

Bihar Taxation on Luxuries in Hotels Act, 1988

[Bihar Act 5 of 1988]¹

An act to levy tax on luxuries in hotels in Bihar

Be it enacted by the Legislature of the State of Bihar in the Thirty-eighth Year of the Republic of India as follows—

Comments & Case-law

A taxing statute is not wholly immune from attack on the ground that it infringes the equality clause under Article 14 of the Constitution. Though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the court might think more just or equitable. *Builders Association of India vs. State of Bihar*, 1992 (1) PLJR 1 (FB), also see *Kunnathat Thathunni Moopil Nair vs. State of Kerala*, AIR 1961 SC 532.

The Legislature cannot be accused of having indulged in trickery in giving something with one hand and taking it away with the other. The Court should prefer a construction which advances the objectives of the Act to any other interpretation. *Smt. Meera Gupta vs. State of West Bengal*, 1992 (2) PLJR 17 (SC) : 1988 BRLJ 119 (SC).

Construction of statute which leads to manifest injustice or absurdity should be avoided. A construction which advances the object and purpose of enacting the statute should be preferred. *Amrapali Films Ltd. vs. State of Bihar*, 1989 PLJR 199.

Where the Legislative intent is clearly discernible courts should not construe the provisions of the statute so as to change its meaning even if it is shown that it will cause inconvenience or injustice. *Ganesh Prasad vs. State of Bihar*, 1978 BBCJ 125.

Where a statute contains both general and special provisions, the special provision will prevail upon the general provision. *Suresh Singh vs. State of Bihar*, 1990 (1) PLJR 709.

If a word is capable of two interpretations, then in a fiscal statute the matter should be resolved in favour of the tax payer and not the Revenue. *Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar*, 1988 PLJR 1024.

The Legislature is competent to cure the defect in a statute pointed out by reason of any judgment and validate the levy and collection of tax, which prior to the enactment of the Validating Act, was being invalidly done. *Amrapali Films Ltd. vs. State of Bihar*, 1989 PLJR 199.

Where the legislature in enacting the statute has used certain expressions or terms of well known connotations or legal significance, the court must interpret them as used or understood in the popular sense. *Sonia Bhatia vs. State of U.P.*, (1981) 2 SCC 585 : AIR 1981 SC 1274.

1. Published in Bihar Gazette (Ex-ord.) dated 29.2.1988.

The Constitution is the repository and source of all legal power. Any power conferred by the Constitution should be construed liberally by Courts in order to achieve the object for which such power has been conferred. *Kanhaya Lal Omar vs. R.K. Trivedi*, (1985) 4 SCC 628 : AIR 1986 SC111.

Retrospectivity— A provision cannot be said to be retrospective merely because a part of the requisites for its operation is drawn from a time antecedent to its passing. *Saharanpur Electric Supply Co. Ltd. vs. C.I.T.*, (1992)2 SCC 738.

Tax.— Laws imposing taxes can be held to be restrictions on trade and commerce, if their imposition hampers the free flow of trade and commerce and they are not what can be termed compensatory tax on regulatory measures. *West Bengal Hosiery Association vs. State of Bihar*, 1988 PLJR 96 (SC).

1. Short title, extend and commencement.—(1) This Act may be called the Bihar Taxation of Luxuries in Hotels Act, 1988.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force at once.

2. Definitions.— In this Act unless there is anything repugnant to the subject or context.—

(a) "Assistant Commissioner" means an Assistant Commissioner of Commercial Taxes appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and includes Additional Assistant Commissioner;

(b) "Commissioner" means the Commissioner of Commercial Taxes appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and includes Additional Commissioner of Commercial Taxes and also any other officer upon whom the State Government may, by notification, confer all or any of the powers or duties of the Commissioner of Commercial Taxes;

(c) "Commercial Taxes Officer" means a Commercial Taxes Officer appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);

(d) "Deputy Commissioner" means a Deputy Commissioner of Commercial Taxes appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);

(e) "Hotel" includes a boarding house, a lodging house and a restaurant where any room is provided therein to a customer on rent;

(f) "Joint Commissioner" means a Joint Commissioner of Commercial Taxes appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);

(g) "Authority" means an Authority defined in the rules made under this Act;

(h) "Luxuries" means such amenities as are provided in a Hotel to occupants of such rooms or suits of rooms therein as carry a rent of rupees five hundred or more per day.

