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## **West Bengal Taxation Laws (Second Amendment) Act, 1983**

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## **West Bengal Taxation Laws (Second Amendment) Act, 1983**

An Act to amend the Bengal Amusements Tax Act, 1922 (Amendments to these Acts are not printed here.), the Bengal Finance (Sales Tax) Act, 1941, the Bengal Agricultural Income-tax Act, 1944 (Amendments to these Acts are not printed here.), the West Bengal Sales Tax Act, 1954, the West Bengal Primary Education Act, 1973 (Amendments to these Acts are not printed here.), the West Bengal Rural Employment and Production Act, 1976 (Amendments to these Acts are not printed here.), and the West Bengal Entertainment-cum-Amusement Tax Act, 1982 (Amendments to these Acts are not printed here.). 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 Entertainment-cum-Amusement Tax Act, 1982, for the purposes and in the manner hereinafter appearing; It is hereby enacted in the thirty-fourth year of the Republic of India, by the Legislature of West Bengal, as follows:-

### **1. Short Title And Commencement :-**

(1) This Act may be called the West Bengal Taxation Laws (Second Amendment) Act, 1983. (2) This section shall come into force at once; clause (1) and clause (10) of section 4 of this Act shall be deemed to have come into force on the 1st day of April, 1983; and the remaining provisions of this Act shall come into force on such date or dates as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

## **2. Amendment Of Bengal Act Vi Of 1941 :-**

In the Bengal Finance (Sales Tax) Act, 1941, - (1) in section 2, - (a) in clause (g), for the words, "including a transfer of property in goods involved in the execution of a contract, but does not", the following words shall be substituted and shall be deemed always to have been substituted:- "and includes - (i) any transfer of property in goods involved in the execution of a contract, and (ii) any supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration, and such supply or any goods shall be deemed to be a sale of those goods by the person making the supply and a purchase of those goods by the person to whom such supply is made but does not"; (2) in section 4, - (a) in sub-section (2), for the words "on the expiry of two months from the date on which such gross turnover first exceeds the taxable quantum, on all sales effected after such expiry", the words "with effect from the date immediately following the day on which such gross turnover first exceeds the taxable quantum, on all sales effected after that day." shall be substituted; (b) in sub-section (4), for the words "on the expiry of two months from the date on which such gross turnover again first exceeds the taxable quantum on all sales effected after such expiry", the words, ", with effect from the date immediately following the day on which such gross turnover against first exceeds the taxable quantum, on all sales effected after that day." shall be substituted; (3) in section 7, - (a) in the proviso to sub-section (1), for the word, figure and letter "section 6C", the words, figures and letters "section 4 or section 6C" shall be substituted; (b) in sub-section (3a), for the words "from the date of commencement of such liability or the date of filing of such application, whichever is later.", the following words shall be substituted:- "From the date of commencement of such liability if the application for registration is made within thirty days from such date, or from the date of filing of such application in any, other case."; (4) after section 10, the following sections shall be inserted:- "10A. Interest payable by dealer- (1) Where a registered or certified dealer furnishes a return referred to in section 10 in respect of any period by the prescribed date or thereafter, but fails to make full payment of tax payable in respect of such period by such prescribed date, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the

first day of such month next following the prescribed date up to the month preceding the month of full payment of such tax or up to the month prior to the month of assessment under section 11 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to such return as remains unpaid at the commencement of each such month: Provided that where such dealer admits in writing that the amount of tax payable in respect of such period is an amount which is either more or less than what has been originally shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of tax payable according to such admission as remains unpaid at the commencement of each such month. (2) Where a registered or certified dealer fails to furnish a return referred to in section 10 in respect of any period by the prescribed date or thereafter before the assessment under section 11 in respect of such period, and on such assessment full amount of tax payable for such period is found not to have been paid by him by such prescribed date, he shall pay a simple interest at the rate of two percentum for each English calendar month of default from the first day of the month next following the prescribed date up to the month preceding the month of full payment of tax for such period or up to the month prior to the month of assessment under section 11 in respect of such period, whichever is earlier, upon so much of the amount to tax payable by him according to such assessment as remains unpaid at the commencement of each such month: Provided that where an assessment under section 11 is made for more than one return period and such assessment does not show separately the tax payable for the period in respect of which interest is payable under this sub-section, the Commissioner shall estimate the tax payable for such period on the basis of such assessment after giving the dealer an opportunity of being heard. (3) Where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under sub-section (3) of section 11 for payment thereof, he shall pay a simple interest at the rate of two percentum for each English calendar month of default from the first day of the month next following the date specified in such notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceedings under sub-section (4) of section 11, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the commencement

