

West Bengal Taxation Laws (Second Amendment) Act, 1979

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An Act to amend the Bengal Finance (Sales Tax) Act, 1941, and the West Bengal Sales Tax Act, 1954. WHEREAS it is expedient to amend the Bengal Finance (Sales Tax) Act, 1941, and the West Bengal Sales Tax Act, 1954, for the purposes and in the manner hereinafter appearing; It is hereby enacted in the Thirtieth 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 (Second Amendment) Act, 1979. (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 Vi Of 1941 :-

In the Bengal Finance (Sales Tax) Act, 1941, - (1) in section 2, - (a) for clause (1a), the following clause shall be substituted:- "(1a) business includes - (i) any trade, commerce or manufacture or execution of contract or any adventure or concern in the nature of trade, commerce or manufacture or execution of contract, whether or not such trade, commerce, manufacture, execution of contract, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, execution of contract, adventure or concern; and (ii) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, execution of contract, adventure or concern;", (b) in clause (c), for the words "in West Bengal", the words "in West Bengal or of purchasing goods in West Bengal for execution of any contract" shall be substituted; (c) after

clause (dd), the following clause shall be inserted:- "(ddd) notified purchase price, used in relation to any period, means the aggregate of the purchase prices or parts of purchase prices paid or payable by a dealer during such period in respect of purchase of goods for use in execution of any contract, after deducting therefrom the amount, if any, refunded to the dealer by the seller in respect of any such purchase of goods returned to the seller: Provided that in case of a dealer who elects in terms of the provisions of clause (i), the notified purchase price shall mean the aggregate of the purchase prices actually paid. Explanation. - Notwithstanding anything contained in this Act, or in the West Bengal Sales Tax Act, 1954, for the purposes of this clause and section 6C, goods shall include commodities specified for taxation under section 25 of the West Bengal Sales Tax Act, 1954."; (d) after clause (ha), the following clause shall be inserted:- "(hb) tax means the tax payable under section 5, section 6B or section 6C;"; (2) in section 5, - (a) in sub-section (1), in clause (e), for the word "seven ", the word "eight" shall be substituted; (b) in sub-section (2), in clause (b), in sub-clause (v), - (i) for the words "six and a half", the words "seven and one-fourth" shall be substituted; (ii) for the word "seven", the word "eight" shall be substituted; (3) in section 6A, after sub-section (2), the following sub-section shall be added:- "(3) A dealer shall be liable to pay the surcharge or additional surcharge on the total amount of tax payable by him for the period up to the 31st day of March, 1979."; (4) after section 6A, the following sections shall be inserted:- "6B. Liability to payment of turnover tax and rate thereof - (1) Notwithstanding anything contained elsewhere in this Act, - (a) every dealer, whose aggregate of the gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954, during the last year ending on or before the 31st day of March, 1979, exceeds rupees fifty lakhs, shall, in addition to the tax payable by him under section 5 and section 6C, if any, be liable to pay from the 1st day of April, 1979, a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (3) of such part of his turnover as specified in sub-section (2); (b) every dealer, other than those referred to in clause (a), whose aggregate of the gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954, during any year ending on or after the 1st day of April, 1979, exceeds rupees fifty lakhs shall, in addition to the tax payable by him under section 5 and section 6C, if any, be liable to pay from the first day of the

year immediately following such year a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2); (c) every dealer who has become liable to pay the turnover tax under clause (a) or clause (b) shall continue to be so liable until the expiry of three consecutive years during each of which the aggregate of his gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954, does not exceed rupees fifty lakhs and on the expiry of such three years his liability to pay the turnover tax shall cease; (d) every dealer whose liability to pay the turnover tax has ceased under the provisions of clause (c), shall if the aggregate of his gross turnover under this Act and gross turnover under the West Bengal Sales Tax Act, 1954, during any year again exceeds rupees fifty lakhs, be liable to pay from the first day of the year immediately following such year the turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2).

