1941; (iii) three per centum of such part of his turnover as represents sales to a dealer registered under the Bengal Finance (Sales Tax) Act, 1941, and engaged in the business of raising coal, of notified commodities of the class or classes specified in the certificate of registration of such dealer as being required for use by him directly in connection with the raising of coal in West Bengal for sale, and of other notified commodities for the packing of notified commodities so specified:"; (b) in the proviso, for the words "registered dealer", the words "dealer registered under this Act or the Bengal Finance (Sales Tax) Act, 1941, as the case may be," shall be substituted.

6. Amendment Of West Ben. Act Xliii Of 1973 :-

In section 78 of the West Bengal Primary Education Act, 1973, in sub-section (2), in clause (b), for the words "fifty paise", the words "rupee one" shall be substituted.

7. Amendment Of West Ben. Act Xiv Of 1976 :-

In the West Bengal Rural Employment and Production Act, 1976, in section 4, - (a) in sub-section (1), for the words "are assessed", the words "are assessed or liable to be assessed" shall be substituted; (b) in sub-section (2), - (i) in clause (a), for the words "in respect of lands,", the words "in respect of lands, other than a tea estate," shall be substituted; (ii) after clause (a), the following clause shall be inserted:- "(aa) in respect of a tea estate, at such rate, not exceeding rupees six on each kilogram of tea on the despatches from such tea estate of tea grown therein, as the State Government may, by notification in the official Gazette, fix in this behalf: Provided that in calculating the despatches of tea for the purpose of levy of ruler employment cess, such despatches for sale made at such tea auction centers as may be recognised by the State Government by notification in the official Gazette shall be excluded: Provided further that the State Government may fix different rates on despatches of different classes of tea.

Explanation. - For the purpose of this section "tea" means the plant *Camellia Sinensis* (L) O. Kuntze as well as all varieties of the product known commercially as tea made from the leaves of the plant *Camellia Sinensis* (L) O. Kuntze, including green tea and green tea leaves, processed or unprocessed; (iii) in clause (b), for the words "rupee two and fifty paise", the words "rupees five" shall be substituted; (c) after sub-section (2), the following sub-sections shall be inserted:- "(3) Notwithstanding anything contained in the Cess Act, 1880, - (a) the rural employment cess under (aa) of sub-section (2) shall be payable by an owner of a tea estate in such manner, for such period and by such date as may be prescribed and shall be levied by such authority (hereinafter referred to as the prescribed authority) in such manner as may be prescribed; (b) every owner of a tea estate shall get himself registered with the prescribed authority in the manner prescribed; (c) every owner of a tea estate shall file such return as may be prescribed; (d) the rural employment cess under clause (aa) of sub-section (2) shall be assessed by the prescribed authority in the manner prescribed and, if the return furnished under clause (c) are not accepted, the owner of a tea estate shall be given a reasonable opportunity of being heard before making such assessment; (e) appeal, revision and review, as the case may be, from an order the assessment or other orders relating to rural employment cess under clause (aa) of sub-section (2) shall lie to such authority and in such manner as may be prescribed; (f) recovery of cess assessed under clause (d) or refund of any amount of such cess found to have been paid in excess after assessment shall be in the manner prescribed; (g) every owner of a tea estate shall be liable to pay by way of penalty an amount, not exceeding the amount of cess leviable under clause (aa) of sub-section (2) for any period, for default in payment of such cess for such period without reasonable cause by such date as may be prescribed. The penalty shall be imposed by the prescribed authority in the manner prescribed; (h) the State Government or the prescribed authority may appoint persons to assist the prescribed authority; (i) any powers, duties or functions of the prescribed authority may be delegated to any person appointed under clause (h) in such manner as may be prescribed. Explanation I. - For the purpose of this section, tea estate means any land used or intended to be used for growing tea and shall include land comprised in factory, workshop and housing for persons employed in the tea estate and other lands for purposes ancillary to the growing of tea. Explanation II. - Owner with reference to a tea

estate, the possession of which has been transferred by lease, mortgage or otherwise, means the transferee so long as his right to possession subsists. (4) The State Government may, if it considers necessary so to do, by notification in the official Gazette, exempt such categories of despatches or such percentage of despatches from the liability to pay the whole or any part of the rural employment cess, or reduce the rate of the rural employment cess payable thereon, under clause (aa) of sub-section (2), on such terms and conditions as may be specified in the notification: Provided that the State Government may, at any time, add to, amend, vary or rescind any such notification."

8. 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 14, for sub-section (4), the following sub-section shall be substituted:- "(4) Any order passed by any authority under this Act may be revised, either on application or on own motion, by such authority and in such manner as may be prescribed."; (2) for section 17, the following section shall be substituted:- "17. Production and inspection and accounts and documents and search of place of work, etc - (1) Any authority under this Act may, for the purposes of this Act, require any person or any employer to produce before him any accounts or documents relating to his professions, trades, callings or employments, or disbursement of salaries and wages to his employees, as the case may be. (2) All accounts, registers and other documents, either relating to professions, trades, callings or employments or disbursement of salaries and wages to the employees, as the case may be, shall at all reasonable time be open to inspection by an authority under this Act. (3) If the Commissioner or an officer appointed under sub-section (2) of section 12 of this Act has reason to suspect that any person or employer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing in writing, inspect and search any place of work or any other place where the Commissioner or the officer has, upon information received, reasons to believe that records relating to professions, trades, callings or employments or disbursement of salaries and wages to the employees are being kept by the persons or the employer, as the case may be, and seize such accounts, registers and documents as may be necessary for determination of tax payable under this Act. (4) The Commissioner or the officer exercising the power under

sub-section (3) shall give to the person in-charge of work or other premises searched a receipt describing the accounts, registers and documents seized and removed from such place of work or premises, as the case may be, and shall retain the accounts, registers and documents seized only for so long as may be necessary for the purposes of examination thereof or prosecution: Provided that such officer shall not retain in the registers, accounts and documents seized by him under sub-section (3) for a period exceeding one year from the date of seizure unless he states the reason therefor in writing and obtains sanction in writing from the Commissioner. (5) The occupant of the place of work or premises searched or some person in his behalf shall, in every instance, be permitted to be present during the search. The receipt referred to in sub-section (4) shall be countersigned by the occupant or any person witnessing the search and seizure.".