of each such month. (4) Where as a result of an order under section 20 or section 21 the amount of tax payable is reduced, the interest payable under sub-section (3) shall be determined or redetermined on the basis of such reduced amount and the excess interest paid, if any, shall be refunded. (5) Where a registered or certified dealer is liable to pay interest under sub-section (1) or sub-section (2) or sub-section (3), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the amount of interest payable by, or due from, him. (6) A registered or certified dealer liable to pay interest under sub-section (1), sub-section (2) or sub-section (3) shall pay such interest in such manner and by such date or dates as may be prescribed. (7) Interest under sub-section (1) or sub-section (2) shall be payable in respect of returns the prescribed dates for furnishing of which under sub-section (2) of section 10 are the dates subsequent to, and interest under sub-section (3) shall be payable in respect of assessments for which the notices under sub-section (3) of section 11 are issued after, the date of coming into force of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983. (8) Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed. 10B. Interest payable by the Commissioner - The Commissioner shall, in the prescribed manner, pay a simple interest at the rate of two percentum for each English calendar month of delay in making refund to a dealer the amount of tax paid in excess which arises out of an order under section 20 or section 21, passed after the date of coming into force of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, from the first day of the month next following the expiry of three months from the date of such order up to the month preceding the month in which the refund is made in the manner referred to in section 12, upon the amount of tax refundable to him according to such order. 10C. Rounding off of the amount of tax payable for calculating interest - In calculating the interest payable under section 10A or section 10B, the amount of 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."; (5) in section 11, - (a) in

sub-section (1), after the second proviso, the following proviso shall be added:- "Provided also that if interest is payable in terms of sub-section (1) of sub-section (2) and sub-section (7) of section 10A in respect of any period, penalty under this sub-section for failure to furnish a return by the prescribed date for such period shall not exceed fifty percentum of the amount of tax so assessed."; (b) in sub-section (2d), after the proviso, the following proviso shall be added:- "Provided further that if interest is payable in terms of sub-section (1) or sub-section (2) and sub-section (7) of section 10A in respect of any period, penalty under this sub-section for failure to furnish a return by the prescribed date for such period shall not exceed fifty percentum of the amount of tax so assessed."; (c) after sub-section (2g), the following sub-sections shall be inserted:- "(2h) Where the Commissioner is satisfied that a dealer is liable to pay interest under section 10A, he shall, in such manner as may be prescribed, determine the amount of interest payable by such dealer. If on such determination any additional amount is found to be payable by the dealer or any excess amount is found to be refundable to the dealer, the Commissioner shall issue a notice, in the prescribed manner, to such dealer directing him to pay such additional amount or informing him of the amount of excess payment, as the case may be. (2i) No determination under sub-section (2h) in respect of interest payable under sub-section (1) or sub-section (2) of section 10A shall be made after the expiry of one year from the date of assessment under section 11 in respect of the period for which such determination is made. (2j) Where there is an apparent mistake in the determination of interest under sub-section (2h), the Commissioner may, on his own motion or upon application made by a dealer within six months from the date of determination, rectify the amount of interest payable by such dealer and issue a fresh notice in the prescribed manner."; (d) in sub-section (4), - (i) for the words "said notice", the word "said notice or any amount of interest which remains unpaid after the date specified in the notice under sub-section (2h) or sub-section (2j)" shall be substituted; (ii) in clause (i) of the second proviso, for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (e) in sub-section (4A), for the words "tax or penalty", wherever they occur, the words "tax, penalty or interest" shall be substituted; (f) in sub-section (4B), after the proviso, the following proviso shall be added:- "Provided further that no penalty under this sub-section shall be imposed in respect of assessment for which interest is payable under sub-

