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PART III—Act of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1017-L.—30th August, 2011.—The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:—

West Bengal Act VII of 2011

THE WEST BENGAL FINANCE ACT, 2011.

[Passed by the West Bengal Legislature.]

*[Assent of the Governor was first published in the Kolkata Gazette,
Extraordinary, of the 30th August, 2011.]*

An Act to amend the Indian Stamp Act, 1899, in its application to West Bengal, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003.

WHEREAS it is expedient to amend the Indian Stamp Act, 1899, in its application to West Bengal, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003, for the purposes and in the manner hereinafter appearing;

2 of 1899.
West Ben. Act
XXI of 1972.
West Ben. Act
XLIX of 1994.
West Ben. Act
XXXVII of
2003.

It is hereby enacted in the Sixty-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 Finance Act, 2011.

*The West Bengal Finance Act, 2011.**(Section 2.)*

(2) Save as otherwise provided, it shall come into force on such date, or shall be deemed to have come into force on such date, as the State Government may, by notification in the *Official Gazette*, appoint, and different dates may be appointed for different provisions of this Act.

Application and amendment of Act 2 of 1899.

2. (1) The Indian Stamp Act, 1899 (hereinafter referred to as the principal Act) shall, in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided.

(2) In Schedule IA to the principal Act,—

(a) in article 23, in the column under the heading “Proper Stamp-duty”,—

(i) in clause (a), for the words “rupees twenty-five lakh”, the words “rupees thirty lakh” shall be substituted;

(ii) in clause (b), for the words “rupees twenty-five lakh”, the words “rupees thirty lakh” shall be substituted;

(iii) in clause (c), for the words “rupees twenty-five lakh”, the words “rupees thirty lakh” shall be substituted;

(b) after article 23 in the first column and the entry relating thereto in the second column, the following article in the first column and entries relating thereto in the second column shall be inserted:—

‘23A. Conveyance as defined in *Explanation* (i) to sub-section (10) of section 2 as amended by the Indian Stamp (West Bengal Amendment) Act, 1990 (West Ben. Act XVII of 1990)—

(a) when made between family members

The same duty as a Gift [No. 33 (i)] on the market value of the property which is the subject-matter of the Conveyance.

(b) in other cases

The same duty as a Conveyance (No. 23) on the market value of the property which is the subject-matter of the Conveyance.

Explanation.—For the purpose of this article, “Family” shall have the same meaning as explained under article 33.’;

(c) against item (i) of article 33 in the first column, in the column under the heading “Proper Stamp-duty”, for the words “one-half of one *per centum*”, the words “two *per centum*” shall be substituted;

(d) in article 35,—

(i) in clause (a) in the first column,—

(A) against item (ii), in the column under the heading “Proper Stamp-duty”, for the words “value of the average annual rent reserved”, the words “value of the average annual rent reserved or ten *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher” shall be substituted;

(B) against item (iii), in the column under the heading “Proper Stamp-duty”, for the words “value of the average annual rent reserved”, the words “value of the average annual rent reserved or twenty-five *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher” shall be substituted;

*The West Bengal Finance Act, 2011.**(Section 2.)*

- (C) against item (iv), in the column under the heading "Proper Stamp-duty", for the words "value of the average annual rent reserved", the words "value of the average annual rent reserved or fifty *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher" shall be substituted;
- (D) against item (v), in the column under the heading "Proper Stamp-duty", for the words "value of the average annual rent reserved", the words "value of the average annual rent reserved or seventy-five *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher" shall be substituted;
- (E) against item (vi), in the column under the heading "Proper Stamp-duty", for the words "value of the average annual rent reserved", the words "value of the average annual rent reserved or ninety-five *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher" shall be substituted;
- (F) against item (vii), for the entry in the column under the heading "Proper Stamp-duty", the following entry shall be substituted:—
- "The same duty as a Conveyance (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved or ninety-five *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher.";
- (G) against item (viii), for the entry in the column under the heading "Proper Stamp-duty", the following entry shall be substituted:—
- "The same duty as a Conveyance (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved or ninety-five *per centum* of market value of the property which is the subject-matter of the lease, whichever is higher.";
- (ii) for clause (b) in the first column and the entry relating thereto in the second column, the following clause in the first column and entries relating thereto in the second column shall be substituted:—
- "(b) where the lease is granted for a fine or premium, or for money advanced and no rent is reserved—
- (i) where the lease purports to be for a term of less than one year; The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease.

*The West Bengal Finance Act, 2011.**(Section 2.)*

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| (ii) where the lease purports to be for a term of not less than one year but not more than five years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or ten <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |
| (iii) where the lease purports to be for a term exceeding five years but not more than ten years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or twenty-five <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |
| (iv) where the lease purports to be for a term exceeding ten years but not more than twenty years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or fifty <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |
| (v) where the lease purports to be for a term exceeding twenty years but not more than thirty years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or seventy-five <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |
| (vi) where the lease purports to be for a term exceeding thirty years but not more than hundred years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or ninety-five <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |

*The West Bengal Finance Act, 2011.**(Section 2.)*

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| (vii) where the lease purports to be for a term exceeding one hundred years or in perpetuity; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or ninety-five <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher. |
| (viii) where the lease does not purport to be for any definite term; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease or ninety-five <i>per centum</i> of market value of the property which is the subject-matter of the lease, whichever is higher.”; |
- (iii) for clause (c) in the first column and the entry relating thereto in the second column, the following clause in the first column and entries relating thereto in the second column shall be substituted:—
- “(c) where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved—
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| (i) where the lease purports to be for a term of less than one year; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered. |
| (ii) where the lease purports to be for a term of not less than one year but not more than five years; | The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered or the same duty as a Conveyance (No. 23) on ten <i>per centum</i> of the market value of the property which is the subject matter of the lease, whichever is higher. |

*The West Bengal Finance Act, 2011.**(Section 2.)*

- (iii) where the lease purports to be for a term exceeding five years but not exceeding ten years; The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered or the same duty as a Conveyance (No. 23) on twenty-five *per centum* of the market value of the property which is the subject-matter of the lease, whichever is higher.
- (iv) where the lease purports to be for a term exceeding ten years but not exceeding twenty years; The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered or the Same duty as a Conveyance (No. 23) on fifty *per centum* of the market value of the property which is the subject-matter of the lease, whichever is higher.
- (v) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years; The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered or the same duty as a Conveyance (No. 23) on seventy-five *per centum* of the market value of the property which is the subject-matter of the lease, whichever is higher.

