

**MAHARASHTRA TAX ON LUXURIES AND TAX BY WAY OF CESS ON OTHER FACILITIES, SERVICES,  
ENJOYMENTS, UTILITIES, CONSUMPTIONS ETC ACT, 1987**

**61 of 1987**

**[7th December, 1987]**

**CONTENTS**

1. Short title, extent and commencement
2. Definitions
3. Incidence and levy of tax
- 3A. Incidence of tax on tobacconist
- 3B. Levy of Luxury Tax on a tobacconist
- 3C. Application of certain Sections to tobacconist
- 3D. Incidence of tax on textile traders
- 3E. Levy of Luxury Tax on Textile Traders
- 3F. Application of certain Sections to textile traders
- 3G. Remove of Doubts
4. Liability of hotelier [ textile trader] [and tobacconist] to pay tax
- 4A. Levy of cess on Beedis
- 4B. Application of certain Sections to supplier of beedi
5. Liability of firms as hoteliers, [textile trader] ["and tobacconist]
6. Special Provision regarding liability to pay tax including any penalty or interest in certain cases
7. Authorities under the Act
8. Registration
9. Non-transfer ability of registration certificate
10. Information to be furnished regarding changes in business, etc
11. Certificate of registration to continue in certain circumstances
12. Returns
13. Assessment of tax
14. .
15. Reassessment of turnover escaping assessment, under assessed, etc
16. imposition of penalty and levy of interest
17. Imposition of penalty for contravening certain provisions
18. Payment of tax
19. Rounding off the tax, etc.
20. Special powers of authorities for recovery of tax as arrear of land revenue
21. Special mode of recovery and certain recovery proceedings
22. Exemption
23. Refund of excess payment
- 23A. Refund of tax
24. Interest on delayed refunds
25. Power to withhold refund in certain cases
26. Remission of tax
27. Prohibition against collection of tax in certain cases
28. Bill or cash memorandum to be issued to customer
29. Accounts
30. Production and inspection of accounts and documents and search of premises
31. Hotelier [and tobacconist] to declare the name of owner of business
32. Power to collect statistics
33. Determination of certain disputed question
34. Powers of Commissioner
35. Bar to certain proceedings
36. Appeals
37. Non-appealable orders
38. Revision
39. Court fee on appeal and certain other applications
40. Application of section 4,5 and 12 of the limitation Act
41. Rectification of mistakes
42. Offences and penalties
43. Disclosure of information by any public servant
44. Offences by Companies
45. Investigation of offences
46. Compounding of offences
47. Power to transfer proceedings
48. Appearance before any authority in proceedings
49. Persons appointed under Section 7 to be public servants
50. Indemnity
51. Power to make rules
52. Repeal of Mah. XXI of 1974
53. Savings
54. Removal of difficulties

**MAHARASHTRA TAX ON LUXURIES AND TAX BY WAY OF CESS ON OTHER FACILITIES, SERVICES,**

An Act to consolidate and amend the law relating to the levy of tax on Luxuries 4[\*] in the State of Maharashtra. These words were inserted in the Preamble by Mah.Act 22 of 2001, s.21 The brackets and words in 'Hotels and Lodging Houses' were deleted by Maharashtra.Act 17 of 1993, s. 14. For Statements of Objects and Reasons see- Maharashtra Government Gazette, part V, Extraordinary, dated the 19th November, 1987, public purpose.437-438. This indicates the date of commencement of the Act. The words 'provided in Hotels and Lodging Houses' were deleted by Mah. Act 17 of 1993. Sec 12. WHEREAS it is expedient to consolidate and amend the law relating to the levy and collection of tax on luxuries 1[and tax by way of cess on other facilities, services, enjoyments, utilities, consumptions, etc 2[\*], and to provide for matters connected therewith and incidental thereto; It is hereby enacted in the Thirty-eighth year of the Republic of India as follows

**1. Short title, extent and commencement :-**

(1) This Act may be called the MAHARASHTRA TAX ON LUXURIES AND TAX BY WAY OF CESS ON OTHER FACILITIES, SERVICES, ENJOYMENTS, UTILITIES, CONSUMPTIONS ETC. ACT, 1987

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on 1st day of January, 1998.

**2. Definitions :-**

In this Act, unless the context requires otherwise, -

(a) "appointed day" means the day appointed by the State Government under Sub-Section (3) of Section 1;

[(b) "business" includes -

(i) the activity of providing residential accommodation and any other service in connection with or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary [consideration]

(ii) any supply in a club whether or not incorporated by way of or as part of any service 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 made or given for cash, deferred payment or other valuable consideration; whether or not such activity, other services or supply is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such activity, other services or supply];"

[(iii) the activity of supplying tobacco;]

(iv) the activity of stocking textile;

[(v) the activity of supplying beedis;

["(b-l) "club" includes both an incorporated and unincorporated association of persons by whatever name called;"]

(c) "Commissioner" means the person appointed to be the Commissioner of Luxury Tax for the purposes of this Act and includes an Additional Commissioner of Luxury Tax, if any, appointed under Section 7 ;

(d)[\* \* \*]

[(d-1) "Eligibility Certificate" means a certificate issued by the Maharashtra Tourism Development Corporations under the package Scheme of Incentives for Tourism, 1993.

(d-2) "Eligible unit" means the unit in respect of which an Eligibility Certificate is issued"]

[(e) "hotel" includes - (i) a residential accommodation, a club, a lodging house, an inn, a public house or a building or part of a building where a residential accommodation is provided by way of business; and (ii) a club where supply is made or given of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) by way of or as part of any service or in any other manner whatsoever, for cash, deferred payment or other valuable consideration by way of business,"]

(f) "hotelier" means the owner of the hotel and includes the person who for the time being is in charge of the management of the hotel:

[(g) "luxury provided in a hotel" means-

(i) accommodation and other services provided in a hotel, the rate or charges for which including the charges for air-conditioning, telephone, television, radio, music, entertainment, extra beds and the like, [exceeds rupees two hundred or more] [per residential accommodation] per day; and

(ii) any supply in a club 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"]

(h) "person" includes any [company, club] or association or body of individuals whether incorporated or not, and

also a Hindu a undivided family, a firm, a local authority, a State Government and the Central Government;]

(i) "place of business" includes an office, or any other place which [is used by a person] for the purpose of his business or where he keeps his books accounts;

(j) "prescribed" means prescribed by rules made under this Act;

[(k) "receipt",

(i) in relation to a hotelier means the amount of valuable consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel; and

(ii) in relation to a tobacconist means, -

(A) in respect of supply of tobacco made by him by way of sale, the amount of valuable consideration received or receivable by him for such sale including any sum charged for anything done by him in respect of the tobacco so sold at the time to before the delivery thereof and the price, if charged separately of any primary or secondary packing, other than the cost of insurance for transit, when such cost is separately charged; and

(B) in respect of supply of tobacco made by him by way otherwise than by way of sale, the value determined under Section 4 of the Central Excise Act, 1944 ].

(ii) after sub-clause (ii), the following sub-clause shall be added, namely, -

(iii) in relation to a textile trader means, -

(A) in respect of supply of textile made by him by way of sale, the amount of valuable consideration received or receivable by him for such sale, including any sum charged for or anything done by him in respect of the textile sold at the time or before the delivery thereof and the price, if charged separately of any primary or secondary packing, other than the cost of insurance for transit when such cost is separately charged; and

(B) in respect of supply of textile made by him otherwise than by way of sale, the value determined under Section 4 of the Central Excise Act, 1944

(I) "registered hotelier", "registered tobacconist" or "registered textile trader" means, a hotelier, a tobacconist or, as the case may be, a textile trader registered under Section 8 of this Act].

(m) "rules" means rules made under this Act;

(n) "State" means the State of Maharashtra ;

[(n-1) "supplier of beedi" means

(i) a manufacturer who supplies beedis whether by way of sale or otherwise, and includes any person who for the purpose of business gets the manufacturing done from any other person, whether or not on job-work basis, but does not include any person who manufactures beedis only on jobwork basis without having or obtaining any proprietary right over it, at any stage;

(ii) any person who for the purpose of business brings or causes to be brought beedis in the State or to whom any beedis are dispatched from any place outside the State and who and who supplies such beedis whether by way of sale or otherwise;

(iii) any person who supplies the beedis from a place within the State to any place outside the State, whether by way of sale or otherwise.

Explanation:- For the removal of doubt, it is hereby declared that, a person, not being a person referred to in sub-clause (iii), who exclusively obtains beedis, whether by way of purchase or otherwise from a registered supplier of beedi shall not be deemed to be a supplier of beedi for the purposes of this clause.";

(o) "tax" means, the tax levied on luxuries [and tax by way of cess on other facilities, services, enjoyments, utilities, consumptions, etc [\*\*\*] under this Act;

[o-1) "tobacco" means unmanufactured and manufactured tobacco as described in the notes and in the table in Chapter 24 of the Central Excise Tariff Act, 1985 .

