

Tuesday, February 1, 2011

Andhra Pradesh Excise Act

ANDHRA PRADESH EXCISE ACT 1968, (ACT 17, OF 1968) STATEMENT OF OBJECTS AND REASONS

At present the Andhra Pradesh (Telangana Area) Abkari Act, 1316F.(Act 1 of 1316F) and the Andhra Pradesh (Telangana area) Intoxicating Drugs Act, 1333 F (Act IV of 1933 F) are in force in Tenlangana Area of the State. The Andhra Pradesh (Andhra Area) Abkari Act, 1886 has ceased to be in force in the Andhra Area by virtue of Section 2 of the Andhra Pradesh (Andhra Area) Prohibition Act 1937. However, in case if the State Government declares by notification under the proviso to Section 2 of the Andhra Pradesh (Andhra Area) Prohibition Act 1937 that the provisions of the Act other than Section 1,3 and 6 shall cease to be in force in any local area, on any particular date, the Andhra Pradesh (Andhra Area) Abkari Act, 1886 will revive and come into force in that local area from the said date. It will thus be seen that on the statue book there are in the two areas of the State two sets of law relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquors and drugs and the levy of duties of excise and countervailing duties on alcoholic liquors for human consumption, Indian hemp and other narcotic drugs. It is therefore proposed to integrate the said laws for achieving uniformity of law applicable to the entire State. It is however, proposed to extend the unified law only to the Telangana Area in the first instance and to extend it to any local area in the Andhra Area only as and when a notification is issued under the proviso to Section 2 of the Andhra Pradesh (Andhra Area) Prohibition Act, 1937 declaring that the provisions of the Act, shall cease to be in force in that local area. In other words it extends to Telangana Area immediately after it is brought into force, while it extends to the Andhra Area only as and when the prohibition is lifted in that area (*Received the assent of the President on 26-08-1968; Published in A.P. Gazette (Extraordinary) Part VI-B, dated 29-08-1968*)

ANDHRA PRADESH EXCISE ACT 1968, (ACT 17, OF 1968)

An Act consolidate and amend the law relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs, the levy of duties of excise and countervailing duties on alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotics and to provide for matters connected therewith in the State of Andhra Pradesh.

Be it enacted by the Legislature of the State of Andhra Pradesh in the Nineteenth year of the Republic of India as follows:-

CHAPTER-I PRELIMINARY

1.Short title, extent and commencement: 1) This Act may be called the Andhra Pradesh Excise Act 1968, (2) *It extends to the whole of the State of Andhra Pradesh. Provided that on and from the date of commencement of the Andhra Pradesh Prohibition Act 1995, the provisions of this Act shall, in so far as they are inconsistent with the provisions of this said Act cease to operate.* (3) It shall come into force on such date as the Government may by notification appoint. (Sub-section (2) of Section 1 substituted by Section 34 of Act 17 of 1995 (A.P. Prohibition Act 1995)

Comments

1.The Sub-section (2) prior to its substitution read as under:- ② it extends – (a) in the first instance, to the territories of the State, specified in sub-section (1) of section 3 of the State reorganization Act 1956 (Central Act 37 of Act 1956) and to the local areas in the Andhra area in which the provisions of the Andhra Pradesh (Andhra Area) Prohibition Act, 1937 (Act X of 1937) other than Sections 1,3 and 6 have not come into force; and (b) to a local area of the State not comprised within the territories referred to in clause(a) as and when a notification is issued under the proviso to Section 2 of the Andhra Pradesh (Andhra Area) Prohibition Act 1937 (Act X of 1937) declaring that the provisions of the Act, other than sections 1,3 and 6 shall cease to be in force in that local area”

II The A.P. Excise Act (Act.No.17 of 1968) came into force on 30-08-1968, in Telangana area as per G.O. Ms.No. 928, Revenue, dated 30.8.1968 published in A.P.AGazette No.198, dated 30.8.1968. Prior to that date, The A.P. (Telangana Area) Abkari Act 1326F and the A.P. (Telangana area) intoxicating Drugs Act 1333F, were in force in Telangana area. These two Acts and also the A.P. (Andhra area) Abkari Act, 1886 were repealed by Section 73 of the A.P. Excise Act 1968. III Consequent on lifting of prohibition in Andhra area, the A.P. Excise Act 1968 was extended to the Andhra Area also with effect from 1.11.1969

by notification in G.O.Ms.No.966, Revenue Department dated 6.10.1969 published in A.P. Gazette No 23, dated 6.10.1969 and G.O.Ms.No.989, Revenue Department dated 11.10.1969 published in Gazette No.24, dated 13.10.1969. Prior to 1.11.1969 the A.P. Andhra Area) Prohibition Act, 1937 was in force in Andhra Area. This Act was ceased to be in force except Section 1,3 and 6 with effect from 1.11.1969” When the total prohibition was imposed on the consumption of alcoholic drinks other than toddy by enacting A.P. Prohibition Act, 1995, the A.P. Excise Act 1968 has not been repealed. Both the Acts are in force in the State. In order to overcome the inconsistency of the provisions of both the Acts, a provision has been made in the A.P. Prohibition Act, 1995 by Section 34 amending Section (1) of the A.P. Excise Act 1968. According to this amendment, whatever provisions of A.P. Excise Act, 1968 that are inconsistent with the provisions of the A.P. Prohibition Act 1995 cease to operate. Consequent on the decision of the Government for partial lifting of Prohibition in the state and allowing the manufacturing, possession, sale, import, export and transport of intoxicating liquors other than arrack, the Andhra Pradesh Prohibition Act, 1995 was suitably modified by amending the relevant Sections by Act 5 of 1997, By virtue of this amendment the provisions of A.P Excise Act in so far they are relate to manufacture, possession, sale, import, export and transport of intoxicating liquors other than Arrack stands good.

2 Definitions: In this act unless the context otherwise requires- (1) “Arrack” includes all liquor produced or manufactured in India and supplied by the Government, other than Foreign Liquor and Indian Made Foreign Liquor (For the expression “ Indian Liquor” the expression : Indian Made Foreign Liquor” substituted by Act 17 of 2006. This submitted is applicable wherever the expression “ Indian Liquor” occurs in the Act)

(1-A) “Bar” means the privilege granted under the Act to an establishment, where food is served, for sale of Indian Made Foreign Liquor and Foreign Liquor in loose for consumption on the licensed premises. (Clause-1-A inserted by Act 35 of 2005, Effected from 20.05.2005). (2) “Beer” includes ale, stout, porter and all other fermented liquors usually made from malt. (2-A) “ Bonafied purpose” means the privilege granted under the Act for the sale or use as the case may be of any intoxicant, any material or any liquor and does not include Indian Made Foreign Liquor, Foreign Liquor and Toddy.(Clause-2-A inserted by Act 35 of 2005, Effected from 20.05.2005) (3) “Bottle” means to transfer liquor from one cask to another cask or from a cask or vessel to a bottle, jar, flask, pot, closed packet, basket, tin, barrel, case, receptacle, bag, sack or wrapper or any other receptacle in any form in which any intoxicant is packet for the purpose of sale whether or not any process of manufacture is employed and includes re-bottling; (Clause (3) Substitution by Act 4 of 1994, w.e.f 26.11.1993)

Comments

Clause (3) prior to its substitution by Act 4 of 1994, reads as: “(3) Bottle means to transfer liquor from a cask or other vessel to a bottle, jar, flask, pot or similar receptacle for the purpose of sale whether or not any process of manufacture is employed, and includes rebottling”.

(4) “Buy or Buying” includes any receipt including gift; (5) “Collector” means the Collector of a district and includes the joint collector or any person appointed by the Government to exercise the powers and to perform the functions of collector under this Act’ (For the words “the District Revenue Officer” the words “the joint Collector” substituted by Act 4 of 1994, w.e.f.26.11.93) (6) “Commissioner” means the officer appointed under section 3; (6-A) “Corporation” means the Andhra Pradesh Beverages Corporation Limited, Hyderabad (Clause 6-A inserted by Act, 17 of 2006)

(7) “Cultivation or “Cultivating” includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed; (8) “Denatured” means subjected to a process prescribed for the purpose of rendering unfit for human consumption; (9) “ Excise article” means any alcoholic liquor for human consumption; or any intoxicating drug. (Clause 9 substituted by Act 20 of 1994, w.e.f 20-05-94

Comments

Clause 9 prior to its substitution by Act 20 of 1994 read as follows: (9) ‘Excisable article’ means: (a) any alcoholic liquor for human consumption; (b) any intoxicating drug. (c) Opium (d) other narcotic drugs and narcotics which the Government may, by notification, declare to be an excisable article. The expression of “Excisable article” was modified by A.P. Act 20 of 1994 to bring in conformity with the Narcotic Drugs and Psychotropic Substances Act 1985, which is a Central Act

(10) “Excise duty” or “Countervailing duty” means the duty of excise or countervailing duty, as the case may be, mentioned in entry 51 in List II of the seventh Schedule to the Constitution; (11) “Prohibition and Excise Officer” means the Commissioner, the Collector or any officer or other person lawfully appointed or invested with powers under the relevant provisions of this Act; (12) “ Excise revenue” means revenue

derived or derivable from any duty, fee, tax, rent, fine, penalty or confiscation levied, imposed or ordered under the provisions of the Act or other law for the time being in force relating to intoxicating liquors or intoxicating drugs; (13) **"Excise tree"** includes the tree of mohwa, coconut, palm, palmyra, date, bagani, sago, sendhi or any tree of the species of palm or palmyra, from the fermented or unfermented juice of which toddy or liquor can be prepared.; (14) **"Export"** means: (a) to take out of any area of the State to which this Act extends to any other area of the State to which this Act does not extend; (b) to take out of the State otherwise than from a Customs station as defined in Section 2 of the Customs Act, 1962 (Central Act 52 of 1962). (15) **" Foreign Liquor"** includes every Liquor imported into India other than Indian Made Foreign Liquor and Arrack; (16) **" Government"** means the State Government' (17) **"Import"** except in the phrase ' Import into India" means (a) to bring into any area of the State to which this Act extends from any other area of the State to which this Act does not extend. (b) to bring into the State otherwise than from a customs station, as defined in Section 2 of the Customs Act 1962 (Central Act 52 of 1962); (18) **"Indian Made Foreign Liquor"** means liquor produced manufactured or compounded in India after the manner of Gin, brandy, whisky or rum imported from foreign countries and includes Wine, Beer, Milk Punch' and other liquors consisting or containing any such spirit, but does not include Foreign Liquor' (clause 18 substituted by Act 17 of 2006)

18-A " In-house" means the privilege granted under the Act for sale of Indian Made Foreign Liquor and Foreign Liquor by club, Guest House of A.P. Tourism Development Corporation, Military Canteen, Airport Transit lounge for International Air passengers. (Clause-18-A inserted by Act 35 of 2005, Effected from 20.05.2005); (19) **" Intoxicant"** means any liquor as defined in Clause (21) or any intoxicating drug as defined in Clause (20) and includes gulmohwa (that is mohwa flower); (20) **"Intoxicating drug"** means- (a) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant including all forms known as bhang, siddi, or ganja; (b) charas, that is the resin obtained from the Indian hemp plant which has not been subjected to any manipulations other than those necessary for packing and transport; (c) any mixture with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared there from; and (d) any other intoxicating or narcotic substance which the Government may, by notification, declared to be an intoxicating drug, such substance not being opium, cocoa leaf or manufactured drug as defined in Section 2 of the *Narcotic Drugs and Psychotropic Substances Act 1985* (Central Act 61 of 1985) (For the words ' Dangerous Drugs Act, 1930, the words 'Narcotic Drugs and Psychotropic Substances Act, 1985 substituted by Act 20 of 1994 w.e.f.20-05-1994) (21)