*The West Bengal Finance Act, 2011.**(Section 2.)*

- (vi) where the lease purports to be for a term exceeding thirty years or in perpetuity or does not purport to be for any definite term;

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered or the same duty as a Conveyance (No. 23) on ninety-five *per centum* of the market value of the property which is the subject-matter of the lease, whichever is higher:

Provided that in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed rupees ten.”;

- (e) against article 45 in the first column, in the entry relating thereto in the second column, for the words “one-half of one *per centum*”, the words “two *per centum*” shall be substituted;
- (f) for item A of article 58 in the first column and the entry relating thereto in the second column, the following item in the first column and entries relating thereto in the second column shall be substituted:—

‘A.—Instrument of (including a deed of dower)—

- (a) Settlement in favour of a member or members of a family; The same duty as a Gift [No. 33(i)] on the market value of the property for the settlement thereof for the purpose referred to in sub-clause (b) of clause (24) of section 2.
- (b) Settlement in favour of persons other than family members; The same duty as a Conveyance (No. 23) on the market value of the property for the settlement thereof for the purpose referred to in sub-clause (b) of clause (24) of section 2.

*The West Bengal Finance Act, 2011.**(Section 2.)*

- (c) Settlement for any other purpose The same duty as a Bottomry Bond (No. 16) on the market value of the property which is the subject matter of the settlement for the purpose referred to in sub-clause (a), and sub-clause (c), of clause (24) of section 2:

Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and in pursuance of such agreement an instrument of settlement is subsequently executed, the duty on such instrument shall not exceed rupees ten.

Exemption.—Deed of dower executed on the occasion of a marriage between Muhammedans.

Explanation.—For the purpose of this item, “Family” shall have the same meaning as explained under article 33.’;

- (g) for article 63 in the first column and the entry relating thereto in the second column, the following article in the first column and the entries relating thereto in the second column shall be substituted:—

‘63. Transfer of lease by way of assignment, and not by way of under-lease—

- (i) when made to a member or mem-bers of a family without conside-ration The same duty as a gift [No. 33(i)] on the market value of the property which is the subject-matter of the transfer of lease.

- (ii) in other cases The same duty as a Lease (No. 35).

Exemption.—Transfer of any lease exempt from duty.

Explanation.—For the purpose of this item, “Family” shall have the same meaning as explained in item (i) of article 33.’.

The West Bengal Finance Act, 2011.

(Sections 3, 4.)

Amendment of
West Ben. Act
XXI of 1972.**3. In the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972,—**

(1) after section 4A, the following section shall be inserted:—

“Registration of proprietor. 4AA. (1) Every proprietor of a hotel or restaurant who is liable to deposit the entertainment tax under section 3 recoverable from, or the luxury tax under section 4 payable by him as referred to in section 4A shall get himself registered with the prescribed authority in the prescribed manner within ninety days from the end of the month in which he has become liable for the first time to deposit tax under the said section or within ninety days from the date of coming into force of this section, whichever is later.

(2) If a proprietor fails to get himself registered within the time specified in sub-section (1), the prescribed authority may, after giving such proprietor a reasonable opportunity of being heard, impose a penalty of a sum not exceeding five thousand rupees for each month of default.

(3) No penalty under sub-section (2) shall be imposed in respect of the same fact for which proceeding under sub-section (1) of section 6 has been initiated and no such proceeding shall be initiated in respect of a fact for which a penalty under sub-section (2) of this section has been imposed.”;

(2) in section 4C, for the words “two *per centum*”, the words “one *per centum*” shall be substituted;

(3) in section 6,—

(a) in sub-section (1),—

(i) for the words “If any person fails to pay the entertainment tax or the luxury tax”, the words “If any proprietor fails to get himself registered under this Act or fails to deposit the entertainment tax or the luxury tax” shall be substituted;

(ii) for the words “five hundred rupees”, the words “five thousand rupees” shall be substituted;

(iii) for the words “five rupees”, the words “five hundred rupees” shall be substituted;

(b) in sub-section (2),—

(i) for the word “person”, the word “proprietor” shall be substituted;

(ii) for the words “to pay the tax which was payable by him”, the words “to deposit tax which was payable” shall be substituted.