Explanation - For the purposes of this clause - (a) unmanufactured tobacco means unmanufactured tobacco having brand name ;

[(o-1A) "textile" means textile as described, from time to time, in Chapters 50 to 60 of the Schedule appended to the Central Excise Tariff Act, 1985 , when sold at a price exceeding rupees one thousand per meter or, as the case may be, the value under Section 4 of the Central Excise Act, 1944 , exceeds rupees one thousand per meter;

(o-1B) "textile trader" means, -

(i) a manufacturer who supplies textiles whether by way of a sale or otherwise and includes any person who for the purposes of business gets the manufacturing done from any other person, whether or not on job work basis, but does not include any person who manufactures textile only on job work basis, without obtaining any proprietary right over it at any stage;

(ii) any person who for the purposes of business brings or causes to be brought textile in the State or to whom any textile is despatched from any place outside the State and who supplies such textile whether by way of sale or otherwise;]

[(c) unmanufactured and manufactured tobacco does not include jarda sold at a price not exceeding Rs.200 per kilogram;

(o-2) "tobacconist" means, -

(i) a manufacturer who supplies tobacco whether by way of sale or otherwise, and include any person who for the purpose of business gets the manufacturing done from any other person whether or not on job work basis; but does not include any person who manufactures tobacco only on job work basis without obtaining any proprietary right over it at any stage;

(ii) any person who for the purposes of business brings or cause to be brought tobacco in the state or to whom any tobacco is despatched from any place outside the State and who supplies such tobacco whether by way of sale or otherwise;

(iii) any person who supplies tobacco from a place within the State to any place outside the State whether by way of sale or otherwise;

(iv) any person who does not buy or otherwise obtain unmanufactured tobacco under a brand name but supplies whether by way of sale or otherwise such unmanufactured tobacco in a scale container under a brand name.

Explanation:- For the removal of doubts, it is hereby declared that, -

(1) an agriculturist, as defined in the Bombay Sales Tax Act, 1959 who exclusively supplied unmanufactured tobacco grown on land cultivated by him personally whether or not in a sealed container but not under a brand name;

(2) a person who exclusively supplies unmanufactured tobacco whether or not in a sealed container but not under a brand name; and.

(3) a person, not being a person referred to in sub-clause (iii), who exclusively obtains tobacco whether by way of purchase or otherwise from a registered tobacconist, shall not be deemed to be a tobacconist for the purposes of this clause,"]

[(p) "turnover of receipts" -

(i) in the case of a hotelier means the aggregate of the amounts of valuable consideration received or receivable by a hotelier or by this agent in respect of the luxuries provided in a hotel during a given period; and

(ii) in the case of a tobacconist means the aggregate of the amount of receipts of a tobacconist during a given period in respect of the supply of tobacco whether such supply is by way of sale or otherwise;]

[(iii) in the case of a textile trader, means the aggregate of the amount of receipts of a textile trader during a given period in respect of the supply of textile;]

(q) "year" means -

(i) the financial year; or

(ii) in relation to any particular [registered hotelier [registered textile trader] or as the case may be registered tobacconist] for the purposes of this Act, means the year by reference to which the accounts of the [hotelier [textile trader] or tobacconist are] ordinarily maintained in his books of accounts.

### **3. Incidence and levy of tax :-**

(1) Subject to the provisions of this Act and the rules made thereunder shall be levied a tax on the turnover of receipts of a hotelier.

(2) There shall be levied a tax on the turnover of receipts [in respect of luxuries covered by sub-clause (i) of clause (g) of Section 2] at the following rates, namely :-

(a) Where the charge for luxury provided in a hotel is less than two hundred rupees per day per residential	Nil
---	-----

accommodation	
(b) Where the charge for luxury provided in a	4 per centum of such turn over of receipts.
hotel 1[is two hundred rupees] or more, but does not exceed one hundred rupees per day 2[per residential accommodation], -	
(c) Where the charge for luxury provided in a hotel exceeds twelve hundred rupees per day 2[per residential accommodation].	10 per centum of such turnover of receipts.

[Provided that, where the charges are levied otherwise than on daily basis, then the charges for determining the tax liability under this Section shall be computed proportionately for a day per residential accommodation, based on the total period of such accommodation for which the charges are made].

[(2-A) There shall be levied a tax at the rate of 12% on the turnover of receipts in respect of luxuries covered by sub-clause (ii) of clause (g) of Section 2 .]

(3) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.

[(4) \* \* \*]

(5) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, unless the additional person is a child occupying the room alongwith his parent or guardian and no separate charge is recovered for the child, in addition to the tax levied for luxury provided to the specified number of persons, there shall be levied and recovered separately the tax in respect of the charges made for the extra persons accommodated.

Explanation:- For the purpose of this Sub-Section, "child" means a person who has not completed twelve years of age.

(6) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier [has already paid the tax] under the Bombay Sales Tax Act, 1959

(7) For the purposes of this Act, tax collected separately by the hotelier shall not be considered to be part of the receipt or the turnover of receipts of the hotelier.

**3A. Incidence of tax on tobacconist :-**

(1) On or after the commencement of the Maharashtra Tax Laws (Levy and Amendment Act, 1995 (hereinafter referred to as the commencement date"), every tobacconist whose turnover of receipts made during -

(i) the year ending on the 31st March, 1995; or

(ii) the year commencing on the 1st April, 1995, has exceeded Rs.50,000 during such year, shall, until such liability ceases under Sub-Section (3), be liable to pay tax on his turnover of receipts;

Provided that, a tobacconist to whom sub-clause (i) does not apply but sub-clause (ii) applies and whose turnover of receipts first exceeds Rs.50,000 after the commencement date shall not be liable to pay tax in respect of receipts upto the time when his turnover of receipts as Computed from the 1st day of April, 1995 does not exceed Rs.50,000.

(2) Every tobacconist whose turnover of receipts during any year commencing on the 1st April, being a year subsequent to the years mentioned in Sub-Section (1), first exceeds Rs.50,000 shall until such liability ceases under Sub-Section (3), be liable to pay tax under this Act with effect from the said date:

Provided that, a tobacconist shall not be liable to pay tax in respect of the turnover of receipts during the period commencing on the 1st April of the said year upon the time when his turnover, of receipts as computed from the 1st April of the said year does not exceed Rs.50,000.

(3) Every tobacconist who has become liable to pay tax under this Act shall continue to be so liable until his registration is duly cancelled; and upon such, cancellation, his liability to pay tax, other than tax already levied or leviable shall, until his turnover of receipts against first exceeds Rs, 50,000 case:

Provided that, where the tobacconist becomes liable to pay tax again in the same year in which he ceased to be liable as aforesaid, then in respect of the turnover of receipts during the period commencing on the date of cessation of liability to tax and ending on the date which his turnover of receipts does not exceed Rs. 50,000 no tax shall be payable.

**3B. Levy of Luxury Tax on a tobacconist :-**

(1) Subject to the provisions of this Act and the rules made thereunder, there shall be levied a tax on the turnover of receipts of a tobacconist.

[(2) There shall be levied a tax on the turnover of the receipts of a tobacconist in so far as the turnover of receipts relates to the tobacco specified in column (2) of the Table hereunder, at the rates set out in column (3) thereof.

TABLE

<b>Serial No.</b>	<b>Type of Tobacco</b>	<b>Rate of tax in a rupee</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Cigars, cheroots and cigarettes	8 paise
2.	Snuff	8 paise
3.	[* * *]	[***]
4.	Gutka and Pan-masala containing	25 paise

	tobacco	
5.	Tobacco other than the tobacco specified above	20 paise

Provided that, the tax shall be levied under sub-section (2), after deducting from such turnover, receipts in respect of which the tobacconist proves to the satisfaction of the Commissioner that, -

(a) tax on the very tobacco supplied by him whether by way of sale or otherwise has already been paid by any other person and in support thereof produces a proof of such payment; or

(b) the tobacco has been supplied by way of inter state consignment to another state, whether the consignment is to himself or to any other person and further, in support of such claim, produces on demand a certificate as may be prescribed; or.

(c) the tobacco has been supplied by way of sale on the course of inter State Trade or commerce or on the course of export outside the territory of India and in support thereof produces a proof of such sale of export.

(3) For the purposes of Sub-Section(2), a sale shall be deemed to have taken place

(a) in the course of inter-State trade, of such sale has occasioned the movement of tobacco from Maharashtra to any other state; and

(b) in the course of export outside the territory of India of the sale occasions such export.

### **3C. Application of certain Sections to tobacconist :-**

The provisions contained in Sub-Section (7) of Section 3 and Section 8, Section 9 to Section 21, Section 23, Section 24, Section 26 to Section 30, Section 32 to Section 34, Section 36, Section 37 and Section 43 shall mutates mutandis apply to a tobacconist as they apply to a hotelier.