(2) The turnover tax shall be levied on that part of the gross turnover of a dealer during any period which remains after deducting therefrom his turnover during that period on - (a) sales of goods referred to in section 14 of the Central Sales Tax Act, 1956; (b) sales of electrical energy and newspapers; (c) sales of motor spirit as defined in clause (b) of section 2 of the West Bengal Motor Spirit Sales Tax Act, 1974; (d) sales of goods declared tax-free under section 6; (e) sales of goods which are generally exempt from tax under sub-clause (vi) of clause (a) of sub-section (2) of section 5; (f) sales referred to in sub-clause (v) of clause (a) of sub-section (2) of section 5 of goods, other than those specified in clauses (a), (b), (c), (d) and (e); (g) such other sales as may be prescribed.

(3) The turnover tax shall be levied at the rate of - (a) one per centum of such part of the turnover as specified in sub-section (2), if the aggregate of the gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954, of the dealer liable to pay such tax exceeds rupees one crore during the year in respect of which or part of which the turnover tax is levied; (b) one-half of one per centum of such part of the turnover as specified in sub-section (2), if the provisions of clause (a) do not apply: Provided that the tax payable by a dealer under clause (a) shall not exceed a sum equivalent to the aggregate of one-half of the tax payable by him in accordance with the said clause and ten per centum of the amount by which his aforesaid gross turnover exceeds rupees one crore.

(4) No dealer shall realise from his purchaser the turnover tax payable by him under this section. 6C.

Liability to payment of purchase tax and rate thereof - (1) Notwithstanding anything contained elsewhere in this Act, - (a) every dealer who purchases goods for use in execution of any contract and whose notified purchase price during the last year ending on or before the 31st day of March, 1979, exceeds rupees two lakhs shall, in addition to the tax payable by him under section 5 and section 6B, if any, be liable to pay from the 1st day of April, 1979, a purchase tax at the rate specified in sub-section (3) of such part of his notified purchase price as specified in sub-section (2); (b) every dealer who purchases goods for use in execution of any contract, other than those referred to in clause (a) and whose notified purchase price during any year ending on or after the 1st day of April, 1979, exceeds rupees two lakhs shall, in addition to the tax payable by him under section 5 and section 6B, if any, be liable to pay from the first day of the year immediately following such year a purchase tax at the rate specified in sub-section (3) of such part of his notified purchase price as specified in sub-section (2); (c) every dealer who has become liable to pay the purchase tax under clause (a) or clause (b) shall continue to be so liable until the expiry of three consecutive years during each of which the notified purchase price does not exceed rupees two lakhs and on the expiry of such three years his liability to pay the purchase tax shall cease; (d) every dealer whose liability to pay the purchase tax has ceased under the provisions of clause (c), shall, if the notified purchase price during any year again exceeds rupees two lakhs, be liable to pay from the first day of the year immediately following such year the purchase tax at the rate specified in sub-section (3) of such part of his notified purchase price as specified in sub-section (2). (2) The purchase tax shall be levied on that part of the notified purchase price of dealer during any period which remains after deducting therefrom his notified purchase price during that period on - (a) purchase of goods referred to in section 14 of the Central Sales Tax Act, 1956, on the sale whereof or on a prior sale or purchase whereof in West Bengal due tax under this Act is shown to the satisfaction of the Commissioner to have been paid; (b) purchase of goods sales of which are declared tax-free under section 6; (c) purchase of goods sales which are generally exempt from tax under sub-clause (vi) of clause (a) of sub-section (2) of section 5; (d) purchase of goods which are shown to the satisfaction of the Commissioner to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the

goods into, or export of the goods out of, the territory of India, within the meaning of section 5 of that Act; (e) such other purchases as may be prescribed. (3) The purchase tax shall be levied at the rate of - (a) two per centum of such part of the notified purchase price specified in sub-section (2), if the notified purchase price of the dealer who is liable to pay such tax exceeds rupees fifty lakhs during the year in respect of which or part of which the purchase tax is levied; (b) one per centum of such part of the notified purchase price specified in sub-section (2), if the provision of clause (a) do not apply: Provided that the tax payable by a dealer under clause (a) shall not exceed a sum equivalent to the aggregate of one-half of the tax payable by him in accordance with the said clause and the amount by which his notified purchase price exceeds rupees fifty lakhs."; (5) in section 7, - (a) in sub-section (1), - (i) for the word and figure "section 4", the words and figures "section 4 or section 6C" shall be substituted, (ii) the following proviso shall be added:- "Provided that a dealer liable to pay tax under section 6C shall be allowed two months time from the date from which he is first liable to pay such tax to get himself registered."; (b) in sub-section (6), in clause (b), for the word and figure "section 4", the words and figures "section 4 and section 6C" shall be substituted.