Amendment of
West Ben. Act
XLIX of 1994.**4. In the West Bengal Sales Tax Act, 1994,—**

(1) in section 56A, for sub-section (5), the following sub-section shall be substituted:—

“(5) The amount payable by an applicant for settlement of the total amount recoverable in respect of a certificate as referred to in sub-section (1), shall be determined—

(a) at the rate of twenty-five *per centum* of the amount, subject to the provisions of sub-section (8), and sub-section (9), of section 52, specified in a certificate referred to in sub-section (2) of section 52 or the actual amount paid in respect of the amount specified in such certificate, whichever is higher; and

*The West Bengal Finance Act, 2011.**(Section 5.)*

- (b) at the rate of five *per centum* of the amount specified in a certificate referred to in sub-section (2) of section 52 towards the amount of interest recoverable under clause (a) of rule 5 of the rules in Schedule X till the date of making application under sub-section (3), subject to a maximum of rupees one lakh, or the actual amount paid towards the interest recoverable, whichever is higher; and
- (c) at the rate of one hundred rupees as charges recoverable under clause (b) of rule 5 of the rules in Schedule X till the date of making the application under sub-section (3), or the actual amount paid towards charges recoverable, whichever is higher:

Provided that where the applicant has already paid, before coming into force of this sub-section, the amount as specified in the certificate referred to in sub-section (2) of section 52 in excess of or equal to the total amount specified in clause (a), clause (b) and clause (c) above, or where the applicant makes good the deficit amount to make it equal to the total amount specified in clause (a), clause (b) and clause (c) above, the same shall be accepted as payment made in full of "the total amount recoverable" as referred to in sub-section (1):

Provided further that the amount paid in excess of the total amount as referred to in the first proviso shall not be refundable to the applicant under any circumstances.";

- (2) in section 68, to sub-section (3), the following proviso shall be added:—

"Provided that the Commissioner may from amongst the registered dealers select certain such dealers who may be allowed to import goods from outside the State on the basis of such documents, under such circumstances, and under such conditions and restrictions as may be prescribed.";

- (3) in Schedule VIII, in the entry in column (3) against serial No. 2 in column (1), for the words "Thirty-seven", the word "Fifty" shall be substituted.

Amendment of
West Ben. Act
XXXVII of 2003.

5. In the West Bengal Value Added Tax Act, 2003,—

(1) in section 2,—

- (a) after clause (19), the following clause shall be inserted:—

“(19A) “intra-State contractual transfer price” means contractual transfer price as referred to in section 14, in respect of works contract executed within West Bengal, but excluding sale price for sales of goods in the course of inter-State trade or commerce, or outside the State, or in the course of export out of the territory of India or import into the territory of India as referred to in section 3, section 4 or section 5 of the Central Sales Tax Act, 1956;”;

*The West Bengal Finance Act, 2011.**(Section 5.)*

- (b) in clause (23), in sub-clause (c), for the words, figures, letter and brackets "or sub-section (3B).", the words, figures, letter and brackets "or sub-section (3B), or sub-section (6)," shall be substituted;
- (2) in section 12,—
 - (a) in sub-section (1), for the words and figures "of section 16", the words "or sub-section (6), of section 16" shall be substituted;
 - (b) in sub-section (2), for the words and figures "of section 16", the words, figures and brackets "or sub-section (6), of section 16" shall be substituted;
- (3) in section 18, for sub-section (2), the following sub-section shall be substituted:—

‘(2) The expression “taxable contractual transfer price” for a period as stated in sub-section (1), shall mean, in the case of a dealer who is liable to pay tax on transfer of property in goods involved in the execution of works contract under section 14 or sub-section (3) of section 24 or sub-section (3) of section 27C, that part of his intra-State contractual transfer price during that period which remains after deducting therefrom—

 - (a) contractual transfer of goods, sales of which are declared tax-free under section 21;
 - (b) charges towards labour, service and other like charges as may be prescribed;
 - (c) amounts paid to a sub-contractor for execution of the works contract, whether fully or in part, where the dealer claiming such deduction produces proof to the satisfaction of the Commissioner that—
 - (i) the sub-contractor is a registered dealer liable to pay tax under section 14; and
 - (ii) an invoice has been raised by such sub-contractor to such dealer for the amount claimed as deduction; and
 - (iii) the amount of such transaction is included by such sub-contractor in his return furnished under section 32; and
 - (iv) there is no transfer of property in goods (whether as goods or in some other form) from such sub-contractor to the dealer in respect of such works contract;
 - (d) such other amounts or contractual transfers as may be prescribed.’;
- (4) in section 22,—
 - (a) in sub-section (4), in the first proviso, for the words “if purchases are used”, the words “if purchased goods are used” shall be substituted;
 - (b) in sub-section (12),—
 - (i) in clause (a), for the words and figures “of section 16”, the words, figures and brackets “or sub-section (6), of section 16” shall be substituted;
 - (ii) after clause (d), the following clauses shall be inserted:—
 - “(da) made from a registered dealer who obtained registration on the basis of false or incorrect documents or false or incorrect representations and whose certificate of registration has been cancelled in accordance with the provisions of clause (c) of sub-section (1) of section 29; or
 - (db) made from a registered dealer who is found upon enquiry not to have existed, at the time of sale of goods, at the address as disclosed in tax invoice produced or, as the case may be, at the address as disclosed at the time of registration, subject to the amendment made under section 27 or amendment application as moved under section 27A, if any; or”;

*The West Bengal Finance Act, 2011.**(Section 5.)*

(5) after section 22, the following sections shall be inserted:—

“Penalty for false claim of input tax credit or input tax rebate.

22A. (1) Where any registered dealer has claimed input tax credit or input tax rebate for a period without entering into a valid transaction of purchase with another registered dealer in West Bengal resulting in claim of a higher amount of input tax credit or input tax rebate than is admissible to him, the Commissioner may, by way of a separate proceeding independent of any scrutiny, verification, audit, assessment, appeal, revision or review for such period and after giving in the prescribed manner, a reasonable opportunity of being heard to such dealer, impose, in addition to any tax levied or leviable or penalty imposed or imposable under this Act for such period, by an order in writing, a penalty of a sum calculated at such *per centum*, not less than twenty-five *per centum* and not exceeding one hundred fifty *per centum*, as specified in sub-section (2), of the amount of input tax credit or input tax rebate claimed in excess than is admissible to him:

Provided that no penalty under this section shall be imposed if action has been taken under sub-section (3) of section 22, or penalty has been imposed under section 96, on such dealer, for the same facts and *vice versa*.