### **3D. Incidence of tax on textile traders :-**

(1) On or after the date of commencement of Section 16 of the Maharashtra Tax Laws (Levy, Amendment and Validation) Ordinance, 2000 (hereinafter referred to as "the said commencement date"), every textile trader whose turnover of receipts made during,-

(i) the year, ending on the 31st March, 2000, or

(ii) the year, commencing on the 1st April, 2000, has exceeded Rs. 50,000, during such year, shall, until such liability ceases under sub-Section (3), be liable to pay tax on his turnover of receipts:

Provided that, a textile trader to whom sub-clause(i) does not apply but sub-clause(ii) applies and whose turnover of receipts, first exceeds Rs. 50,000 after the commencement date shall not be liable to pay tax in respect of receipts upto the time when his turnover of receipts as computed from the 1st April 2000 does not exceed Rs 50,000.

2. Every textile trader, whose turnover of receipts during any year commencing on the 1st April, being a year subsequent to the years mentioned in Sub-Section (1) first exceeds Rs. 50,000 shall until such liability ceases under sub-Section (3), be liable to pay tax under this Act with effect from the said date:

Provided that, a textile trader shall not be liable to pay the tax in respect of the turnover of receipts during the period commencing on the 1st April of the said year upto the time when his turnover of receipts as computed from the 1st April of the said year does not exceed Rs. 50,000

(3) Every textile trader who has become liable to pay the tax under this Act shall continue to be so liable until his registration is duly cancelled; and upon cancellation, his liability to pay tax, other than the tax already levied or leviable shall, until his turnover of receipts against first exceeds Rs 50,000, cease:

Provided that, where the textile trader becomes liable to pay tax again the same year in which he ceased to be liable as aforesaid, then in respect of the turnover of receipts during the period

### **3E. Levy of Luxury Tax on Textile Traders :-**

(1) Subject to the provisions of this Act and the rules made thereunder, there shall be levied a tax at the rate of four paise in the rupee on the turnover of receipts of textile trader after deducting from such turnover receipts in respect of which the textile trader proves to the satisfaction of the Commissioner that,- (a) tax on the very textile supplied by him, whether by way of sale or otherwise has already been paid by any other person and in support of such claim, produces proof of payment; (b) the textile has been supplied by way of inter state consignment to another state whether the consignment is to himself or to any other person and further, in support of such claim,

produces, on demand, a certificate as may be prescribed; and (c) the textile has been supplied by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India and in support thereof produces a proof of such sale or export.

(2) For the purposes of Sub-Section (1), a sale shall be deemed to have taken place

(a) in the course of inter state trade, if such sale has occasioned the movement of textile from Maharashtra to any other State; and

(b) in the course of export outside the territory of India, if the sale occasions such export.

### **3F. Application of certain Sections to textile traders :-**

The provisions contained in Sub- Section (7) of Section 3 and Section 6 , Section 8 , Section 9 to Section 21 , Section 23 , Section 23A , Section 24 , Section 26 to Section 34 , Section 36 , Section 37 and Section 43 shall Mutatis mutandis, apply to a textile trader as they apply to a hotelier or tobacconist as the case may be.

### **3G. Remove of Doubts :-**

It is hereby declared for the removal of doubts that the activity of supplying of tobacco or, as the case may be, textile shall constitute supply of luxuries for the purposes of this Act]

### **4. Liability of hotelier [ textile trader] [and tobacconist] to pay tax :-**

(1) Subject to the provisions of this Act and the rules made thereunder, there shall be paid by [every hotelier [every textile trader] and every tobacconist] who is liable to pay tax under this Act, the tax or taxes leviable in accordance with the provisions of this Act.

(2) If a person other than the owner (including part-owner) is for the time being in charge of the [business] then such person and the owner (including part-owner) shall jointly and severally be liable to pay the tax.

### **4A. Levy of cess on Beedis :-**

(1) Subject to the provisions of this Act and the rules made thereunder, there shall be levied and collected a cess on supply of beedis, by the supplier of beedi, at the rate of one paise per beedi or after deducting from the total number of beedis supplied by a

(a) cess on the said number of beedis supplied by him, whether by way of sale or otherwise has already been paid by any other person and in support of such claim, produces proof of such payment; or

(b) the beedis have been supplied by him by way of inter-State consignment to another State, whether the consignment is to himself or to any other person and further in support of such claim, produces, on demand, a certificate as may be prescribed; or

(c) the beedis have been supplied by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India and in support thereof produces a proof of such sale or export.

(2) For the purposes of sub-section (1), a sale shall be deemed to have taken place, -

(a) in the course of inter-State trade, if such sale has occasioned the movement of beedis from Maharashtra to any other State; and

(b) in the course of export outside the territory of India, if the sale occasions such export.

(3) If a person other than the owner (including part-owner) is for the time being in charge of the business, then such person and the owner (including part-owner) shall jointly and severally be liable to pay the cess by way of tax.

### **4B. Application of certain Sections to supplier of beedi :-**

The provisions contained in Section 4(1), Section 5 , Section 6 , Section 8 , Section 9 to Section 14 , Section 16 to Section 18 , Section 20 , Section 21 , Section 23 , Section 23A , Section 24 , Section 25 to Section 34 , Section 36 , Section 37 , Section 38 and Section 43 shall, mutates mutandis, apply to a supplier of beedi as they apply to a hotelier, tobacconist, or textile trader, as the case may be.

### **5. Liability of firms as hoteliers, [textile trader] [and tobacconist] :-**

where a [business] is owned, managed or run by a firm, then the firm and each of the partners of the firm shall be jointly and severally liable for payment of tax:

Provided that, where any partner retires from the firm, he shall be liable to pay the tax, penalty and the interest, if any, remaining unpaid at the time of his retirement, and any tax due upto the date of his retirement, even if assessment of tax or levy of penalty and interest (if any) is made at a later date.

### **6. Special Provision regarding liability to pay tax including any penalty or interest in certain cases :-**

Where a hotelier, liable to pay tax under this act, dies then-

(a) if the business carried on by the hotelier is continued after his death by his legal representatives or any other person, such legal representative or other person shall be liable to pay the tax including any penalty or interest due from such hotelier under this Act in the like manner and to the same extent as the deceased hotelier; or

(b) if the business carried on by the hotelier is discounted, whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased in the like manner and to the



Explanation-For the purpose of this Sub-Section , the expression "legal representative" has the meaning to it in clause (11) of Section 2 of the code of civil procedure, 1908 .

(2) Where a hotelier liable to pay tax under this Act is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax(including any penalty or interest)due from the hotelier under this Act upto the time of partition whether such tax(including any penalty or interest) has been assessed before partition but has remained unpaid or is assessed after partition

(3)Where a hotelier, liable to pay tax under this Act is a firm and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under Section 5 , the tax(including any penalty or interest) due from the firm under this Act upto the time of dissolution, whether such tax( including any penalty or interest) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.

(4) Where a hotelier, liable to pay tax under this Act, transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, then the hotelier and the person succeeding shall jointly and severally be liable to pay the tax(including any penalty or interest)due from the hotelier under this Act upto the time of such transfer, disposal or change, whether such tax(including any penalty or interest) has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

(5)Where a hotelier, liable to pay tax under this Act, - (a)is the guardian of a ward on whose behalf the business is carried on by the guardian or (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax( including any penalty or interest)due from the hotelier upto the time of termination of the guardianship or trust, whether such tax(including any penalty or interest)has been assessed before the termination of the guardianship or trust but has remained unpaid, or is assessed thereafter.

(6) where a hotelier, liable to pay tax under this Act, is succeeded in the business by any person in the manner described in clause(a) of Sub-Section (1) or in Sub-Section (4), then such person, unless he already holds a certificate of registration, shall, within 30 days thereof, apply for registration.

#### **7. Authorities under the Act :-**

(1)

(a) for carrying out the purposes of this Act the State Government shall appoint an officer to be the Commissioner of Luxury Tax for the whole of the State of Maharashtra.

(b)The State Government may appoint,-

(i) one or more officers to be the additional Commissioner of Luxury Tax, and

(ii) such number of Deputy Commissioners of Luxury Tax, Assistant Commissioners of Luxury Tax and Luxury Tax Officers and other officers and persons(with such designations)as it thinks necessary.

#### **8. Registration :-**

(1) No hotelier or tobacconist liable to pay the tax under this act shall conduct or cause to be conducted business, unless he possesses a valid certificate of registration as provided by this Act:

Provided that, it shall be lawful for the hotelier or, as the case may be, tobacconist to conduct or cause to conduct business if the hotelier or the tobacconist has applied for registrations as provided by this Act.

(2) Every hotelier and every tobacconist required to possess a certificate of registration shall apply to the commissioner within thirty days from the date on which the hotelier or, as the case may be, tobacconist first becomes liable to pay the tax.]

(3) If the commissioner, after such inquiry as he deems fit, is satisfied that an application for registration is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4)The Commissioner may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time the certificate of registration.

(5)Where a registered [hotelier or to tobacconist] discontinues, transfers or otherwise disposes of his activity of providing accommodation by way of business or where he ceases to be liable to pay the tax and he applies in the prescribed form to the Commissioner shall, after making such inquiry as may be necessary, cancel the certificate of registration with effect from such date as he may fix in accordance with the rules.

