

Finance Act 1972

Section 69 - Amendment of Bengal Act Vi of 1941 as in Force in Delhi

In the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union territory of Delhi, -

(a) in section 5, in sub-section (2), in sub-clause (ii) of clause (a), for the words "for use by him, as raw materials in the manufacture of goods for sale; and", the following shall be substituted, namely :-

"For use by him as raw materials in the manufacture in the Union territory of Delhi (hereafter in this sub-clause referred to as Delhi), of goods (other than goods declared tax-free under section 6), -

(A) for sale inside Delhi; or

(B) for sale in the course of inter-State trade or commerce, being a sale occasioning, or effected by transfer of documents of title to such goods during the movement of such goods from Delhi; or

(C) for sale in the course of export outside India being a sale occasioning the movement of such goods from Delhi, or a sale effected by transfer of documents of title to such goods effected during the movement of such goods from Delhi, to a place outside India and after the goods have crossed the customs frontiers of India; and";

(b) after section 12, the following sections shall be inserted, namely :-

12A. Liability in case of transfer of business. - Where a dealer, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave or licence, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax (including penalty) due from the dealer up to the time of such transfer, whether such tax (including penalty) has been assessed before such transfer, but has remained unpaid or is assessed thereafter :

Provided that the liability of the transferee shall be limited to the value of the assets he obtained by such transfer.

12B. Liability in case of company in liquidation. - (1) Every person -

(a) who is a liquidator of any company which is being wound up whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Commissioner.

(2) The Commissioner shall after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of a appointment of the liquidator the amount which, in the opinion of the Commissioner, would be sufficient to provide for any tax (including any penalty) which is then or is likely thereafter to become, payable by the company under this Act.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Commissioner under sub-section (2), and on being so notified the liquidator shall set aside an amount equal to the amount notified and until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax and penalty, if any, payable by the company under this Act or for making any payment top secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give notice in accordance with sub-section (1) or fails to set aside amount as

required by sub-section (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax and penalty, if any, which the company would be liable to pay under this Act :

Provided that if the amount of any tax (including any penalty) payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall be attached to all the liquidators jointly and severally.

(6) When any private company is wound up and any tax (including any penalty) assessed under this Act on the company for any period before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax (including penalty) unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

(7) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

(8) For the purposes on this section, the expressions "company" and "private company" shall have the meanings respectively assigned to them under clauses (i) and (iii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).

12C. Liability of partners of firm to pay tax. -Notwithstanding any contract to the contrary, where any firm is liable to pay any tax (including any penalty) under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment :

Provided that where any such partner retires from the firm, he shall intimate the date of his retirement to the Commissioner by a notice in that behalf in writing and he shall be liable to pay tax (including penalty) remaining unpaid at the time of his retirement and any tax (including any penalty) due up to the date of his retirement though unassessed on that date :

Provided further that if no such intimation is given within fifteen days from the date of retirement, the liability of the partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

12D. Liability of guardians, trustees, etc. - Where the business in respect of which tax is payable under this Act is carried on by, or is in charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself; and all the provisions of this Act shall, so far as may be, apply accordingly.

12E. Liability of Court of Wards, etc. - Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any Receiver or Manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax shall be levied upon and be recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself; and all the provisions of this Act shall, so far as may be, apply accordingly.

12F. Liability in other cases. - (1) Where a dealer is a firm or an association of persons or a Hindu undivided family, and such firm, association or family has discontinued business -

(a) the tax payable under this Act by such firm, association or family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place; and

(b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or family shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm, association or family, whether such tax (including penalty) has been assessed prior to or after such discontinuance, and,

subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a dealer :

Provided that where the partner of a firm liable to pay such tax (including penalty) dies, the provisions of sub-section (4) shall, so far as may be, apply.

(2) Where a change has occurred in the constitution of a firm or association, the partners or members of the firm or association as it existed before and as it exists after its re-constitution, shall, without prejudice to the provisions of section 12C, jointly and severally be liable to pay any tax (including any penalty) due from such firm or association for any period before its re-constitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the dealer, being a firm or association of persons is dissolved, or where the dealer, being a Hindu undivided family has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be treated as references to dissolution or, as the case may be, to partition.

(4) Where a dealer liable to pay tax under this Act dies, then -

(a) if the business carried on by the dealer is continued after his death, by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax (including penalty) due from the dealer under this Act whether such tax (including penalty) has been assessed before his death but has remained unpaid or is assessed after his death;

(b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased, to the extent the estate is capable of meeting the charge, the tax (including penalty) due from the dealer under this Act whether such tax (including penalty) has been assessed before his death but has remained unpaid or is assessed after his death,

and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

Explanation : For the purposes of this sub-section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908);

(c) in section 17, for the words "the transferee shall for all the purposes of this Act", the words, figures and letter "then, save as otherwise provided in section 12A, the transferee shall for all the purposes of this Act" shall be substituted.