(i) "Month" means a calendar month;

(j) "Prescribed" means prescribed by rules made under this Act;

(k) "Proprietor" in relation to a hotel includes a person who for the time being is in charge of its management;

(l) "Quarter" means the quarter ending on the 30th June, 30th September, 31st December and 31st March;

(m) "Rent" means the aggregate of all charges, by whatever name called, realised from the occupier of a room in a hotel and includes lodging, boarding or service charges or any sum charged by the proprietor on account of tips payable to servants of the hotel, or all or any of them;

Explanation 1.— Where the rate of rent of a room is not charged for occupation alone, and boarding and service charged are included therein then the actual sum realised for each day, or part thereof (excluding any sum paid for food, or drinks) and charges for service and any entertainment and like shall be aggregated and the total shall to be deemed to be the rent.

Explanation 2.— Where charges are levied otherwise than on daily basis, then the charges shall be computed as for a day based on the period of occupation of the room for which charges are made.

(n) "Room" includes a suite of rooms which is ordinarily hired out as one unit;

(o) "Tax" means the tax levied under this Act;

(p) "Tribunal" means the Tribunal constituted under section 8 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);

(q) "Year" means a financial year.

Comments & Case-law

Business.— The word "business" should be construed to mean carrying on a commercial venture. *Steel Authority of India vs. B.A.P.M.B.*, 1990 (2) PLJR 521 (FB).

Licence.—Where the Licensing Authority has not passed any order for years without either rejecting or allowing the applications for grant of licence and have also accepted deposit of licence fee each year, the Licensee becomes entitled to issue of licence. *Murarilal Jhunjunwala vs. State of Bihar*, 1991 (1) PLJR 91 (SC).

["3. Levy of Tax.—(1) The tax on luxuries shall be levied and paid by the proprietor at the rate specified in sub-section (2) on the rent of such room or suits of rooms provided with luxuries as carry a rent of rupees five hundred or more per day.

(2) The rate of tax shall be 5 percent of the rent of such room or suit of rooms provided with luxuries as carry a rent of rupees five hundred or more per day but less than rupees one thousand per day and 10 percent of the rent of such room or suit of rooms provided with luxuries as carry a rent of rupees one thousand or more per day."

Comments & Case-law

The liability to tax commences from the start of business. Therefore, the Assessing Authority cannot fix liability for period prior to the date of commencement recorded in the records in absence of any Inspection report indicating that the start of business was from an earlier date. *Prabhat Oil Mills vs. State of Bihar*, 1977 BRLJ. 157.

Provisions of compounding is valid. *Syed Jamilur Rahman vs. State of Bihar*, 1986 BRLJ 142; 1986 PLJR 562.

Levy of—service of meal in hotels, restaurants— where food is supplied in a eating house and it is established upon the facts that the substance of the transaction evidenced by its dominant object is a sale of food and the rendering of service is merely incidental—the transaction would be exigible to Sales tax—it will be for the taxing authority to ascertain the facts and to determine whether the sale of the food supplied is intended—earlier view of the Supreme Court clarified. *Commissioner of Sales Tax vs. Northern Railway Catering*, 1994 BRLJ 15.

Levy of Sales Tax—Food and drink supplied by hotels and restaurants by way of service or part thereof—levy of tax at the total sum paid by customer in such cases valid—separation of food charges and service charges for tax purpose not necessary. *K. Damodarasamy Naidu & Bros. vs. State of T.N.*, 2000 BRLJ 90.

Levy of Tax—Supreme Court directing the State Govt. to frame rules, set-

ting out formula to split up the sum charged by hotels which provide lodging and boarding for a composite sum for the purpose of tax, within the specified time limit. *K. Damodarasamy Naidu & Bros. vs. State of T.N.*, 2000 BRLJ 90.]

