

WEST BENGAL STATE TAX ON CONSUMPTION OR USE OF GOODS ACT, 2001

GOVERNMENT OF WEST BENGAL LAW DEPARTMENT Legislative West Bengal Act XV of 2001 THE WEST BENGAL STATE TAX ON CONSUMPTION OR USE OF GOODS ACT, 2001. [Passed by the West Bengal Legislature.] [Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, of the 31st July, 2001.] An Act to provide for the levy of tax on the entry of certain goods into the local areas of the State of West Bengal for Consumption or use in such local areas. WHEREAS it is expedient to provide for the levy of tax on entry of certain goods into the local areas of the State of West Bengal for consumption or use therein; It is hereby enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:— 1. (1) This Act may be called the West Bengal State Tax on Consumption or Use of Goods Act, 2001. (2) It extends to all local areas in West Bengal. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. 2. (1) In this Act, unless the context otherwise requires,— (a) "consumption or use" shall not include consumption or use, by a dealer, of goods brought, or caused to be brought, by him into any local area for consumption or use by him directly in the manufacture of goods for sale; (b) "goods" means the goods specified in the Schedule; For proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on the 30th July, 2001. 2 This Act came into force w.e.f. 1.8.2001 vide the Finance (Taxation) Department notification No. 2606 (PPU), dt. 1.8.2001. 155 Short title, extent and commencement. The West Bengal State Tax on Consumption or Use of Goods Act, 2001. [West Ben. Act (Section 2.) (c) "local area" means any area of the State within the limits (d) (e) (d) (g) (h) (i) (1) (m) of any— (i) municipal corporation, (ii) municipality, (iii) notified area, (iv) panchayat. or (v) any other area under any other local authority. by whatever name called, constituted or continued under an Act of the Parliament or the State Legislature: "notification" means a notification published in the Official Gazette; "person" includes any company, association of persons whether incorporated or not, Hindu undivided family, a partnership firm, trust, Government, local authority, corporation and other statutory bodies; "prescribed" means prescribed by rules made under this "registered dealer" means a dealer registered in the State under the West Bengal Sales Tax Act, 1994, or under the Central Sales Tax Act, 1956; "Schedule" means the Schedule to this Act: "tax" means the tax payable under this Act; "Tax Recovery Officer" means the Tax Recovery Officer as defined in clause (36) of section 2 of the West Bengal Sales Tax Act, 1994: "the State" means the State of West Bengal; "The State Government" means the Government of West Bengal: "value or goods", in relation to any goods, means the aggregate of— (i) the price paid or payable for such goods or, if the price of such goods is not available, the prevailing market price of such goods in the local area, (ii) any tax, duty or charges paid or payable in respect of such goods before its entry into any local area, (iii) the cost or insurance, warehousing, loading, unloading and other incidental charges incurred in respect of such goods before its entry into any local area, and (iv) the cost of freight and delivery for carrying such goods to such local area. 156 West Ben. Act XLIX of 1994. 74 or 1956. The West Bengal State Tax on Consumption or Use of Goods Act, XV of 2001. 1 West Ben. Act XLIX of 1994. 45 (Sections 3-5.) (2) Unless there is anything repugnant in the subject or context, all expressions used in this Act, which are not defined, but defined in the West Bengal Sales Tax Act, 1994, shall have the same meaning as in that Act. 3. (1) The State Government shall appoint an authority (hereinafter referred to as the prescribed authority) for carrying out the purposes of this Act. (2) The State Government may appoint such other persons, being the officers of the State Government, to assist the prescribed authority as the State Government may think fit and may specify the area or areas over which such persons shall exercise jurisdiction, (3) Persons appointed under sub-section (2) shall exercise (a) such power as may be prescribed: or (b) such power as may be delegated to them in writing by the prescribed authority, where no prescription is made as referred to in clause (a). (4) The prescribed authority and the persons appointed under sub-section (2) shall be deemed to be public servants within the meaning or section 2d of the Indian Penal Code. (5) No suit, prosecution or other legal proceedings shall lie against the prescribed authority or the persons appointed under sub-section (2) [or anything which is in good faith done, or intended to be done, under this Act or the rules made thereunder]

4. Every person who brings or causes to be brought any goods into any local area from any place outside such local area for consumption or use therein, shall be liable to pay a tax at such rate, not exceeding fifteen per centum of the value of goods, as the State Government may, by notification, fix and different rates may be so fixed in respect of different items or goods