"Liquor" includes- (a) Spirits of wine, denatured spirits, methylated spirits, rectified spirit, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) Any other intoxicating substance which the Government may by notification, declare to be liquor for the purpose of this Act; (22) **"Manufacture"** includes every process whether natural or artificial by which any fermented, spirituous or intoxicating liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor; (22-A) **"Material"** includes molassess, wash and such other substances as the State Government may, by notification specify; (22-B) **"Molassess"** means the heavy dark coloured residual syrup drained away in the final stage of the manufacture of jaggery or sugar or khandasari sugar cane or gur containing solution or suspension, sugars which can be fermented and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup but does not include any article which the State Government may, by notification, declare not to be molasses, for the purpose of this Act. (Clause 22-A,22-B inserted by Act 12 of 2005 w.e.f. 08.04.2005.); (23) **"Notification"** means a notification published in the Andhra Pradesh Gazette and the term 'notified' shall be construed accordingly; (24) **"Place"** includes a house, building, booth, shed, enclosure, shop, tent, vessel, raft and vehicle; (25) **"Police Station"** includes any place which the Government may, by notification, declared to be a police station for the purpose of this Act; (26) **"Prescribed"** means prescribed by rules made under this Act; (27) **"Rectification"** includes every process whereby spirits are purified or coloured or flavoured by mixing any material therewith; (28) **"Sale" or "Selling"** includes any transfer otherwise than by way of gift; (28-A) **"Shop"** means the privilege granted under the Act for exclusive sale of Indian Made Foreign Liquor or Foreign Liquor in sealed or capsuled bottles or packages or tins to an individual in quantities not exceeding the limits as prescribed without permitting consumption on the licensed premises; (Clause-1-A inserted by Act 35 of 2005, Effected from 20.05.2005); (29) **"Spirit"** means any liquor containing alcohol and obtained by distillation whether it is denatured or not; (30) **"Toddy"** means fermented or unfermented juice drawn from an excise tree and containing alcohol; (31) **"Transport"** means to move from one place to another within the State, whether or not the intervening area lies wholly within the State, and includes, to move from a place outside the State

to any other place outside it through the intervening area lying within the State; (The words 'and includes, to move from a place out side the State to any other place outside it through the intervening area lying within the State' added by the Act 10 of 1989)

(32) "Wash" includes fermented wort or a dilute solution of sugar from which spirit is distilled. (Clause 32 was inserted by Act 12 of 2005 w.e.f. 08-04-2005)

CHAPTER – II

ESTABLISHMENT AND CONTROL

3. Appointment of Commissioner:- (1) The Government may, by notification, appoint an officer as the Commissioner of Prohibition and Excise for the State, who subject to the general or special orders of the Government in this behalf, shall be the chief controlling authority in all matters connected with the administration of this Act. (2) The Commissioner shall be competent to exercise all the powers of the collector under this Act, and shall have the control of the administration of the Prohibition and Excise Department

4. General control of Commissioner over Collector:- The collector shall exercise the powers and perform the functions assigned by or under this Act, subject to the general control of the Commissioner.

5. Appointment of certain officers and staff:- (1) The Government may appoint such number of Additional Commissioners, Joint Commissioners, Deputy Commissioners and Assistant Commissioners of Proh. & Excise and District Proh. & Excise Officers and such other officers as they think fit for the purpose of performing the functions respectively conferred on them by or under this Act. (2) The Government may sanction the appointment of as many Prohibition and Excise Superintendents, Assistant Prohibition and Excise Superintendents and other subordinate staff as they think fir for the purpose of performing the functions respectively conferred on them by or under this Act. (3) The appointment of the posts sanctioned in Sub-section (2), shall be made by such authority as may be prescribed. (4) All such officers shall perform the said functions within such area or areas or in the whole of the State as the Government or the Commissioner may assign to them (Section 5 substituted by Act 10 of 1989 e.f.16-09-1988) (Sub-section (1) of Section 5 substituted by Act 17 of 1995)

Comments

1. Section 5 prior to its substitution by Act 10 of 1989 read as follows: 5. Appointment of Regional Officers: The Government may appoint a Deputy Commissioner for such area as may be notified by the Government, to exercise such powers and perform such functions as are assigned by the Commissioner, subject to the control of the Government"
2. Sub-section (1) of Section 5 prior to its substitution by Act 17 of 1995 read as follows: "(1) The Government may appoint an Additional Commissioner of Excise, Director of Distilleries and Breweries as many Deputy Commissioners of Excise, Assistant Commissioner of Excise and such other officers as they think fir for the purpose of performing the functions respectively conferred on them by or under this Act".
3. Under Section 34 of Act 17 of 1995 while amending A.P. Excise Act 1968 it has be enacted that, throughout the Act for the words "Excise Officer", "Commissioner of Excise" "Additional Commissioner of Excise", "Deputy Commissioner Excise", " Assistant Commissioner of Excise", "Excise Superintendent" " Assistant Excise Superintendent" and "Excise Department" the words "Prohibition and Excise Officer", "Commissioner of Prohibition and Excise" "Additional Commissioner of Prohibition and Excise", "Deputy Commissioner Prohibition and Excise", " Assistant Commissioner of Prohibition and Excise", "Prohibition and Excise Superintendent" " Assistant Prohibition and Excise Superintendent" and "Prohibition and Excise Department" shall respectively be substituted.

6. Appointment of Excise Superintendents and Assistant Excise Superintendents:(Section 6 omitted by Act 10 of 1989)

Comments

Section 6 prior to its omission by Act 10 of 1989, read as follows:- 6(1) The Government may appoint an officer as Excise Superintendent for a district or of part of a district and authorize him also to exercise all or any of the powers and perform all or any of the functions of a Collector under this Act. (2) The Government may appoint such number of Assistant Excise Superintendents for a district or part of a district to exercise such powers and perform such duties as they may direct.

7. Appointment of other subordinate staff: (Section 7 Omitted by Act 10 of 1989)

Comments

Section 7 prior to its omission by Act 10 of 1989, read as follows: 7(1) The Government may sanction the appointment of such number of Excise Inspectors and Sub-Inspectors as may, from time to time, be considered necessary, to exercise the powers and to perform the functions in connection with detection, investigation, enquiry and trial of offences under this Act. (2) The Government may also sanction the appointment of such number of subordinate officers, of such classes and with such designation, powers and functions under this Act as they may think fit. (3) The appointment to the posts sanctioned in sub-section (1) or Sub-Section (2) shall be subject to the approval of the Government, be made by such authority as the Government may specify in this behalf. (4) The Government may, by notification, direct that all or any of the powers and functions assigned to an Inspector and Sub-Inspector under sub-section (1) or to a subordinate officer under sub-section (2) shall be exercised and performed by such officer of the Government as may be specified therein.

8. Delegation: The Commissioner, the Collector or the Prohibition and Excise Superintendent may by order delegate to any officer subordinate to him any of the powers conferred on or functions entrusted to the Commissioner, the Collector or the Prohibition and Excise Superintendent by or under this Act, subject to such restrictions and control as may be prescribed and subject also to such limitations and conditions, if any as be specified in the order of delegation.

Comments

In exercise of powers conferred by section 8, the Government have framed the rules The Andhra Pradesh (Delegation of powers) Rules, 1972 specifying the Officers to whom powers may be delegated and the restrictions on the delegation of powers.

CHAPTER – III IMPORT, EXPORT AND TRANSPORT

9. Import of intoxicants: (1) No intoxicant shall be imported except under a permit issued by such officer, not below the rank of Prohibition and Excise Superintendent, and on such terms as may be prescribed and on payment of such excise duty or countervailing duty and fees, as may be levied under this Act. Provided that the said officer may subject to such restrictions and conditions as may be prescribed to ensure the collection of the excise duty or countervailing duty; permit the import of an intoxicant without the payment of the excise duty or countervailing duty; Provided further that no countervailing duty shall be payable on the intoxicant which, being liable to the payment of duty under the Indian Tariff Act, 1934 (Central Act 32 of 1934), or any other law for the time being in force relating to the duties of customs on goods imported into India, has been dealt with according to such law. (2) The officers referred to under sub-section (1) may by an order, cancel any permit issued under that sub-section for breach of any of the terms subject to which it was issued or for any other reason to be recorded in writing therein.

10. Export of Intoxicants: (1) No intoxicant shall be exported except under a permit issued by such officer, not below the rank of a Prohibition and Excise Superintendent, and on such terms, as may be prescribed and on payment of such fee as may be levied under this Act: Provided that no intoxicant produced or manufactured in India shall be permitted to be exported unless the excise duty or countervailing duty to which, such intoxicant is liable, has been paid. (2) The officer referred to under sub-section (1) may, by an order, cancel any permit issued under that sub-section for breach of any of the terms subject to which it was issued, or for any other reason to be recorded in writing therein.

11. Regulations of transport of intoxicants: (1) The Government may, by notification, prohibit or regulate the transport of an intoxicant or any kind of intoxicants from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State, except under a permit issued under Section 12. (2) No intoxicant exceeding, such quantity as be prescribed either generally or for any particular area, shall be transported, except under a permit issued under Section 12. (Sub-section-1 substituted by Act 10 of 1989 Effective .from 16-09-88)

12. Permits for transport of intoxicants: (1) *Any officer not below the rank of an Assistant Prohibition and Excise Superintendent authorized by the Commissioner may issue a permit for the transport of intoxicants.* (Sub-section (1) substituted by Act 10 of 1989 Effective from 1.12.1981) (2) A permit under sub-section (1) may be either for general for definite periods and kinds of intoxicant or special; for specified occasions and particular consignment only; Provided that a general permit shall be issued only to persons licensed under this Act and may specify the maximum quantity of intoxicant that may be transported at any one time. (3) Every permit under this section shall specify (a) the name of the person authorized to transport intoxicants; (b) the period for and the route through which the permit shall be valid; (c) the quantity, strength and description of intoxicants for which it is issued; and (d) any other particulars and conditions which may be prescribed.

Explanation: The expression 'person authorized' in this sub-section shall include his servants and other persons employed by him and acting on his behalf.

Comments

Sub-section (1) of Section 12 prior to its substitution by Act 10 of 1989 read as follows: "12(1): The Excise Superintendent may issue a permit for the transport of intoxicants." Under pre-amended Sub-section (1) the Excise Superintendent was competent to issue permits for transport of intoxicants. However in order to quicken issue of permits the Commissioner of Excise has been issuing permits from 1.12.1981 onwards. To validate such issue of permits by the Commissioner the sub-section (1) was suitably amended with retrospective effect from 1.12.1981.

