

**Abkari (Second Amendment) Act, 1975****24 of 1975**

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**Abkari (Second Amendment) Act, 1975****24 of 1975**

An Act further to amend the Abkari Act 1 of 1077 WHEREAS it is expedient further to amend the Abkari Act 1 of 1077, for the purposes hereinafter appearing; BE it enacted in the Twenty-sixth Year of the Republic of India as follows :-

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

- (1) This Act may be called the Abkari (Second Amendment) Act, 1975.
- (2) It shall come into force at once.

**2. Substitution Of New Section For Section 34 :-**

For section 34 of the Abkari Act 1 of 1077 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:-

"34. Offenders may be arrested and contraband liquor, vehicles, etc., seized without warrant .-(1) Any officer of the Excise Department or the Police Department may arrest without warrant in any public thoroughfare or open place other than a dwelling house, any person found committing an offence punishable under section 15C or section 55 or section 57 or section 58, and in any such thoroughfare or public place may -

(a) seize and detain -

i. any liquor or intoxicating drug.

ii. Any material, still, utensil, implement or apparatus;

- iii. Any receptacle, package or covering; and
- iv. Any animal, cart, vessel or other conveyance, which he has reason to believe to be liable to confiscation under this Act;
- (b) search any person, animal, cart, vessel or other conveyance, package, receptacle or covering upon whom or in or upon which he may have reasonable cause to suspect any such liquor or intoxicating drug to be, or to be concealed.
- (2) If the officer making an arrest under sub-section (1) is not empowered under section 5A to admit to bail, the person arrested shall forthwith be produced before an officer so empowered.
- (3) It shall be the duty of the officer empowered under section 5A to admit such person to bail if sufficient bail is tendered for his appearance before an Abkari Officer having jurisdiction to inquire into the case."

### **3. Amendment Of Section 67 :-**

In section 67 of the principal Act, -

- (a) in the first paragraph, -
  - (i) for the words "two thousand rupees", the words "five thousand rupees" shall be substituted;
  - (ii) the portion beginning with the words "and, in all cases whatsoever" and ending with the words "on payment of the value thereof as estimated by such officer" shall be omitted;
- (b) for the second paragraph, the following paragraph shall be substituted, namely: -

"On the payment of such sum of money to such officer, the accused person if in custody shall be discharged and no further proceedings shall be taken against such person.

### **4. Insertion Of New Section 67B To 67H :-**

After section 67A of the principal Act, the following sections shall be inserted namely:-

"67B. Confiscation by Abkari Officers in certain cases.- (1) Notwithstanding anything contained in this Act or other law for the time being in force, where any liquor, intoxicating drug, materials, still, utensil, implement or apparatus or any receptacle, package or covering in such liquor, intoxicating drug, material, still, utensil, implement or apparatus is found or any animal, cart, vessel or other conveyance used in carrying the same is seized and detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the

same before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Excise Commissioner (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes and detains any property specified in sub-section (1) or where any such property is produced before an authorised officer under the sub-section and he is satisfied that an offence under this Act has been committed in respect of or by means of that property and that such property is liable to confiscation under this Act, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property and where such property consists of any receptacle or package, the authorised officer may also order confiscation of all contents thereof.

(3) When making an order of confiscation under sub-section (2), the authorised officer may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed.

67C. Issue of show cause notice before confiscation under section 67B . -(1) No order confiscating any property shall be made under section 67B unless the person from whom the same is seized-

a. is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

b. is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation ; and

c. is given a reasonable opportunity of being heard in the matter.

(2 ) Without prejudice to the provisions of sub-section (1) no order confiscating any animal, cart, vessel other conveyance shall be made under section 67B if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicating drug or the material, still, utensil, implement or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

67D. Property not liable to confiscation to be returned to owner . - Where the authorised officer passes an order under section 67B that any property seized and detained by him or produced before him under that section is not liable to confiscation under this Act,

he shall, after the expiry of thirty days from the date of such order, release such property to the person from whom it was seized :

Provided that where the Commissioner has called for under section 67F the record of an order of the authorised officer such property shall be released only subject to the orders of the commissioner under that section.

67E. Appeal .-(1) Any person aggrieved by any order passed under section 67B may, within thirty days from the date of communication to him of such order, appeal to an officer not below the rank of Deputy Commissioner of Excise authorized by the Government in this behalf by notification in the Gazette (hereinafter referred to as the appellate authority).

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as may be necessary, pass such order as he thinks fit, confirming, modifying or annulling the order appealed against .

(3) An order of the appellate authority under sub- section (2) shall, subject to the provisions of section 67F, be final and shall not be called in question in any court.

67F. Revision .-(1) The Commissioner may, before expiry of thirty days from the date of an order passed under section 67B or section 67E, of his own motion, call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that the Commissioner shall not call for and examine the record of any order passed under section 67B if an appeal against such order is pending before the appellate authority:

Provided further that no order prejudicial to a person shall be passed under this section without giving an opportunity of being heard.

(2) An order of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court.

67G. Award of confiscation not to interfere with other punishments .-The award of any confiscation under section 67B or section 67E of section 67F shall not prevent the infliction of any punishment to which any person is liable under this Act.

67H. Property confiscated when to vest in Government .-When an order for confiscation of any property has been passed under section 67B or section 67E or section 67F and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be,

shall vest in the Government free from all encumbrances.".

## **5. Validation :-**

Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court, all animals, carts, vessels and other conveyances used in carrying any receptacle, package or covering containing any liquor, intoxicating drug, material, still, utensil, implement or apparatus in respect of, or by means of which, an offence under the principal Act is believed to have been committed and seized and detained before the commencement of this Act may be disposed of under the provisions of the principal Act as amended by this Act, as if this Act were in force at the time of such seizure and detention.