1["3A. Exemption from Tax.—Notwithstanding anything contained in section-3 of the said Act, the State Government may, by notification and subject to such conditions and restrictions as may be specified in the notification, exempt any proprietor or class of proprietors from the levy of tax"

2["3AA. Compounding of Tax.—Notwithstanding anything to the contrary contained in this Act, the State Government may, subject to such conditions and restrictions as it may prescribe by a notification, permit a proprietor of a hotel or class or description of hotels to pay a fixed amount in lieu of the tax payable under this act."

4. Collection of tax by the proprietor—Every proprietor liable to pay tax under section 3 shall collect alongwith rent, the amount of tax payable under the said section from the person to whom a room along with luxuries is provided by him.

Comments & Case-law

The assessee claiming exemption on the ground that no tax was collected is saddled with the onus to prove it. Such an assessee cannot assail the notice by the Authorities calling upon him to produce his books of account. *Anand Bihar vs. Additional Superintendent of Commercial Taxes*, 1988 BRLJ 75.

5. Registration.— Every proprietor, who is liable to pay tax under section 3 shall apply for a certificate of registration in the prescribed manner within a month of coming into effect of this Act or within one month from the date he starts providing room along with luxuries in the hotel.

Comments & Case-law

The Levy of Additional tax being compensatory in nature cannot be said to be restriction on trade and commerce so as to contravene the provisions of Article 304 of the Constitution. *Ram Jiwan Prasad Lath vs. State of Bihar*, 1986 PLJR 231.

Assessment.—revision against the order of JCCT (Appeals) confirming the assessment order passed by the lower court under Bihar Taxation on Luxuries in Hotel Act, 1988-as submitted petitioner applied for Registration under the 1988 Act.—Petitioner rejected as petitioner failed to appear on the date fixed for hearing-assessment completed ex-parte determining the tax liability and penalty imposed-held, appellate order appears to have been passed in cryptic manner without going into the merit of the case-moreover, imposition of penalty also wrong when the petitioner had applied willfully for the registration, hence liable to be set aside-impugned order set aside and matter remanded to lower court for passing order afresh after giving opportunity of hearing to the petitioner. *M/s Hotel Trimurty vs. The State of Jharkhand*. BRLJ-2005. (Rev.484.)

6. Returns. —Every proprietor liable to pay tax under this Act, shall submit a return for every quarter by the last day of the month following in the manner prescribed.

7. Payment of Tax.—(1) The amount of tax payable under section 3 shall be paid by the proprietor to the State Government by the 25th day of the month following for every quarter in the prescribed manner.

8. Assessment of Tax.—(1) Assessment of the tax payable by a proprietor shall be made after examining the accounts or registers and other evidences as the prescribed authority may require.

(2) In case a proprietor does not furnish any return or fails to produce ac-

1. Ins by Amdt. Act 30 of 2006

2. Ins by Finance Act, 2007 (8 of 2007)

counts for assessment as required under sub-section (1), the prescribed authority may, after giving the proprietor a reasonable opportunity of being heard, assess the amount of tax payable by such proprietor, to the best of his judgment.

(3) If the prescribed authority, upon information which has come into his possession is satisfied that the proprietor has been liable to pay tax under this Act in respect of any period, and has nevertheless failed to apply for registration under section 5 or having so applied failed to comply with any requirement for registration within a reasonable time and for which his application for registration has been rejected such prescribed authority shall, after giving the proprietor an opportunity of being heard, assess the amount of tax to the best of his judgment in respect of such period and shall also impose a penalty which shall be equal to the amount of tax assessed.

Comments & Case-law

The law requires that both the assessee as well as the Revenue should be given reasonable opportunities of being heard before an assessment order is passed. *Arun Prabhat Brother vs. State*, 1973 BRLJ 76.

The proceeding for assessment of tax is initiated either when the assessee files a return or when a notice is issued to the assessee. *Rajpur Farms Ltd. vs. C. C. T.*, 1972 PLJR 39 (FB).

