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West Bengal Act XXI of 1972

THE WEST BENGAL ENTERTAINMENTS AND LUXURIES (HOTELS AND RESTAURANTS) TAX ACT, 1972.

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West Bengal Act XXI of 1972

THE WEST BENGAL ENTERTAINMENTS AND LUXURIES (HOTELS AND RESTAURANTS) TAX ACT, 1972¹.

AMENDED

West Ben. Act X of 1974.
West Ben. Act VII of 1975.
West Ben. Act III of 1979.
West Ben. Act V of 1985.
West Ben. Act III of 1988.
West Ben. Act VIII of 1990.
West Ben. Act I of 1992.
West Ben. Act XVI of 1994.
West Ben. Act V of 1997.
West Ben. Act XXIII of 1997.
West Ben. Act III of 1999.

[25th July, 1972.]

An Act to provide for the imposition of taxes on entertainments and luxuries in hotels and restaurants.

WHEREAS it is expedient to provide for the imposition of taxes on entertainments and luxuries in hotels and restaurants and for matters connected therewith;

It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972.

Short title, extent and application.

(2) It extends to the whole of West Bengal.

(3) It shall apply in the first instance only to Calcutta but the State Government may, by notification in the *Official Gazette*, apply the provisions of this Act to any other area specified in such notification.

2. In this Act, unless the context otherwise requires,—

Definitions.

²(a) "Calcutta" means the area described in Schedule I to the Calcutta Municipal Corporation Act, 1980;

³(aa) "Commissioner" means the Commissioner of Agricultural Income-tax appointed under sub-section (2) of section 21 of the Bengal Agricultural Income-tax Act, 1944;

(b) "entertainment" means any exhibition, performance, amusement, game, sport, cabaret, dance or floor show⁴ provided in any hotel or restaurant;

West Ben. Act LIX of 1980.

Ben. Act IV of 1944.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, Part IVA, of the 1st July, 1972, page 1414; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on the 4th July, 1972.

²Clause (a) was substituted for the original clause by s. 7(1) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

³Clause (aa) was inserted by s. 5(1) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

⁴The words "and includes performance by any singer, musician or bandsman" were omitted by s. 5(1)(a) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

(Section 3.)

- (c) "entertainment tax" means tax payable under section 3 of this Act;
- ¹(ca) "hotel" means a building or part of a building or any place where any activity or business is carried on in providing lodging or boarding or any kind of accommodation, with or without supply of food, drinks or refreshments, to the members of the public on payment or for any consideration with the object of making profit;
- ²(d) "luxury" means provision for—
- (i) air-conditioning through air-conditioner or central air-conditioning or any other mechanical means, or
 - (ii) air-cooling through air-cooler,
- provided in any of the rooms, or any part of a building, constituting a hotel or restaurant;
- (e) "luxury tax" means tax levied under section 4 of this Act;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "proprietor" in relation to a hotel ³[or restaurant] includes the person who for the time being is in charge of management of a hotel ³[or restaurant];
- (h) "restaurant" includes an eating-house.

Liability for entertainment tax.

3. ⁴(1) An entertainment tax shall be payable by every person who is admitted into or enters any place, within either a hotel or restaurant, which is provided with luxury, where an entertainment is provided, and such tax shall be calculated ⁵[at the rate of 30 per centum] of the total sum paid or payable by such person for all the services including food and drink, supplied to him and also including any fee for admission into such place of entertainment:

¹Clause (ca) was added by s. 2(a) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974).

²Clause (d) was substituted for the original clause by s. 5(1)(b) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

³These words within the square brackets were inserted with retrospective effect by s. 2(b) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974).

⁴Section 3 was renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, sub-section (2) was added by s. 7(2) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

⁵The figure and words "15 per centum" were first substituted for the figure and words "10 per centum" by s. 3(a) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974). Thereafter these figure and words within square brackets were substituted for the figure and words "at the rate of 15 per centum" by s. 3(1)(a) of the West Bengal Taxation Laws (Amendment) Act, 1979 (West Ben. Act III of 1979).

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(Section 4.)

Provided that where payment is charged for admission to the place of entertainment, the entertainment tax under this section shall in no case be less than ¹[60 per centum] of such payment for admission to the place of entertainment:

²Provided further that the State Government may, by notification published in the *Official Gazette*, direct that entertainment tax shall be payable—

- (a) by such class of persons, or
- (b) in respect of entertainment provided in such class of hotels or restaurants,

at such rate lower than that fixed under this section, and subject to such restrictions and conditions, as may be specified in the said notification:

²Provided also that subject to such restrictions and conditions as may be prescribed, no entertainment tax shall be payable—

- (a) by such class of persons, or
- (b) in respect of entertainment provided in such class of hotels or restaurants and in such area or areas,

as may be prescribed.