[(6) Where the Commissioner is satisfied that any registered hotelier or, as the case may be, registered tobacconist has discontinued, transferred or otherwise disposed of his business and has failed to apply under Sub-Section (5) for cancellation of certificate of registration, the Commissioner may, after giving such hotelier or tobacconist a reasonable opportunity of being heard, cancel the certificate of registration with effect from such date as he may fix to be the date from which the said activity has been discontinued, transferred or otherwise disposed of:

Provided that, the cancellation of certificate of registration whether on an application of the hotelier or tobacconist

or otherwise shall not affect the liability of such hotelier or tobacconist on otherwise shall not affect the liability of such hotelier or tobacconist to pay the tax(including any penalty or interest) due for any period up to the date of cancellation.]

**9. Non-transfer ability of registration certificate :-**

Save as otherwise provided in Section 11, a certificate of registration shall be personal to the hotelier to whom it is granted and shall not be transferable.

**10. Information to be furnished regarding changes in business, etc :-**

(1) If a hotelier liable to pay tax under this Act,-

(a) sells or otherwise disposes of his business or any part thereof, or effects or makes any other changes to his knowledge in the ownership of the business, or

(b) discontinues his business, or changes the place thereof or opens a new place of business, or

(c) changes the name or nature of his business, or.

(d) enters into a partnership or other association in regard to his business, he shall within prescribed time, inform the prescribed Authority accordingly

(2) where any such hotelier dies, his executor, administrator or other legal representatives or where any such hotelier is a firm and there is a change in the constitution of the firm or the firm is dissolved, every person who was a partner thereof, shall, in like manner, inform the said authority of such death, change in the constitution or, as the case may be, dissolution.

**11. Certificate of registration to continue in certain circumstances :-**

Where a registered hotelier-

(a) effects change in the name of his business, or

(b) is a firm, and there is a change in the constitution of the firm without dissolution thereof, or

(c) is a trustee of a trust, and there is change in the trustees thereof, or

(d) is a guardian of a ward, and there is change in the guardian, then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the hotelier, or the firm with the changed constitution, or the new trustees, or new guardian, to apply for a fresh certificate of registration and on information being furnished in the manner required by Section 10, the certificate of registration shall be amended.

**12. Returns :-**

(1) Every registered hotelier shall furnish returns for such period, by such dates, and to such authority, as may be prescribed: Provided that, the Commissioner may, subject to such terms and conditions as may be prescribed, exempt any such hotelier from furnishing such returns or permit any such hotelier,- (a) to furnish them for such different period; or (b) to furnish a consolidated return relating to all or any of the places of business of the hotelier in the state for the said period, or for such different period, to such authority, as he may direct.

(2) If any hotelier, having furnished return under sub-Section (1), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return.

**13. Assessment of tax :-**

(1) The amount of tax due from a hotelier liable to pay tax shall be assessed separately for each year during which he is so liable: Provided that, the commissioner may, subject to such conditions as may be prescribed, assess the tax due from any hotelier during a part of a year.

(2) If the Commissioner is satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete he shall assess the amount of tax due from the hotelier on the basis of such returns.

(3) If the Commissioner is not satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete, and he thinks it necessary to require the presence of the hotelier or the production of further evidence, he shall serve on such hotelier a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such hotelier relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the evidence which may be produced, assess the amount of tax due from the hotelier.

(4) If a registered hotelier fails to comply with the terms of any notice issued under Sub- Section (3), the Commissioner shall assess, to the best of his judgment, the amount of tax due from him.

(5) Where all returns are filed by a registered hotelier for any year ending on or after the appointed day by the prescribed dates, or on or before the date prescribed for filing the last return of that year, no order of assessment under Sub-Section (3) or (4) in respect of that year shall be made after the expiry of three years from the end of the said year, and if for any reason such order is not made within the period aforesaid, then the returns so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such hotelier.

Explanation - In the case of returns filed by a registered hotelier referred to in sub-clause (ii) of clause(q) of Section 2 , the period of three years shall be computed from the end of the financial year in which the year, by reference to which the accounts of that hotelier are maintained in his books, ends:

Provided that, where a fresh assessment is to be made in view of any order made in appeal under this Act or by the High Court or by the Supreme Court, such assessment shall be made within thirty six months from the date of such order

Provided further that, in computing any period of limitation laid down in this Sub-Section the time during which the assessment remained stayed under the order of the High Court or of the Supreme Court shall stand excluded

Provided also that, the Commissioner may, in the interest of the revenue and for reasons to be receded in writing, issue directions not to proceed with the assessment of any particular hotelier or class of hoteliers for any particular period. The period covered by such direction to stay the assessment proceeding shall be excluded in computing the period of limitations laid down in this Sub- Section.

(6)If a registered hotelier does not furnish return in respect of any period by the prescribed date, the Commissioner shall, at any time within five years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of the tax(if any)due from him.

(7) If the commissioner has-reason to believe that a hotelier is liable to pay tax in respect of any period, but has failed to apply for registration or failed to apply for registration with in time as required by Section 8, the Commissioner shall, at any time with in eight years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax(if any)due from the hotelier in respect of that period, and any period or periods subsequent thereto.

(8) Notwithstanding anything contained in the foregoing provisions of this Section, where the Commissioner is not satisfied about the correctness or the completeness of the accounts of a hotelier, or where no method of accounting has been regularly employed by a hotelier, the Commissioner may, after giving the hotelier a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax (if any) due from him.

(9)Any assessment made under this Section shall be without prejudice to any penalty, or prosecution for an offence, under this Act.

#### **14. . :-**

Applicability of provisions of this Act to person liable to pay tax under Section 6 Where in respect of any tax (including any penalty or interest)due from a hotelier under this Act. any other person is liable for payment thereof under Section 6 then such other person shall be deemed to be a hotelier for the purpose of this Act, and all the relevant provisions of this Act, and all the relevant provisions of this Act shall in respect of such liability apply to such person also, as if he were the hotelier:

#### **15. Reassessment of turnover escaping assessment, under assessed, etc :-**

(1) If a hotelier has been assessed under Section 13 for any year or part thereof and where for any reason the whole or any part of the turnover of receipts in respect of that year or part thereof has escaped assessment, or has been under assessed or assessed at a lower rate or any deduction has been wrongly made, then the commissioner may, at any time within five years of the end of that year, after giving the hotelier a reasonable opportunity of being heard, proceed to assess or reassess, to the best of his judgment, the amount of tax due from such hotelier:

Provided that, the amount of tax shall be assessed at the rates at which it would have been assessed had there been no underassessment or escapement:

Provided further that, where in respect of such turnover of receipts an order has already been passed in appeal or revision under this Act, the Commissioner shall make a report to the Appropriate, appellate or Revising Authority under this Act, which shall thereupon after giving the hotelier concerned a reasonable opportunity of being heard, pass such order as it deems fit.

(2)Nothing in Sub-Section (1) shall apply to any proceeding(including any notice issued)under Section 38 or Section 41 .

(3)Nothing in Section 38 or Section 41 shall affect any proceeding under this Section.

#### **16. imposition of penalty and levy of interest :-**

(1) If, while assessing or reassessing the amount of tax due from a hotelier under any provisions of this Act or while passing any order in any appeal, revision or rectification proceedings, it appears to the Commissioner that such hotelier has-

(a)failed to apply for registration as required by Section 8 or has carried on business, without being registered, in contravention of Section 8 ;

(b)failed, without reasonable cause, to comply with any notice in respect of the proceeding under Section 13 , Section 15 , Section 30 or Section 38 ; or

(c)failed to disclose any transaction of receipt or has failed to furnish return by the prescribed date or has failed to

show in the return the appropriate liability to pay tax or has failed to disclose fully and truly all material facts necessary for the proper and correct quantification of the tax liability. then the Commissioner may, after giving the hotelier an opportunity of being heard, by order in writing impose upon the hotelier by way of penalty, in addition to any tax assessed or reassessed or found due in the appeal or revision or rectification proceedings as the case may be-

(i) in the case covered by clause (a), a sum not exceeding the amount of the tax payable by the hotelier for the period during which he carried on business without being registered, in contravention of Section 8 ;

(ii) in the case covered by clause (b), a sum not exceeding rupees one thousand; and

(iii) in the case covered by clause (c), a sum not exceeding the amount of the tax found payable under the said clause.

(2)

(a) If a hotelier does not pay the tax within time he is required by or under the provisions[ of this Act to pay it, then he shall be liable to pay by way of simple interest in addition to the amount of such tax, a sum equal to two percent of the amount of such tax for each month or part thereof after the last date by which he should have paid such tax.

Explanation :-For the purpose of this clause in relation to the tax payable according to a return or, as the case may be, to the payment of tax for the period, covered by a return, a hotelier or a person shall, notwithstanding anything contained in Section 18 or any other provisions of this Act or the rules made thereunder, be deemed not to have paid the amount of such tax within the time he is required by or under the provision of this Act to pay it, if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return as required under the rules made under this Act; and accordingly, if he has not paid the full amount of such tax or has paid only the part of the amount of such tax by such date, he shall be liable under this clause for payment of interest after such date on he full or part, as the case may be, of the amount of such tax which has remained unpaid on such date.