CHAPTER – IV

MANUFACTURE, POSSESSION AND SALE

13. Manufacture etc., of excisable articles prohibited except under a licence: (1) No person shall – (a) manufacture or collect an intoxicant, (b) Cultivate hemp plant, (c) Tap an excise tree or draw toddy from any such trees, (d) Construct or work distillery or brewery, (e) Bottle liquor for sale, or (f) Use, keep or have in his possession, any materials, still, utensils, implements, apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy; except under the authority and subject to the terms and conditions of a licence granted by such officer, not below the rank of Prohibition and Excise Superintendent, as may be prescribed. *Provided that the provisions of this sub-section, in so far as they relate to establishing, continuing or licensing a distillery shall apply only to those distilleries which manufacture spirits for potable purpose and regulatory provisions relating to regulation and supervision, shall be applicable to all distilleries. (Proviso under clause (f) of sub-section (1) added by Act 11 of 2000, Effective from 28-04-2000)* (2) A licence granted under this section shall extend to and cover servants and other provisions and other persons employed by the licensee and acting on his behalf. (3) Notwithstanding any thing in sub-section (1) the Government may, by notification direct that in such areas as may be specified therein, it shall not be necessary to take out a licence for the manufacture of liquor for bonafied home consumption of the manufacturer.

Comments

The State Government have been issuing licenses under Sections 13 and 16 of the Act for all types of distilleries irrespective of the purpose for which the Rectified Spirit produced by them is put to use i.e. for industrial purpose or potable purpose or for both. The Hon'ble Supreme Court on India by an order dated 29.1.1997 in W.P. No 322/96 in M/s Bihar Distilleries and others has held that (i) in the matters of industries where the manufacture of Rectified Spirit is exclusive for the purpose of obtaining or manufacture potable liquors, such industries shall be under the total and exclusive control of the States in all respects; (ii) in the matters of industries where the manufacture of Rectified Spirit is for both industrial and potable purpose permission to establish and regulate the functioning of distilleries shall be the exclusive domain of the Union; (iii) However, even in regard to industries where the entire Rectified Spirit is supplied for industrial purposes or both for industrial and potable purpose, the power of the States to take necessary steps to ensure against misuse or diversion of Rectified Spirit meant for industrial purposes, both during and after manufacture of Rectified Spirit continues unaffected. In view of these observations of the Apex Court, a proviso under Section 13(1) and section 16 has been inserted by Act 11 of 2000 to meet the requirement.

14. Possession of excisable articles in excess of the quantity prescribed: (1) The Government may, by notification, specify the maximum quantity of any intoxicant which a person may have in his possession; Provided that the different maxima may be specified for different of kinds of intoxicants. (2) No person shall have in his possession any intoxicant in excess of the quantity specified under sub-section (1) except under the authority and in accordance with the terms and conditions of – (a) a licence for the manufacture, cultivation, sale, buying or supply of such articles, or (b) a permit granted by such officer, not below the rank of a Prohibition and Excise Superintendent, as may be prescribed.

15. Sale or buying of excisable article without licence prohibited: (1) No person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted in this behalf: Provided that a person having a licence to draw toddy from an excise tree, may sell such toddy to a person licensed to buy toddy under this Act without obtaining a licence for such sale but subject to such restrictions and conditions as the Commissioner may, by general or special order, specify. (2) A licence for sale or buying under sub-section (1) shall be granted – (a) by the Prohibition and Excise Superintendent, if the sale or buying is within the district: (b) by the Deputy Commissioner of Excise, if the sale or buying is in more than one district within his jurisdiction: and (c) by the Commissioner, if the sale

or buying is in an area within the jurisdiction more than one Deputy Commissioner: Provided that subject to such conditions as may be determined by the Commissioner, a licence for sale or buying granted under the excisable law in force in any other part of India may be deemed to be a licence granted under this Act. (3) Nothing in this section shall apply to the sale of any liquor lawfully procured by any person for his private use and sold by him or on his behalf or his representative in interest upon his quitting a station or after his decease. (4) Notwithstanding any thing in sub-sections (1) and (2), no club or hotel shall supply liquor to its members or customers on payment of a price or any fee or subscription except under the authority and in accordance with the terms and conditions of a licence granted in that behalf by the Commissioner on payment of such fee as may be fixed by him according to scale of fees prescribed therefor.

16. Establishment of Distilleries and Warehouses: (1) The Commissioner, with the previous sanction of the Government: (a) establish or continue a distillery in which spirit may be manufactured (xxx) on such conditions as the Government may impose; (xxx) The words 'in accordance with a licence granted under Section 13' after words 'manufactured' omitted by Act 23 of 1971 Effective from 23.11.1971) (b) discontinue any distillery so established or continued; (c) licence, on conditions as the Government may impose, the constructions and working of a distillery or brewery; (d) establish, continue or licence a warehouse wherein intoxicant may be deposited and kept; (e) discontinue any warehouse so established or continued. (2) A warehouse established under sub-section (1) shall be for general accommodation of intoxicants subject to duty, pending removal for local consumption or for export. (3) Without the sanction of the Government, no person shall remove any intoxicant from any distillery, brewery, warehouse or other place of storage established, continued or licensed under this Act, unless the duty, if any imposed under this Act has been paid. *Provided that the provisions of this section in so far as they relate to establishing, continuing or licensing of distillery shall apply only to those distilleries which manufacture spirits for potable purpose and other regulatory provisions relating to regulation and supervision, shall be applicable to all distilleries.* (Proviso under sub-section (3) added by Act 11 of 2000. Effective from 28.4.2000) Note: Please see the comments under Section 13

17. Grant of exclusive privilege of manufacture, etc.: (1) Subject to the provisions of section 28 and any rules made in this behalf, the Government may, subject to such conditions as they may deem fit to impose, grant for a fixed period to any person, either jointly or severally, at any place, within any such area in the state as may be specified, a lease or licence or both for the exclusive privilege, - (i) of tapping, drawing toddy from any excise tree or selling or of both; or (ii) of manufacturing; or (iii) of supplying or selling by wholesale or of both; or (iv) of manufacturing, of supplying and selling by wholesale; or (v) of selling by shop; or (vi) of selling by Bar; or (vii) of selling by In-house; or (viii) of selling or using for bonafide purpose as may be specified any liquor or other intoxicant or material as may be specified in the said order. (2) It shall be lawful for the Government to prescribe from time to time different methods of selection for grant of exclusive privilege for different purposes under sub-section (1). (3) Notwithstanding any thing contained in sub-section (1), a lease or licence or both in respect of 'Shop' may be granted *for a period not exceeding two years at a time.* (The words 'for a period not exceeding two years at a time' substituted for the words 'for a period of one year or part thereof' by Act 39 of 2006. Effect from 25.5.2006. (4) No grantee of any privilege under sub-section (1) or sub-section (3) shall exercise the same unless the Commissioner of Prohibition and Excise, or any officer authorized in this behalf issues a licence. (5) The Government may confer on any officer all or any of the powers mentioned in sub-section (1) and (3). (6) The Commissioner of Prohibition and Excise, may, after due enquiry as he may deem fit, permit a licence holder in respect of manufacture of any liquor or intoxicant to sub-let such a privilege and grant a licence to the person who holds the sub-lease on collection of such fee as may be prescribed. (Section 17 substituted by Act 35 of 2005, Effective from 20.5.2005)

Comments

Section 17 prior to its substitution by Act 35 of 2005 read as follows: "17(1) Subject to the provisions of Section 28 and any rule made in this behalf, the Government may, subject to such conditions as they may deem fit, to impose, grant for a fixed period to any person at any place a lease or licence or both either jointly or severally for the exclusive privilege. (i) of manufacturing or of supplying by whole sale or of both; or (ii) of selling by wholesale or by retail; or (iii) of manufacturing or of supplying by wholesale, or of both, and of selling by retail, any liquor or other intoxicant within any such area in the State as may be specified in the said order.

EXPLANATION:

A lease shall not take effect until the Collector or any other competent officer has issued licence under this Act. (2) The Government may confer on any officer the power mentioned in sub-section (1) "It may be seen from the pre-amended Section that all the activities of liquor trade have been clubbed and were covered by a single set of rules i.e. A.P. Indian Liqor and Foreign Liquor Rules 1970. In order to have clarity over the issue the Government have decided to have different set of rules for different purposes. In order to achieve this object, Section 17 which deals with granting of exclusive privilege has been suitably substituted by Act 35 of 2005.

18. Duties of licensee with regard to measurement and testing: Every person, who manufactures or sell any intoxicant under a licence granted under this Act shall be bound: (a) to keep such measures, weights and instruments as the Commissioner may specify on the licensed premises and to maintain them in good condition; and (b) on the requisition of the Prohibition and Excise officer duly empowered in that behalf, at any time to measure, weigh or test any intoxicant in his possession in such manner as that officer may require

19 Prohibition of employment of children and of persons suffering from contagious diseases: (1) No person who is licensed to sell any intoxicant for human consumption on his premises shall during the hours in which such premises are kept open for such purpose, employ or permit to be employed either with or without remuneration, any children under such age as may be prescribed, in any part of the premises where the intoxicant is consumed by the public. (2) No such person as is referred to in sub-section(1) shall employ or permit to be employed either with or without remuneration, any person who is suffering from leprosy or any other contagious disease

20. Close of shops for preservation of public peace: (1) The District Magistrate may, by notice in writing to the licensee, require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for preservation of the public peace.

Explanation: For the purpose of this section, the expression 'District Magistrate' includes the Additional District Magistrate or any other person empowered to exercise the powers of District Magistrate. (2) If any riot or any unlawful assembly is apprehended or occurs in the vicinity of any such shop, any Magistrate of the first or second class may for reasons to be recorded in writing, require such shop to be kept closed for such reasonable period as he may think necessary. (3) The licensee shall not, on account of closure of the shop under this section, be entitle to any compensation except to the refund of such licence fee paid by him in respect of the shop as is proportionate to the period during which the shop is required to be kept closed under this section.

CHAPTER –V

EXCISE DUTY AND COUNTERVAILING DUTY

21. Excise duty or countervailing duty on excisable articles: (1) The Government may, by notification, levy an excise duty on any excisable article manufactured or produced in the State (xxx) at such rates not exceeding the rates mentioned in the Schedule as may be specified in the notification. (xxx. The expression ' in accordance with a licence granted under Section 13' omitted by Act 23 of 1971 Effective from 23.11.1971)

(2) The Government may, by notification, levy a countervailing duty on any excisable article manufactured or produced elsewhere in India and imported into the State (xxx) at such rates as may be specified in the notification, which may not exceed the rates of excise duty on similar excisable articles levied under sub-section (1) (xxx the words 'under a permit issued or licence granted under this Act' omitted by Act 23 of 1971 Effective from 23.11.1971) (3) Different rates may be specified in sub-section (1) and (2) for different kinds of excisable articles and different modes of levying duties under Section 22

22. Modes of levying duties: The excise and countervailing duty under Section 21 shall be levied in one or more of the following modes: (a) Rateably, on the quantity or advalorem of any excisable article produced or manufactured in or issued from a distillery, brewery or manufactory or warehouse or imported into the State. (The words 'on the quantity or advalorem of any excisable article' substituted for the words ' on the quantity of any excisable article' by Act 39 of 2006 Effective from 25.5.2006) (b) In the case of spirits or other liquors produced in any distillery, brewery or manufactory in accordance with its quality or strength or in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree or attenuation of the wash or wort, as the case may be prescribed. (The words 'any distillery, brewery or manufactory' substituted for the words ' any distillery established or continued or any distillery, brewery or manufactory licensed under this Act' by Act 23 of 1971 Effective from 23.11.1971). (c) In the case of toddy, in the form of a tax on each variety of excise tree from which toddy is drawn having due regard to the period during which such tree is capable of yielding toddy. (d) *By different rates of fees on*

licenses issued for different purposes mentioned in sub-section (1) of Section 17 as may be prescribed. (Clause (d) substituted by Act 35 of 2005 Effective from 20.5.2005)

Comments

The clause (d) of section 22, prior to its substitution by Act 35 of 2005, read as follows: (d) by fee on licenses for the manufacture, supply or sale of any excisable article

23. Payment for exclusive privilege: (1) Instead of or in addition to any excise duty or fees leviable under Section 21 and 22, the Commissioner or any other *officer authorized* may accept payment of a sum in consideration of the grant of lease or licence or both for the exclusive privilege in respect of liquor or any other intoxicant under Section 17. (for the words ' Competent officer' the words ' officer authorised' substituted by Act 35 of 2005) (2) *It shall be lawful for the Commissioner to prescribe different rates of exclusive privilege fee for different purposes mentioned in sub-section (1) of Section 17.* (Sub-section (2) added by Act 35 of 2005 Effective from 20.5.2005)

23-A Payment by the Corporation: In consideration of the privilege conferred on the corporation, in terms of Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor, Foreign Liquor) Act, 1993 the entire margins, Special privilege fee, any other receipts and any other amount realized by the Corporation from whatever source after deducting the expenses incurred by the Corporation, shall be paid as privilege fee or Special privilege fee or any other fee by whatever name called to the Commissioner of Prohibition and Excise, in terms of Section 23 (1) in the month succeeding the month of sale.