³(2) The entertainment tax shall be recoverable from the proprietor.

⁴4. There shall be charged, levied and paid to the State Government a luxury tax by the proprietor of every hotel and restaurant in which there is provision for luxury and such tax shall be calculated—

Liability for luxury tax.

- (a) in the case of a restaurant at the rate of an annual sum of rupees three hundred for every ten square metres or part thereof in respect of so much of the floor area of restaurant which is provided with luxury, and

¹The figure and words "30 per centum" were first substituted for the figure and words "25 per centum" by s. 3(b) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974). Thereafter these figure and words within square brackets were substituted for the words "30 per centum" by s. 3(1)(b) of the West Bengal Taxation Laws (Amendment) Act, 1979 (West Ben. Act III of 1979).

²The second and third proviso were added by s. 2(1) of the West Bengal Taxation Laws (Amendment) Act, 1997 (West Ben. Act XXIII of 1997).

³See foot-note 4 on page 346, *ante*.

⁴Section 4 was substituted for the original section by s. 7 of the West Bengal Taxation Laws (Amendment) Act, 1985 (West Ben. Act V of 1985).

(Sections 4A, 4B.)

- (b) in the case of a hotel at such rate not exceeding ¹[twenty-five *per centum* of the daily charges realised or realisable, as the case may be, for an occupied room] provided with luxury as may be notified by the State Government in the *Official Gazette*:

²Provided that subject to such restrictions and conditions as may be prescribed, no luxury tax shall be charged, levied and paid under clause (b) in respect of daily charges realised or realisable for any occupied room provided with luxury from such class of persons as may be prescribed.

Payment of
entertain-
ment tax,
luxury tax
and returns.

³4A. The entertainment tax under section 3 recoverable from, and the luxury tax under section 4 payable by, a proprietor, shall be deposited into a Government Treasury or the Reserve Bank of India, and returns shall be furnished by him to such authority, in such form, in such manner, and within such time, as may be prescribed.

Interest
payable by
the proprietor.

³4B. (1) If the amount of entertainment tax payable under section 3 or the luxury tax under section 4 is not paid within the time as prescribed under section 4A, the proprietor shall pay a simple interest at the rate of two *per centum* for each English calendar month of default from the first day of such month next following the prescribed date up to the month prior to the month in which such tax is fully paid or up to the month prior to the month of assessment under section 5 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to returns where returns are furnished, or according to such assessment where returns are not furnished, as remains unpaid at the end of each such month of default.

(2) Where a proprietor fails to make a payment of any tax payable after assessment by the date specified in the notice issued under subsection (6) of section 5 for payment thereof he shall pay simple interest at the rate of two *per centum* for each English calendar month of default from the first day of such month next following the date specified in the demand notice up to the month preceding the month of full payment of

¹The words "twenty-five *per centum* of the daily charges realised or realisable for an occupied room" were substituted for the words "fifteen *per centum* on the daily charges of a room" by s. 8 of the West Bengal Finance Act, 1992 (West Ben. Act I of 1992). Then these words in the square brackets were substituted for the words "twenty-five *per centum* of the daily charges realised or realisable for an occupied room" by s. 5(2) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994). (w.e.f. 1.4.85.)

²This proviso was added by s. 2(2) of the West Bengal Taxation Laws (Amendment) Act, 1997 (West Ben. Act XXIII of 1997).

³Sections 4A, 4B, 4C and 4D were inserted by s. 7(3) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

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(Sections 4C, 4D and 5.)

such tax or up to the month preceding the month of commencement of proceeding under section 7, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of default.

(3) Where as a result of an order under section 5A, ¹[section 5B or section 5C,] the amount on which interest was payable under this section has been modified, the interest shall be payable on the modified amount.

(4) A proprietor liable to pay interest under sub-section (1) or sub-section (2), shall pay such interest in such manner and by such date or dates as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2), no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed.

²4C. The State Government shall, in the prescribed manner, pay a simple interest at the rate of two *per centum* for each English calendar month of delay in making refund of tax paid in excess which arises out of an order passed under section 5A, ³[section 5B or section 5C,] from the first day of such month next following the expiry of three months from the date of passing of such order up to the month preceding the month in which the refund is made upon the amount of tax refundable to him according to such order.

Interest payable by the State Government.

⁴4D. In calculating the interest payable under section 4B or section 4C, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

Rounding off of the amount of tax payable for calculating interest.

⁵5. (1) If any proprietor, who is liable to pay tax under section 3, fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall assess to the best of his judgement the amount of

Assessment of tax and determination of interest.

¹Words, figures and letters were inserted by s. 5(2) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

²See foot-note 3 on page 348, *ante*.