(2) For the purposes of imposition of penalty under sub-section (1), the *per centum* shall be as follows:—

(a) at the rate of twenty-five *per centum* where the dealer admits in writing the fact of such ineligible claim of input tax credit or input tax rebate and pays the full amount of tax involved in such ineligible claim along with interest thereon within one month of inspection or enquiry leading to detection of such ineligible claim, or within one month of initiation of the proceeding for such period for imposition of penalty under sub-section (1), or within one month of initiation of the proceeding for assessment or appeal or revision or review for such period, as the case may be, whichever is earlier;

(b) at the rate of one hundred fifty *per centum* in all other cases:

Provided that a dealer may make application within the period mentioned in clause (a) to the Commissioner, with proof of payment of thirty *per centum* of the full amount of tax involved in such ineligible claim of input tax credit or input tax rebate as admitted in writing, for granting of instalment for payment of the balance amount of such tax along with interest, and upon such application by the dealer the Commissioner may allow such dealer to make payment of the balance admitted amount of tax involved in such ineligible claim along with interest thereon in monthly instalments of not more than ten months and upon payment of the full admitted amount of tax involved in such ineligible claim along with interest thereon, penalty under the sub-section (1) shall be imposed at the percentage specified in clause (a):

*The West Bengal Finance Act, 2011.**(Section 5.)*

Provided further that if the dealer fails to pay the full amount of tax as per the instalment granted under the first proviso, then the penalty under sub-section (1) shall be imposed at the rate of one hundred fifty *per centum* of the amount of tax involved in such ineligible claim:

Provided also that if it is found that the amount of tax involved in such ineligible claim of input tax credit or input tax rebate by a dealer is in excess of the amount admitted in writing by the dealer under clause (a), then penalty under sub-section (1) shall be imposed at the rate of one hundred fifty *per centum* of that part of the amount of tax involved in such ineligible claim of input tax credit or input tax rebate which has not been admitted by the dealer in writing.

(3) Nothing contained in the above-mentioned provisions shall be construed to affect liability of the dealer to pay interest under the Act by grant of instalment for payment of the admitted amount of tax by the dealer.

"Penalty for issue of tax invoice without sale or without delivery of goods.

22B. (1) Where any registered dealer has issued tax invoice to another registered dealer in any period—

- (a) without entering into a valid transaction of sale of goods, or
- (b) without effecting any consequent delivery of goods,

the Commissioner may, by way of a separate proceeding independent of any scrutiny, verification, audit, assessment, appeal, revision or review for such period and after giving in the prescribed manner, a reasonable opportunity of being heard to such dealer, impose, in addition to any tax levied or leviable or penalty imposed or imposable under this Act for such period, by an order in writing, a penalty of a sum calculated at such percentages, not less than one hundred and twenty-five *per centum* and not exceeding two hundred fifty *per centum*, as specified in sub-section (2), of the amount of tax involved in the tax invoices issued by him in the situations referred to in clause (a) and clause (b):

Provided that no penalty under this section shall be imposed if action has been taken against the dealer under sub-section (3) of section 22 for the same facts and *vice versa*.

(2) For the purposes of imposition of penalty under sub-section (1) the percentages shall be as follows:—

- (a) at the rate of one hundred and twenty-five *per centum* where the dealer admits in writing the fact of such issue of tax invoice and pays within one month of inspection or enquiry leading to detection of such issue of tax invoice or within one month of initiation of proceedings for the purpose of imposition of penalty under sub-section (1), or within one month of initiation of the proceeding for assessment or appeal or revision or review for such period, as the case may be, whichever is earlier, an amount towards penalty equal to one hundred and twenty-five *per centum* of the full amount of tax shown in such tax invoices issued by him in the situations referred to in clause (a) and clause (b) of sub-section (1);

The West Bengal Finance Act, 2011.

(Section 5.)

- (b) at the rate of two hundred fifty *per centum* in all other cases:

Provided that a dealer may make application within the period mentioned in clause (a) to the Commissioner, with proof of payment of thirty *per centum* of the penalty imposable under clause (a), for granting of instalment for payment of the balance amount towards penalty as so imposable, and upon such application, the Commissioner may allow such dealer to make payment in monthly instalments for not more than ten months the balance amount towards penalty so imposable, and upon payment of such full amount, penalty under the sub-section (1) shall be imposed at the percentage specified in clause (a):

Provided further that if the dealer fails to pay the full amount of penalty imposable as per the instalment granted, if any, under the first proviso, then the penalty under sub-section (1) shall be imposed at the rate of two hundred fifty *per centum* of the amount of tax shown in such tax invoices issued by him in the situations referred to in clause (a) and clause (b) of sub-section (1):

Provided also that if it is found that the amount of tax involved in such issue of tax invoice by a dealer is in excess of the amount admitted in writing by the dealer under clause (a), then penalty under sub-section (1) shall be imposed at the rate of two hundred fifty *per centum* on that part of the amount of tax, involved in such tax invoices issued by him in the situations referred to in clause (a) and clause (b) of sub-section (1), which has not been admitted by the dealer in writing.”;

- (6) in section 24, after sub-section (2A), the following sub-section shall be inserted:—

“(2B) Where a dealer who has become liable to pay tax under section 10 or under section 11 or under section 14 applies for registration under section 24 and it is found from the documents produced or otherwise that such dealer claims to carry on business from table-space in a room not owned by him or not directly let out to him by the landlord or from accommodation not owned or directly let out to him by the landlord, the registering authority shall grant him registration only when such dealer furnishes a security of amount not exceeding rupees one lakh each in such manner as may be prescribed.”;

- (7) in section 29,—

- (a) in sub-section (1), after clause (f), the following clause shall be inserted:—

“(g) the dealer has received a tax invoice from another dealer without entering into a transaction of purchase.”;

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- (b) for sub-section (3), the following sub-sections shall be substituted:—

“(3) The cancellation of registration effected under clause (c) of sub-section (1), subject to such conditions and restrictions, as may be prescribed, shall be deemed to take effect from the date of validity of the certificate of registration as granted under sub-section (2) of section 24.