(b) If any tax other than the tax on which interest is leviable under clause (a) has remained unpaid on the date prescribed for filing the last return in respect of any period of assessment, then the hotelier shall be liable to pay by the way of simple interest, a sum equal to two percent of such tax for each month or part thereof from the date immediately following the date on which the period for which the dealer or person has been assessed expires till the date of order of assessment and where any payment of such unpaid tax, whether in full or part, is made on or before the date of order of assessment the amount of such interest shall be calculated by taking in to consideration the amount of and the date of such payment. If as a result of any order passed under this Act, the amount of tax, which had so remained unpaid, is enhanced or reduced, as the case may be , the interest shall be enhanced or reduced accordingly:

Provided that the Commissioner or any appellate Authority may, for reasons to be recorded in writing, remit the whole or any part of the interest payable in respect of any period.]

#### **17. Imposition of penalty for contravening certain provisions :-**

(1) If any person

(a)

(i) not being a hotelier liable to pay tax under this Act, collects any sum by way of tax, or

(ii) being a registered hotelier, collects any amount by way of tax in excess of the tax payable by him, or

(iii) otherwise collects tax in contravention of the provisions of Section 27 , or

(b) being a hotelier liable to pay tax under this Act, or being a hotelier who was required so to do so by the Commissioner by a notice, served on him, fails in contravention of Sub-Section (1) of Section 29 to keep a true account of his turnover of receipts or fails when directed so to do under that Section to keep any accounts or record in accordance with the direction. he shall be liable to pay, in addition to any tax for which he may be liable, a penalty of an amount as follows:-

(A) where there has been contravention referred to in Sub-clause (i) or (iii) of clause (a), a penalty of an amount not exceeding two thousand rupees or double the sum collected by way of tax, whichever is less.

(B) Where there has been a contravention referred to in sub-clause (ii) of clause (a) or in clause (b), a penalty of an amount not exceeding two thousand rupees. Section 27 shall be forfeited to the State Government.

(2) If the Commissioner, in the course of any proceeding under this Act or otherwise, has a reason to believe that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under Sub-Section (1), he shall serve on such person a notice in the prescribed manner requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in Sub-Section (1) should not be impose on him.

(3) The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit.

(4) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this Section.

(5) When any order of forfeiture is made, the commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.

#### **18. Payment of tax :-**

(1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.

(2) A registered hotelier furnishing return as required by Sub-4 (1) of Section 12, shall first pay into a Government treasury, in the prescribed manner, the whole of the amount of tax due from him [for the period covered by a return] along with the amount of any penalty or interest payable by him under Section 16

(3) A registered hotelier furnishing a revised return in accordance with Sub-Section (1) of Section 12, which revised return shows that a larger amount of tax than already paid is payable, shall first pay into a Government treasury the extra amount tax.

(4)(a) The amount of tax -

(i) due where returns have been furnished without full payment thereof, or

(ii) assessed or reassessed for any period under Section 13 or Section 15 less any sum already paid by the hotelier in respect of such period, or

(b) the amount of interest or penalty (if any) levied under Section 16 or Section 17, and

(c) the sum (if any) forfeited to the state Government under Section 17, and

(d) the amount of the fine (if any) imposed under Sub-Section (3) of Section 34, shall be paid by the hotelier or the person liable therefore in to a Government treasury by such date as may be specified in a notice issued by the Commissioner for this purpose being a date not earlier than thirty days from the date of service of the notice:

Provided that, the Commissioner may, in respect of any particular hotelier or person, and for reasons to be recorded in writing, allow him to pay the tax, interest or penalty (if any) or the sum forfeited by instalments.

(5) Any tax, penalty or interest or sum forfeited, which remains unpaid after the date specified in the notice for payment, and any installment not duly paid, shall be recoverable as an arrear of land revenue.

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any sum collected by a person by way of tax in contravention of Section 27, is forfeited to the state Government under Section 17 and is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected. A refund of such sum or any part thereof can be claimed from Government by the person from whom it was realized by way of tax, provided that an application for such claim is made by him in writing in the prescribed form to the Commissioner, within one year from the date of the order of forfeiture. On receipt of any such application, the Commissioner shall hold such inquiry as he deem fit, and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered, he shall refund the sum or any part thereof, which is found due, to the person concerned.

#### **19. Rounding off the tax, etc. :-**

The amount of tax, penalty, interest, composition money, fine or any other sum payable under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored:

Provided that, nothing in this Section shall apply for the purpose of collection by the hotelier of any amount by way of tax under this Act.

#### **20. Special powers of authorities for recovery of tax as arrear of land revenue :-**

(1) For the purpose of effecting recovery of the amount of tax, penalty, interest and amount forfeited, due and recoverable from any hotelier or other person by or under the provisions of this Act, as an arrear of land revenue-

(i) the commissioner of Luxury Tax shall have and exercise all the powers and perform all the duties of the Commissioner under the Maharashtra land revenue code, 1966;

(ii) the additional Commissioner of Luxury Tax shall have and exercise all the powers and perform all the duties of the additional Commissioner under the said code;

(iii) the Deputy Commissioner of Luxury Tax shall have and exercise all the powers and perform all the duties of the Collector under the said code;

(iv) the assistant Commissioner of Luxury Tax shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the assistant or Deputy Collector under the said code;

(v) the luxury tax officers shall have and exercise all the powers (except the powers of confirmation of sale and arrest

and confinement of a defaulter in a civil jail)and perform all the duties of the Tahsildar under the said code.

(2)Every notice issued or order passed in exercise of the powers conferred by Sub-Section (1) shall, for the purposes of Section 35 , 36, 37, 38 and 41, be deemed to be a notice issued or an order passed under this Act.

## **21. Special mode of recovery and certain recovery proceedings :-**

(1) Notwithstanding anything contained in any law for the time being in force, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the hotelier at his last address known to the Commissioner, require-

(a)any person from whom any amount of money is due, or may become due to a hotelier on whom notice has been served under Sub-Section (4) of Section 18 , or

(b)any person who holds or may subsequently hold money for or on account of such hotelier, to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice(but not before the money becomes due or is held as aforesaid), so much of the money as is sufficient to pay the amount due by the hotelier in respect of the arrears of tax, penalty, interest or sum forfeited under this Act, or the whole of the Money when it is equal to or less than that amount.

Explanation- For the purposes of this Section, the amount of money due to a hotelier from, or money held for or on account of a hotelier by any person, shall be calculated after deducting therefrom such claims (if any) lawfully subsisting, as may have fallen due for payment by such hotelier to such person.

(2)The Commissioner may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of such notice.

(3)

(a)Any person making any payment in compliance with a notice under this Section shall be deemed to have made the payment under the authority of the hotelier and the receipt of the Commissioner shall constitute a good and sufficient discharge of the liability of such person, to the extent of the amount referred to in the receipt.

(b)Any person discharging any liability to the hotelier after receipt of the notice referred to in this Section, shall be personally liable to the Commissioner to the extent of the liability discharged, or to the extent of the liability of the hotelier for tax, penalty and sum forfeited, whichever is less,

(c)Where a person to whom a notice under this Section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the hotelier, or that he does not hold any money for or on account of the hotelier, then, nothing contained in this Section shall be deemed to require such person to pay any such sum or part thereof, as the case may be to the Commissioner.

(d) Any amount of money which a person is required to pay to the Commissioner or for which he is personally liable to the commissioner under this Section shall, if it remains unpaid, be recoverable as an arrear of land revenue.

(4) Where any notice of demand in respect of any tax or penalty or interest(hereinafter in this Section referred to as "Government dues")is served upon a hotelier or the person liable therefore under Sub-Section (4) of Section 18 , and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-

(a)Where such Government dues are enhanced in such appeal or proceedings, the Commissioner shall serve upon the hotelier or person, as the case may be, another notice only in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues are covered by the notice or notice of demand served upon him before the disposal of such appeal or proceedings may, without the service of any fresh notice, be continued from the stage at which such proceedings stood immediately before such disposal;

(b)Where such Government dues are reduced in such appeal proceeding -

(i)it shall not be necessary for the Commissioner to serve upon the hotelier or person a fresh Notice;

(ii)the Commissioner shall give intimation of the fact of such reduction to him;

(iii)any recovery proceedings initiated on the basis of the notice or notices of demand served upon him before the disposal of such appeal, or proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c)No recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the hotelier or person after the disposal of such appeal, or proceedings or that such Government dues have been enhanced or reduced in such appeal, or proceeding:

Provided that, where any Government dues are reduced in such appeal or proceedings and the hotelier or person is entitled to any refund thereof, such refund shall be made in accordance with the provisions of Section 23 .

(5)For the removal of doubts, it is hereby declared that no fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in appeal, revision or other proceedings under this Act.

## **22. Exemption :-**

(1) Subject to such conditions as it may impose, the state Government may, if it is necessary so to do in the public interest, by notification in the official Gazette, exempt any specified class of luxuries provided in a hotel from payment of the whole or any part of tax payable under the provisions of this Act and such exemption shall take effect from the date of the publication of the notification in the official Gazette or such other date as may be mentioned therein.

