

THE ORISSA LUXURY TAX ACT, 1995

TABLE OF CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement
2. Definitions
3. Taxing authorities
4. Incidence of luxury tax
5. Levy of luxury tax
6. Licence
7. Returns and payment of luxury tax
8. Interest
9. Assessment of luxury tax, imposition of penalty and determination of interest
10. Refunds
11. Accounts
12. Production and inspection of accounts and search of premises
13. Search and seizure of luxuries
14. Establishment of check-posts or barriers and inspection of goods
15. Appeal and revision
16. Statement of case to the High Court
17. Power to take evidence
18. Offences, penalties and prosecution
19. Liability to prosecution
20. Compounding of offences
21. Power to make rules
22. Power to remove difficulties

Schedule

ORISSA ACT 11 OF 1995

* THE ORISSA LUXURY TAX ACT, 1995

[Received the assent of the Governor on the 26th August 1995 first published in an extraordinary issue of the *Orissa Gazette*, dated the 26th August 1995.]

AN ACT TO PROVIDE FOR THE IMPOSITION OF TAX ON LUXURIES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Legislature of the State of Orissa in the Forty-sixth year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Luxury Tax Act, 1995.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—
 - (a) "Commissioner" means the Commissioner of Luxury Tax appointed under sub-section (1) of section (3);
 - (b) "Licensed stockist" means a stockist to whom a licence has been granted under sub-section (4) of section 6;
 - (c) "Luxuries" means the commodities as specified in the Schedule for enjoyment over and above the necessaries of life;
 - (d) "Luxury tax" means the tax payable under section 4;
 - (e) "Prescribed" means prescribed by rules made under this Act;
 - (f) "Stock of luxuries" means the quantity of luxuries that a stockist receives in, or procures for, his stock, or records or accounts for in his books of account in Orissa during any prescribed period for stocking, vending, supplying or distributing to a wholesaler, dealer, retailer, distributor or any other person, but shall not include any quantity of such luxuries held by him in stock on the first day of such prescribed period;
 - (g) "Stockist" means a person who is in regular course of business, in his possession of, or control over a stock of luxuries, whether manufactured, made or processed by him in Orissa, or brought by him into Orissa, either on his own account or on account of others, from any place outside Orissa, for stocking, vending, supplying or distributing such luxuries in Orissa;
 - (h) "Tribunal" means the Orissa Sales Tax Tribunal constituted under sub-section (2) of section 3 of the Orissa Sales Tax Act, 1947;
 - (i) "Turnover of stock of luxuries", in relation to a stockist in respect of any prescribed period or part thereof, means the aggregate of the values of stock of luxuries;
 - (j) "Value of stock of luxuries" means,
 - (i) in respect of any stockist, being a manufacturer of any of the luxuries, the value of such luxuries calculated at the ex-factory price at the time of receipt or entry thereof in his stock, and
 - (ii) in respect of any stockist being an importer of any of the luxuries, the value of such luxuries calculated at the price thereof as per consigner's bill, invoice or consignment note or other document of like nature, and shall include—
 - (a) excise duty and central sales tax, if any, paid or payable on such luxuries by the manufacturer or importer thereof, as the case may be, and

Orissa Act 14
of 1947.

Come in to force w. e. f., 1st day of September, 1995 vide *Orissa Gazette*, Extraordinary, dated the 31st August 1995 (No. 999)

(b) transport charges and insurance charges, if any, for carrying such luxuries to any premises, godown, warehouse or any other place for delivery to a wholesaler, dealer, retailer, distributor or any other person;

(k) "year" means the financial year.

Taxing authorities.

3. (1) The State Government may appoint any person to be the Commissioner of Luxury Tax, Orissa who shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act, and may appoint such other persons under any prescribed designation to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act within such local area as may be assigned to them by the Commissioner.

(2) The Commissioner and the persons appointed under sub-section (1) shall be deemed to be the public servants within the meaning of section 21 of the Indian Penal Code. 48 of 1960.

(3) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and duties under this Act to any person appointed under sub-section (1) to assist him.

(4) No suit, prosecution or other legal proceedings shall lie against the Commissioner or the persons appointed under sub-section (1) to assist him, for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Incidence of luxury tax.

4. Every stockist shall be liable to pay a luxury tax on his turnover of stock of luxuries at such rate, not exceeding twenty per centum, as the State Government may, by notification, fix in this behalf, and different rates may be fixed for different class or classes of luxuries.

Levy of luxury tax.