Assessment of tax—appeal against assessment not admitted as it was defective—no notice given to rectify the defect—dismissal of appeal bad. *Shri Shankar Vijay Saw Mills vs. State of Bihar* 1992 BRLJ (Rev.) 12.

Assessment without reasonable opportunity—Ex-parte order passed after rejecting petition for time not proper—matter remanded for fresh assessment after giving reasonable opportunity. *M/s Mangal Chand Ramesh Kumar vs. State of Bihar* 1991 BRLJ (Rev.) 49.

Penalty—revision—against order of confirmation of the assessment of Hotel Luxury tax and also imposing penalty for non-deposit of tax—held, revision heard ex-parte—Hotel Luxury tax was enacted on 2-1-88 with retrospective effect from 19-12-1987 unless it is challenged and declared ultravires by court of law, it is a valid Act—thus assessment of the on the basis of retrospective effect fully valid and legal. *M/s Hotel Hindustan Makhija Towers. vs. State of Jharkhand*. BRLJ-2002. (Rev. 191.)

9. Extension of period.—The prescribed authority may for the reasons to be recorded in writing extend the date for either filing the return under section 6 or payment of tax under section 7 or for payment of the assessed tax for a period not exceeding thirty days from the due date.

10. Liability in case of default.—In case any proprietor fails either to file return under section 6 or to pay the tax under section 7 or the amount of tax assessed or penalty imposed under section 8 within the due or extended date he shall be liable to pay, by way of penalty a sum calculated at the rate of rupees fifty for every day of default or an interest at the rate of two and half percentum of the amount of tax due for every month or part thereof whichever is higher.

11. Recovery of Tax.—The amount of tax due and the penalty if any payable under this Act shall be recoverable from the proprietor as an arrear of land revenue.

[**Notes.**—Recovery as “an arrear of land revenue” means recovery as “a public demand” under Bihar & Orissa Public Demands Recovery Act, 1914.]

12. Inspection, search and seizure.—The assessing authority or any other authority prescribed for this purpose may, with a view to satisfying itself that the provisions of this Act or Rules made thereunder are being complied with;—

- (a) enter any hotel at any time;
- (b) require any proprietor of a hotel to produce before him any books, accounts or other documents and inspect them;
- (c) inspect any room to ascertain their occupancy; and
- (d) seize any books, accounts and documents for detailed examination ;

Provided that a receipt shall be given to the proprietor in respect of the books of account and document seized.

13. Appeal.—Any proprietor aggrieved by an order of assessment under section 8 or imposition of penalty under section 10 may, within sixty days from the date of order or service of the notice of demand, appeal to the Joint Commissioner (Appeal) or any other authority specially authorised in this behalf in the manner prescribed, and, the Joint Commissioner (Appeal) or any other authority specially authorised in this behalf after hearing the appellant, may confirm, annul or modify the said order of assessment or penalty ;

Provided that the appellate authority may condone the delay in preferring the appeal if the appellant satisfies that he was prevented by any sufficient cause from preferring the appeal within time.

Comments & Case-law

The period of limitation for filing appeal or revision is to be counted from the date of actual or constructive communication of the order of judgment to the party. This principle is applicable to taxing as well as non-taxing statutes. *Vaishali Flour Mills v. State of Bihar*, 1988 BRLJ 52.

Application for condonation of delay in preferring appeal or revision has to be judged on its own merit. The matter of condonation of delay should be judged broadly and not in pedantic manner. *Ashok Automobiles (Ranchi) Pvt. Ltd. vs. State of Bihar*, 1988 BRLJ 77.

Where appeal against assessment order is provided under the statute, the plea of resort to writ remedy under Articles 226 and 227 of the Constitution must be discouraged. *Shyam Kishore vs. Municipal Corporation*, (1993) 1 SCC 22.

The opportunity to show cause, even if not stipulated in the statute, must be provided by way of compliance with minimal requirement rule of natural justice, where the provision involves adverse civil consequences, such a imputation of tax evasion. *C. B. Gautam vs. Union of India*, (1993) 1 SCC 78.