(3A) The cancellation of registration under any clause other than clause (c) of sub-section (1), subject to such conditions and restrictions, as may be prescribed, shall take effect from the date as specified by the appropriate authority in his order:

Provided that the date of cancellation of the certificate of registration in case referred to in clause (e) or clause (f) of sub-section (1) of section 29 shall not be a date prior to the date on which order of cancellation is passed.”;

- (c) after sub-section (4), the following sub-section shall be inserted:—

“(5) The appropriate authority as referred to in sub-section (1), sub-section (2), sub-section (3A), and sub-section (4), shall be the appropriate assessing authority of the dealer notwithstanding the fact that the certificate of registration to such dealer may have been granted by an authority higher in rank to such appropriate assessing authority.”;

- (8) in section 32,—

- (a) in sub-section (2), after the second proviso, the following proviso shall be inserted:—

“Provided also that where a dealer, required to furnish return under sub-section (1), has furnished a return beyond the prescribed date without making full payment of the net tax, interest and late fee payable according to such return, such dealer shall, except for the return period or periods as the State Government may by notification specify, be deemed to have delayed in furnishing that return and shall pay late fee upto the date of full payment of such net tax and interest, or upto the date of assessment under section 46 or section 48 in respect of such return period, whichever is earlier.”;

- (b) in sub-section (3), for the words “discovers any omission or error in any return furnished by him”, the words “discovers any omission or error which is apparent and honest in nature in a return furnished by him under sub-section (1)” shall be substituted;

- (c) to sub-section (3), the following proviso shall be inserted:—

“Provided that a revised return under this sub-section shall be furnished once only.”;

- (d) in sub-section (4), for the proviso, the following proviso shall be substituted:—

“Provided that the dealer shall be eligible to claim the amount deducted under sub-section (1) of section 40 as payment of tax in the tax period during which the certificate of deduction under sub-section (3) of section 40 has been received.”;

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- (9) in section 40, for sub-section (1), the following sub-section shall be substituted:—

‘(1) Notwithstanding anything contained in section 32 or any rules made thereunder or any terms of a contract to the contrary, any person responsible for paying any sum to any dealer for execution of a works contract within West Bengal referred to in section 14, wholly or partly in pursuance of a contract between such dealer and—

- (a) Government,
- (b) a local authority,
- (c) a corporation or a body established by or under any law for the time being in force,
- (d) a company incorporated under the Companies Act, 1956, including a Government undertaking,
- (e) a co-operative society registered or deemed to be registered under the West Bengal Co-operative Societies Act, 2006,
- (f) an educational institution,
- (g) a promoter,
- (h) any bank,
- (i) any hospital or nursing home or diagnostic centre,
- (j) a partnership firm,
- (k) a joint-venture company, or
- (l) a limited liability partnership,

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shall, at the time of payment of such sum in cash or by issue of a cheque or draft or any other mode of payment, deduct, towards tax leviable on intra-State contractual transfer price, arising from transfer of property in taxable goods in the execution of such works contract by him, if any, an amount equal to such percentage not exceeding fifteen *per centum* on such portion of payment as may be prescribed, depending upon the amount of charges towards labour, service and other charges as referred to in clause (b) of sub-section (2) of section 18, and the scope of claim of input tax credit, and different portions and different percentages may be prescribed for the purpose of such deduction:

Provided that no deduction under this sub-section shall be made,—

- (i) where the payment is made as advance prior to the commencement of the execution of such works contract; or
- (ii) where no transfer of property in goods (whether as goods or in some other form) is involved in the execution of such works contract, and the payment is made by, or on behalf of, or to a dealer who has not claimed deductions under clause (c) of sub-section (2) of section 18 in respect of such works contract.

Explanation.—For the purposes of this sub-section, “promoter” means a person who constructs, reconstructs, converts, renovates or extends or causes to be constructed, reconstructed, converted, renovated or extended, a building (including a flat or apartment or a block of flats or apartments or a resort) for the purposes of transfer of such building, either in full or in part, by sale or otherwise to any person or to any company, firm, co-operative society, association of persons or any artificial juridical person, and includes—

- (i) his assignee, if any,

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- (ii) the person who develops or reclaims the land, the person who constructs, reconstructs, converts, renovates or extends, and the person who transfers, such building, if such persons are different,
- (iii) a society registered under the West Bengal Societies Registration Act, 1961.
- (iv) any firm, board or other association of persons established by or under any law for the time being in force.’;

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(10) in section 41,—

(a) in sub-section (1),—

- (i) for the words “shall be scrutinized by the Commissioner to ascertain”, the words “shall be scrutinized, either electronically or otherwise, by the Commissioner, in the manner as may be prescribed, to ascertain” shall be deemed to have been substituted with effect from the 1st day of April, 2010;
- (ii) in clause (a), for the words “correct and complete”, the words “complete and self-consistent” shall be deemed to have been substituted with effect from the 1st day of April, 2005;
- (iii) in clause (b), for the words, figures and brackets “sub-section (3) of section 33”, the words, figures and brackets “sub-section (1), or sub-section (3), of section 33” shall be deemed to have been substituted with effect from the 1st day of April, 2005;

(b) in sub-section (2), for the words “correct and complete”, the words “complete and self-consistent” shall be deemed to have been substituted with effect from the 1st day of April, 2005;

(c) in sub-section (3), for the words “four months from the date on which”, the words, “four months from the last date of the month in which” shall be substituted;

(11) in section 43, in sub-section (5), after the first proviso, the following provisos shall be inserted:—

“Provided further that no assessment under clause (ca) of sub-section (1) of section 46 shall be made, where the dealer has admitted, in writing, the observations made in the report referred to in sub-section (3) and has paid in full the amount of net tax paid in short, due to excess claim of input tax credit or input tax rebate or non-reversal of input tax credit, or for any other reason as mentioned in such report, with interest as payable under section 33;

Provided also that the provisions of the second proviso shall not be applicable in respect of assessment required to be made under any of the clauses of sub-section (1) of section 46, other than clause (ca) of sub-section (1) of section 46.”;

(12) after section 43, the following section shall be inserted:—

“Special Audit of
dealers.