section (3) and sub-section (7) of section 10A."; (6) in section 11B, in sub-section (1), for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (7) in section 11C, for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (8) in section 11D, - (a) in clause (a), for the words "additional surcharge or penalty", the words "additional surcharge, penalty or interest" shall be substituted; (b) in clause (b), - (i) for the words "additional surcharge or penalty", the words "additional surcharge, penalty or interest" shall be substituted; (ii) for the words "or imposition of such penalty", the words ", imposition of such penalty or determination of such interest" shall be substituted; (9) in section 12, in sub-section (1), for the words "tax or penalty" in the two places where they occur, the words "tax, penalty or interest" shall be substituted; (10) in section 20, - (a) in the proviso to sub-section (1), for the word "tax", the words "tax or interest, as the case may be," shall be substituted; (b) in the Explanation to sub-section (1), for the words "penalty or tax", the words "interest, penalty or tax" shall be substituted; (c) in the Explanation to sub-section (6), for the words "and imposition of penalty," the words "imposition of penalty or determination of interest," shall be substituted; (11) in section 22, in sub-section (1), - (a) in clause (ee), the words "or to pay the full amount of tax due from him according to such return" shall be omitted; (b) after clause (ee), the following clause shall be inserted:- (eee) "fails to make payment of interest payable under section 10A; or"; (12) In section 26, in sub-section (2), - (a) after clause (h), the following clauses shall be inserted:- "(hh) the manner in which and the date by which interest shall be paid by a dealer under section 10A; (hhh) cases in which, circumstances under which and conditions subject to which no interest is payable under section 10A; (hhhh) the manner in which interest shall be paid by the Commissioner under section 10B;"; (b) after clause (i), the following clause shall be inserted:- "(ii) the manner of determination and demanding of interest under section 11;"; (13) after section 26, the following section shall be inserted:- "26A. Validation and exemption - (1) For the purposes of this Act, every transaction by way of supply of the nature referred to in sub-clause (ii) of clause (g) of section 2 shall be deemed to be, and shall be deemed always to have been, a transaction by way of sale, with respect to which the person making such supply is the seller and the person to whom such supply is made, is the purchaser; and notwithstanding any judgment, decree or order of any court, tribunal or authority, no

imposition of tax on any such transaction before the coming into force of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, shall be deemed to be invalid or ever to have been invalid, and accordingly - (i) all the aforesaid taxes levied or collected or purporting to have been levied or collected under this Act shall be deemed always to have been validly levied or collected in accordance with this Act; (ii) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any court, tribunal or authority of any decree or order directing the refund of, any such tax which has been collected; (iii) recoveries shall be made in accordance with the provisions of this Act of all amounts which would have been collected thereunder as tax as aforesaid as if this section has been in force at all material times. (2) Notwithstanding anything contained in sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax - (a) where such supply has been made, by any restaurant or eating house (by whatever name called), at any time on or after 7th day of September, 1978, and before the commencement of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time; or (b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972, and before the commencement of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time: Provided that the burden of proving that the aforesaid tax was not collected on any supply of the nature referred to in clause (a) or, as the case may be, clause (b) shall lie on the person claiming the exemption under this sub-section. (3) For the removal of doubts, it is hereby declared that - (a) nothing in sub-section (1) shall be construed as preventing any person - (i) from questioning in accordance with the provisions of this Act the assessment, reassessment, levy or collection of the aforesaid tax, or (ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under this Act; and (b) no act or omission on the part of any person, before the commencement of section 3 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, shall be punishable

as an offence which would not have been so punishable if that section had not come into force."; (14) in Schedule I, in the first column, in item 7, for the words "two rupees and fifty paise.", the words "fifteen rupees." shall be substituted.

### **3. Amendment Of West Bengal Act Iv Of 1954 :-**

In the West Bengal Sales Tax Act, 1954, - (1) after section 6, the following section shall be inserted:- "6A. Security from a person not being a registered dealer.-Where a person who is not a dealer registered under this Act imports into West Bengal any notified commodity, the prescribed authority may, for good or sufficient reasons, demand from him a reasonable security in such form and subject to such conditions as may be prescribed."; (2) after section 8, the following sections shall be inserted:- "8A. Interest payable by a dealer.-(1) Where a registered dealer submits a return referred to in section 8 in respect of any period by the prescribed date or thereafter, but fails to make full payment of tax payable in respect of such period by the prescribed date, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the prescribed date up to the month preceding the month of full payment of such tax 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 amount of tax payable by him according to such return as remains unpaid at the commencement of each such month: Provided that where such dealer admits in writing that the amount of tax payable in respect of such period is an amount which is either more or less than what has been originally shown as payable in the return and where the prescribed authority is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of tax payable according to such admission as remains unpaid at the commencement of each such month. (2) Where a registered dealer fails to submit a return referred to in section 8 in respect of any period by the prescribed date or thereafter before the assessment under section 9 in respect of such period, and on such assessment full amount of tax payable for such period is found not to have been paid by him by such prescribed date, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the prescribed date up to the month preceding the month of full payment of tax for such period 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 amount of tax payable by him according to such assessment as remains unpaid at the commencement of each such month: Provided that where as assessment under section 9 is made for more than one return period and such assessment does not show separately the tax payable for the period in respect of which interest is payable under this sub-section, the prescribed authority shall estimate the tax payable for such period on the basis of such assessment after giving the dealer an opportunity of being heard. (3) Where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under sub-section (1) of section 10 for payment thereof, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of the month next following the date specified in such notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceedings under sub-section (2) of section 10, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the commencement of each such month. (4) Where as a result of an order under section 12 or section 12A the amount of tax payable is reduced, the interest payable under sub-section (3) shall be determined or redetermined on the basis of such reduced amount and the excess interest paid, if any, shall be refunded. (5) Where a dealer is liable to pay interest under sub-section (1) or sub-section (2) or sub-section (3), he shall, in the prescribed manner, pay into a Government treasury or the Reserve Bank of India the amount of interest payable by, or due from, him. (6) A dealer liable to pay interest under sub-section (1), sub-section (2) or sub-section (3) shall pay such interest in such manner and by such date or dates as may be prescribed. (7) Interest under sub-section (1) or sub-section (2) shall be payable in respect of returns the prescribed dates for submission of which under sub-section (1) of section 8 are the dates subsequent to, and interest under sub-section (3) shall be payable in respect of assessment for which the notices under sub-section (1) of section 10 are issued after, the date of coming into force of section 5 of the West Bengal Taxation Laws (Second Amendment) Act, 1983. (8) Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed. 8B. Interest