14. Revision.—Subject to such rules as may be prescribed an order passed on appeal under section 13 may, on application, be revised by the Tribunal:

Provided that such an application shall be entertained only if made within 90 days from the date of communication of the order sought to be revised :

Provided further that where the Tribunal is satisfied that the appellant had sufficient reason for not filing the application for revision in time, it may condone the delay.

Comments & Case-law

The proviso to a Section or Rule cannot be read as an independent provision of the statute. The proviso must be read with the main Section or Rule, as the case may be. *Dr. Amir Prasad vs. State of Bihar*, 1991(2), PLJR 384.

Where a remedy is provided under the statute, that remedy must be first exhausted before the writ jurisdiction of the High Court is invoked, *Bihar Hard Coke Manufacturing Co. vs. State of Bihar*, 1990 BRLJ 183.

Revision—revision against the order of C.C.T.—the C.C.T. instead of exercising his jurisdiction u/s 46 (4) sent back the case of the petitioner to J.C.C.T. for disposal as the petitioner did not exhaust the normal appellate channel and more over no additional financial burden was to be borne—the learned C.C.T. has rightly took the decision that the petitioners should have exhausted the other remedies available to him. *North Eastern Carrying Corpn. vs. State of Bihar*, 1999 BRLJ (Rev.) 95.

Revision—limitation—filed against the order of J.C.C.T. (Appeals) dismissing the application of the petitioner on the ground of limitation—petitioner applied for the certified copy of the assessment order promptly but due to the strike of the non-gazetted employees he could not get the same timely—after the strike was over he got the certified copy of the order—held, the petitioner has good and sufficient cause for consideration of the delay and condone the same for limitation—the impugned order set aside and the matter remanded for fresh consideration. *Green Ply Industries Ltd. (M/s) vs. State of Bihar*, 2001 BRLJ (Rev.) 54.

Revision petition filed before C.C.T. dismissed at the admission stage itself on the ground that it was not filed with promptitude and that it was not desirable to encourage by passing of regular remedy of filing appeal provided under statute—in the absence of any specific time limit for filing revision petition under section 46 (4) of the Bihar Finance Act, 1981, a revision petition should not be dismissed only on the ground that it was filed belatedly, specially when a reasonable explanation is furnished for the said delay—case remanded to C.C.T. *Rohtas Wool Traders vs. State of Bihar*, 1998 BRLJ (Rev.) 9.

15. Power to call for records.—The Commissioner may on his own motion, call for and examine the records of any proceeding passed by any authority under this Act, other than mentioned in section 14, for the purpose of satisfying himself as to the legality or propriety of such order and may after making or causing to be made such inquiry as he may deem necessary revise any order passed by any authority.

16. Review.— Any order passed by an authority under this Act may be reviewed by the said authority :

Provided that no such review shall be made after the expiry of one year from the date of such order without the previous sanction of the Commissioner :

Provided further that no authority shall review an order passed by its predecessor in office without previous sanction. of the Commissioner.

Comments & Case-law

Review has very limited scope and the power of review can be exercised only in respect of error apparent on the face of the record of the Judgment order. Where the High Court had refused to exercise its writ jurisdiction on the ground of laches by the petitioner, a case for remedy by way of review cannot be made out. *Tarkeshwar Singh vs. State of Bihar*, 1992(1) PLJR 468.

Judicial review is not directed against the decision but is a review of the decision making process. The High Court cannot reappraise the primary or

preceptive facts found by the fact finding Authority under the statute. *H. B. Gandhi vs. Gopinath and Sons.*, 1992 Supp (2) SCC 312.

The power of procedural is inherent or implied power vested in every Court or Tribunal for setting aside a palpably erroneous order passed under a misapprehension. The power of "review on merit" can be exercised only if it has been conferred by the statute either specifically or by necessary implication on the Court or the Tribunal. *Ram Chandra Sahu vs. State of Bihar*, 1990(1) PLJR 604.

Section 152 of the Code of Civil Procedure confers jurisdiction on all courts to correct accidental mistakes or omissions as well as clerical or arithmetical mistakes in judgments and decrees. *Sheo Shankar Singh vs. State of Bihar*, 1991(1) PLJR 468.