23-B Payment by the Corporation from 21.7.1993: Notwithstanding any thing contained in this Act, and the A.P. (Regulation of Trade in Indian Made Foreign Liquor, Foreign Liquor) Act, 1993 and the rules made there under, or any order issued by the Government or the Commissioner of Prohibition and Excise, all amounts paid by the Corporation from 21-07-1993 to the Commissioner of Prohibition and Excise, as privilege fee or special privilege fee or any other fee or cess by whatever name called, in consideration of the privilege conferred on the Corporation, shall be deemed to be the due payment for the relevant years under Section 23 and Section 23-A. (Section 23-A and 23-B inserted by Act 17 of 2006, Effective from 21.7.1993)

Comments

Under Section 23 of the Act, the Commissioner may accept the payment of a sum in consideration of the grant of lease or licence or both for the exclusive privilege in respect of liquor or other intoxicant. This sum is called variously as rental, licence fee, lease amount, privilege fee etc., depending on the situation. In consideration of the above privilege, the Andhra Pradesh Beverages Corporation Limited has been paying to the Commissioner of Prohibition and Excise, certain sums from time to time in the shape of privilege fee, Special privilege fee, Special privilege fee (sports promotion), cess etc., and the same was being accepted by the Commissioner. For discharging this statutory obligation, the Andhra Pradesh Beverages Corporation has been fixing and collecting wholesale margin, Special privilege fee, Sports privilege fee etc., on the sale of Indian Made Foreign Liquor and Foreign Liquor and remitting the same to the Commissioner from the year 1993-94. In order to safeguard and ensure proper collection of this source of revenue and to bring more clarity by unequivocally declaring all amounts collected as margin fee, etc., by the Corporation and paid as privilege fee or special privilege fee etc., to the Government as amounts paid in consideration for grant of exclusive privilege for wholesale trade in Indian Made Foreign Liquor and Foreign Liquor in the State and to declare all such payment made from 1993-94 (from 21.7.1993, the date from which the Andhra Pradesh (Regulation of Trade of Indian Liquor and Foreign Liquor) Act 1993 came into force) to be due payments to Government, statutory provisions has been made in the Act by inserting Section 23-A and 23-B by Act 17 of 2006.

24. Owner or other person in possession of excise trees to give intimation of unwillingness to tap excise trees etc.: (1) Where in any area, a duty under Section 21 is levied, the owner or other person in possession of the excise trees in that area, who is unwilling to have his excise trees tapped or to allow the drawl of toddy there from, shall, before the date notified in this regard by the authority empowered to grant a licence under Section 13, intimate his unwillingness in writing to the said authority. *Every such intimation received before the date so notified may be approved by the Commissioner subject to such rules as may be made in this behalf and shall take effect only on and from the date on which it is so approved; and the intimation so approved shall not be revoked during the period of seventeen months from the date so notified.* (2) Where no such intimation is received by the said authority before the date so notified, the licence applied for under Section 13 may be granted to the person applying therefor. (In sub-section (1) the sentence "Every such intimation.....the date so notified" substituted by the Act 6 of 1974 for the sentence ' Any such intimation shall not revoked during the period of seventeen months from the

date so notified' Effective from 5.3.74) (Sub-section (3) omitted by Act 10 of 1989. Effective from 16.9.1988)

Comments

Sub-section(3) prior to its omission by Act 10 of 1989, read as follows: "(3) Where the owner or other person referred to in sub-section (1) fails to give the intimation before the date so notified, he shall not cut down or cause to be cut down his excise trees during the period of seventeen months from the date so notified, and the owner or other person, who cuts down or causes to be cut down any excise tree in contravention of this provision, shall be liable to pay for every excise tree so cut down a penalty equal to twice the amount of duty payable in respect of that excise tree at the time of contravention. Such penalty may be imposed by the authority referred to in sub-section (1) after giving the owner or other person concerned an opportunity to make his representation against the imposition of such penalty" The intention of the Government to omit sub-section (3) is to remove the prohibition to cut an excise tree without intimation.

25. Recovery of duty under this Act from the persons other than the licensee in certain cases: Where the excise trees are tapped or toddy is drawn therefrom without any licence under this Act the duty payable under this Act shall be recoverable primarily from the person who has tapped the excise trees or caused them to be tapped and in default of payment by, or on failure of recovery from such person the duty shall be recoverable from the occupier, if any, of the land in which the said excise trees are standing, or if the excise trees do not belong to the occupier of such land or if the land is not occupied by any person, from the owner or other person in possession of the excise trees, unless such owner or other person proves that the excise trees were tapped or toddy was drawn there from without his knowledge.

26. Rent to which the owner or person in possession of excise trees is entitled: Where a licence is granted, the owner or other person in possession of excise tree shall be entitled to receive as rent for each excise tree from which toddy is tapped or drawn such sum as may be prescribed (xxx) and the said rent shall be paid by the person from whom the duty under this Act is payable, directly to the owner or other person who is entitled to it.

(xxx The words ' which shall not exceed the duty payable therefor under this Act' omitted by Act 10 of 1989. Effective from 16.9.1988)

Comments

Initially the Section 26 reads as follows: "26 Rent to which the owner or person in possession of excise trees entitled: Where a licence is granted, the owner or other person in possession of excise trees shall be entitled to receive as rent for each excise tree from which toddy is tapped or drawn, such sum, as may be prescribed which shall not exceed fifty percent of the duty payable therefor, under Section 23 and the said rent shall be payable by the person from whom the duty under Section 23 is payable and shall be deposited by him in the Government treasury, for being paid to the owner or other person who is entitled to it, in such manner as may be prescribed" A number of complaints have been received by the Government that the tree owners rent is not being paid to the pattadars in time and in some cases it remained unpaid for the years together. The Government considered the matter and decided to be allowed to pay the tree owners rent directly to the tree owner or person who is entitled to it instead of remitting it in the Government treasury. Further, the Government decided to enhance the tree rent payable to the tree owners from one-half to such amount as may be prescribed, which shall not exceed the duty payable therefor by way of tree tax. With these two objectives the Government amended the Section 26 by Act4 of 1979 with effect from 1.10.1978. The Section 26 as amended by Act4 of 1979 read as follows: "26 Rent to which the owner or person in possession of excise trees entitled: Were a licence is granted, the owner or other person in possession of excise trees shall be entitled to receive as rent for each excise tree from which toddy is tapped or drawn, such sum, as may be prescribed which shall not exceed the duty payable therefor under this Act and the said rent shall be paid by the person from whom the duty under this Act is payable, directly to the owner or other person who is entitle to it."

Subsequently the Government considered the payment enhanced rent to the owners of the Excise trees and accordingly amended the Section 26 by Act 10 of 1989 omitting the word "which shall not exceed the duty payable therefor under this Act". This facilitates the payment of enhanced rent to the owners of Excise trees without reference to the duty payable thereon.

27. Prohibition of cutting down or destroying excise trees: No person shall without the permission of the Collector or such officer as may be empowered by the Government in this behalf, cut down or destroy any excise trees (xxx). Such person may be given subject to such conditions and on payment of such fee may be prescribed.

(xxx The words 'belonging to Government' omitted by Act 10 of 1989 Effective from 16.9.1988)

Comments

Prior to the amendment, Section 27 prohibits the cutting down or destroying Government excise trees. By virtue of this amendment it has been extended this prohibition to all excise trees whether to Government or on private lands.

CHAPTER – VI LICENCES AND PERMITS

28. Forms and conditions of licence etc.: (1) Every permit issued or licence granted under this Act shall be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions, and shall be in such form and shall contain such particulars, as may be prescribed. (2) The conditions prescribed under sub-section (1) may include provisions of accommodation by the licensee to Proh. & Excise officers at the licensed premises on payment of rent or other charges for such accommodation at or near the licensed premises and the payment of the costs, charges and expenses (including the salaries and allowances of the Proh. & Excise Officers) which the Government may incur in connection with the supervision to ensure compliance with the provisions of this Act, the rules made thereunder and the licence.

29. Power to take security and counterpart agreement: Subject to such rules as may be prescribed, the authority granting licence under this Act may require the licensee – (a) to give security for the observance of the terms of his licence and (b) to execute a counterpart agreement in conformity with the tenor of his licence.

30. Technical defects, irregularities and omissions: (1) No licence granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the licence or in any proceedings taken prior to the grant thereof. (2) The decision of the Commissioner as to what is a technical defect, irregularity or omission, shall be final.

31. Power to cancel or suspend licence etc.: (1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act, may cancel or suspend it irrespective of the period to which the licence or permit relates- (The words “ irrespective of the period to which the licence or permit relates” inserted by Act 10 of 1989 Effective from 16.9.1988) (a) if any duty or fee is payable by the holder thereof is not duly paid, or (b) in the event of any breach ,by the holder thereof or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or (c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or (d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Narcotic Drugs and Psychotropic Substances Act 1985 Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise duties) Act 1955, or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482 Section 483 Section 484 Section 486 Section 487 Section 488, Section 489 of the Indian Penal Code or any offence punishable under section 112, or Section 114 of the Customs Act 1962, irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or (The expression ‘ Narcotic Drugs and Psychotropic Substances Act 1985 substituted for the expression ‘Dangerous Drugs Act 1930’ Similarly the expression ‘Customs Act. 1962 irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit’ for the expression ‘ Customs Act 1962 or’ substituted by Act 10 of 1989 Effective from 16.9.1988) © If the conditions of the licence or permit provide for such cancellation or suspension at will; Provided that no such licence or permit shall be cancelled or suspend unless the holder thereof is given an opportunity of making his representation against the action proposed. (2) Where a licence or permit held by any person is cancelled under clause (a), clause(b), clause(c), or clause (d) of sub-section(1), the authority aforesaid may cancel any other licence granted or permit issued to such person under this Act or under the Opium Act. 1878. (3) The holder of a licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

Comments

It was observed by the Hon'ble High Court of Andhra Pradesh that there is no provision in the Act and the rules made thereunder entitling the licencing authority to cancel lincence or contravention of the terms and conditions of licence granted for the previous year. Therefore sub-section (1) of Section 31 was

suitable amended by incorporating the words 'irrespective of the period to which the licence or permit relates' thereby providing provision for cancellation of licence for contravention of the terms and conditions in such cases

32. Power to withdraw licence: (1) Wherever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in Section 31, it may withdraw the licence on the expiration of not less than thirty days notice in writing of its intention to do so. (2) When a licence is withdrawn under sub-section(1) part of the licence fee proportionate to the unexpired portion of the terms of the licence and the deposit made by the licensee in respect thereof shall be refunded to him after deduction of the amount if any, due from him to the Government.

