

KARNATAKA ACT NO.2 OF 2001
THE KARNATAKA TAX ON LUXURIES
(AMENDMENT) ACT, 2001

ARRANGEMENT OF SECTIONS

Sections:

1. Short title and commencement.
2. Amendment of section 2
3. Amendment of section 4B.
4. Substitution of section 12B
5. Insertion of new section 17A
6. Amendment of Schedule
7. Repeal and savings

STATEMENT OF OBJECTS AND REASONS

Gutkha which is a product containing among others mainly arecanut and tobacco was subject to sales tax at 15% till 31.3.2000 and at 16% from 1.4.2000 under the Karnataka Sales Tax, 1957. Apart from this, gutkha is also liable for 4% entry tax under the Karnataka Tax on entry of goods Act, 1979 and in cases where entry tax is not payable, it is liable for 4% luxuries tax under the Karnataka tax on Luxuries Act, 1979.

As per the agreement made with the Union Government by all States, the States have agreed for levy and collection of Additional Duty of Excise in lieu of sales tax by the Union Government under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on tobacco (and also on tobacco products, textiles and sugar). The Additional duty of Excise so collected by the Union Government is shared among all the States

and any state levying sales tax on these goods would lose its share from such Additional duty of Excise collected.

Till 31.3.1992 tobacco and its products, textiles and sugar had been generally exempted from sales tax under the Karnataka Sales Tax Act, 1957. However by an amendment to the Fifth Schedule with effect from 1.4.92, exemption of sales tax was confined only to the goods which are specified from time to time in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. This was done to empower the State to levy sales tax on those goods on which no Additional Duty of Excise in lieu of sales tax, was proposed to be levied by the Union Government. Accordingly sales tax was being levied by the State on tobacco and its products.

Similarly, certain other states were also levying sales tax on tobacco and its products, which were not specified under the Additional duties of Excise (Goods of Special Importance) Act, 1957. The levy of Sales tax by the State of Andhra Pradesh on gutkha, which was not specified under the Additional Duties of Excise (Goods of special Importance) Act, 1957 was questioned before Supreme Court in M/s Kothari Products Limited Vs. Govt. of Andhra Pradesh and the Apex Court in its judgement dated 25.1.2000 has held that gutkha is tobacco specified under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and therefore not liable for sales tax. As the ratio of the aforesaid case is also applicable to the State, it is not possible to continue to levy of sales tax on gutkha in the State.

Discontinuance of sales tax on gutkha would entail a revenue loss of about rupees thirty crores per annum.

It was therefore considered necessary to increase the rate of luxury tax on gutkha from 4% to 20% by amending the Karnataka Luxuries Tax Act, 1979 which was in addition to the existing entry tax at 4%.

As the matter was urgent, the Karnataka Tax on Luxuries (Amendment) Ordinance, 2001 was promulgated.

This Bill seeks to replace the said Ordinance.

Hence the Bill.

(Vide L.A.Bill No.3 of 2001 File No. ಸಂವ್ಯಶಾಇ 4 ಶಾಸನ 2001)

KARNATAKA ACT NO. 2 OF 2001

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**THE KARNATAKA TAX ON LUXURIES (AMENDMENT)
ACT, 2001**

*(Received the assent of the Governor on the thirtieth day of
March, 2001)*

An Act further to amend the Karnataka Tax on Luxuries Act, 1979.

Whereas it is expedient further to amend the Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979), for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Fifty second year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Karnataka Tax on Luxuries (Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the twenty third day of January 2001.

2. Amendment of Section 2.- In Section 2 of the Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979) (hereinafter referred to as the principal Act),-

(1) for clause (5-A), the following shall be substituted, namely:-

“(5-A). “Luxury Tax Officer” means an Assistant Commissioner of Commercial Taxes or any other officer of the Commercial Taxes Department as the State Government or the

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Commissioner may, by notification in this behalf, appoint to exercise powers and perform functions of the Luxury Tax Officer under this Act;”

(2) in clause (6-B), the following shall be inserted at the end, namely:-

“or on the first day of April 2000, on which tax under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) has been paid or has become payable;”

3. Amendment of Section 4B.- In Section 4B of the principal Act, in sub-section (3),-

(1) after clause (i), the following shall be inserted, namely:-

“(ia) on which tax under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) has been paid or has become payable.”

(2) in clause (iii), before the words “on which”, the following words and punctuation mark shall be inserted, namely, -

“other than relating to gutkha,”

4. Substitution of Section 12B.- For Section 12B of the principal Act, the following shall be substituted, namely:-

“12-B. Maintenance of accounts and issue of sale bills or cash memorandum.- (1) Every registered proprietor, stockist and every proprietor or stockist liable to get himself registered under this Act shall maintain and keep true and complete accounts relating to his business as well as such other registers or records as may be prescribed in this regard. All such accounts, registers or records shall be retained by him in his safe custody till his assessment or re-assessment, as the case may be, for the relevant year is completed or, in cases where any appeal,

revision or other proceedings in respect of such year has been filed and is pending, the same is disposed of.

(2) Every proprietor liable to pay luxury tax under the Act shall issue a bill or cash memorandum in respect of the charges for lodging accommodation or charges for marriage hall recovered by him from a guest or any person and shall specify in such bill or cash memorandum, the full name of the hotel or marriage hall, the amount of luxury tax recovered, the name of the guest or any person from whom it is recovered and where the charges are recovered in any foreign exchange, the name of the currency.