(2) Where a hotelier or person has availed of such exemption and any of the conditions subject to which such exemption was granted are not complied with, for any reason whatsoever, then such hotelier or person shall be liable to pay tax on the luxury provided in a hotel, in accordance with the other provisions of this Act.

(3) If the Commissioner has reason to believe that any person is liable to pay tax under Sub-Section (2), the Commissioner shall, after giving him a reasonable opportunity of being heard, assess the amount of tax so due.

G.N.F.D.No.LTA.1090/179/Taxation 2, dated the 21st January, 1992 (M.G.G., Pt.IV-B., p. 84)

In exercise of the powers conferred by Section 22 of the Maharashtra Tax on Luxuries 1[\* \* \*] Act, 1987 (Mah.XLI of 1987) the Government of Maharashtra in the public interest hereby exempts from the payment of tax to the extent specified in column (3) of the Schedule hereto appended, the classes of luxuries specified in column, (2) of thereof, subject to the conditions, (if any), specified against each of such classes of luxuries, in column (4) of the said Schedule.

<b>Sr.no.</b>	<b>Classes of Luxuries</b>	<b>Exemption whether on whole or part of tax</b>	<b>Condition</b>
1.	Luxuries provided in	Whole of tax	On product Form-'A' s

	hotels or Lodging Houses to employees of the U.S.Consulate, Bombay, who hold diplomatic or consular status.		by co officer the states of Ar in Bombay.
2	Luxuries provided in hotels or Lodging Houses to the employees of the Consulate General of the sultanate of Oman, Bombay who hold diplomatic or consular status.	Whole of tax	On product Form 'B' s by Co officer of Consulate General of Sultanate Oman in Bo



3.	Luxuries provided in hotels Lodging houses to employees of the consulate General of the people's republic of China, Bombay who hold diplomatic or consular status	Whole of tax	On product Form 'C' by Co officer of Consulate General of People's Re of China Bombay.
4	Luxuries provided in Hotel President, Bombay and Hotel Taj Inter-Continental, Bombay, during the	Whole of tax	On product Form 'D' by the auth officer, not the rank Deputy Mu Corporation Greater Bor

	<p>period from 20th November, 1993 to 24th November 1993(both days inclusive)to the participants of the third Congress of CITY NET, hosted by the Municipal Corporation of Greater Bombay.</p>		
1[5.	<p>Luxuries provided in hotels or lodging Houses to employees of the Consulate General of</p>	<p>Whole of tax</p>	<p>On product Form 'E' s b y Co officer of Consulate General Austria, Bombay.</p>

	Austria, Bombay who hold diplomatic or consular status		
2[6.	Luxuries Provided in Hotels of Lodging Houses to employees of the Consulate General of the Republic of Yemen, Bombay, who hold diplomatic or consular status	Whole of tax	On product Form F sign Consular (C of the Con General of Republic Yemen, Bombay
3[7.	Luxuries provided in a hotel Certified	whole of Tax	Nil

	by the Maharashtra Tourism development Corporation as an eligible unit under the Package Scheme of incentives for Tourism 1993		
8.	Luxuries Provided in Hotels or Lodging Houses to employees of the Consulate General of the Federal Republic of Germany, Mumbai, who hold diplomatic or	Whole of tax	On product Form 'H' s b y Co Officer of ConsulateGe of the F Republic Germany Mumbai.

	consular status		
9.	Luxuries provided in Hotels or Lodging Houses to employees of the Consulate General of Singapore in Mumbai, who hold diplomatic or consular status	Whole of tax	On producti Form 'I' s by Co Officer of Consulate General Singapore Mumbai
10.	Luxuries Provided in Hotels or Lodging Houses to employees of the Consulate General of I s r a e l in	Whole Tax	On product Form'J' sigr Consular of the Con General of in Mumbai

	Mumbai, who hold diplomatic or Consular status		
11.	Luxuries provided in Hotels or Lodging Houses to employees of the Consulate General of Republic of Korea in Mumbai, who hold diplomatic or Consular status.	Whole of tax	On product Form 'k' signed by Consular (General) of the Consulate General of Republic of India in Mumbai.

### **23. Refund of excess payment :-**

(1) The Commissioner shall refund to a person the amount of tax and penalty or interest(if any) paid by such person in excess of the amount due from him . The refund may be either by cash payment or, at the option of the person , by deduction of such excess from the amount of tax and penalty or interest due in respect of any other period :

Provided that , the Commissioner shall first apply such excess towards the recovery of any amount due in respect of

which a notice under Sub-Section (4) of Section 18 has been issued, and shall then refund the balance(if any).

(2)Where any refund is due to any hotelier according to the return furnished by him for any period , such refund may provisionally be adjusted by him against the tax due and payable as per the returns furnished under Section 12 for any period: Provided that, the amount of tax or penalty or interest or all of them due from, and payable by, the hotelier on the date of such adjustment shall first be deducted from such refund before making adjustment.

#### **23A. Refund of tax :-**

The State Government may by rules provide for refund of tax to a tobacconist when any tobacco has been exported out of India, or sold in the course of inter State Trade or, as the case may be, consigned by a tobacconist by way of inter-State consignment to any place outside the State, whether such consignment is to himself or to any other person.]

#### **24. Interest on delayed refunds :-**

(1) Where an amount required to be refunded by the Commissioner to any person by virtue of an order issued under this Act is not so refunded to him within ninety days of the date of the order, the State Government shall pay such person simple interest at nine percent per annum on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund. Explanation-If the delay in granting the refund within the period of ninety days aforesaid is attributable to the hotelier, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purpose of calculation of interest under the provisions of this Section, such question shall be determined by the Commissioner, whose decision shall be final.

#### **25. Power to withhold refund in certain cases :-**

(1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.

(2) Where a refund is withheld under Sub-Section (1), the State Government shall pay interest in accordance with the provision of Section 24 on the amount of refund ultimately determined to be due to the person as a result of the appeal or further proceeding, for the period from the date immediately following the expiry of ninety days from the date of order referred to in Sub-Section (1) to the date of refund.

#### **26. Remission of tax :-**

The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, remit the whole or any part of the tax payable, in respect of any period, by any hotelier: Provided that, if the amount to be remitted exceeds two thousand rupees, the"remission of the excess shall not be made without the previous sanction of the State Government.

#### **27. Prohibition against collection of tax in certain cases :-**

(1)No person shall collect any sum by way of tax in respect of his business to the extent that he is not liable to pay it under the Act.

(2)No person , who is not a registered [ hotelier or tobacconist and liable to pay tax in respect of his business shall collect any sum by way of tax from 'any other person and no registered hotelier or

Provided that, this Sub-Section shall not apply where a person is required to collect such amount of tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

#### **28. Bill or cash memorandum to be issued to customer :-**

A registered hotelier shall issue to the customer or customers a bill or cash memorandum serially numbered signed and dated by him or his servant, manager or agent and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of not less than five years from the date of the transaction.

#### **29. Accounts :-**

(1) Every hotelier liable to pay tax under this Act, and every hotelier who is required so to do by the Commissioner by notice served on him in the prescribed manner, shall keep a true account of the luxury provided by him in the hotel.

(2)If the Commissioner considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine whether or not a hotelier is liable to tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the statement furnished, the Commissioner may require such hotelier by notice in writing to keep such accounts in such form or manner as in his opinion is necessary for the purpose of proper assessment and as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(3)The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any hotelier, or by notification in the official Gazette, direct any class of hoteliers to maintain

accounts and records showing such particulars regarding their business in such form, and in such manner, as may be specified by him.

(4) Every registered hotelier shall ordinarily keep all his accounts, registers and documents relating to his business at the place or places of business specified in his certificate of registration or, with the previous approval of the Commissioner, at such other place as may be approved by the Commissioner.

### **30. Production and inspection of accounts and documents and search of premises :-**

(1) The Commissioner may, subject to such conditions as may be prescribed, require any hotelier to produce before him any accounts or documents, or to furnish any information, relating to his business, or any other information as may be necessary for the purpose of this Act.

(2) All accounts, registers and documents relating to the business of any hotelier and cash kept in any place of business of any hotelier, shall at all reasonable time be open to inspection by the Commissioner, and the Commissioner or any person authorised by him may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of cash found as appear to him necessary for the purposes of this Act.

(3) If the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him, he may, for the reasons to be recorded in writing, seize such accounts, registers or documents of the hotelier as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for a prosecution.

(4) For the purposes of Sub-Section (2) or Sub-Section (3), the Commissioner may enter and search any place of business of any hotelier, or any other place where the Commissioner has reason to believe that the hotelier keeps or is for the time being keeping any account, registers or documents of his business.

(5) Where any books of accounts or other documents or money are found in the possession or control of any person in the course of search, it shall be presumed, unless the contrary is proved, that such books of accounts, other documents or money belong to such person.