33. Surrender of licence: (1) Any holder of a licence granted under this Act to sell an excisable article may surrender his licence on the expiration of one month notice in writing given by him to the Prohibition and Excise Superintendent of his intention to surrender the same but the licence fee proportionate to the unexpired portion of the term of the licence for which it would have been current but for such surrender shall not be refunded. (2) Sub-section (1) shall not apply in the case of any licence issued in respect of a lease granted under Section 17

CHAPTER VII OFFENCES AND PENALTIES

34. Penalties for illegal import, export etc.,: Whoever, in contravention of this Act or of any rule, notification, or order made, issued or passed there under or of any licence or permit granted or issued under this Act,- (a) Imports, exports, transports, manufactures, collects or possesses or sells any intoxicant; or (b) taps any excise tree; or (c) draws toddy from any excise tree; or (d) constructs or works any distillery or brewery; or (e) uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy; or (f) bottles any liquor for purposes of sale; or (g) buys any intoxicants; or (h) possesses any material or film either with or without Government logo of any district in the State of Andhra Pradesh or any other State or wrapper or any other thing in which intoxicants can be packed or any apparatus, or implement or machine for the purpose of packing any intoxicant; (i) removes any intoxicant from any distillery, brewery or warehouse lincensed, established or continued under this Act; Shall on conviction be punished,- (i) where intoxicant involved in the offence is less than such quantity as be notified in this behalf with imprisonment for a term which shall not be less than six months but which may extend up to three years and with fine which shall not be less than rupees five thousand but which may extend up to rupees twenty thousand. (ii) where the intoxicant involved in the offence is not less than the quantity notified as aforesaid with imprisonment for a term which shall not be less than one year and which may extend up to five years and with fine which shall not be less than rupees ten thousand but which may extend up to rupees one lakh; and (2) in the case of an offence other than an offence falling under clause (a) with imprisonment which shall not be less than six months but which may extend to one year and with fine which may extend up to rupees ten thousand. (Section 34 substituted by Act 4 of 1994. Effective from 26-11-1993

Comments

Section 34, prior to its substitution by Act 4 of 1994 read as follows: "34 Whoever, in contravention of this Act or of any rule, notification, or order made, issued or passed there under or of any licence or permit granted or issued under this Act,- (a) Imports, exports, transports, manufactures, collects or possesses any intoxicant; or (b) cultivates the hemp plant, or fail to take the measure prescribed for checking the spontaneous growth or the extirpation of the hemp plant or collects any portion of such plant from which an intoxicating drug can be manufactured; or (c) taps any excise tree; or (d) draws toddy from any excise tree; or (e) constructs or works any distillery or brewery; or (f) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy; or (g) bottles any liquor for purpose of sale; or (h) sells or buys any intoxicants; or (i) removes any intoxicant from any distillery, brewery or warehouse lincensed, established or continued under this Act; Shall on conviction be punished,- (i) In case of an offence falling under clause (a), clause (e), clause (f), or clause (i) with imprisonment for a term which shall not less than two years but which shall not exceed five years, and with fine which may extend to five thousand rupees (ii) In any other case, with imprisonment which may be extended to six months or with fine which may extend to one thousand rupees or with both" It may be seen from the pre-amended Section 34 that the punishment prescribed is the same whatever be the quantity of the intoxicant involved in the offence. In order to enhance the punishment where the quantity of intoxicant is more, Section 34 was suitably amended

according to which the Government notifies the quantity for the purpose of the imposing graded punishments

35. Penalty for rendering denatured spirit fit for human consumption: Whoever renders or attempts to render fit for human consumption any spirit which has been denatured or has in his possession any spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall on conviction, be punished with imprisonment for a term which shall not be less than two years but which shall not exceed five years and with fine which may extend to five thousand rupees.

Explanation: For the purpose of this Section it shall be presumed, unless and until the contrary is proved, that any spirit, which is proved on chemical analysis to contain any quantity of any of the prescribed denaturants, is or contains or has been derived from denatured spirit.

36. Penalty for misconduct of licensees etc.: (1) Whoever being a holder of a licence or permit granted or issued under this Act or being in the employ of such holder and acting on his behalf;- (a) fails to produce such licence or permit on demand by any Prohibition and Excise Officer or any other officer duly empowered to make such demand; or (b) willfully does or omits to do any thing in breach of any of the conditions of his licence or permit not otherwise provided in this Act; or (c) Willfully contravenes any rule made under this Act; or (d) permits drunkenness, disorderly conduct, riot or gaming in any place where in any intoxicant is sold or manufactured; or (e) permits or suffers persons whom he knows or has reason to believe to have been convicted of any non-bailable offence, or who are reputed prostitutes or habitual offenders, to resort to, or assemble or remain in or on the premises where any excisable article is sold or manufactured; or (f) sells any intoxicant to a person who is drunk; or (g) sells or gives any intoxicant to any person apparently under twenty one years of age or permits or suffers such person to remain in or on the premises where any excisable article is sold or manufactured; or (For the words ' child apparently under eighteen years of age or permits or suffers such child' the words ' person apparently under twenty one years of age or permits or suffers such person" substituted by Act 4 of 1994 Effective from 26.11.1993) in contravention of Section 19 employs or permits to be employed on any part of his licensed premises referred to in that section any child or person suffering from leprosy or other contagious disease, shall on conviction, be punished – (i) in the case of an offence falling under clause (a), clause (b), Clause (c), with imprisonment for a term which shall not be less than six months but which shall not exceed two years and with fine which may extend to one thousand rupees; (ii) in any other case, with imprisonment which may extend to three months or with fine which may extend to five thousand rupees or with both. (2) Where any holder of a licence or permit under this Act or any person in his employ or acting or his behalf is charged with permitting drunkenness on the premises of such holder, and it is proved that any person was drunk on such premises, it shall lie on the person charged to prove that the holder of the licence and the persons employed by him took all reasonable steps for preventing drunkenness on such premises.

37. Penalty for adulteration etc., by licenced vendor or manufacturer: Whoever being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employ of such holder- (a) mixes or permits to be mixed with intoxicant sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act when such admixture does not amount to the offence of the adulteration under Section 272 of Indian Penal Code; or (b) sells or keeps or exposes for sale as Foreign Liquor, liquor which he knows or has reason to believe to be Indian Made Foreign Liquor; or (c) makes any bottle or the cork of any bottle, case packing or other receptacle containing Indian Made Foreign Liquor, or uses any bottle, case, package or other receptacle containing Indian Made Foreign Liquor, with any mark thereon or on the cork thereof with the intention for causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, when such act shall not amount to the offence of using a false trade mark with intention to deceive or injure any person under Section 482 of the Indian Penal Code; or (d) sells or keeps or exposes for sale any Indian Made Foreign Liquor in a bottle, case, package or other receptacle with any mark thereon or on the mark thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, when such act shall not amount to the offence of selling goods marked with a counterfeit trade-mark under Section 486 of the Indian Penal code; or (e) makes any block for printing counterfeit excise adhesive label, photo copies of such label for counterfeiting, prints any counterfeit excise adhesive label, makes counterfeit cork or capsule, to be used on bottles, packages or other receptacles containing Indian Made Foreign Liquor or Foreign Liquor or in possession of counterfeit excise adhesive label, cork, capsule, block or any other material to be used for printing such label or making such cork or capsule. Shall on conviction, be

punished with imprisonment (i) in case of first offence for a term which shall not be less than one year but which may extend upto three years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees thirty thousand. (ii) in case of second or subsequent offence for a term which shall not be less than two years but which may extend up to three years and with fine which shall not be less than rupees fifty thousand but which may extend upto rupees one lakh. (Clause(e) and items (i) and (ii) inserted by Act 4 of 1994. Effective from 26.11.1993)

37-A Penalty for adulteration resulting in death etc., (1) whoever mixes or permits to be mixed with any liquor or intoxicating drug any noxious substances or any substance which is likely to cause disability or grievous hurt or death to human being, shall, on conviction , be punishable – (i) if, as a result of such an act, disability or grievous hurt or death is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend upto imprisonment for life, and with fine which extend upto rupees one lakh; (ii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend upto ten years and with fine which may extend upto fifty thousand rupees. Explanation: For the purpose of this Section and Section 37-B the expression “grievous hurt” shall have the same meaning as in Section 320 of the Indian Penal Code, 1860 (central Act 45 of 1860) (For the words; ‘this section’ the words ‘ this section and section 37-B’ substituted by Act 20 of 1994 Effective from 20.5.1994).(2) whoever omits to take reasonable precautions to prevent the mixing of any noxious substance or any substance which is likely to cause disability or grievous hut or death to human being, with any liquor or intoxicating drug shall, on conviction be punishable,- (i) if as a result of such omission, disability or grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend upto imprisonment for life, and with fine which may extend upto rupees one lakh. (ii) if as a result of such omission, death is caused to any person, with imprisonment for a term which shall not be less than three years but which may extend upto imprisonment for life, and with fine which may extend upto rupees one lakh. (iii) in any other case, with imprisonment of a term which shall not be less than one year but which may extend upto ten years and with fine which may extend upto rupees fifty thousand. (3) Whoever possess any liquor or intoxicating drug in which any substance referred to in sub-section (1) is mixed, knowing that such substance is mixed with such liquor or intoxicating drug shall, on conviction, be punishable with imprisonment for a term which shall not be less than one year but which may extend upto ten years and with fine which may extend upto rupees fifty thousand, (Section 37-A inserted by Act 4 of 1994, Effective from 26-11-1993)

37-B Order to pay compensation: (1) Notwithstanding any thing contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the court when passing the judgment in a case falling under Section 37-A may, if it is satisfied that the death or grievous hurt or disability has been caused to any person or persons by consumption of liquor or intoxicating drug sold in any place order the person who sold the liquor or intoxicating drug, whether or not he is convicted of an offence under Section 37-A to pay, by way of compensation, such amount as it deems just to the legal representatives of the deceased or to the person or persons to whom grievous hurt or disability has been caused; Provided where the liquor or intoxicating drug is sold in a licenced shop the liability to pay the compensation under this section shall be on the licensee. (2) Any person aggrieved by an order under sub-section (1) may, within ninety days from the date of the order, prefer an appeal to the High Court. Provided that no such appeal shall lie unless the amount ordered to be paid under sub-section (1) is deposited in the court which passed such order. Provided further, that the High Court may entertain the appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time (Section 37-B inserted by Act 20 of 1994. Effective from 20.5.1994)

38. Penalty for consumption in the Chemist's shop: (1) A chemist, druggist, apothecary or keeper of a dispensary, who allows any intoxicant which has not been bonafide medicated for medicinal purposes to be consumed on his business premises by any person shall, on conviction be punished with imprisonment for a term which may extend to three months and with fine which may extend to one thousand rupees. (2) Any person who consumes any such intoxicant on such premises shall, on conviction, be punished with fine which may extend to two thousand rupees.