43A. (1) The Commissioner may, on the basis of information received or otherwise, select, subject to such conditions and Restrictions, as may be prescribed, certain dealers for the purpose of special audit of accounts, records and documents including physical verification of goods held in stock.

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(2) The Special audit shall be conducted at the dealer's place of business with or without prior notice.”;

(13) in section 46, in sub-section (1),—

(a) after clause (eb), the following clause shall be inserted:—

“(ec) where a registered dealer is enjoying deferment, tax holiday, or remission as referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 116;”;

(b) in the fifth proviso, for the words, figures and brackets “where no scrutiny in accordance with the provision of sub-section (1) of section 41 of a return furnished by a registered dealer has been caused or where no notice, as referred to in sub-section (2) of section 41, has been issued”, the words, figures and brackets “where no scrutiny in accordance with the provision of sub-section (1) of section 41 of a return for return period starting on or after the 1st day of April, 2010, furnished under sub-section (1) of section 32 by a registered dealer has been caused” shall be deemed to have been substituted with effect from the 1st day of April, 2010;

(c) after the sixth proviso, the following proviso shall be inserted:—

“Provided also that no assessment proceedings by issue of notice under this sub-section shall be initiated for any period starting on or after the first day of April, 2008, by any authority including an authority as referred to in section 43—

(a) where the amount paid in short on account of net tax or excess claim of input tax credit or input tax rebate or non-reversal of input tax credit, or for any other reason, or on account of short payment of interest or late fee, has been quantified in the audit report for such period under sub-section (3) of section 43; and

(b) where the dealer upon receipt of such audit report for such period has admitted in writing the observations made therein and has paid in full the amount paid in short as referred to above and as quantified in such report, within one month from the receipt of the audit report, and

(c) where any other reason for assessment as given in different clauses, other than clause (ca), does not exist,

and upon fulfilment of the conditions specified in clause (a), clause (b) and clause (c), initiation, if any, already made for assessment for such period shall be dropped.”;

(14) after section 47, the following sections shall be inserted:—

“Special Provision
for deemed
assessment.

47A. (1) The returns furnished by a registered dealer, other than those mentioned in clause (a) or clause (b) or clause (c) of sub-section (1) of section 116, for the year commencing from the 1st day of April, 2009, and ending on the 31st day of March, 2010, and the 1st day of April, 2010, and ending on the 31st day of March, 2011 [hereinafter referred to as the eligible period(s)], in accordance with the provisions of section 32 and the total turnover of sales during the eligible period(s) in respect of such returns is less than rupees three crore, shall, notwithstanding the provisions of sub-section (1) of section 46, be accepted as correct and complete, and the assessment in respect of such returns for the eligible period(s) shall be deemed to have been made under sub-section (1) of section 47 on the 31st day of December, 2011, subject to the furnishing of a declaration as required under sub-section (4) and enclosing a receipted challan

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showing payment of balance amount of net tax along with interest, or late fee previously remaining unpaid, if any, for such eligible period(s) subject to the provisions of sub-section (2) of this section.

(2) The provisions of this section shall not apply in respect of a year, where the registered dealer—

- (a) is required to be assessed under clause (aa), or clause (b), or clause (c), or clause (d), or clause (h), of sub-section (1) of section 46, for any return period for such year falling within the eligible period(s); or
- (b) is engaged in execution of works contract within West Bengal during any period within the eligible period(s); or
- (c) has claimed refund of unadjusted excess input tax credit or excess payment of net tax or interest or late fee during any period within the eligible period(s); or
- (d) has been selected for audit under section 43 for any period within such eligible period(s); or
- (e) has been found to have evaded any tax under the Act for any year or part of a year within the preceding three years before the eligible period(s); or
- (f) has not furnished return under the Act or under the Central Sales Tax Act, 1956, on or before the 31st day of October, 2011, in accordance with the provisions of the respective Acts, for any return period for the year falling within the eligible period(s); or
- (g) has claimed exemption from tax on sales or for lower rate of tax on sales under the Act in respect of any return period for such year falling within the eligible periods but is not in possession of the relevant declarations or certificates or documents required in support of such claim and has not paid the relevant taxes in terms of sub-section (3); or
- (h) has claimed exemption from tax on sales or for lower rate of tax on sales under the Central Sales Tax Act, 1956, in respect of any return period for such year falling within the eligible period but has not produced, or is not in possession of, the relevant declarations, certificates or documents in support of such claim or has not paid the relevant taxes in terms of sub-section (3); or
- (i) has claimed exemption from tax under section 6A of the Central Sales Tax Act, 1956, in respect of any return period for such year falling within the eligible periods but has not produced, or in possession of, the relevant declarations or documents in support of such claim or has not paid the relevant taxes in terms of sub-section (3).

74 of 1956.