payable by the prescribed authority--The prescribed authority shall, in the prescribed manner, pay a simple interest at the rate of two percentum for each English calendar month of delay in making refund to a dealer the amount of tax paid in excess which arises out of an order under section 12 or section 12A passed after the date of coming into force of section 5 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, from the first day of the month next following the expiry of three months from the date of such order up to the month preceding the month in which the refund is made in the manner referred to in section 11, upon the amount of tax refundable to him according to such order. 8C. Rounding off of the amount of tax payable for calculating interest - In calculating the interest payable under section 8A or section 8B, the amount of 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."; (3) in section 9, - (a) in sub-section (1A), after the proviso, the following proviso shall be added:- "Provided further that if interest is payable under sub-section (1) or sub-section (2) and sub-section (7) of section 8A in respect of any period, penalty under this sub-section for failure to submit a return by the prescribed date for such period shall not exceed fifty percentum of the amount of tax so assessed."; (b) in sub-section (3), after the second proviso, the following proviso shall be added:- "Provided also that if interest is payable under sub-section (1) or sub-section (2) and sub-section (7) of section 8A in respect of any period, penalty under clause (i) of this sub-section for such period shall not exceed fifty percentum of the amount of tax so assessed and no penalty for such period shall be imposed for failure to comply with the provisions of sub-section (2) of section 8."; (c) after sub-section (4), the following sub-sections shall be inserted:- "(5) Where the prescribed authority is satisfied that a dealer is liable to pay interest under section 8A, he shall, in such manner as may be prescribed, determine the amount of interest payable by such dealer. If on such determination any additional amount is found to be payable by the dealer or any excess amount is found to be refundable to the dealer, the prescribed authority shall issue a notice, in the prescribed manner, to such dealer 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) in respect of interest payable under sub-section (1) or sub-section (2) of section 8A shall be made after the expiry of one year from the date of assessment under section 9 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 his own motion or upon application made by a dealer within six months from the date of such determination, rectify the amount of interest payable by such dealer and issue a fresh notice in the prescribed manner."; (4) in section 10, in sub-section (2), - (a) for the words "said notice", the words "said notice or any amount of interest which remains unpaid after the date specified in the notice under sub-section (5) or sub-section (7) of section 9" shall be substituted; (b) in the first proviso, for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (c) in the second proviso, for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (5) in section 10B, in sub-section (1), for the words "tax or penalty", the words "tax, penalty or interest" shall be substituted; (6) in section 11, in sub-section (1), for the words "tax or penalty", wherever they occur, the words "tax, penalty or interest" shall be substituted; (7) in section 12, - (a) in sub-section (1), in the proviso, - (i) for the words "or penalty, if any,", the words "or penalty, if any, or determination of interest" shall be substituted; (ii) for the word "tax", the words "tax or interest" shall be inserted; (b) in sub-section (1A), in clause (a), for the words "tax determined,", the words "tax or interest determined," shall be substituted; (c) after sub-section (5), the following Explanation shall be inserted:- "Explanation. - In this section the expression assessment and determination of tax shall include determination of interest under section 9"; (8) in section 16, in sub-section (1), - (a) in clause (d), for the word and figure "section 8", the words, brackets and figures "sub-section (1) of section 8," shall be substituted; (b) after clause (dd), the following clause shall be inserted:- "(ddd) fails to make payment of interest payable under section 8A;"; (9) in section 21, in sub-section (2), after clause (b), the following clauses shall be inserted:- "(bb) the manner and the form in which security under section 6A shall be furnished; (bbb) the manner in which and the date by which interest shall be paid by a dealer and cases in which, circumstances under which and conditions subject to which, no interest is payable under section 8A; (bbbb) the manner in which interest shall be paid by the

prescribed authority under section 8B; (bbbbb) the manner of determination and demanding of interest under section 9;".