39. Manufacture, sale or possession by one person on account of another: (1) Where any intoxicant has been manufactured or sold or is possessed by any person or on account of any other person and such other person knows or has reason to believe that such manufacture or sale was or that such possession is on his account, the intoxicant shall, for the purpose of this Act, be deemed to have been manufactured or sold by or to be in the possession of such other person. (2) Nothing in sub-section (1) shall absolve

any person who manufactures, sells, or has possession of any intoxicant on account of another person from liability to any punishment under this Act for unlawful manufacture sale or possession of such article.

40 Penalty for cutting down or destroying excise trees: Whoever contravenes the provisions of Section 27, shall on conviction be punished with imprisonment – (i) in case of the first offence, for a term which shall not be less than three months and with fine which shall not be less than one thousand rupees; and (ii) in case of the second and subsequent offences for a term which shall not be less than six months and with fine which shall not be less than two thousand rupees. (Section 40 substituted by Act 10 of 1989. Effective from 16.9.1988)

Comments

Section 40, prior to its substitution by Act 10 of 1989, read as follows: **40 Penalty for cutting down or destroying Government excise trees:** Whoever contravenes the provisions of Section 27 shall on conviction be punished for each such offence with imprisonment for a term which may extend to six months with fine which may extend to one thousand rupees.

40-A penalty for false statement made in declaration or affidavit: Whosoever in any declaration or affidavit made to a Proh. & Excise Officer makes any statement which is false after due verification or which he believes to be false or does not believe it to be true, touching any point material to the object for which the declaration or affidavit is made or used shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend upto three years and shall also be liable to fine which may extend upto rupees ten thousand. (Section 40-A inserted by Act 4 of 1994, Effective from 26.11.1993)

41. Penalty for offences not otherwise provided for: Whoever does any act in contravention of any of the provisions of this Act, or of rule, notification, or order made issued or passed thereunder and otherwise provided for in this Act, shall on conviction, be punished with imprisonment which may extend upto six months and with fine which may extend upto five thousand rupees. (For the words 'be punished with fine which may extend to five thousand rupees' the words 'be punished with imprisonment which may extend upto six months and with fine which may extend upto five thousand rupees, substituted by Act 4 of 1994. Effective from 26.11.1993)

42. Presumption as to commission of offence in certain cases: In prosecution under Section 34, Section 37 and Section 37-A it shall be presumed until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of - (a) any intoxicant; or (b) any still, utensil, implement, or apparatus whatsoever in the manufacture of any intoxicant other than toddy; or (c) any materials which have undergone any process towards the manufacture of any intoxicant or from which an intoxicant has been manufactured for the possession of which he is unable to account satisfactorily.

43 Criminal Liability of the Licensee for the acts of servants: Where any offence under Section 34, Section 35, Section 37 or Section 38 is committed by any person in the employ and acting on behalf of the holder of a licence or permit granted or issued under this Act, such holder shall also be punishable as if he has committed himself the said offence, unless he establishes that all due diligence was exercised by him to prevent the commission of such offence. (The proviso under Section 43 omitted by Act, 10 of 1989. Effective from 16.9.1988)

Comments

The proviso under Section 43, prior to its omission read as follows: **Provided that no person other than the actual offender shall be punishable under this section with imprisonment, except in default of payment of fine.**

43-A Punishment for allowing premises etc., to be used for commission of an offence: Whoever being a licensee under this Act and having the control or use of any house, room, enclosure, space, animal, conveyance knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable in the same manner as if he had himself committed the said offence. (Section 43-A inserted by Act 10 of 1989. Effective from 16.9.1988)

44 Enhanced punishment after previous conviction: If any person, after having been previously convicted of an offence punishable under Section 34, Section 35, Section 37, Section 38 or Section 40 or under the corresponding provisions of any enactment repealed by this Act subsequently commits and is convicted of any offence punishable under any of those sections, he shall be liable to twice the punishment which might be imposed on the first conviction under this Act. Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXI of Code of Criminal Procedure, 1973 from being so tried. (For the expression 'Chapter XXII of the Code of Criminal

Procedure, 1898' the expression 'Chapter XXI of the Code of Criminal Procedure, 1973' substituted by Act 4 of 1994. Effective from 26.11.1993)

45. Liability of certain things to confiscation: whenever an offence has been committed, which is punishable under this Act, the following things shall be liable to confiscation, namely:- (1) Any intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed; (2) Any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or brought along with, or in addition to any intoxicant liable to confiscation under clause (1); and (3) Any receptacle, package or covering in which any thing liable to confiscation under clause (1) or clause (2), is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same. (Proviso under sub-section 3, omitted by Act 4 of 1994. Effective from 26.11.1993

Comments

The proviso under sub-section 3, prior to its omission read as follows: **Provided that, if any thing specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.**

46. Confiscation by Proh. & Excise Officers in certain cases: (1) Notwithstanding any thing contained in this Act or any other law for the time being in force, where any thing liable for confiscation under Section 45 is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay; produce the seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area. (2) On production of the said seized property under sub-section (1) the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under this Act has been committed, may whether or not a prosecution is instituted for the commission of such an offence, order, confiscation of such property. (3) While making an order of confiscation under sub-section (2), the Deputy Commissioner of Prohibition and Excise may also order that such of the properties to which the order of confiscation relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed. (4) Where the Deputy Commissioner of Prohibition and Excise after passing an order of confiscation under Sub-section 2 is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose departmentally. (5) The Deputy Commissioner of Prohibition and Excise shall submit a full report of all particulars of confiscation to the Commissioner of Prohibition and Excise within twenty four hours of such confiscation. (6) The Deputy Commissioner of Prohibition and Excise shall for the purpose of this Act, have the same powers vested in a Civil Court under the Code of Civil procedure, 1908 (Central Act 5 of 1908) when making enquiries under this section in respect of the following matters, namely: - (a) receiving evidence of affidavits, (b) summoning and enforcing the attendance of any person and examining him on oath; and (c) compelling the production of documents.

46-A. Issue of show cause notice: No order of confiscation of any property shall be made under Section 46 unless the person from whom the said property is seized,- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; and (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice.

46-B. Order of confiscation in the absence of offender: When an offence under this Act has been committed, but the offender is not known or cannot be found, or when any thing liable to confiscation under this Act, and not in the possession of any person cannot be satisfactorily accounted for, the Prohibition and Excise Superintendent may order confiscate such property. Provided that no such order shall be made until the expiration of one month, from the date of seizing the goods intended to be confiscated.

46-C. Appeal: Any person aggrieved by an order passed by Deputy Commissioner of Prohibition and Excise under section 46, may within sixty days from the date of passing such order appeal to Commissioner of Prohibition and Excise, who may after giving reasonable opportunity to the appellant pass such order as he deems fit.

46-D. Other confiscation not to interfere with other punishments: The order of confiscation under sub-section (2) of Section 46 or Section 46-B shall not prevent from initiation of criminal proceedings against the accused under this Act. The result of criminal proceedings either acquittal or conviction or otherwise under the provisions of this Act, will have not bearing on the order of confiscation passed under this Act.

46-E Bar of jurisdiction: Notwithstanding any thing contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) when the Deputy Commissioner of Prohibition and Excise or the appellate

authority is seized with the matter under this Act, no court shall entertain any application in respect of excisable articles, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition and Excise or the appellate authority with regard to the disposed of the same shall be exclusive.

46-F. Property confiscated when to vest in Government: When an order of confiscation of any property has been passed under Section 46 and such order become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in Government free from all encumbrances. (Section 46 to 46-F was substituted by Act 20 of 1994, Effective from 20.5.1994)

Comments

Section 46, prior to its substitution read as follows: “46 Order of confiscation: (1) where in any case tried by him, the Magistrate decides or cannot be found, or when thing is liable to confiscation under Section 45, he shall order confiscation of such thing. (2) When an offence under this Act has been committed, but the offender is not known or cannot be found, or when things liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Commissioner or by any other officer authorized by Government in this behalf, who may order such confiscation. Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto and evidence, if any, which they produce in support of their claims; Provided further that if the thing in the question is liable to speedy and natural decay or if the Commissioner or any other officer authorized by the Government in that behalf is of opinion that the sale would be for the benefit of its owner, he may at any time direct it to be sold, and the provisions of this Section shall, as nearly as may be practicable, apply to the net proceeds of such sale” The substituted sections 46, 46-A, 46-B, 46-C, 46-D, 46-E and 46-F provide for confiscation by the Deputy Commissioner of Prohibition and Excise of the articles seized under Section 45 for effective implementation of the Act and provide for appeal against the orders of confiscation and bar the jurisdiction of courts where the excise officials are seized with mater relating to confiscation.

47. Compounding of offences: (1) The Collector or any Prohibition and Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of Section 31 or who is reasonably suspected of having committed an offence falling under clause (b), clause (c), or clause (g) of Section 34; clause (a), clause (e), clause (f), clause (g) or clause (h) of Section 36; clause (b), clause (c) or clause (d) of Section 37; or Section 42, a sum of money not exceeding one lakh rupees and subject to such minima as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed as the case may be, and in all cases in which any property, has been seized is liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer; Provided that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed. (For the expression ‘ clause (c), clause (d), clause (g) or clause (h) of Section 34’ the expression clause (b), clause (c) or clause (g) of Section 34 substituted by Act 4 of 1994 Effect from 26.11.1993)(The words ‘one lakh rupees’ substituted for the words ‘ten thousand rupees’ of Act 10 of 2005, Effective from 2.4.2005). (2) On payment by the person, the sum of money or the value or both, as the case may be in accordance with the provisions of sub-section (1) or Section 47-A, such person, if in custody shall be set at liberty, and all the property seized may be released and no proceedings shall be instituted or continued against such person in any Criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings be taken against such person or property with reference to same Act. (The expression ‘in accordance with the provisions of sub-section (1) or section 47-A’ and the expression ‘or continued’ added by Act 10 of 1989. Effect from 16.9.1988)

47-A Special powers of Commissioner in regard to compounding of offences: (1) Any person who is reasonably suspected of having committed an offence falling under Section 38 may apply to the Commissioner for compounding the offence before he is convicted. (The expression ‘falling under Section 38’ for the expression ‘ falling under clause (a) of Section 34 or Section 38’ substituted by Act 4 of 1994. Effective from 26.11.1993)

(2) On receipt of such application, the Commissioner having regard to the circumstances of the case, may in his discretion order for compounding the offence on payment of a sum of money by way of

compounding fee or compensation for the offence on such terms and conditions as he deems fit. Provided that the sum of money fixed as compounding fee or compensation by the Commissioner under this section shall not be less than five times but not more than ten times the duty involved and where no duty is involved, not less than rupees fifteen thousand but not more than rupees one lakh; Provided further that in all cases in which any property has been seized as liable to confiscation under this Act, may be ordered by him to be released on payment of the value thereof as estimated by him or by an officer authorized by him in this behalf; Provided also that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed. (Section 47-A inserted by Act 10 of 1989. Effective from 1.1.1987)

Comments

Prior to insertion of Section 47-A, the Commissioner, the Collector or any Excise Officer is empowered to compound the offences under Section 47 of the Act. It has been decided by the Government to give special powers to the Commissioner with retrospective effect from 1.1.1987 in regard to compounding of offences and also to revalidate the acts of the Commissioner in having compounded certain offences without having specific powers. Accordingly Section 47-A was inserted by Act 10 of 1989 with retrospective effect from 1.1.1987.