³Words, figures and letters were inserted by s. 5(3) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

⁴Section 5 was substituted for the original section by s. 7(4) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990). Prior to the substitution the words "be assessed and recovered" were substituted with retrospective effect for the words "be recoverable" by s. 5 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974).

(Section 5.)

entertainment tax due from such proprietor and, in making such assessment, shall give such proprietor a reasonable opportunity of being heard.

(2) If any proprietor, who is liable to pay tax under section 4, fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall proceed to assess to the best of his judgement the amount of luxury tax due from such proprietor and, in making such assessment, shall give such proprietor a reasonable opportunity of being heard.

(3) Where the prescribed authority is satisfied that any proprietor is liable to pay interest under section 4B, he shall, in such manner as may be prescribed, determine the amount of interest payable by such proprietor.

(4) No assessment under sub-section (1) or sub-section (2) shall be made after the expiry of two years from the end of the period in respect of which the assessment is made or from the commencement of section 7 of the West Bengal Taxation Laws (Second Amendment) Act, 1990, whichever is latter.

West Ben.
Act VIII of
1990.

(5) In computing the time limited by sub-section (4) for making any assessment under sub-section (1) or sub-section (2), the period during which the prescribed authority is restrained from commencing or continuing any proceeding for such assessment by an order of any Court shall be excluded.

(6) Where any tax is due in consequence of any assessment made under sub-section (1) or sub-section (2) or interest is due in consequence of any determination under sub-section (3), the prescribed authority shall serve upon the proprietor such notice as may be prescribed.

(7) The amount of tax assessed under sub-section (1) or sub-section (2), less the sum, if any, already paid by the proprietor in respect of the said period, shall, together with any interest determined under sub-section (3) that may be directed to be paid under the provisions of sub-section (6), be paid in the manner and within the date as may be specified in a notice by the prescribed authority for this purpose, and the date to be so specified shall not be less than thirty days from the date of service of such notice.

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(Sections 5A-5C.)

¹5A. (1) A proprietor aggrieved by an order made under this Act or the rules made thereunder may appeal to such authority and in such manner as may be prescribed within sixty days from the date on which he receives an intimation of such order or within such further period as may be allowed by such authority for cause shown to his satisfaction.

Appeal and review.

(2) The appellate authority shall dispose of the appeal in the manner prescribed.

(3) Subject to such rules as may be prescribed, the prescribed authority may, of its own motion or upon application, review an assessment made or order passed under this Act or the rules made thereunder within two years from the date of making such assessment or passing such order:

Provided that no assessment shall be ²**** reviewed without giving the proprietor a reasonable opportunity of being heard:

³Provided further that the prescribed authority may, on application or on its own motion, review, on or before the 31st day of March, 1996, any assessment made, on or before the 31st day of March, 1994, under sub-section (2) of section 5 of the tax payable by a proprietor under clause (b) of section 4.

⁴5B. Subject to such rules as may be made under this Act and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any assessment order or any other order, passed by any authority under section 5, or section 5A, and the rules made thereunder.

Suo motu revision by the Commissioner.

⁴5C. Subject to such rules as may be prescribed under this Act and for reasons to be recorded in writing, the Commissioner may, upon application, revise an appellate order passed by any authority under section 5A and the rules made thereunder:

Revision by Commissioner upon application.

Provided that the provisions of this section shall not apply to any appellate order passed by an appellate authority under sub-section (2) of section 5A on any day before the date of coming into force of this section.

¹This section was substituted for the original section by s. 7(5) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990). Prior to this substitution, section 5A was inserted with retrospective effect by s. 6 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (Amendment) Act, 1974 (West Ben. Act X of 1974).

²The words "revised or" were omitted by s. 5(4) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

³This proviso was inserted by s. 5(3) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

⁴Sections 5B and 5C were inserted by s. 5(5) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

(Sections 6-7A.)

Penalty.

6. (1) If any person fails to pay the entertainment tax or the luxury tax within the prescribed period he shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees and where the offence is a continuing one, with a further fine not exceeding five rupees for every day during which the offence continues.

(2) A person who is convicted for an offence under sub-section (1) shall, in addition to the fine, be liable to pay the tax which was payable by him under section 3 or section 4 of this Act, as the case may be.

Recovery as
an arrear of
land revenue.

7. Any sum due on account of entertainment tax or luxury tax ¹[or interest] shall be recoverable by the State Government as an arrear of land revenue under the Bengal Public Demands Recovery Act, 1913.

Ben. Act III
of 1913.Special mode
of recovery.

²7A. (1) Notwithstanding any proceeding being initiated under section 7 for recovery of entertainment tax or luxury tax or interest as an arrear of land revenue, the prescribed authority may, at any time or from time to time by notice in the prescribed form, require any person from whom money is due or may become due to the proprietor referred to in section 4A or section 4B or any person who holds or may subsequently hold money for or on account of such proprietor, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by such proprietor in respect of the arrears of such tax or interest or the whole of the money when such money is equal to or less than the amount due.