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

In the West Bengal Sales Tax Act, 1954, - (1) in section 4A, after sub-section (2), the following sub-section shall be added:- "(3) A dealer shall be liable to pay the surcharge or additional surcharge on the total amount of tax payable by him for the period up to the 31st day of March, 1979."; (2) after section 4AA, the following section shall be inserted:- "4AAA. Liability to pay turnover tax and rate thereof. - (1) Notwithstanding anything contained elsewhere in this Act, - (a) every dealer whose aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, during the last year ending on or before the 31st day of March, 1979, exceeds rupees fifty lakhs, shall, in addition to the tax payable by him under section 4, be liable to pay from the 1st day of April, 1979, a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2); (b) every dealer, other than those referred to in clause (a), whose aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, during any year ending on or after the 1st day of April, 1979,

exceeds rupees fifty lakhs shall, in addition to the tax payable by him under section 4, be liable to pay from the first day of the year immediately following such year a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2); (c) every dealer who has become liable to pay the turnover tax under clause (a) or clause (b) shall continue to be so liable until the expiry of three consecutive years during each of which the aggregate of his gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, does not exceed rupees fifty lakhs and on the expiry of such three years his liability to pay the turnover tax shall cease; (d) every dealer whose liability to pay the turnover tax has ceased under the provisions of clause (c) shall, if the aggregate of his gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, during any year again exceeds rupees fifty lakhs, be liable to pay from the first day of the year immediately following such year the turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2).

(2) The turnover tax shall be levied on that part of the gross turnover of a dealer during any period which remains after deducting therefrom his turnover during that period on - (a) sales of goods referred to in section 14 of the Central Sales Tax Act, 1956, if specified under section 25 for the purpose of taxation under this Act; (b) sales of notified commodities for which the rate of tax fixed under section 4 is nil; (c) sales which are shown to the satisfaction of the prescribed authority to have taken place in the course of inter-State trade or commerce, within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import into, or export out of, the territory of India, within the meaning of section 5 of that Act, of notified commodities, other than those specified in clauses (a) and (b); (d) such other sales as may be prescribed.

(3) The turnover tax shall be levied at the rate of - (a) one per centum of such part of the turnover as specified in sub-section (2), if the aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, of the dealer liable to pay such tax exceeds rupees one crore during the year in respect of which or part of which the turnover tax is levied; (b) one-half of one per centum of such part of the turnover as specified in sub-section (2), if the provisions of clause (a) do not apply: Provided that the tax payable by a dealer under clause (a) shall not exceed a sum equivalent to the aggregate of one-half of the tax payable by him in accordance with

the said clause and ten per centum of the amount by which his aforesaid gross turnover exceeds rupees one crore. (4) No dealer shall realise from his purchaser the turnover tax payable by him under this section. Explanation. - For the purposes of this section "year" means the year referred to in the explanation II to sub-section (1) of section 4A."; (3) in section 23, in the proviso, after clause (i), the following clause shall be added:- "(ia) the said Act shall apply for the purposes of section 6B or section 6C of the said Act.". The Statement of Objects and Reasons appended to the West Bengal Taxation Laws (Second Amendment) Bill, 1979 (Calcutta Gazette, Extraordinary, Part IV, dated March 2, 1979, page 448.), runs as follows: "The object of the present Bill is to amend the Bengal Finance (Sales Tax) Act, 1941, and the West Bengal Sales Tax Act, 1954, inter alia, for the following purposes:- (1) To levy a turnover tax under both the Acts on dealers having a turnover exceeding Rs. 50 lakhs in a year @ 1/2%, provided where the turnover exceeds Rs. 1 crore, the rate of tax will be 1%. (2) To levy a purchase tax on goods purchased by a contractor for execution of works @ 1% if the purchase turnover exceeds Rs. 2 lakhs but up to Rs. 50 lakhs, and @ 2% if the turnover exceeds Rs. 50 lakhs during the year. (3) To enhance the general rate of tax under the Bengal Finance (Sales Tax) Act, 1941, from 7% to 8% (4) To abolish surcharge-cum-additional surcharge leviable under both the Acts. No additional expenditure is envisaged to give effect to the provisions of the Bill."