48. Penalty for vexatious delay: Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to the nearest Prohibition and Excise Officer or to the officer-in-charge of the nearest police station, as required by sub-section (2) of Section 60 any person arrested, shall on conviction, be punished with fine which may extend to two hundred rupees.

49. Penalty for Prohibition and Excise Officer refusing to do duty: Any Prohibition and Excise Officer, who without lawful excuse, shall cease or refuse to perform or withdraw himself from the duties of his office unless expressly allowed to do so in writing by the Commissioner, or unless he shall have given to his official superior officer two months notice in writing of his intention to do so, or who shall be guilty of cowardice, shall on conviction be punished with imprisonment, which shall not be less than one month but which shall not exceed three months, or with fine which shall not be less than five hundred rupees but which shall not exceed one thousand rupees or with both.

50 Penalty for abetment: Any officer or person who unlawfully releases or abets the escape of any person arrested under this Act, or abets the commission of any offence against this Act, or acts in any manner inconsistent with his duty for the purpose of enabling any person to do any thing whereby any of the provisions of this Act may be evaded or contravened or the excise revenue may be defrauded and any officer of any other department referred to in Section 53 who abets the commission of any offence against this Act in any place shall, on conviction for every such offence, be punished with imprisonment for a term which shall not be less than three months but which shall not exceed one year. (The words ' Which shall not exceed one year' have been substituted for the words ' which shall not exceed six months or with fine which shall not be less than five hundred rupees but which shall not exceed one thousand rupees or with both' by Act 4 of 1994. Effective from 26.11.1993)

50-A. Penalty for assault: Notwithstanding any thing contained in the Indian Penal Code 1860 who ever assault or threatens to assault or obstructs or attempts to obstruct any Excise Officer in the discharge of his official duties in the matters of detection, seizure, arrest, investigation, prosecution of the offences under the Act or attempts to use criminal force on Prohibition and Excise Officer shall be punished with imprisonment for a term which may extend to three years and with fine which may extend rupees fifty thousands. (Section 50-A inserted by Act 20 of 1994, Effective from 20.5.1994)

CHAPTER – VIII

DETECTION, INVESTIGATION AND TRAIL OF OFFENCES

51. Landholders, officers and others to give information: (1) Whenever any intoxicant is manufactured or collected or any excise tree is tapped or any hemp plant is cultivated, in or on any land or building, in contravention of this Act – (a) all owners or occupiers of such land or building or their agents; (b) (i) Village officers or servants including members of village police; (ii) Sarpanches, members and officers of Gram Panchayat; and (iii) All officers other than Prohibition and Excise Officers employed in the collection of revenue or rent on land on behalf of the Government, or a local authority in the locality in which such land or building is situated shall in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or to an officer of the Prohibition and Excise or Police or Revenue Department as soon as the fact comes to their knowledge. (2) Every Prohibition and Excise Officer shall be bound to give immediate information either to his immediate official superior or to the Prohibition and Excise Inspector, of all breaches of any of the provisions of this Act, which may come to his knowledge under sub-section

(1) or otherwise. (3) All such officers, Sarpanches, members or servants as are referred to Sub-section (1) shall be bound – (a) to take all reasonable measures in their power to prevent the commission of such breaches which they may know, or have reason to believe, are about or likely to be committed; and (b) to assist the Commissioner in carrying out the provisions of this Act.

52. Power to enter and inspect places of manufacture and sale: The Commissioner or a Collector or any Prohibition and Excise Officer not below such rank as may be prescribed, or any police officer duly empowered in that behalf, may – (a) enter and inspect, at any time by day or by night, and any place in which any licensed manufacturer, manufactures or stores any intoxicant, and (b) enter and inspect, at any time, within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any intoxicant is kept for sale by any person holding a licence under this Act, and (c) examine the accounts and registers, and examine, test, measure or weigh any materials, stills, utensils, implements apparatus or intoxicant found in such place.

53. Power to arrest without warrant, to seize article liable for confiscation and to make searches: (1) Any officer of the Government employed in the Prohibition and Excise, Police or Revenue Department of the State subject to such restrictions as may be prescribed and any other person duly empowered may – (a) arrest without warrant any person for an offence punishable under Section 27 or Section 34 or Section 35 or Section 36 or Section 37 or Section 37-A or Section 40-A or Section 50 or Section 50 – A; (b) Seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Act, or any other law for the time being on force, relating to excise revenue; and (c) detain and search any person upon whom and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be. (2) When any person is accused or is reasonably suspected of committing an offence under this Act, other than an offence under Section 34, Section 35, Section 36, or Section 37 or Section 37-A or Section 50 and on demand of any such officer as aforesaid, refuses to give his name and residence or gives a name and residence which such officer has reason to believe is false, he may be arrested by such officer in order that his name and residence may be ascertained. (Clause (a) of sub-section (1) substituted by Act 20 of 1994. Effective from 20.5.1994) (In sub-section (2) the expression ‘ 37-A or Section 50’ inserted after the expression ‘ or Section 37’ by Act 20 of 1994. Effective from 20.5.1994.

Comments

Clause (a) of sub-section (1) of Section 53 prior to its substitution read as follows: (a) arrest without warrant any person found committing an offence punishable under Section 34, Section 35, Section 36. or Section 37;

53-A. Obligation of officers to assist each other: The Officers of the Departments of Police and Revenue shall upon notice given or request made by a Prohibition and Excise Officer be legally bound to assist him in carrying out the provisions of the Act. (Section 53-A, inserted by Act 4 of 1994, Effective from 26.11.1993)

54. Powers of Magistrate to issue a warrant: If a Magistrate, upon information and after such enquiry, if any, as he thinks necessary, has reason to believe that an offence under Section 34, Section 35, Section 36, or Section 37 has been, is being or is likely to be, committed, he may issue a warrant, - (a) for the search of any place in which he has reason to believe that any intoxicant, still, utensil, implement, apparatus or materials which are used for the commission of such offence or in respect to which such offence has been, or is being or is likely to be committed, are kept or concealed; and (b) for the arrest of any person whom he has reason to believe to have been, to be, or likely to be engaged in the commission of any such offence.

55. Power to search without warrant: Whenever the Commissioner or a Collector or any police officer not below the rank of an officer-in-charge of a police station or any Prohibition and Excise Officer not below the rank of Prohibition and Excise Sub-Inspector has reason to believe that an offence under Section 34, Section 35, Section 36, Section 37 or Section 37-A has been, is being or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the ground of his belief – (a) at any time by day or night enter and search any place and seize any thing found therein which he has reason to believe to be liable to confiscation under this Act; and (b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid. (For the expression ‘or section 37’ the expression ‘ Section 37 or 37-A’ substituted by Act 4 of 1994. Effective from 26.11.1993)

56. Power to Prohibition and Excise Officers in matters of investigation: (1)

Any Prohibition and Excise officer not below the rank of Prohibition and Excise Sub-Inspector may, as regards offences under Section 27, Section 34, Section 35, Section 36, Section 37 or Section 37-A or Section 40-A exercise within such area as may notified in this behalf, powers conferred on an officer-in-charge of a police station by the provisions, of the Code of Criminal Procedure, 1973. Provided that any such power shall be subject to such restrictions and modifications, as may be prescribed. (2) For the purpose of Section 156 of the said code, the area in regard to which a Prohibition and Excise Officer is empowered under sub-section (1) shall be deemed to be a police officer and such officer shall be deemed to be the officer-in-charge of the station. (In sub-section (1), the expression ' Section 27, Section 34' substituted for the expression 'section 34' by Act 10 of 1989. Effective from 16.9.1988) (For the expression ' or section 37' the expression ' Section 37, Section 37-A, or ' Section 40-A, and for the expression ' the Code of Criminal Procedure, 1898' the expression ' the Code of Criminal Procedure 1973' substituted by Act 4 of 1994. Effective from 26-11-1993)

57. Report by investigating officer: If, on any investigation by a Prohibition and Excise Officer not below the rank of Prohibition and Excise Sub-Inspector, it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer shall submit a report, which shall for the purpose of Section 190 of the Code of Criminal Procedure, 1973, be deemed to be a police report, to a Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports. (The expression ' Section 190 Code of Criminal Procedure, 1973 substituted for the expression ' Section 190 of Code of Criminal Procedure, 1898' by Act 4 of 1994. Effective from 26.11.1993)

58. Report by Prohibition and Excise Officer: Where any Prohibition and Excise Officer not below the rank of Prohibition and Excise Sub-Inspector makes any arrest, seizure or search under this Act, he shall, within twenty four hours thereafter – (a) make a full report of all the particulars of the arrest, seizure or search to his immediate official superior; and (b) unless bail be accepted under Section 60, take or send the person arrested or the thing seized, with all convenient dispatch, to the nearest Magistrate for trial or adjudication.

59. Arrest, search etc., how to be made: Any person arrested under this Act, shall be informed, as soon as may be, of the grounds for such arrest and save as otherwise expressly provided in this Act, the provisions of the Code of Criminal Procedure, 1973, relating to arrests, detention in custody, searches, summonses, warrants of arrest, search warrants, the production of persons arrested and the disposal of things seized shall apply, as far as may be, to all actions taken in these respects under this Act. (The expression ' the Code of Criminal Procedure, 1973' substituted for the expression ' the Code of Criminal Procedure, 1898' by Act 4 of 1994. Effective from 26.11.1993)

60. Security for appearance in case of arrest without warrant: (1) The Government may, by notification, empower any Prohibition and Excise Officer to release on bail persons arrested under this Act otherwise than on a warrant. (2) When a person is arrested under this Act, otherwise than a warrant, by a person or officer who is not authorized to release arrested persons on bail, he shall be produced before or forwarded to – (a) the nearest Prohibition and Excise Officer who has authority to release the arrested persons on bail; or (b) the nearest officer-in-charge of the Police station, whoever is nearer. (3) Whenever any person arrested under this Act, otherwise than on a warrant, is prepared to give bail, and is arrested by or produced in accordance with Sub-section (2) before an officer who has authority to release arrested persons on bail, he shall be released on bail or at the discretion of the officer releasing him on his own bond. (4) The provisions of Sections 442 to 446 and Section 449 of Code of Criminal Procedure, 1973 shall apply so far as may be, in every case, in which bail is accepted or, bond taken under this Section. (The expression 'Sections 442 to 446 and Section 449 of the Code of Criminal Procedure, 1973' substituted for the expression ' Section 449 to 502, section 513, section 514 and section 515 of the Code of Criminal Procedure, 1898' by Act 20 of 1994. Effective from 20.5.1994)

(5) Notwithstanding any thing contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no person accused of an offence under clauses (a) and (h) of Section 34 or Section 37, Section 37-A, Section 40-A, Section 50 and Section 50-A of this Act, the court shall not grant any bail, unless the prosecuting officer is given an opportunity to oppose the application, and the court shall record reasons while granting bail. (Sub-section (5) added by Act 20 of 1994. Effective from 20.5.1994)

Comments

The Government in their G.O.Ms.No.927, Revenue Department, dated 25.9.1969, notified empowering Excise officers of and above the rank of Sub-Inspector to release on bail, person arrested under this Act otherwise than a warrant.