(2) A notice under this section may be issued to any person who holds or may subsequently hold any money for, or on account of, the proprietor jointly with any other person and, for the purposes of this section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(3) A copy of the notice shall be forwarded to the proprietor at his last address known to the prescribed authority, and, in the case of a joint account, to all the joint-holders at their last addresses known to the prescribed authority.

¹These words were inserted by s. 7(6) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

²Section 7A was inserted by s. 4 of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

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(Section 7A.)

(4) Save as otherwise provided in this section, every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(5) Any claim with respect to any property in relation to which a notice under this section has been issued, arising after the date of the notice, shall be void as against any demand contained in the notice.

(6) Where a person to whom a notice under this section is sent proves to the satisfaction of the prescribed authority that the sum demanded or any part thereof is not due to the proprietor or that he does not hold any money for, or on account of, the proprietor or that the money demanded or any part thereof is not likely to be due to the proprietor or be held for, or on account of, the proprietor, then, nothing contained in this section shall be deemed to require such person to deposit any such sum or part thereof, as the case may be.

(7) The prescribed authority may, at any time or from time to time, amend or revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice.

(8) The Treasury or the Bank shall grant a receipt for any amount paid in compliance with a notice issued under this section, and the person so paying the amount shall be fully discharged from his liability to the proprietor to the extent of the amount so paid.

(9) Any person discharging any liability to the proprietor after receipt of a notice under this section shall be personally liable to the prescribed authority, to the extent of his own liability to the proprietor so discharged or to the extent of the liability of the proprietor for any sum due under this Act, whichever is less.

(10) If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be a proprietor in default in respect of the amount specified in the notice, and further proceedings may be taken against him for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt.

(11) The prescribed authority may apply to the court in whose custody there is money belonging to the proprietor for payment to him of the entire amount of such money or, if it is more than the amount of tax or interest due, an amount sufficient to discharge the liability of the amount of tax or interest:

(Sections 8, 8A and 9.)

Provided that any dues or property exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any payment required to be made under this section. 5 of 1908.

Inspection. 8. (1) ¹[The Commissioner and such other officers as may be prescribed] may enter any hotel or restaurant at any reasonable time with a view to seeing whether the provisions of this Act or the rules made thereunder are being complied with.

(2) If any person prevents or obstructs the entry of ²[any officer referred to in sub-section (1),] he shall, in addition to any other punishment to which he is so liable under any law for the time being in force, be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

(3) ³[Every officer referred to in sub-section (1)] shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Indemnity. 8A. No suit, prosecution or other legal proceeding shall lie against any officer of the State Government for anything which is in good faith done or intended to be done in the discharge of his duties under this Act or the rules made thereunder.

Saving. 9. No entertainments tax, in relation to an entertainment in a hotel or restaurant, shall be leviable on any person under the provisions of section 3 of the Bengal Amusements Tax Act, 1922, if such person pays entertainment tax under the provisions of this Act. Ben. Act V
of 1922.

¹The words, figures and brackets "Inspector appointed by the State Government under section 3 of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act V of 1941) to assist the Commissioner of Commercial Taxes," were first substituted for the words "Amusement Tax Inspector" by s. 3(2) of the West Bengal Taxation Laws (Amendment) Act, 1979 (West Ben. Act III of 1979). Thereafter the words "Agricultural Income Tax Inspector appointed by the State Government to assist the Commissioner of Agricultural Income Tax," were substituted for the words, figures and brackets "Inspector appointed by the State Government under section 3 of the Bengal Finance (Sales Tax) Act, 1941 to assist the Commissioner of Commercial Taxes," by s. 5 of the West Bengal Taxation Laws (Amendment) Act, 1988 (West Ben. Act III of 1988). Finally, the words within the square brackets were substituted for the words "Any officer not below the rank of Agricultural Income Tax Inspector appointed by the State Government to assist the Commissioner of Agricultural Income Tax, in Calcutta and Sub-Deputy Collector in a district, authorised by the State Government for the purpose," by s. 5(6)(i) of the West Bengal Finance Act, 1999 (West Ben. Act III of 1999).

²Words, figure and brackets within the square brackets were substituted for the words "any officer so authorised," by s. 5(6)(ii), *ibid*.

³Words, figure and brackets within the square brackets were substituted for the words "Every officer authorised under this section" by s. 5(6)(iii), *ibid*.

⁴This section was inserted by s. 7(7) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

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(Section 10.)

10. (1) The State Government may make rules for carrying out the purposes of this Act. Rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters which, under any provision of this Act, are required to be prescribed or to be provided by rules.