5. The luxury tax payable by a stockist under this Act shall be levied on that part of his turnover of stock of luxuries during any prescribed period which remains after deducting therefrom his such turnover during that period representing—

(a) the value of such stock of luxuries as shown to the satisfaction of the Commissioner to have been despatched to places outside Orissa;

(b) the value of stock of luxuries of such class or classes or description as may be prescribed.

Licence.

6. (1) No stockist shall, while being liable to pay luxury tax under section 4, hold any stock of luxuries in any premises, godown, warehouse or any other place in Orissa unless he obtains, on application, a licence in the prescribed form.

(2) If a stockist fails to obtain a licence under sub-section (1) within a period of one month of the commencement of this Act or within a period of seven days from the date of his liability under section 4, whichever is later, the Commissioner may, after giving him a reasonable opportunity of being heard, impose, by way of penalty, a sum being not less than five thousand rupees and not more than ten thousand rupees, for each month of delay in obtaining the licence and direct the stockist by a notice to pay the amount of such penalty into a Government Treasury within the date specified in the notice:

Provided that no penalty under this sub-section shall be imposed in respect of the same fact for which a prosecution under sub-section (2) of section 18 has been instituted and no prosecution would lie *vice versa*.

(3) Every stockist required to obtain a licence under sub-section (1) shall make an application in this behalf in the prescribed manner to the Commissioner.

(4) If the Commissioner is satisfied that the application for licence is in order, he shall, subject to such conditions and restrictions and in such manner as may be prescribed, grant the applicant a licence in the prescribed form.

(5) Where a stockist makes an application for licence under sub-section (3) within the period referred to in sub-section (2), such stockist shall be deemed to have complied with the provisions of sub-section (1) during the pendency of his application for the grant of the licence.

(6) Where a licence has been granted to a stockist under sub-section (4), the Commissioner may, if he is of opinion that it is necessary or expedient so to do for the proper realisation or recovery of the luxury tax under this Act, at any time while such licence is in force, by an order in writing and for reasons to be recorded therein, require the stockist to furnish within such period and in such manner as may be prescribed, a security for the proper payment of the luxury tax payable by him under this Act:

Provided that no order shall be passed under this sub-section without giving the stockist an opportunity of being heard.

(7) The Commissioner may, on application or otherwise, from time to time amend the licence of a stockist.

(8) Where the liability of a stockist to whom a licence has been granted under sub-section (4), to pay the luxury tax under this Act has ceased, such licence may, on application by him, be cancelled by the Commissioner in the manner prescribed.

(9) A licence granted to a stockist under sub-section (4) may be cancelled by the Commissioner after due notice to such stockist if he is satisfied that the stockist has failed to pay the luxury tax, penalty or interest payable under this Act or to furnish the security under sub-section (6) :

Provided that the licence so cancelled may be restored if the stockist to whom the licence was granted pays the arrear luxury tax, penalty and interest and furnishes a receipted challan therefor.

Returns &
payment of
luxury tax.

7. (1) Every licensed stockist shall furnish returns of turnover of stock of luxuries to such authority, in such manner, for such period or periods, and by such date or dates, as may be prescribed.

(2) Before any licensed stockist furnishes the returns under sub-section (1) he shall, in the prescribed manner, pay into a Government Treasury the full amount of luxury tax due from him under this Act according to such returns, and shall furnish along with each such return a receipt from such Treasury showing the payment of such amount.

Interest.

8. (1) If the amount of luxury tax payable under section 5 in respect of any period is not paid by the stockist referred to in section 7 by the date prescribed under that section, such stockist shall pay a simple interest at the rate of three per centum for each month of default from the first day of such month next following the prescribed date to the last day of 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 9 in respect of such period, whichever is earlier, upon so much of the amount of luxury tax payable by him according to return where return is furnished, or according to such assessment where return is not furnished, as remains unpaid at the end of each such month of default.

(2) Where a stockist fails to make payment of any luxury tax payable after assessment made under sub-section (1), or sub-section (2), by the date specified in the notice issued under sub-section (8), of section 9 for payment thereof, he shall pay a simple interest at the rate of three per centum for each month of default from the first day of such month next following the date specified in such notice to the last day of the month prior to the month of full payment of such luxury tax, or up to the month prior to the month of commencement of proceedings under sub-section (10) of section 9, whichever is earlier, upon so much of the amount of luxury tax due from 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 15, the amount of luxury tax on which interest was payable under this section is modified, the interest shall be payable on the modified amount.