### **31. Hotelier [and tobacconist] to declare the name of owner of business :-**

Every hotelier [and tobacconist], who is liable to pay tax and who is a Hindu undivided family, or an association or club or society or firm or company, or who carries on family, or an association or club or society or firm or company, or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed send to the authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who is the owner or who are the owners of the [business]. Such declaration may be revised from time to time.

### **32. Power to collect statistics :-**

(1) If the State Government considers that for the purposes of the better administration of this Act, it is necessary so to do, it may, by notification in the official Gazette, direct that statistics be collected relating to any matter dealt with by or under this Act.

(2) Upon such direction being made, the State Government or any person or persons authorised by it in this behalf may, by notification in the official Gazette, and by notice in any newspaper or in such other manner as in its or his opinion is best calculated to bring to the notice to the attention of hoteliers, call upon all hoteliers or any class of hoteliers to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

### **33. Determination of certain disputed question :-**

(1) If any question arises otherwise than in proceeding before a Court, or before the Commissioner has commenced assessment or reassessment of a hotelier under Section 13 or Section 15, about the interpretation or the scope of any provisions of this Act, the Commissioner shall make an order determining such question.

Explanation:- For the purposes of this Sub-Section, the Commissioner shall be deemed to have commenced assessment or reassessment of a hotelier, when the hotelier is served with a notice under Section 13 or 15, as the case may be.

(2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, as respects the period prior to determination.

(3) If any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this Section, but such question may be raised in appeal against or by way of revision of such order.

### **34. Powers of Commissioner :-**

(1) In discharging his function by or under this Act, the Commissioner shall have all the powers of a civil Court for the purpose of-



- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and
- (d) issuing Commissions for the examination of witnesses

(2) In the case of any affidavit to be made for the purposes of this Act, any officer appointed by the commissioner may administer the oath to the deponent.

(3) Without prejudice to the provisions of any other law for the time being in force where a person, to whom a summons is issued by the commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and time, intentionally omits to attend or produce the documents at the place and time, the Commissioner may impose on him such fine not exceeding five hundred rupees as he thinks fit; and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax:

Provided that, before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

(4) If any documents are produced by a person on whom a summons was issued by the Commissioner, and the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him and the documents produced are necessary for establishing the case against such hotelier, the commissioner may, for reasons to be recorded in writing, impound the documents and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with the proceedings under this Act, or for a prosecution.

### **35. Bar to certain proceedings :-**

Save as is provided elsewhere in this Act, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any officer or person subordinate to him shall be called in question in any Court, and save as is provided by Section 36 no appeal shall lie against any such assessment or order.

### **36. Appeals :-**

(1) An appeal from every original order, not being an order mentioned in Section 37, passed under this Act or the rules made thereunder, shall lie-

- (a) If the order is made by a luxury tax officer, or any other officer subordinate to him, to the assistant Commissioner;
- (b) If the order is made by an Assistant Commissioner, to the Deputy Commissioner;
- (c) if the order is made by a deputy Commissioner, to the [\*\*\*] Commissioner.

(2) In the case of an order passed in appeal by an Assistant Commissioner or by a Deputy Commissioner, a second appeal shall lie to the Commissioner.

(3) Every order passed in appeal under this Section, shall, subject to the provisions of Sections 38 and 41, be final.

(4) Subject to the provisions of Section 40, no appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order appealed against.

(5) No appeal against an order of assessment with or without interest or penalty, or against an order levying an interest or penalty or both against an order, directing the forfeiture, of any tax collected by a hotelier, shall ordinarily be entertained by an appellate Authority, unless such appeals accompanied by satisfactory proof of the payment of the tax with or without interest or penalty or both

(a) without payment of the tax with interest or penalty (if any), or as the case may be, of the interest or penalty or both and of the sum forfeited, on the appellant furnishing in the prescribed manner security for such amount as it may direct, or

(b) on proof of payment of such smaller sum, with or without security for such amount of tax. interest or penalty or sum forfeited which remains unpaid, as it may direct.

(6) Subject to such rules of procedure as may be prescribed, every appellate Authority (both in the first appeal and the second appeal) shall have the following power :

(a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment; or it may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and making such further inquiry as may be necessary; and the Assessing Authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(b) in an appeal against an order levying interest or penalty, the appellate Authority may confirm or cancel such order or vary it so as either to enhance or to reduce the interest or penalty;

(c) in any other case, the Appellate Authority may pass such orders in the appeal as it deems just and proper: Provided that, the Appellate Authority shall not enhance an assessment of interest or penalty unless the appellant

has had a reasonable opportunity of showing cause against such enhancement.

**37. Non-appealable orders :-**

No appeal shall lie against -

- (1) a notice issued under this Act calling upon a hotelier for assessment or asking a hotelier to show cause as to why he should not be prosecuted for an offence under this Act, or notices issued under any of the provisions of section 20 of this Act, or
- (2) an order pertaining to the seizure or retention of account books, registers and other document, or
- (3) an order sanctioning a prosecution under this Act, or
- (4) an order transferring any proceeding under section 47 .

**38. Revision :-**

(1) Subject to any rules which may be made in this behalf, the Commissioner may, of his own motion, call for and examine the record of any order passed (including an order passed in appeal) under this Act or the rules made there under by any officer or person subordinate to him and pass such order thereon as he thinks just and proper : Provided that, no notice shall be served on the assessee by the Commissioner under this Subsection after the expiry of three years from the date of the communication of the order sought to be revised, and no order in revision shall be, made by him hereunder after the expiry of five years from such date

(2) No order shall be passed under this Section which adversely affects any person unless such person has been given reasonable opportunity of being heard.

**39. Court fee on appeal and certain other applications :-**

Notwithstanding any thing contained in the Bombay Court Fees Act, 1959 , an appeal preferred under Section 36 shall bear a court fee stamp of such value not exceeding [one thousand rupees] as may be prescribed, and any other application. not otherwise provided for by or under this Act, when presented to any authority under this Act for a prescribed purpose, shall bear a Court fee stamp of two rupees.

**40. Application of section 4,5 and 12 of the limitation Act :-**

In computing the period laid down under Section 36 the provisions of Section 4 , 5 and 12 of the Limitation Act, 1963, shall, so far as may be apply.

**41. Rectification of mistakes :-**

(1) The Commissioner may at any time with in two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record. and shall within a like period rectify any such mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order:

Provided that, no such rectification shall be made if it has the effect of enhancing the tax unless the Commissioner has given notice in writing to such persons of his intention to do so and has allowed such persons a reasonable opportunity of being heard.

(2) The provisions of Sub-section (1) shall apply to the rectification of a mistake by an appellate authority under Section 36 as they apply to the rectification of a mistake by the Commissioner.

(3) Where any such rectification has the effect of reducing the amount of the tax or interest or penalty or the amount of forfeiture, the Commissioner shall, in the prescribed manner, refund any amount due to such person.

(4) Where any such rectification has the effect of enhancing the amount of the tax or interest or penalty or the amount of forfeiture, the Commissioner shall recover the amount due from such person in the manner provided for in Section 18 .

**42. Offences and penalties :-**

(1) Whoever, knowingly furnishes a false return shall on conviction, be punished-

(i) in case where the amount of lax which could have been evaded if the false return had been accepted as true , exceeds Rs. 10,000 with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(ii) in any other case, with rigorous imprisonment for a term, which shall not be less than three months but which may extend to one year and with fine.

(2) whoever, knowingly keeps false account of the receipts in contravention of Section 29 . shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever-

(i) Willfully attempts, in any manner whatsoever, to evade any tax leviable under this Act, or

(ii) Willfully attempts, in any manner whatsoever, to evade any payment of any tax or penalty or interest under this

Act, Shall, on conviction, be punished-

(a) In case where the amount involved exceeds Rs 50,000 during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(b) In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(4) Whoever aids or abets any person in commission of any act specified in Sub-sections (1) to (3) shall, on conviction be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine.

(5) Whoever-

(a) carries on business without being registered in willful contravention of section 8 or

(b) fails, without sufficient cause, to furnish any information required by Section 10 , or

(c) fails, without sufficient cause, to furnish any return as required by Section 12 , by the date and in the manner prescribed, or

(d) contravenes, without reasonable cause, any of the provisions of Section 27 , or

(e) fails, without sufficient cause, to issue a bill or cash memorandum as required under Section 28, or

(f) fails, without sufficient cause, when directed under Section 29 to keep any accounts or record, in accordance with such direction, or

(g) fails, without sufficient cause, to comply with any requirement made of him under Section 30, or

(h) voluntarily obstructs any officer making inspection or search or seizure under Section 30 , shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine.

(6) Whoever commits any of the acts specified in Sub-section (1) to (5) and the offence is a continuing one under any of the provisions of these Sub-sections, shall, on conviction, be punished with a daily fine of not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this Section .

(7) Notwithstanding anything contained in Sub-sections (1) to (6), no person shall be proceeded against under these Sub-sections for the Acts referred to therein, if the total amount of tax evaded or attempted to be evaded is less than Rs. 200 during the period of a year.