(3) Where a registered dealer is eligible and is willing to be assessed in accordance with the provisions of sub-section (1) for the eligible period(s), such registered dealer shall verify the related returns for the periods with his books of accounts and documents, including declarations or certificates required to be possessed or furnished or produced in support of the claims for deduction from turnover of sales or for exemption from payment of tax or for payment of tax at a lower rate, as claimed in such returns, and shall furnish a declaration on or before the 31st day of December, 2011, in the form along with such documents, and in such manner, as may be prescribed.

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(4) The registered dealer, if upon verification, finds that there is any short payment or non-payment of net tax or interest or late fee or the amount of unadjusted excess input tax credit carried forward in the return for the next period is in excess of the amount admissible to be lawfully carried forward, he shall make payment of such balance amount of net tax along with interest or late fee previously remained unpaid and shall also furnish along with such declaration receipted challan showing such payment.

(5) No refund of tax, input tax credit or input tax rebate, interest or late fee shall be made in respect of any return period falling within the eligible period(s), unless an assessment is made under sub-section (1) of section 46.

(6) The provisions of sub-section (3), sub-section (3A), sub-section (4), and sub-section (5), of section 47 shall, *mutatis mutandis*, apply in respect of an assessment deemed to have been made under this section.

Summary
assessment of
returns.

47AA. (1) A return, including a revised return, furnished by a registered dealer, other than those mentioned in clause (a) or clause (b) or clause (c) of sub-section (1) of section 116, under section 32, shall be deemed to have been summarily assessed on the date of submission of such return if—

- (a) the dealer has also furnished the return under the Central Sales Tax Act, 1956, for the return period, if he is required to furnish such a return under that Act; and 74 of 1956.
- (b) the returns furnished under the Act and the Central Sales Tax Act, 1956, are complete and self-consistent; and
- (c) the amount of net tax, interest and late fee has been paid in full according to such return or returns; and
- (d) no proceeding arising from seizure of accounts or goods under the Act has been initiated in respect of the year to which the said return period relates, or for any period in respect of the preceding two years, by the Bureau of Investigation or any other authority having jurisdiction over such dealer.

(2) No assessment shall be made under sub-section (1) of section 46 in respect of any return summarily assessed under sub-section (1), unless such summary assessment is revoked under sub-section (3) or is reopened under sub-section (4).

(3) The summary assessment under sub-section (1) in respect of a return furnished by a registered dealer shall stand automatically revoked, if for any return period in the year containing such return which has been summarily assessed under sub-section (1)—

- (a) the dealer has failed to produce books of accounts or documents for the period in response to a notice issued for the purposes of this Act; or
- (b) the dealer has failed to submit the statements, accounts and declarations in terms of section 30E; or
- (c) the accounts, registers or documents, or goods of the dealer has been seized in respect of the dealer for any period during the previous year or the year to which the return period relates; or

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- (d) the dealer has failed to comply with the provisions of the Central Sales Tax Act, 1956: 74 of 1956.

Provided that in respect of return furnished for the quarter ending on the 30th day of June, 2011, the summary assessment, if any, under sub-section (1) of this section, shall stand revoked where any proceeding under the Act has been started before coming into force this section by the assessing authority against the dealer in respect of the said return period.

(4) A summary assessment under sub-section (1) may be reopened by the Commissioner by an order in writing, after granting the registered dealer an opportunity of hearing, within six years from the end of the financial year in respect of which such summary assessment has been made, if he is satisfied that an assessment is required to be made under sub-section (1) of section 46 in the interest of State revenue or for any other reason.”;

- (15) in section 49, in sub-section (3), for the words “from the date of such order”, the words “from the end of the month in which such order is received by the appropriate assessing authority” shall be substituted;
- (16) in section 61, in sub-section (1), in clause (ab), for the words “seventy-five *per centum*”, the words “fifty *per centum*” shall be substituted;
- (17) section 62 shall be renumbered as sub-section (1), and after sub-section (1) so renumbered, the following sub-sections shall be inserted:—

“(2) The Commissioner shall have the power to adjust any amount due to be refunded to a registered dealer under sub-section (1) against any tax, interest, late fee or penalty due from him, in such manner, and subject to such conditions and restrictions, as may be prescribed.

(3) Where an order giving rise to a refund is the subject-matter of an appeal or revision or any other proceeding, or where any other proceeding is pending, and the Commissioner has reasons to believe that the grant of the refund to the registered dealer is likely to adversely affect the interest of revenue, the Commissioner may withhold the refund for a period not exceeding three months from the date of such order.”;

- (18) in section 65, for the words “five thousand rupees”, the words “ten thousand rupees” shall be substituted;
- (19) after section 66A, the following section shall be inserted:—

“Penalty for non-maintenance or non-production of accounts, documents, etc.

66AA. Where the Commissioner is satisfied that a dealer—

- (a) has not maintained accounts or documents for ascertaining the net tax liability for a period; or
- (b) has refused or has failed without reasonable cause, to produce such accounts or documents as are required to be produced under section 66 or in a proceeding for verification of return under section 42 or for audit under section 43 or for special audit under section 43A or for assessment under section 46 or section 48 or in appeal or revision or review or in a proceeding for imposition of penalty, under this Act; or

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(c) has not provided he required facilities to access to his accounts and documents maintained in electronic form for examination for the purposes of this Act,

he may, in addition to any other action under this Act, impose for each such occasion a penalty of rupees ten thousand on the dealer in such manner as may be prescribed.”;

(20) in section 73, to sub-section (2), the following proviso shall be added:—

“Provided that the Commissioner may, from amongst the registered dealers, select certain such dealers who may be allowed to import goods from outside the State on the basis of such documents and subject to such conditions and restrictions as may be prescribed.”;

(21) in section 84, in sub-section (2), for the first proviso, the following proviso shall be substituted:—

‘Provided that any appeal which is entertained under sub-section (1), shall, if not disposed of within the date as referred to in column (2) of the Table below from the date of its filing as referred to in column (1), shall be deemed to have been disposed of in accordance with law and all claims of the applicant shall be deemed to have been allowed in full.