(4) A stockist liable to pay interest under sub-section (1) or sub-section (2) shall pay into a Government Treasury the amount of 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.

(6) The State Government shall, in the prescribed manner, pay a simple interest at the rate of three per centum for each month of delay in making refund of luxury tax paid in excess which arises out of an order passed under section 15, from the first day of such month next following the expiry of three months from the date of passing of such order to the last day of the month prior to the month in which the refund is made upon the amount of tax refundable to him according to such order.

(7) In calculating the interest payable under this section, the amount of luxury 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.

Assessment
of luxury tax,
imposition of
penalty &
determin-
ation of
Interest.

9. (1) If no return is furnished by a licensed stockist in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the return furnished is correct and complete, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of luxury tax due from the licensed stockist in respect of a year comprising all such periods and, in making such assessment, shall give the licensed stockist a reasonable opportunity of being heard, and in the case of failure by a licensed stockist to submit in respect of any period a return accompanied by a receipt from a Government Treasury as required under section 7 by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause for such period, direct that the licensed stockist shall pay, by way of penalty, in addition to the amount of luxury tax so assessed in respect of such period, a sum not exceeding that amount :

Provided that no penalty under this sub-section shall be directed to be paid in respect of the same fact for which a prosecution under clause (c) of sub-section (1) of section 18 has been instituted and no prosecution would lie *vice versa*.

(2) If, upon information, the Commissioner is satisfied that any stockist who has been liable to pay luxury tax under section 4, has failed to obtain licence, or has not been granted licence, he shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of luxury tax due from such stockist in respect of any period or part thereof during which such stockist has either failed to obtain licence, or has not been granted licence, after giving him a reasonable opportunity of being heard.

(3) No assessment under sub-section (1) shall be made after the expiry of two years, and no assessment under sub-section (2) shall be made after the expiry of six years, from the end of the year in respect of which or part of which the assessment is made.

(4) In computing the period limited by sub-section (3) for making any assessment under sub-section (1) or sub-section (2), the period during which the Commissioner is restrained from commencing or continuing any proceeding for which such assessment by an order of any Court shall be excluded.

(5) Where the Commissioner is satisfied that a stockist is liable to pay interest under section 8, he shall, in such manner as may be prescribed, determine the amount of interest payable by such stockist and if, on such determination, any additional amount is found to be payable by the stockist or any excess amount is found to be refundable to the stockist, the Commissioner shall issue a notice, in the prescribed manner, to such stockist directing him to pay such additional amount or informing him of the amount of excess payment, as the case may be.

(6) No determination under sub-section (5) of interest payable under sub-section (1) of section 8 shall be made after the expiry of one year from the date of assessment of luxury tax under sub-section (1) in respect of the period for which such determination is made.

(7) Where there is an apparent mistake in the determination of interest under sub-section (5), the Commissioner may, on his own motion, or upon application made by a stockist within six months from the date of determination, rectify the amount of interest payable by such stockist and issue a fresh notice in the prescribed manner.

(8) The amount of luxury tax due from a stockist upon assessment made under sub-section (1) or sub-section (2), as the case may be, shall, together with any penalty directed to be paid under sub-section (1), be paid by the stockist into a Government Treasury by such date as may be specified in a notice issued by the Commissioner for this purpose, and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(9) The amount of interest that may become due from a stockist upon determination under sub-section (5) shall be paid by the stockist into a Government Treasury by such date as may be specified in the notice issued under that sub-section by the Commissioner and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(10) Any amount of luxury tax, penalty or interest which remains unpaid after the date specified in the notice under sub-section (8) or sub-section (9) shall be recoverable as an arrear of land revenue.

Refunds 10. The Commissioner shall, in the prescribed manner, refund to a stockist any amount of luxury tax, penalty or interest paid by such stockist in excess of the amount due from him under this Act, either by cash payment or by deduction from or adjustment in, the amount of luxury tax, penalty or interest due in respect of any other period.

Accounts. 11. Every stockist shall maintain and keep true and up-to-date account of the quantity and value of luxuries held in stock by him and vended, supplied or distributed by him during the prescribed period and also keep documents in support of other charges, duties and tax, paid or payable by him, and if the Commissioner considers that such account is not sufficiently clear or intelligible to enable him to make a proper check of the return referred to in section 7, he may require such stockist to keep such accounts as he may direct.

