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## **West Bengal Taxation Laws (Amendment) Act, 2008**

**20 of 2008**

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## **West Bengal Taxation Laws (Amendment) Act, 2008**

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An Act to amend the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003 West Bengal Act XLIX of 1994. West Bengal Act XXXVII of 2003 Whereas it is expedient to amend the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003, for the purposes and in the manner hereinafter appearing. It is hereby enacted in the Fifty-ninth 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, 2008. (2) Save as otherwise provided, it shall come into force on such date, or shall be deemed to have come into force on such date, as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

### **2. Amendment Of West Ben. Act Xlix Of 1994 :-**

In the West Bengal Sales Tax Act, 1994,- (1) in section 2,- (a) in clause (40), in sub-clause (d), for the words "the sale-prices or the parts of sale-prices", the words, figures and letter "the sale-prices or the parts of sale-prices, where such sale-prices or parts of sale-prices do not exceed the maximum retail price as referred to in the Explanation to section 22D" shall be substituted; (b) after the proviso to sub-clause (d), the following Explanation shall be added:- Explanation:- For the purpose of sub-clause (d), the expression "the sale-prices or the parts of sale-prices", in relation to

goods sold in parts either in volume or in weight, means the aggregate of sale-prices of all such parts of the goods in order to determining whether the sale-prices of such goods exceed the maximum retail price of such goods. (2) section 22D shall be re-numbered as sub-section (1) of that section,- (a) in sub-section (1) so re-numbered, after the words "at his option", the words "where such goods are sold at a price not exceeding maximum retail price of such goods" shall be inserted; (b) after sub-section (1), the following sub-section shall be inserted:- "(2) Where a dealer, after purchasing any goods specified in Schedule VIII, on a priorsale whereof in West Bengal by a registered dealer, tax has teen paid on the maximum retail price of such goods in accordance with the provisions of sub-section (1), has sold such goods at the per unit sale-price (excluding tax) which exceeds the per unit maximum retail price of such goods calculated either in volume or in weight, as the case may be, such dealer shall, notwithstanding anything contrary contained in any provisions of this Act, be liable to pay a tax at the rate specified in the notification referred to in sub-section (1) on that part of the sale-price (excluding tax) of the quantity of such goods which remains after deducting therefrom the maximum retail price of equal quantity of such goods." (3) Chapter XA shall be omitted. (4) in Schedule IV, in Part A, after serial No. 2, the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:- "3. Rectified spirit and Extra Neutral Alcohol (ENA)".

### **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 (15), after sub-clause (c), the following sub-clause shall be inserted:- "(cc) rectified spirit and Extra Neutral Alcohol (ENA)". (b) in clause (30A),- (i) for the words "in the open market", the words "in the market" shall be deemed to have been substituted with effect from the 1st day of April, 2008; (ii) for the words "at which such goods", the words "at which goods of the kind or quality" shall be deemed to have been substituted with effect from the 1st day of April, 2008. (2) in section 42,- (a) in sub-section (1), for the words "input tax credit or input tax rebate", the words and figures "input tax credit or input tax rebate or that there are certain discrepancies as noticed upon scrutiny of the return under section 41 or otherwise" shall be substituted; (b) in sub-section (2), for the words and figures "correct and complete, or whereupon scrutiny of the return under section 41 or otherwise, the

Commissioner notices certain discrepancies in the return", the words "correct and complete" shall be substituted. (3) in section 46,- (a) in sub-section (1), in clause (g), for the words "within three months from the end of the following year", the words "within three months from the end of the following year or subject to satisfaction of the Commissioner, within such further time not exceeding nine months from the end of the following year as may be allowed by the Commissioner" shall be substituted; (b) in sub-section (3), in clause (b),- (i) for the words "net tax payable", the words "net tax payable, late fee" and shall be deemed to have been substituted with effect from the 1st day of April, 2007; (ii) for the words "interest determined and", the words "interest determined, the difference between the amount of input tax credit which the dealer has carried forward in the return for the next return period and the amount of excess of net tax credit over output tax payable, as is found, admissible upon assessment, which may be carried forward to the next return period of where no such amount which can be carried forward to the next return period is found admissible upon assessment, the amount of input tax credit which the dealer has carried forward in the return for the next return period", and shall be substituted. (4) in section 47,- (a) in sub-section (1),- (i) for the words, figures and brackets "revoked under subsection (3) of section 45", the words, figures, and brackets, "revoked under sub-section (3) or sub-section (4) of section 45" shall be substituted; (ii) for the words "assessment in respect of such year or such period shall be deemed to have been made by him", the words, figures and brackets "assessment in respect of such year or such period shall be deemed to have been made by him on the date mentioned in sub-section (1) of section 49 after which no assessment can be made" shall be substituted. (b) in sub-section (3), in the proviso, for the words "such year", occurring in two places, the words "such year or such part of a year" shall be substituted; (c) for sub-section (4), the following sub-section shall be substituted:- "(4) Where a registered dealer brings to the notice of the Commissioner by making an application to him within six months from the date of assessment deemed to have been made in accordance with the provisions of sub-section (1) in respect of any year or part of a year:- (a) that an amount of net tax or interest or late fee as referred to in sub-section (2) of section 32 has been paid by him in excess of what was payable in respect of any return period falling within such year or part of a year, due to his error in fact or in law; or (b) that the excess

amount of input tax credit or input tax rebate, which has accumulated during a year, at his option, has not been carried forward to a return period in the following year, the Commissioner may, if he is prima facie satisfied about such excess payment owing to error in fact or in law or about such excess amount of input tax credit or input tax rebate that has not been carried forward, within one year from the date of receipt of such application, reopen such assessment, by an order in writing, for making a fresh assessment of tax for such year or such part of a year under sub-section (1) of section 46." (d) to sub-section (4), the following proviso shall be added:- "Provided that the fresh assessment under sub-section (1) of section 46 for such year or such part of a year shall be made, notwithstanding the provision of section 49, on any date within two years from the date of passing of the order, in writing, for reopening the assessment in respect of such year or such part of a year, which is deemed to have been made in accordance with the provisions of sub-section (1) of this section." (5) in section 49, to the second proviso, the following proviso shall be added:- "Provided also that where an assessment under clause (e), or clause (ea), of sub-section (1) of section 46 is required to be made by the Commissioner, such assessment shall, notwithstanding the provisions of this sub-section, be made within the date after which no assessment shall be made as referred to in this sub-section, or at any time within two years from the date of refund, whichever is later." (6) in section 61, in clause (ab), for the words "referred to in this subsection", the words "referred to in this sub-clause" shall be substituted; (7) in section 84,- (a) in sub-section (1), in the first proviso, for the word "penalty", the words "penalty, late fee" shall be substituted; (b) in sub-section (2),- (i) in the first proviso, for the words "two years", the words "one year" shall be substituted; (ii) in the second proviso, for the words "one year", the words "six months" shall be substituted. By order of the Governor, Anindya Bhattacharyya, Secy.-in-charge to the Govt. of West Bengal,