(8) whoever, when required to furnish any information or return under Section 32 ,

(a) willfully refuses or without lawful excuse neglects to furnish such information or return, or

(b) willfully furnishes or causes to be furnished any information or return which he knows to be false, shall, on conviction, be punished with the fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to ten rupees for each day after the first offence during which the offence continues.

(9) Whoever, when engaged in connection with the collection of statistics under Section 32 , willfully discloses any information or the contents of any return given or made under that Section , otherwise than in execution of his duties under that Section or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, 1860 shall, on conviction, be punished with Vol. 18 F-48 imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(10) Save as provided in Sub-section (2) of Section 43 any servant of the Government discloses any of the particulars referred to in Sub-section (1) of that Section, he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both.

(11) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed by the Commissioner under any provisions of this Act.

#### **43. Disclosure of information by any public servant :-**

(1) all particulars contained in any statement made, returns furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the Course of any proceeding under this Act (other than a proceeding before a criminal Court), or any record of any assessment proceeding or any proceeding relating to the recovery of a demand prepared for the purposes of this Act, shall, save as provided in Sub-section (2) be treated as confidential.

(2) Nothing contained in this Section shall apply to the disclosure-

(a) of any such particulars in respect of any such statement, returns, accounts, documents, evidence, affidavit or deposition , for the purpose of any prosecution under the Indian Penal Code, 1860 or the prevention of Corruption Act, 1988 , or this Act; or any other law for the time being in force; or

(b) of any such particulars to the state Government or to any person acting in the execution of this Act, for the

purposes of carrying out the object of this Act; or

(c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice for the recovery of any demand; or

(d) of any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or

(e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

(f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Government to any person or persons appointed by Commissioner under the public servants (Inquires) Act, 1850, or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or

(g) of such facts to an officer of the central Government or a State Government as may be necessary for the purpose of enabling that Government to levy or realize any tax or duty imposed by it; or

(h) of any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his powers under the Bombay Stamp Act, 1958 or the Indian Stamp Act, 1899, to impound and insufficiently stamped document; or

(i) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with proceedings under this Act against a legal practitioner, Tax practitioner or Chartered Accountant, to the authority empowered to take disciplinary action against members practicing the profession of a legal Practitioner, Tax Practitioner or chartered Accountant, as the case may be; or

(j) of any such particulars to the director, Bureau of economics and statistics or any officer serving under him or to any person or persons authorised under Section 32 as may be necessary for enabling the Director or such person or persons to work out the incidence of tax on any particular class of receipts or on receipt generally.

(3) No information of any individual return and no part of any individual return with respect to any matter given for the purposes of Section 32 shall without the previous consent in writing of the owner for the time being or his authorised agent be published in such manner as to enable any particulars to be identified referring to a particular hotelier and no such information shall be used for the purpose of any proceeding under the provisions of this Act.

(4) Except for the purposes of prosecution under this Act, or under the Penal Code, 1860 no person who is not engaged in the collection of statistics under Section 32 or in the administration of this Act shall be permitted to see or have access to any information or any individual return referred to in that Section.

(5) Notwithstanding anything contained in this Act, if the State Government is of opinion that it is necessary or expedient in the public interest to publish or disclose names of any hotelier or other persons and any other particulars relating to any proceedings under this Act in respect of such hoteliers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.

(6) No publication or disclosure under this Section shall be made in relation to any tax on interest levied or penalty imposed or any conviction for any offence connected with any proceedings under this Act, until the time for presenting an appeal to the appropriate/appellate Authority has expired without an appeal having been presented or the appeal, if presented has been disposed of.

Explanation :- In the case of a Firm, Company or other association of persons, the names of the partners of the Firm, the Directors, Managing Agents, Secretaries treasurers or managers of the Company or the members of the association, as the case may be, may also be published or disclosed if in the opinion of the State Government, the circumstances of the case justify it.

#### **44. Offences by Companies :-**

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the Company of the conduct of the business of the Company, as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been Committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purposes of this Section -

(a) "Company" means a body corporate, and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm, means a partner in the firm.

**45. Investigation of offences :-**

(1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation exercise the powers conferred by the code of criminal procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

**46. Compounding of offences :-**

(1) The Commissioner may, either before or after the institution of proceedings for any offence punishable under Section 42 or under any rules made under this act, accept from any person charged with such offence by way of composition of the offence by a sum not exceeding two thousand rupees or where the offence charged is under Sub-section (1), (2), (3), (4) or clauses (a), (b), (c), (d), (g) or (h) of Sub-section (5) of Section 42, a sum not exceeding double the amount of tax which would have been payable on the receipt or turnover of receipts to which the said offence relates, whichever is greater.

(2) On payment of such sum as may be determined by the Commissioner under Sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence.

**47. Power to transfer proceedings :-**

The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceeding or class of proceedings under any provision of this Act, from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding pending with any officer or already transferred under this Section) from any officer to any other officer or to himself:

Provided that, nothing in this Section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both officers are situated in the same city, locality or place.

Explanation- In this Section, the word "proceedings" in relation to any hotelier whose name is specified in any order issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such hotelier.

**48. Appearance before any authority in proceedings :-**

(1) Any person, who is entitled or required to attend before any authority in connection with any proceeding under this Act, may attend-

(a) by a relative or a person regularly employed by him, or

(b) by legal Practitioner, Chartered Accountant or cost Accountant, who is not disqualified by or under Sub-section (2), or

(c) by a Tax Practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under Sub-section (2). If such relative, person employed, legal Practitioner, Chartered Accountant, Cost Accountant or Tax Practitioner is authorised by such person in the prescribed form, such authorization may include the authority to act on behalf of such person in such proceedings.

(2) The Deputy Commissioner may, by order in writing and for reasons to be recorded therein, disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, cost Accountant or Tax Practitioner-

(i) who has been removed or dismissed from Government service, or.

(ii) Who being a legal Practitioner, chartered Accountant or Cost Accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the member of the profession to which he belongs, or

(iii) who being a tax practitioner is found guilty of such misconduct by the Commissioner.

(3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any order of disqualification is made under this Section may within one month of the date of communication of such order appeal to the Commissioner to have the order cancelled.

(5) The order of the deputy Commissioner shall not take effect until one month of the making thereof or where an appeal is preferred until the appeal is decided.

(6) The Commissioner may, at any time suo motu or on an application made to him in this behalf, revoke any order made against any person under Sub-section (2) and thereupon such person shall cease to be disqualified.

**49. Persons appointed under Section 7 to be public servants :-**

The Commissioner and all officers and persons appointed under Section 7 shall be deemed to be public servants within the meaning of Section 21 of the Indian penal code, 1860.

**50. Indemnity :-**

No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

**51. Power to make rules :-**

<sup>1</sup> (1) The power to make rule under this Act shall be exercisable by the state Government by notification in the official Gazette.

(2) Without prejudice to any power to make rules contained elsewhere in this act, the State Government may make rules generally to carry out the purposes of this Act; and such rules may include rules for levy of fees for any of the purposes of this Act.]

(3) In making any rules the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.

(4) Rules made under this Section shall be subject to the conditions of previous publication : Provided that , if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this Section .

(5) Every rule made under this Section shall be laid as soon as may be after it is made before each house of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two Successive Sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both houses agree in making any modification in the rule or both houses agree that the rule should not be made, and notify such decision in the official Gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be; so, however, that any such

1. Sub-sections (1) and (2) of Section 51 were substituted by Mah. Act 17 of 1993 w.e.f 1.5.1993, sec 24.

**52. Repeal of Mah. XXI of 1974 :-**

The Maharashtra Tax on Luxuries (in hotels and lodging Houses) Act, 1974 is hereby repealed.

**53. Savings :-**

(1) Notwithstanding the repeal by Section 52, the law referred to therein and all rules, regulations, orders, notifications, forms and notices issued under that law and in force immediately before the appointed day shall continue to have effect for the purposes of the levy, assessment, collection , refund of any tax, or the imposition of any penalty, which levy, assessment, collection, refund or penalty relates to any period before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid.

(2) Without prejudice to the provisions contained in the foregoing Sub-section and subject thereto, Section 7 of the Bombay General clauses Act, 1904 shall apply in relation to the repeal of the law referred to in section 52 as if the law so repealed had been an enactment within the meaning of Section 7 of that Act.

[(3) Any reference in any provision of the repealed Maharashtra tax on Luxuries (in Hotels and Lodging Houses) Act, 1974 to any officer, Authority or Tribunal, shall for the purpose of carrying in to effect the provisions contained in this Section, be construed as a reference to them Corresponding Officer, Authority or tribunal appointed or constituted by or under this Act, and if any question arises as to who such corresponding Officer, Authority or tribunal is, the decision of the state Government thereon shall be final. For the purpose of recovery of tax including penalty under the said repealed Act, the said Officer, Authority or Tribunal may exercise all or any of the powers relating to recovery and special mode of recovery under this Act as if the tax payable under the said repealed Act is the tax payable under this Act.]

**54. Removal of difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the official Gazette, make such provision or give such direction as appears to it to be necessary for removing the difficulty:

Provided that no such order shall be made by the State Government after the expiry of a period of two years from the appointed day.