Production and inspection of accounts and search of premises. 12. (1) The Commissioner may, subject to such conditions as may be prescribed require any person—

- (a) to produce any accounts, registers or documents before him and explain them; and
- (b) to furnish any information in relation to manufacture, import, use or sale and stock of luxuries and relating to any other matter, as may be deemed necessary for the purposes of this Act.

(2) All accounts, registers and documents and luxuries kept in any place of business of a stockist shall, at all reasonable times, be open to inspection by the Commissioner.

(3) If the Commissioner or any person appointed under sub-section (1) of section 3 to assist him has reasons to suspect that any stockist is attempting to evade payment of luxury tax he may enter into and search any place of business and, for reasons to be recorded in writing, seize such accounts, registers or documents of the stockist as may be necessary, for determination of liability to pay luxury tax by such stockist or for assessment of such tax or for determination of interest or for any other purposes as may be required by or under this Act.

(4) The Commissioner, or any person appointed under sub-section (1) of section 3 to assist him, shall grant a receipt for any accounts, registers, or documents seized by him and shall retain any of such accounts, registers or documents only for a period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act:

Provided that no accounts, registers or documents seized by the Commissioner shall be retained for any period exceeding one year from the date of seizure unless he records, in writing, reasons therefor, but where seizure is made by any person appointed under sub-section (1) of section 3 to assist the Commissioner such person shall not retain any of the accounts, registers or documents seized by him under sub-section (3) for any period exceeding one year from the date of seizure unless he records, in writing, the reasons for further retention and obtains sanction of the Commissioner in writing in this behalf.

Search and seizure of luxuries.

13. (1) If the Commissioner, or any person appointed under sub-section (1) of section 3 to assist him, has reasons to believe that a person is holding a stock of any of the luxuries manufactured by him in Orissa or brought by him into Orissa from any place outside Orissa in any premises and that he is attempting to evade payment of luxury tax, the Commissioner or the person appointed under sub-section (1) of section 3 to assist him may, subject to such restrictions and conditions as may be prescribed enter into such premises and conduct search therein and seize such luxuries to secure payment of luxury tax that may become payable on assessment under section 9.

(2) While making seizure, the Commissioner, or the person who seizes luxuries, shall grant a receipt thereof in the prescribed manner :

Provided that when the Commissioner, or the person appointed under sub-section (1) of section 3 to assist him, thinks it necessary not to seize such luxuries for the time being, he shall seal in the prescribed manner any room, godown or warehouse or any container found within such premises.

(3) Until the amount of luxury tax that may be assessed under sub-section (2) of section 9 is paid together with penalty, if any, that may be directed to be paid under sub-section (2) of section 6, the luxuries so seized shall be retained :

Provided that where a stockist furnishes a security or bank guarantee to secure payment of the luxury tax pending determination of such tax under sub-section (2) of section 9, the luxuries so seized shall be released.

(4) If a stockist fails to pay the amount of luxury tax as may become payable under section 5 or due from him under section 9 and penalty payable under sub-section (2) of section 6, if any, within such period as may be prescribed, the luxuries so seized shall, subject to such conditions and restrictions and in such manner as may be prescribed, be sold in open auction or otherwise by the Commissioner and the sale proceeds thereof shall be remitted to a Government Treasury after deducting therefrom the incidental expenses, if any.

(5) The amount of luxury tax due from a stockist after assessment under section 9 together with penalty, if any, that may be directed to be paid under sub-section (2) of section 6, shall be recovered out of the sale proceeds of the luxuries sold under sub-section (4), and the balance amount of the sale proceeds, if any, shall be refunded to such stockist in the prescribed manner on application made by him within the prescribed period.

Establishment of check posts or barriers and inspection of goods.

14. (1) If the State Government consider it necessary that with a view to prevent or check evasion of tax under this act, in any place or places in the State, it is necessary so to do, they may, by notification, direct the setting up of a check post or the erection of a barrier or both at such places as may be notified or may notify any check post set up or barrier erected under the Orissa Sales Tax Act, 1947, for the purposes of this section.

(2) At every check post or barrier mentioned in sub-section (1) or at any other place, when so required by the Commissioner or any officer appointed under sub-section (1) of section 3 duly empowered by the Commissioner, the driver or any other person in charge of a goods vehicle or boat shall stop the vehicle or boat, as the case may be and keep it stationary as long as may be reasonably necessary, and allow such officer to examine the contents in the vehicle or boat and inspect all records relating to the goods carried which are in possession of such driver or other person in charge as the case may be, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat.

