

LAW (LEGISLATIVE DRAFTING) DEPARTMENT
(Group-II)
NOTIFICATION

Jaipur, June 6, 2007

No. F.2(27)Vidhi/2/2006. The following Act of the Rajasthan State Legislature received the assent of the President on the 19th day of May, 2007 is hereby published for general information:-

THE RAJASTHAN EXCISE (AMENDMENT) ACT, 2007
(Act No. 6 of 2007)

(Received the assent of the President on the 19th day of May, 2007)

An
Act

further to amend the Rajasthan Excise Act, 1950.

Be it enacted by the Rajasthan State Legislature in the Fifty-eighth Year of the Republic of India, as follows:-

1. Short title and commencement.- (1) This Act may be called the Rajasthan Excise (Amendment) Act, 2007.
(2) It shall come into force at once.

2. Amendment of section 3, Rajasthan Act No. II of 1950- In clause (19) of section 3 of the Rajasthan Excise Act, 1950 (Act No. II of 1950), hereinafter in this Act referred to as the principal Act, after the existing expression "boat, raft" and before the existing expression "and enclosure", the expression, "vehicle" shall be inserted.

3. Amendment of section 9, Rajasthan Act No. II of 1950.- For the existing sub-section (1A) of section 9 of the principal Act, the following shall be substituted, namely:-

"(1A) The State Government may also appoint such and so many other persons as it thinks fit and necessary to be:-

- (i) Director Enforcement, Special Director Enforcement, Additional Director Enforcement, Joint Director Enforcement, Zonal Director Enforcement, Deputy Director Enforcement and Assistant Director Enforcement;
- (ii) Deputy Excise Commissioners;
- (iii) District Excise Officers; and
- (iv) Other inferior Officers."

4. **Amendment of section 9A, Rajasthan Act No. II of 1950.-** In section 9A of the principal Act,- In section 9A of the principal Act,-
- (i) in clause (b) of sub-section (1), for the existing expression "to the Division Bench of the Board of Revenue established under the provisions of Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956)," the expression "to the Division Bench of the Rajasthan Tax Board constituted under section 88 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), " shall be substituted;
 - (ii) in sub-section (3), for the existing expression "Board of Revenue", the expression "Rajasthan Tax Board" shall be substituted; and
 - (iii) in sub-section (4), for the existing expression "Board of Revenue", the expression "Rajasthan Tax Board" shall be substituted.

5. **Insertion of section 10A, Rajasthan Act No. II of 1950.-** After the existing section 10 of the principal Act, the following new section shall be inserted, namely:-:-

"10A. Establishment of check-post and inspection of goods while in movement.- (1) The Excise Commissioner may, with a view to prevent or check evasion of excise duty, by notification in the Official Gazette, direct the setting up of check-posts at such places and for such period as may be specified in the notification. Every officer or official, who exercises his powers and discharges his duties at such check-posts by way of inspection of documents produced and goods being moved, shall be its Incharge.

(2) Notwithstanding anything contained in sub-section (1), the Excise Commissioner may, by notification in the Official Gazette, declare any existing check-post established by any other department of the State Government to be the check-post for the purposes of this section and may appoint any officer or official to act as the Incharge of the check-post for the purposes of this section.

(3) The driver or person Incharge of a vehicle or carrier carrying excisable articles shall-

- (a) carry with him the permit, pass, bill and bilty;
- (b) stop the vehicle or carrier at such check-post;
- (c) produce all documents for inspection of the Incharge of the check-post;
- and
- (d) allow the inspection of goods/excisable article.

Explanation.- For the purpose of this section "vehicle or carrier" shall include any means of transportation including an animal to carry goods from one point to another."

6. **Amendment of section 48, Rajasthan Act No. II of 1950.-** In proviso to section 48 of the principal Act, after the existing clause (iii), the following clause shall be added, namely:-

"(iv) the provisions of section 162 of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) shall not apply to the investigations made under this Act."

7. Amendment of section 49, Rajasthan Act No. II of 1950.- For the existing section 49 of the principal Act, the following shall be substituted, namely:-

"49. Modified application of certain provisions of the Code.- (1) Section 167 of the Code shall apply to a case involving an offence punishable under the proviso to section 54, or under sections 54B, 54D or 56 of this Act subject to the modification that in sub-section (2) thereof the reference to "sixty days" and "ninety days", wherever they occur, shall be construed as reference to "one hundred twenty days" and "one hundred eighty days" respectively.