Table

Sl. No.	Date of filing of the appeal	Date within which the appeal as entertained has to be disposed of
1.	Between 1st day of April and 30th day of September of a year	30th day of September of the year immediately following the year in which the appeal was filed.
2.	Between 1st day of October and 31st day of March of a year	31st day of March of the year immediately following the year in which the appeal was filed.

Explanation.—For the purpose of this sub-section “year” shall have the same meaning as defined in clause (58) of section 2.’;

(22) in section 85, in sub-section (2), for the words, letter and brackets “under clause (c)”, the words, letters and brackets “under clause (c) or clause (ca)” shall be substituted;

(23) after section 87, the following section shall be inserted:—

“Fast track method of revision of certain appellate or revisional order from an order of assessment.

87A. Notwithstanding anything contrary contained in any other provision of this Act, the application for revision, disputing the amount of net tax, late fee, penalty or interest for a sum of less than twenty lakh rupees and relating to the year ending the 31st day of March, 2007, and the 31st day of March, 2008, which had been preferred under section 87 before the Appellate and Revisional Board for revision of a final appellate or revisional order from an order of assessment and which is pending on the 30th day of September, 2011, before the said board, shall,

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on and from the 1st day of October, 2011, stand transferred to such authority to be constituted by the Commissioner, and the application for revision so transferred shall be disposed of preferably within a period of one year and in such manner as may be prescribed:

Provided that where the Commissioner is satisfied that any revision application cannot be disposed of within the period as stated above, he may, for the reasons to be recorded in writing extend the period till such time as he may deem fit, but not exceeding twelve months from the end of such period.

(24) in section 88A,—

- (a) in clause (a), for the words and figures “a final appellate order passed under section 84 by an Assistant Commissioner or a Deputy Commissioner or an Additional Commissioner”, the words and figures “a final appellate order passed under section 84” shall be substituted;
- (b) in clause (b), for the words “or section 88 by an Assistant Commissioner, a Deputy Commissioner or an Additional Commissioner”, the words “or section 88” shall be substituted.

(25) in Schedule A,—

- (a) for the entry in column (2) against serial No. 2 in column (1), for the words “used by handicapped persons”, the words “used by handicapped persons including cervical spinal collar, walking stick, wheel chair, and hearing aid” shall be substituted;
- (b) for the entry in column (2) against serial No. 3A in column (1), the following entry shall be substituted:—
 “Bangles made of any kind of materials, except those made of materials mentioned in column (2) against serial No. 2 of Schedule B and those mentioned in the entry in column (2) against serial No. 8A of Part I of Schedule C.”;
- (c) in the entry in column (2) against serial No. 34 in column (1), for the words “cocoon and raw silk”, the words “cocoon, and raw silk made or manufactured in India” shall be substituted;
- (d) in the entry in column (2) against serial No. 35C in column (1), for the words “or *solapith*”, the words “or *solapith*, and articles made thereof” shall be substituted;
- (e) in the entry in column (2) against serial No. 37A in column (1), for item (ii), the following item shall be substituted:—
 “(ii) Cotton textile fabrics, coated, covered, impregnated or laminated with plastics, mosquito net fabrics, and mosquito nets commonly known as *mashari*, when such fabrics or nets are manufactured or made in India.”;
- (f) after serial No. 39 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—

“39A. Un-stitched salwar suits.”;

(26) in Schedule C, in Part I,—

- (a) in the entry in column (2) against serial No. 8A in column (1), for the words “all types of imitation jewellery”, the words “all types of imitation jewellery including costume jewellery or fashion jewellery” shall be substituted;

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- (b) in the entry in column (2) against serial No. 23B in column (1), for the words "Cervical spinal collar, brace and/or those", the words "Brace and or those" shall be substituted;
- (c) in the entry in column (2) against serial No. 24B in column (1), for the words "Cups and glasses", the words "Cups, plates and glasses" shall be substituted;
- (d) in the entry in column (2) against serial No. 34 in column (1), for the words "pump parts and fittings", the words "pump, and its parts and fittings" shall be substituted;
- (e) after serial No. 48 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 "48A. Mosquito net fabrics other than those manufactured or made in India, and mosquito net commonly known as *mashari* other than those manufactured or made in India.";
- (f) in the entry in column (2) against serial No. 51A in column (1), for the words "Nuts, bolts", the words "Nuts, bolts, washer" shall be substituted;
- (g) in the entry in column (2) against serial No. 54B in column (1), for the words "Plant and machinery", the words "Machinery, excluding generator of all types and diesel engine pump set" shall be substituted;
- (h) after serial No. 60 in column (1) and the entry relating thereto in column (2), the following serial No. in column (1) and the entry relating thereto in column (2) shall be inserted:—
 "60A. Raw silk other than those made or manufactured in India.";
- (i) in the entry in column (2), against serial No. 74 in column (1), for the words "Solvent oils other than organic solvent oil.", the words "Solvent oils." shall be substituted;
- (j) in the entry in column (2) against serial No. 84 in column (1) for the words "and parts thereof", the words "and parts thereof but excluding tyres and tubes" shall be substituted;
- (k) in the entry in column (2) against serial No. 89 in column (1), for the words "pen of all varieties and descriptions", the words "pen of all varieties and descriptions including its parts" shall be substituted;
- (27) in Schedule D, the following entries in column (1) and the entries in column (2) shall be inserted:—
 "1. Chewing tobacco, and pan masala of any type, when sold in a packaged condition.
 2. Cigar, Cheroot, and Cigarettes."

By order of the Governor,

B. K. SRIVASTAVA,
Secy.-in-charge to the Govt. of West Bengal,
Law Department.