(3) The Commissioner or the Officer referred to in sub-section (1) shall have the power to seize and confiscate luxuries which are under transport by a goods vehicle or a boat and are not covered by a bill issued by the person who consigns, in the luxuries, in such form and containing such particulars as may be prescribed :

Orissa Act
14 of 1947.

Provided that before taking action for the confiscation of luxuries under this sub-section, the Commissioner or such officer shall give the person affected an opportunity of being heard and make an enquiry in the manner prescribed :

Provided further that where the person affected makes payment to the Commissioner or such officer, as the case may be, of the amount of luxury tax payable in respect of such luxuries to be assessed in the prescribed manner, the luxuries seized as aforesaid shall be released :

Provided also that no order of confiscation shall be made in respect of luxuries which are not liable to payment of luxury tax.

Appeal
and revision.

15. (1) Any stockist may, in the prescribed manner, appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority) against any order of assessment of luxury tax, determination of interest or imposition of penalty under section 9, within such time as may be prescribed :

Provided that no appeal shall be entertained by the appellate authority unless it is satisfied that such amount of luxury tax, interest or penalty, as the case may be, as the appellant may admit to be due from him has been paid.

(2) Subject to such rules of procedure as may be prescribed and for reasons to be recorded in writing, the appellate authority, in disposing of any appeal under sub-section (1), may, by order,—

- (a) confirm, set aside or annul the assessment, or
- (b) reduce or enhance the amount of luxury tax, or
- (c) modify any order pertaining to interest or penalty.

(3) (a) Any stockist or, as the case may be, the State Government, dissatisfied with an appellate order made under sub-section (2) may, within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal against such order :

Provided that an appeal under this clause may be admitted after aforesaid period of limitation if the Tribunal is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

(b) The stockist or the State Government, as the case may be, on receipt of notice that an appeal has been preferred under clause (a) may, notwithstanding that the said stockist or, as the case may be, the State Government may not have appealed against such order or any part thereof, within sixty days of the service of the notice, file a memorandum of cross objections and such memorandum shall be disposed of by the Tribunal as if it were an appeal presented within time under clause (a).

(c) While disposing of an appeal under this sub-section the Tribunal shall have same powers subject to the same conditions as are enumerated in sub-section (2) and any order passed under this sub-section shall, except as otherwise provided in section 16, be final.

(4) (a) Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, on application by a stockist or person, or on his own motion, revise any order made under this Act or the rules made thereunder by any person other than the Tribunal, appointed under sub-section (1) of section 3 to assist him :

Provided that the Commissioner shall not entertain any such application for revision if the stockist or the person filing the same having a remedy by way of appeal under sub-section (1), or sub-section (3) did not avail of such remedy or the application is not filed within the prescribed period.

(b) If the Commissioner proposes to reject an application for revision under the foregoing provision he shall record the reasons for such rejection.

(c) Any stockist or person or, as the case may be, the State Government aggrieved by any order passed by the Commissioner on his own motion may, within sixty days from the date of receipt of such order, prefer an appeal,—

- (i) if the order was passed by the Commissioner, to the High Court; and
- (ii) if the order was passed by any authority sub-ordinate to the Commissioner, to the Commissioner;

(d) All orders passed under this sub-section shall, subject to orders passed in an appeal, if any, be final.

(e) Notwithstanding anything contained in sub-section (3) of section 3, the Commissioner shall not, except with the prior approval of the State Government, delegate his powers under this sub-section to any other person appointed under sub-section (1) of section 3 to assist him.

(5) Any person likely to be affected prejudicially by any order made under this section shall be given a reasonable opportunity of being heard before such order is made.

(6) Any stockist or person while preferring an appeal or filing application for revision under this section, shall deposit, in the prescribed manner, the prescribed fees or pay the same by way of affixture of court fee stamps on memorandum of appeal or application for revision, notwithstanding anything contained in the Court Fees Act, 7 of 1870.

(7) Notwithstanding anything contained in the Orissa Sales Tax Act, 1947, the Orissa Act Tribunal shall determine its own procedure for exercising its functions under this Section. 14 of 1947.

Statement
of case
to the High
Court.

16. (1) Within sixty days from the date of receipt of the copy of an order of the Tribunal under sub-section (3) of section 15 affecting any liability of any stockist to pay tax, penalty or interest under this Act, such stockist or, as the case may be, the State Government may, by application in writing accompanied, when the applicant is other than the State Government, with a fee of one hundred rupees require the Tribunal to refer to the High Court any question of law arising out of such order.