61. Procedure for prosecution and credit of fines to Prohibition and Excise Department: (1) No Magistrate shall take cognizance of an offence punishable- (a) under Section 38 or Section 41 except on the complaint of the Collector or Prohibition and Excise Officer not below the rank of Prohibition and Excise Superintendent, in this behalf, or (b) Notwithstanding any thing in any other law for the time being in force in the State, all sums realized on account of fines imposed by a Magistrate on conviction of a person for any offence under this Act, shall on such realization be credited to the head of account to which the receipts of the Prohibition and Excise Department are credited, after deducting there from the expenses incurred in connection with such realization.

62. Magistrate's power to impose enhanced penalties: Notwithstanding any thing in Section 29 of the Code of Criminal Procedure, 1973 it shall be lawful for any Magistrate of the first class to pass any sentence authorized by this Act in excess of his powers (The expression 'Section 29 of the Code of Criminal Procedure, 1973' substituted for the expression ' Section 32 of Code of Criminal Procedure, 1898' by Act 20 of 1994. Effective from 20.5.1994)

CHAPTER -IX APPEALS AND REVISIONS

63. Appeals: (1) Any person aggrieved by an order by any officer, other than the Commissioner or Collector, under this Act, may, within forty five days from the date of communication of such order, appeal to the Deputy Commissioner. (2) Any person aggrieved by an order passed by the Deputy Commissioner or Collector under this Act, may within sixty days from the date of communication of such order, appeal to the Commissioner.

64. Revision: The Government may, either suo motu or on an application call for and examine the records of any officer in respect of any decision, order or other proceedings made under this Act, including those relating to the grant, issue or refusal of a licence, or permit, for the purpose of satisfying themselves as to correctness, legality or propriety of any such decision or order or as to the regularity of such proceedings, and if in any case, it appears, to them that such decision, order or proceedings should be modified, annulled, reversed or remitted for reconsideration they may pass orders accordingly. Provided that no order adversely affecting any party, shall be passed under this Section unless he has been given an opportunity of making his representation.

CHAPTER -X MISCELLANEOUS

65. Recovery of Government dues: (1) The following moneys, namely – (a) all excise revenue, (b) any loss that may accrue when, in consequence of default, a lease under Section 17 has been taken under management by the Collector, or has been resold by him. (c) Amounts due to the Government by any person on account of any contract relating to the excise revenue; and (d) The costs, charges and expenses (including the salaries and allowances of the Prohibition and Excise Officers) specified in sub-section (2) of Section 28) may be recovered from the person primarily liable to pay the same or from his surety, as of they were arrears of land revenue. (2) when a lease has been taken under management by the Collector, or has been resold by him, the Collector may recover, in the manner authorized by Sub-Section (1) any money due to the defaulter by lessee or assignee. (3) Arrears of money recoverable under this Section shall bear interest at such rates as may be prescribed. (The expression 'at such rates as may be prescribed' substituted for the expression ' the rate of six percent per annum' by Act 27 of 1981. Effective from 1.7.1981)

66. Government's lien on property of defaulter: In the event of default by any person licensed or holder a lease under this Act, his distillery, brewery, warehouse, shop or premises and all fittings, apparatus, stocks of intoxicants or materials for the manufacture of the same, held in or upon any such distillery, brewery, warehouse, shop or premises, shall be liable to be attached in satisfaction of any claim for excise revenue or in respect of any loss incurred by the Government through such default, and to be sold to satisfy such claim which shall be a first charge upon the proceeds of such sale.

67. Recovery of dues lessee under Section 17: Any person to whom a lease has been granted in accordance with the provision of Section 17, may in a case where sub-letting is not forbidden by the terms of lease, proceed against any person holding under him for the recovery of any money due in respect of such sub-lease as if it were an arrear of rent recoverable under the law for the time being in

force with regard to landlord and tenant; Provided that nothing in this Section shall affect the right of any such grantee to recover any such money by a civil suit.

68. Power of Government to exempt, etc., : The Government may, by notification, and subject to such restrictions and conditions, as may be specified in such notification – (a) exempt or reduce the excise duty levied under Section 22 on any liquor sold – (i) for use or consumption by the members of the Armed Forces of the Union, or (ii) for use for bonafide medicinal, scientific, industrial or such like purposes; (b) exempt any intoxicant from any of the provisions of this Act, other than those of Chapter V, in any specified area or for any specified period or occasion.

68-A. Exemption of the Government from taking out licence or permit for production, manufacture, etc., of any intoxicants: Notwithstanding any thing in this Act, it shall not be necessary for the Government or any authority or officer acting on their behalf to take out a licence or permit under this Act for the production, manufacture, possession, import, export, transport, sale or purchase of any intoxicant, (Section 68-A inserted by Act 23 of 1971, Effective from 23.11.1971)

Comments

Under Chapter III of the Act, a permit is necessary for the import, export, or transport of any intoxicant under the Chapter VI a licence is necessary for production, manufacture, possession, purchase and sale of any intoxicant. At that time (in 1971) Arrack was manufactured in the State at Government Distilleries, Narayanaguda, Hyderabad and at Kamareddy of Nizamabad district and it was being sold to the arrack shop contractors at the departmental taluk depots. No permit or licence for production, manufacture, possession, import, export, transport, purchase or sale of arrack manufactured in such distilleries and sold to arrack shop contractors through the departmental taluk depots, was being taken out by the State Government or any authority or officer acting on behalf of the Government on the assumption that the Government do not come within the meaning of the expression “Person” as contained in this Act. With a view to place the matter beyond all doubts and to specifically provide in the Act that it shall not be necessary for the Government to take out a licence or permit under the Act for such purposes, Section 68-A was inserted by Act 23 of 1971)

68-B Power of the State Government to notify exemptions or grant relaxations: The State Government may, by notification in the Andhra Pradesh Gazette and subject to such restrictions and conditions as may be specified in such notification, make exemption or grant relaxation in respect of any of the provisions of the Act. (Section 68-B inserted by Act 35 of 2005. Effective from 20.5.2005)

69. Protection of action taken under this Act: No suit or other legal proceedings shall lie against the Government or any Prohibition and Excise Officer or any other person empowered to exercise powers or to perform the functions under this Act for any thing in good faith done or intended to be done under this Act.

70. Limitation of suits: No suit shall lie against the Government, or against a Prohibition and Excise Officer, other than a suit by Government, in respect of any thing done or alleged to have done in pursuance of this Act, unless the suit is instituted within six months from the date of act complained of.

71. Offences by Companies etc.,: (1) If the person committing an offence under this Act is a company, the company as well as every person in-charge of, and responsible to the company for the conduct for its business at the time of the commission of the offence, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly; (2) Notwithstanding anything in Sub-Section (1), where an offence under this Act has been committed by company, and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation: For the purpose of this Section – (a) “Company” means any body corporate and includes a firm or other association of individuals; or (b) “Director” in relation to firm, means a partner in the firm.

72. Power to make rules: (1) The Government, may, by notification (xxx), makes rules for carrying out all or any of the purposes of this Act. (xxx. The words ‘after previous publication’ omitted by Act 27 of 1981. Effective from 1.7.1981). (2) In particular and without prejudice to the generally of the foregoing provisions, the Government may make rules – (a) Prescribing the powers and duties of the Prohibition and Excise Officers; (b) Regulating and delegation of any powers by the Commissioner or Collector or the Prohibition and Excise Superintendent under section 8; (c) Prescribing the time and manner of presenting appeals and the procedure for dealing with appeals; (d) Regulating the import, export, transport, manufacture, cultivation, collection, possession, supply or storage of any intoxicant and may such rules,

among other matters – (i) regulate the taping of excise trees, the drawing of toddy from such excise trees, the marketing of the same and the maintenance of such marks; (ii) declare the process by which spirit shall be denatured and the denaturation of spirits ascertained; (iii) cause spirit to be denatured through the agency or under the supervision of its own officers; and (iv) regulating the drawing of neera and the sale thereof; (e) regulating the periods and localities in which and the persons or classes of persons to whom, licenses for the wholesale or retail sale or buying of any intoxicant, may be granted and regulating the number of such licenses which may be granted in any area; (ee) Separately for shop, Bar, or In-house, to regulate the localities in which and the persons or classes of person to whom lease or licence or both may be granted and to regulate their number which may be granted in any area and the method of selection for grant such privilege, lease or licence; (f) Prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale or buying is granted for any locality; (g) Regulating the time, place and manner of payment of any duty or fee and the taking of security for the payment of any duty or fee; (gg) Specifying the factors which should be taken into consideration for according or withholding approval under Section 24 and the period within which, and the manner in which such approval shall be accorded or withheld. (h) Prescribing the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted or issued and may, by such rules, among other matters – (i) Fix the period of which any licence or permit shall continue in force; (ii) Prescribe the scales of fees or the manner of fixing the fees payable in respect of any lease, licence or permit, or the storing of any excisable article; (iii) Prescribe the amount of surety to be deposited by the holders or any licence or permit for the performance of the conditions of the same. (iv) Prescribe the accounts to be maintained and the returns to be submitted by the licence holders. (v) prohibit or regulate the transfer of licences; and (vi) Prescribe the ages under which it shall be unlawful to employ children and to sell or give to children excisable articles; (i) Providing for the destruction or other disposal of any intoxicant deemed to be unfit for use; (j) Regulating disposal of confiscated articles; (k) Regulating the grant of expenses to witnesses and to persons charged with offences under the Act, and subsequently released or acquitted; (l) Regulating the powers of Prohibition and Excise Officers to summon the witnesses; (m) prescribing the tax payable to the Government in respect of excise trees from which toddy is drawn; (n) Constituting mobile courts of Magistrates in consultation with High Court, for the trial of offences against any provisions of this Act or the rules or orders made thereunder; (o) Any other matter that may be prescribed under this Act: (3) Any rules under this Act may be made with retrospective effect and when such a rule is made, the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(4) Every rule made under this Act, shall, immediately after it is made be laid before each House of the State Legislature if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule. (clause (ee) under Sub-rule (2) inserted by Act 35 of 2005. Effective from 20.5.2005) (Clause (gg) under Sub-rule (2) inserted by Act 6 of 1974)

73. Repeal and savings: The following enactments, namely- (a) The Andhra Pradesh (Andhra Area) Abkari Act, 1886, (Act 1 of 1886) with all subsequent statutory modifications thereof; (b) The Andhra Pradesh (Telangana Area) Abkari Act, 1316-F; (c) The Andhra Pradesh (Tenlangana area) Intoxicating Drugs Act, 1333-F, are hereby repealed; Provided that Section 8 of the Andhra Pradesh General Clause Act 1891 shall be applicable in respect of the repeal of the said enactment and Section 8 and 18 of the said Act, shall be applicable as if the said enactments had been repealed and re-enacted by an Andhra Pradesh Act; Provided further that such repeal shall not affect the right of the Government to continue to levy by virtue of the provisions of the Article 277 of the Constitution the gallonage fee on denatured spirits, methylated spirits and other spirits not fit for human consumption, which the Government were lawfully levying immediately before the commencement of this Act.