High Court may review its earlier order under Article 226 of the Constitution only in exceptional circumstances. A litigant seeking a review cannot be permitted to rely upon additional materials which had not been placed before the court at the time of passing the order which is sought to be reviewed. *H. E. C. Ltd. vs. Md. Badrud Doja*, 1992(2) PLJR 537.

17. Refund.—Any amount paid by the proprietor in excess of amount finally determined either on assessment under section 8 or on an order in appeal, revision or review shall be refunded to him in the manner prescribed.

Comments & Case-law

Even if the conditions laid down by the statute in respect of procedure for refund are not fulfilled, the claim for refund is not necessarily lost where there are merely minor technical grounds impeding grant of permission of refund of tax. Assessee held by the Supreme Court to be entitled to order for adjustment of amount of refund against taxes due. *Manglore Chemicals and Fertilizers Ltd. vs. Deputy Commissioner of Commercial Taxes*, 1992 BRLJ 92 (SC).

No law can provide for refund of tax to an assessee where the tax has been realised under a statute as such a provision will be invalid and ultravires. Any such scheme of refund cannot be enforceable in a court of law. *Amrit Banaspati Co. Ltd. vs. State of Punjab*, 1992 BRLJ 133(Rep)(SC).

The refund of tax recovered under a provision of law which is declared to be unconstitutional is prospective, that is, from the date of judgment declaring the levy of tax to be unconstitutional. *Kesoram Industries Ltd. vs. Coal India Ltd.*, AIR1993 Cal. 78.

18. Offences and Penalties.—(1) If a proprietor, which shall for the purpose of this section, includes an employee, the manager or every person who was incharge or responsible for the management of the hotel at the time of commission of the offence—

(a) fails or neglects to maintain accounts and registers, issue bill or cash memos as provided in this Act and rules framed thereunder; or

(b) fails or neglects to furnish any information or produce books of account, registers and documents in course of inspection; or

(c) fails to submit returns or pay tax and penalty required under sections 6 and 7; or

(d) obstructs any authority in the performance of duty under this Act shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

(2) (a) No court shall take cognizance of any offence under this Act or the rule made thereunder except with the previous sanction of the Commissioner and

(b) No court inferior to that of Judicial Magistrate of the 1st Class shall try any offence under this Act;

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act II of 1974), all offences punishable under sub-section (1) shall be cognizable and bailable.

Comments & Case-law

Mens rea is not always necessary to be proved before an order imposing penalty can be passed. *Bihar Hard Coke Manufacturing Co. vs. State of Bihar*, 1990 BRLJ 183.

The order imposing penalty on account of unpaid amount of tax cannot be sustained where it is found that the Revenue was not entitled to levy the tax and so no penalty was impossible. *Mukerian Papers Ltd. vs. State of Punjab*, 1991 BRLJ 135(SC).

penalty for failure to deposit tax within time—where time for payment of tax has been extended, the period relevant for imposition of penalty will commence from date of expiry of extended time. *Patna Hume Pipe Manufacturing Co. vs. State*, 1988 BRLJ (Rev.) 38.

penalty can be imposed simultaneously with the assessment order or before the assessment but not after assessment order. *N.K. Metals vs. State of Bihar*, 1990 BRLJ (Rev.) 114.

assessee not paying tax within time—imposition of penalty is valid. *Anana Tea Stores vs. State of Bihar*, 1990 BRLJ (Rev.) 105.

non-consideration of element not sustainable—as no case made out. *Tinplate Company vs. State of Bihar*, 1990 BRLJ (Rev.) 128.

dishonest intention and the nature of transaction remained concealed for the purpose of evasion of tax. (Bihar Finance Act, 1981 Sec. 20 (1) (1)). *Tinplate Company vs. State of Bihar*, 1990 BRLJ (Rev.) 128.

basic element are mensrea, motivated concealment of transaction and an attempt to avoid and evade payment of tax—to be considered while imposing penalty. *Tinplate Company vs. State of Bihar*, 1990 BRLJ (Rev.) 128.