(3) Every registered stockist or a stockist liable to registration under the Act, in respect of each and every delivery of a luxury which is in pursuance of a sale shall issue a bill of sale containing the particulars and which is other than in pursuance of a sale shall issue a delivery note, prescribed, respectively, in sub-section (1) of section 27 and sub-section (2) of section 28A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).”

5. Insertion of new Section 17A.- After Section 17 of the principal Act, the following shall be inserted, namely:-

“17-A. - Recognition of sales tax check posts or barriers for the purposes of the Act. - (1) With a view to prevent or check evasion of tax under this Act, check posts or barriers or both, as the case may be, established or erected under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) (hereinafter referred to as the “Sales Tax Act”) shall be recognized for the purposes of this Act.

(2) The owner or person-in-charge of the goods vehicle carrying any luxury shall carry with him the documents prescribed

for the purpose of sub-section (2) of Section 28-A of the Sales Tax Act and produce and give a copy of the same in the manner and to the officer prescribed in the said Section.

(3) Where the owner or person in-charge of the goods vehicle carrying any luxury is not required to carry the documents prescribed for the purpose of sub-section (2) of Section 28-A of the Sales Tax Act, he shall give a declaration in the prescribed form to the prescribed officer in the said section.

(4) The officer referred to in sub-section (4) of Section 28-A of the Sales Tax Act may, in cases of the type and in the circumstances mentioned in the said sub-section levy penalty not exceeding three times the amount of tax leviable under this Act in respect of the luxury under transport.

(5) Where luxuries are delivered to a carrier or other bailee for transmission, the movement of the luxuries shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where before delivery is taken from him a carrier or bailee to whom luxuries are delivered for transmission, keeps the said luxuries in any office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building or place, any officer empowered to exercise the powers under sub-section (3-A) of section 28-A of the Sales Tax Act, shall have power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or any other place of business or building or place, and to examine the luxuries and inspect all records relating to such luxuries. The carrier or bailee or the person-in-charge of the luxuries and records shall give all facilities for such examination or inspection and shall, if so required, produce the bill of sale or delivery note or other documents referred to in sub-section (2) and give a declaration containing such particulars as may be prescribed

regarding the luxuries and give his name and address and the name and address of the carrier or the bailee and the consignee.

(6) If any officer empowered to enter into and search any office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building or place where a carrier or bailee keeps the luxuries delivered to him for transmission, has reason to suspect that such carrier or bailee has colluded with the owner of the luxuries in evading payment of any tax, he may for reasons to be recorded in writing, seize accounts, registers, records or other documents of the bailee or carrier as he may consider necessary and shall give a receipt for the same. The accounts, registers, records and other documents seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act:

Provided that all searches and seizures under sub-section (5) or this sub-section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974):

Provided further that accounts, registers, records and other documents so seized shall not be retained by such officer for a period exceeding one hundred eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him in writing and the approval of the next higher authority is obtained and such approval in any case shall not be for more than sixty days at a time.

(7) Where the officer-in-charge of the check post or barrier, or the officer empowered as aforesaid on interception of the goods vehicle or inspection of any godown, is of the opinion that further verification is necessary with respect to either accuracy of the particulars furnished in the documents

accompanying the luxuries under transport or in transit, or, as to the sufficiency and the cause adduced in respect of any contravention of sub-section (2), he may verify the particulars himself or if it is necessary cause it to be verified by referring the matter to any other officer and if such verification is not likely to be completed within a reasonable time, he may direct in writing the carrier or the person-in-charge of the goods vehicle or the godown not to deliver the luxuries until permitted to do so by him or such other officer to whom the matter is referred for verification and allow the intercepted vehicle, if any, to pass through:

Provided that the officer shall order for detention of such quantity of luxuries as in his opinion would be equivalent to three times the amount of tax leviable on such luxuries.

(8) The verification under sub-section (7) shall be completed within a period of fifteen days from the date of the direction issued under that sub-section and where such verification cannot be completed within the aforesaid period the officer who has issued such direction, or, as the case may be, the officer to whom the matter is referred for verification shall obtain the permission in writing of the next higher authority to extend such period or completion of the verification, so however such extension shall not be permitted for the period exceeding fifteen days at a time.

(9) Where such officer or other officer to whom the matter is referred, upon such verification is of the opinion that there is a non-compliance with sub-section (2), and penalty is leviable under sub-section (4), he may, proceed against such luxuries in the custody of the carrier, or the person-in-charge of vehicle or the godown in accordance with sub-sections (4) and (11) of this Section.

(10) Where the officer-in-charge of the check post or any empowered officer has issued a notice for contravention of any of the provisions of this Section, further proceedings in pursuance to such notice may, subject to such conditions and in such manner as may be prescribed, be continued by any other officer empowered by the Commissioner in this behalf, from the stage at which it is pending.

(11) The provisions of Section 28-A of the Sales Tax Act relating to the recovery of penalty and appeals shall mutatis mutandis apply to the penalty leviable under sub-section (4) of this Section.”

6. Amendment of schedule.- In the schedule to the principal Act,-

(1) in the entries relating to Serial Number 2, in column 2, the words and punctuation mark “gutkha, “shall be omitted;

(2) after the entries relating to Serial Number 2, the following entries shall be inserted, namely:-

“3. Gutkha 20 per cent “

7. Repeal and savings.- (1) The Karnataka Tax on Luxuries (Amendment) Ordinance, 2001 (Karnataka Ordinance 3 of 2001) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this act.