(2) If, for reasons to be recorded, the Tribunal refuses to make such reference, the applicant may, within thirty days of such refusal, either—

(a) withdraw his application (and if he does so, the fees paid shall be refunded), or

(b) apply to the High Court against such refusal.

(3) If, upon the receipt of an application under clause (b) of sub-section (2) the High Court is not satisfied as to the correctness of the decision of the Tribunal, it may require the Tribunal to state the case and refer the same to the High Court and, on receipt of such requisition, the Tribunal shall state the case and refer the same accordingly.

(4) If the High Court is not satisfied that the statement in a case referred to it under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alterations therein as the High Court may direct in that behalf.

(5) The High Court, upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgment under the seal of the High Court and the signature of the Registrar, and the Tribunal shall dispose of the case accordingly.

(6) The payment of the amount, if any, of luxury tax, penalty and interest due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as a result of such reference, the excess luxury tax, penalty or interest paid shall be refunded in accordance with the provisions of section 10.

Power to
take
evidence.

17. The Tribunal, the Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, shall, for the purposes of this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

- (c) issuing commissions for the examination of witnesses, and any proceeding under this Act before the Tribunal, the Commissioner or any person appointed under sub-section (1) of section 3 to assist the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purposes of section 196 of the Indian Penal Code.

45 of 1860.

Offences,
penalties and
prosecution.

18. (1) Whoever—

- (a) fails to furnish the security demanded under sub-section (6) of section 6;
 (b) fails to pay the full amount of luxury tax payable for any period in accordance with the provisions of section 7;
 (c) fails without reasonable cause to furnish return under section 7;
 (d) submits false return;
 (e) fails to make payment of interest payable under sub-section (i) of section 8;
 (f) fails to comply with the provisions of section 11; or
 (g) refuses to comply with any requirements under sub-section (1) of section 12,

shall be punishable with simple imprisonment which may extend to six months or with fine or with both and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(2) Whoever holds a stock of luxuries in contravention of the provisions of sub-section (1) of section 6 shall be punishable with simple imprisonment which may extend to one year or with minimum fine of five thousand rupees or with both and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(3) Whoever obstructs the Commissioner or any person appointed under sub-section (1) of section 3 to assist him shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever abets any of the offences referred to in sub-section (2) or sub-section (3) shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

(5) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such culpable mental state until the contrary is proved.

Explanation—For the purposes of this sub-section, “culpable mental state” shall include intention, motive, knowledge of a fact, and belief in, or reason to believe a fact.

Liability to
prosecution.

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

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a stockist, being a company within the meaning of the Companies Act, 1956, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, as the case may be, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Compounding
of offences

20. (1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence referred to in clause (f) or clause (g) of sub-section (1), or sub-section (2) of section 18, may, either before or after the commencement of any proceedings in respect of such offence, at his option, compound such offence by paying to the commissioner such sum, not exceeding twenty thousand rupees, as may be determined by the Commissioner.

(2) On full payment of such sum as may be determined by the Commissioner under sub-section (1)—

- (a) no proceedings shall be commenced against the person as aforesaid, or
- (b) if any proceedings have already been commenced against such person, proceedings shall not be proceeded with,

if such person undertakes to comply with the requirements of the provisions contained in sub-section (1) of section 6, section 11 or sub-section (1) of section 12, as the case may be, within such period as the Commissioner may direct.

Power to
make rules.

21. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing such power, such rules may provide for all or any of the following matters, namely:—

- (a) the procedure for, and other matters (including provisions for payment of fees) incidental to, the disposal of appeal and revision under section 15;
- (b) any other matter which may be, or is required to be, prescribed under this Act.

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

Power to
remove
difficulties.

22. If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, do anything which appears to it to be necessary or expedient for the purposes of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

SCHEDULE

[See clause (c) and clause (g) of section 2]

1. Cheroots
2. Cigarettes
3. Cigar

4. Pan masala, perfumed or treated otherwise, of any form or description, that is to say, combination of powder or broken form or otherwise of two or more of the following substances, or combination of two or more of the following substances with any other substance, whether mixed with tobacco or not and sold under various trade names or descriptions such as Pan Bahar, Pan Pasand, Pan Parag, Pan Tarang, Talab, Prem Ranjan or any other name or description;

- (a) betelnuts, locally known as gua (supari);
- (b) cardamom, locally known as alaicha;
- (c) cloves, locally known as labanga;
- (d) aniseed, locally known as panmadhuri;
- (e) cassia, locally known as dalchini;
- (f) menthol.

5. Smoking mixtures for pipes and cigarettes.