(2) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the proviso to section 54, or under sections 54B, 54D or 56 of this Act.

(3) Notwithstanding anything contained in the Code, no person accused of an offence punishable under the proviso to section 54, or under sections 54B, 54D or 56 of this Act shall, if in custody, be released on bail or on his own bond, unless-

- (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any such offence while on bail.

(4) The limitations on grant of bail specified in sub-section (3) are in addition to the limitations under the Code or any other law for the time being in force on the grant of bail.

Explanation.- In this section, the expression "the Code" means the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974).

8. Amendment of section 54, Rajasthan Act No. II of 1950.- In section 54 of the principal Act,-

- (i) for the existing expression "be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twenty thousand rupees", the expression "be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine of twenty thousand rupees or five times of the loss of excise duty, whichever is higher" shall be substituted;
- (ii) the existing first proviso shall be deleted; and
- (iii) for the existing second proviso, the following shall be substituted, namely;-

"Provided that if the quantity of liquor found at the time or in the course of detection of the offence under clause (a) of this section exceeds fifty bulk liters, the person guilty for such offence shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine of twenty thousand rupees or ten times of the loss of excise duty, whichever is higher."

9. Insertion of new sections 54B, 54C and 54D, Rajasthan Act No. II of 1950.-

After the existing section 54A and before the existing section 55 of the principal Act, the following new sections shall be inserted, namely:-

"54B. Penalty for adulteration resulting in death etc.- (1) Whoever mixes or permits to be mixed with any liquor or intoxicating drug any noxious substance or any substance, which is likely to cause disability or grievous hurt or death to human beings, shall, on conviction, be punishable,-

- (i) if, as a result of such an act, death is caused to any person, with imprisonment for a term which shall not be less than two years but which may be for life, and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees;
 - (ii) if, as a result of such an act, 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 be for life, and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees; and
 - (iii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh and fifty thousand rupees.
- (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 hurt or death to human beings, with any liquor or intoxicating drug shall, on conviction, be punishable,-

- (i) if, as a result of such omission, death is caused to any person, with imprisonment for a term which may extend to ten lakh rupees;
- (ii) 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 be for life, and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees; and
- (iii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh and fifty thousand rupees.

- (3) Whoever possesses any liquor or intoxicating drug in which 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 to ten years, and with fine which may extend to one lakh rupees.

Explanation.- For the purposes of this section and section 54C the expression "grievous hurt" shall have the same meaning as is in section 320 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).

54C Order to pay compensation- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) the court when passing the judgment in a case falling under section 54B may, if it is satisfied that death or grievous hurt or disability or other injury 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 54B, to pay, by way of compensation, such amount as it thinks just to the legal representatives of the deceased or to the person or persons to whom grievous hurt or disability has been caused :

Provided that the amount of compensation ordered to be paid under this section shall not be less than three lakh rupees in case of death, two lakh rupees in case of grievous hurt or disability and twenty thousand rupees in other cases :

Provided further that, where the liquor or intoxicating drug is sold in a licensed 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 thirty 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 thirty days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

54D. Penalty for criminal conspiracy :- Whoever is a party to a criminal conspiracy to commit an offence punishable under this Act shall be punished in the same manner as if he had committed such offence.

Explanation :- For the purposes of this section the expression "criminal conspiracy" shall have the same meaning as is in section 120-A of the Indian Penal Code, 1860 (Central Act No. 45 of 1860)."

10. Amendment of section 56, Rajasthan Act No. II of 1950. - In section 56 of the principal Act,-

- (i) for the expression "which shall not be less than six months and may extend to three years and also with fine which shall not be less than rupees two hundred and may extend to one thousand rupees", the expression "which shall not be less than two years but which may extend to five years and with fine of two lakh rupees or five thousand rupees per bulk liter of denatured spirit or denatured spirituous preparation involved, whichever is higher." shall be substituted; and
- (ii) after section 56, so amended, following explanation shall be added, namely :-

"Explanation.- For the purposes 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."

11. Amendment of Section 58, Rajasthan Act No. II of 1950.- In section 58 of the principal Act, for the expression "which may extend to five hundred rupees", the expression "of five thousand rupees" shall be substituted.