5. Notwithstanding anything contained elsewhere in this Act and subject to the conditions and restrictions as may be prescribed, no tax shall be levied on the entry of goods into a local area if it is shown to the satisfaction of the prescribed authority that such goods have already been subjected to tax in any other local area of the State under this Act, or that such goods have been purchased, or procured, from any other local area of the State. 157 Taxing authorities. Incidence of tax. Tax not to be levied more than once. Payment of tax, not to pay tax. Exemption from payment of tax. Security to be furnished in certain cases. Refund of security. The West Bengal State Tax on Consumption or Goods Act, [West Ben. Act (Sections 6-10).] 6. Every person liable to pay tax shall, within thirty days from the date of entry of any goods into any local area for consumption or use therein, pay, in the prescribed manner, into a Government Treasury or section 4: Provided that if such person has paid any amount as security under section 9 in respect of any goods, and the tax payable in respect of such goods does not exceed the amount of such security, such person shall not be required to make any payment of tax under this section

7. No tax shall be payable under section 6 where the goods are brought, or caused to be brought, into any local area by any Government: Provided that the provisions of this section shall not apply unless it is certified by an officer empowered by the Government concerned in this behalf that such goods are property of the Government

8. No tax shall be payable under section 6 (a) by such class of persons, or (b) in respect of such class of goods, in such circumstances, and subject to such conditions and restrictions, as may be prescribed

9. For ensuring that there is no evasion by any person of tax payable under this Act, the prescribed authority may, for good and sufficient reason, by an order in writing, demand from a person, other than a registered dealer, who intends to bring, or intends to cause to be brought, any goods into any local area for consumption or use therein, a reasonable amount of cash security as may be justified to safeguard the interest of revenue. 10. Where a person, who has paid a cash security demanded from him under section 9, makes an application to the prescribed authority in writing for refund of such cash security or part thereof on the ground that the goods, in respect of which such security was paid by him, (a) have not been brought, or caused to be brought by him, into any local area for consumption or use therein; or (b) have not been consumed or used in any local area of the State and have been, within a period of six months of its entry into any local area, despatched to any place outside all the local areas of the State: or 158 XV or 2001.1 west Ben. Act XLIX of 1994. The West Bengal State Tax on Consumption or Use Goods 2001. (Sections 11-13.) have been sold, or used in the execution of works contract within six months of its entry into such local area and due tax under the West Bengal Sales Tax Act, 1994, has been paid under that Act, and where the prescribed authority is satisfied about the correctness and bona fide of such ground, the prescribed authority shall, ordinarily within ninety days from the date of making of such application by such person, make refund of such security or part thereof, as the case may be, to such person

11. Subject to such rules as may be prescribed—where no application is made under section within seven months from the date of entry of any goods into any local area, the amount of cash security furnished under section 9 shall be deemed to be the tax paid under section 6 by the person depositing such security. 12. (1) Where the prescribed authority, upon information or otherwise, is satisfied that any person liable to pay tax, in respect of any goods brought, or caused to be brought, into any local area— (a) has not paid the tax payable by him under section 6, or (b) has not paid tax on the actual value of such goods, the prescribed authority may, after giving such person an opportunity of being heard, in the manner prescribed, determine, by order in writing, the amount of tax payable by such person. (2) The tax determined under sub-section (1) shall be communicated to the person referred to in sub-section (1) in the prescribed manner and such person shall pay the tax within thirty days from the date of communication of the order made under that sub-section. (3) No order shall be passed under sub-section (1) after expiry of two years from the date of entry of goods in the local area

13. Where any person, without any reasonable cause, (a) fails to pay the full amount of tax in accordance with the provisions of section 6: or (b) brings, or causes to be brought, any goods into any

local area without furnishing the cash security demanded under section 9, the prescribed authority may, after giving such person a reasonable opportunity or being heard, in the prescribed manner, impose upon such person, a penalty not exceeding the amount which he fails to pay as tax under section 6 or as cash security under section 9, as the case may be.

159 Adjustment of tax payable.

Penalties. Search, seizure and penalty. Recovery of tax or penalty. Appeal.

14. (a) (b) The West Bengal State Tax on Consumption or Use Goods Act, 2001. [West Ben. Act (Sections 14_16.)] Where the prescribed authority has reasons to suspect that—any goods have been brought, or have been caused to be brought, into any local area in contravention of the provisions of section 9: or the tax paid in respect of any goods brought, ought to be brought, into any local area, has not been paid on actual value of goods in accordance with law, he may, for reasons to be recorded in writing, search any place, almirah or receptacle where, according to his information, such goods are stored.

(2) Where upon a search made under sub-section (1) the prescribed authority has reason to believe that a contravention referred to in clause (a), or a failure to pay tax as referred to in clause (b), of that sub-section has been committed in respect of any goods, he shall, for reasons to be recorded in writing, seize such goods.

(3) Where a seizure of goods is made under sub-section (2), the prescribed authority shall, after giving the person who brought, or caused to be brought, such goods into any local area, impose upon such person, in the prescribed manner, a penalty not exceeding twice the amount of tax payable in respect of such goods.

(4) The goods seized under sub-section (2) shall not be released until the full amount of tax payable under this Act, and penalty imposed under sub-section (3), are paid.

(5) If the tax payable under this Act and the penalty imposed under this section are not paid by the date specified in the notice issued by the prescribed authority in this behalf, the prescribed authority may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods so seized in open auction and remit the sale proceeds thereof to the Government Treasury.

15. Any amount of tax or penalty due under this Act shall be recoverable— (a) as an arrear of land revenue as if it were payable to the Collector: or (b) by the Tax Recovery Officer.

16. (1) Where any person is aggrieved by any order passed under section 9, section 10, section 12, section 13, or section 14, of this Act (16) The West Bengal State Tax on Consumption or Use Goods Act, 2001. (Sections 17-21.) such person may, in the prescribed manner appeal to such authority as may be prescribed against such order within thirty days from the date of communication to him of such order.

(2) Where an appeal is preferred under sub-section (1), the authority referred to in that sub-section shall finally dispose of such appeal ordinarily within three months from the date of presentation of such appeal. Provided that on the application of the appellant in writing and for reasons shown to the satisfaction of such authority, the disposal of the appeal may be deferred to a date beyond the period of three months.

17. The authority as referred to in sub-section (1) of section 16 may, on application, stay the recovery of any tax or penalty due under this Act on such terms and conditions as may be deemed fit and proper.

(1) The prescribed authority may, subject to the conditions and restrictions as may be prescribed, for reasons to be recorded in writing and after giving the person likely to be affected an opportunity or being heard, may revise any order passed by any person appointed under sub-section (2) of section 3.

(2) No order shall be passed under sub-section (1) after expiry of one year from the date passing of the order by the person appointed under sub-section (2) of section 3.

19. The State Government, after giving by notification not less than fourteen days' notice of its intention so to do, may, by like notification, with prospective or retrospective effect, add to, or amend the Schedule or delete any goods from the Schedule.

(1) The State Government may, by notification, make rules, with prospective or retrospective effect, for the purpose of carrying out the provisions of this Act, and such rules may provide for all or any of the matters which, under any provision of this Act, is required to be prescribed, or to be provided for, by rules.

(1) If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

(2) No order shall be made under sub-section (1) after the expiry of two years from the date of coming into force of this Act.

161 Stay of recovery of tax or penalty due. Stay of revision. Power to amend Schedule. Power to make rules. Power to remove difficulties.

The West Bengal State Tax on Consumption or Use Goods Act, 2001. [West Ben. Act (Schedule.)] SCHEDULE. I

Section Air-conditioner, aircooler and other cooling equipments

0. Antenna receiving satellite communication

3. Cables including optical fibre cable
4. **Cement.** Computer and its parts, computer peripherals including 5. printers and plotters
6. **Cooking range.** Electronic goods. 7
8. **Electronic Private Autonet Branch Exchange (EPABX) and other telecommunication equipment.** Knitting machine, 9. Marble, decorative stones. tiles and granite stones. Medical instruments including diagnostic instruments such 11. as X-ray machine and ultra-sonography machine
12. **Microwave oven.** Motor Vehicles including two-wheelers, 13
14. Multimedia projector and other types of projectors
15. **Paper.** Photocopying machine. 16
17. Plastic goods, moulded luggage, plastic furniture and any other furniture
18. Refrigerator
19. **Sanitary wares and fittings.** Scientific instrument
20. **Uninterrupted power supply (UPS).** 21
22. Vanaspathi
23. **Washing Machine.** 162 The West Bengal State Tax on Consumption or Use of Goods Act, 2001. XV of 2001.] Statement of Objects and Reasons on the West Bengal State Tax on Consumption or Use of Goods Bill, 2001 (Bill No. 23 of 2001). STATEMENT OF OBJECTS AND REASONS. In recent years, a consensus on uniform floor rate had been reached by all States and Union Territories at the all India level. However, it has been noticed that a few States and Union Territories are, in violation of such consensus, lowering their State Sales Tax and the Central Sales Tax to encourage people in other States as well as in our State to purchase certain goods directly from those States and Union Territories. This practice is causing hardship to the bona fide dealers in this State and at the same time causing loss of revenue to the State Exchequer
2. **In this backdrop, this Bill seeks—**(a) to prevent diversion of trade; (b) to augment revenue by discouraging the said practice; and (c) to protect bona fide dealers in the State against unequal competition
3. **The Bill has been framed with the above objects in view.** KOLKATA, The 23rd July, 2001. ASIM KUMAR DASGUPTA, Member-in-charge. 163