12. Insertion of section 58A, Rajasthan Act No. II of 1950.- After the existing section 58 of the principal Act, the following new section shall be inserted, namely :-

"58A. Penalty for adulteration, etc., by licensed vendor or manufacturer.- Whoever being the holder of a license for the sale or manufacturer of any intoxicant under this Act, or a person in the employment 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 any article prohibited by any rule made under this Act where such admixture does not amount to the offence of the adulteration under section 272 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860); or
- (b) sell 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) marks 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, with any mark thereon or on the cork thereof, to contain Indian made foreign liquor 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 be offence of using a false property mark with intention to deceive or injure any person under section 482 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860); 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 cork 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 into amount to be offence of selling goods marked with a counterfeit property mark under section 486 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860); or
- (e) makes any block for the purpose of counterfeiting excise adhesive labels or holograms or prepares copies by any means of such labels or holograms for the purpose of counterfeiting such labels or holograms or counterfeits excise adhesive labels or holograms or makes any block for the purpose of counterfeiting corks or capsules to be used on bottles, cases, packing or other receptacles containing Indian made foreign liquor or foreign liquor or counterfeits such corks or capsules or is in possession of counterfeit excise adhesive labels, holograms, corks, capsules or blocks or any other material to be used for counterfeiting such labels, holograms, corks, capsules,

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 to three years and with fine which shall not be less than ten thousand rupees but which may extend to three lakh rupees;
- (ii) in case of a second or subsequent offence, for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Explanation. - For the purposes of this section, the expression "counterfeit" shall have same meaning as is in section 28 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860)

13. Insertion of section 61A, Rajasthan Act No. II of 1950.- After the existing section 61 and before section 62, the following new section shall be inserted, namely:-

" 61A Penalty for certain acts and omissions by Excise Officers.- If any Excise Officer unlawfully releases or abets the escape of any person arrested under this Act or acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or contravened or the excise revenue may be defrauded, he shall be punished with imprisonment for a term, which shall not be less than three months but which may extend to one year :

Provided that no court shall take cognizance against any officer under this section without prior permission of the State Government".

14. Amendment of section 66, Rajasthan Act No. II of 1950.-

- (i) for the existing expression " If any person" the expression "Except as provided in section 58A, if any person" shall be substituted ;
- (ii) the existing first proviso shall be deleted;
- (iii) in second proviso, for the existing expression "the offences referred to in proviso to section 54", the expression "any offence under this Act" shall be substituted.

15. Amendment of section 67, Rajasthan Act No II of 1950:- In section 67 of the principal Act,-

- (i) in the marginal head of the section, for the existing expression . "Cognizance of offences and credit of fines to Excise Department " and credit of fines to Excise Department" shall be substituted.

ii) in sub-section (1),-

- (a) in clause (a), for the existing expression "Section 54", the expression "section 54 or section 54B or section 58A or section 54D" shall be substituted ; and
- (b) in clause (b), for the existing expression "or section 58 the expression "or section 58A" shall be substituted; and
- (iii) after the existing sub-section(2), the following new sub-section shall be inserted, namely:-
 - " (3) Notwithstanding anything 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 this Act, shall, on such realization, be credited to the head of account to which the receipts of the Excise Department are credited, after deduction the expenses incurred in connection with such realization."-

16. Amendment of section 69, Rajasthan Act.II of 1950,- (1) In section 69 of the principal Act,-

- (i) in the proviso to sub-section (2), for the existing punctuation mark"." , appearing at the end, the punctuation mark ":" shall be substituted and after the existing proviso, so amended, the following new proviso shall be added, namely:-

" Provided further that, if the excisable articles seized in connection with an offence under this Act are such as cannot be legally sold in Rajasthan in the form they were seized, such excisable articles may be ordered to be confiscated by the District Excise Officer concerned, whether or not the offence is compounded."; and

(ii) after the existing sub-section (2) and before the existing sub-section (3) the following new sub-sections (3) the following new sub-sections shall be inserted, namely :-

"(2A) Where the District Excise Officer, after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest to do so, order the confiscated excisable articles or any part thereof to be sold by public auction or to be destroyed or disposed of departmentally in accordance with the rules made by the State Government in this behalf.

(2B) Whenever any excisable article is seized under sub-section. (1), the District Excise Officer shall have, and, notwithstanding anything contained in any other law for the time being in force, any court, tribunal or other authority shall not have, jurisdiction to make order with regard to the possession, delivery, disposal and release of such property."

Sd/-
(Mahesh Bhagwati)
Secretary to the Government