imposed for petitioner's failure to produce the books of accounts for inspection—penalty imposed not to interfere with. *M/s Rup Chand Baid vs. State of Bihar*, 1991 BRLJ (Rev.) 40.

levy of penalty for omission to file returns regarding 'luxury tax' levied by State Government on Hotels—penalty under the relevant Act cannot be levied for omission to file returns regarding the luxury tax—an order or notice by the Competent Authority directing Assessee to deposit stipulated amount must also specify whether such deposit was required in respect of levy of penalty or whether it was the amount of assessed luxury tax—Authority directed to reopen the case and pass fresh orders after hearing the Assessee. *Hotel Darpan vs. Sub-divisional Magistrate*, 1996 BRLJ (Rev.) 121.

failure to deposit admitted tax within time—imposition of penalty is justified. *Polar Fan Industries Private Ltd. vs. State of Bihar*, 1987 BRLJ (Rev.) 185.

Imposition of penalty for failure to deposit admitted tax within time—assessee can not claim extension of time for depositing tax as a matter of right on the ground that extension had been granted earlier on some ground. *Kalyanpur Lime & Cement Works Ltd. vs. State of Bihar*, 1987 BRLJ (Rev.) 169.

Penalty imposed for failure to deposit tax within time—matter of imposition of penalty for delay in depositing tax in case of Government undertaking should be considered in light of decision reported in 44 STC 77. *Hindustan Copper Ltd. vs. State of Bihar*, 1989 BRLJ (Rev.) 125.

Penalty imposed for default in payment of dues created by assessment order, becomes non-existent when the assessment order which created the dues becomes non-existent as a result of an appellate or revisional order. *Kishori Aloo Bhandar vs. State of Bihar*, 1989 BRLJ (Rev.) 123.

failure of assessee to deposit assessed tax—assessee granted extended time to deposit tax—assessee will be deemed to have knowledge about notice issued to him, when he was present on date when next date of hearing was fixed. *Patna Hume Pipe Mfg. Co. vs. State of Bihar*, 1988 BRLJ (Rev.) 38.

default in filing return within time—notice to show cause should be sent by registered post and not through ordinary post—onus is on Revenue to show that notice has been served on assessee. *Chhabhi Rani Agro Industries Enterprises vs. State of Bihar*, 1988 BRLJ (Rev.) 12.

imposition of penalty—for filing returns beyond time—penalty imposed after rejecting show cause filed by assessee after allowing opportunity of hearing—imposition of penalty is valid. *Chhabhi Rani Agro Industries Enterprises vs. State of Bihar*, 1988 BRLJ (Rev.) 12.

delay in filing returns—imposition of penalty is justified. *Union Carbide India Ltd. vs. State of Bihar*, 1988 BRLJ (Rev.) 65.

delay in filing returns—imposition of penalty is justified. *Union Carbide India Ltd. vs. State of Bihar*, 1988 BRLJ (Rev.) 65.

Imposition of penalty under section 16 (9) of Bihar Finance Act for default in submission of return and payment of the due—"tax due" only when it is shown as due in the return filed by the assessee—wherein the assessee does not admit of any amount of tax, it is under no obligation to deposit any amount by way of tax—provisions of section 16 (9) not attracted. *Commissioner of C. Taxes vs. State of Bihar*, 1990 BRLJ (Rev.) 156.

claim for exemption rejected by Assessing Authority on the ground that no such claim was made in "Returns" submitted by assessee belatedly—penalty also imposed for delay in filing return—Tribunal may decline to interfere where order imposing penalty is not unduly harsh and assessee had been given opportunity to show cause. *Tata Iron and Steel Co. vs. State of Bihar*, 1995 BRLJ (Rev.) 103.

19. Bar to certain proceedings.—No suit, prosecution or other legal proceeding shall lie against the State Government or any authority or officer of the State Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and Rules made thereunder.

20. Power to make rules.—(1) The State Government may by notification in the official Gazette, make rules consistent with the provisions of this Act for the purpose of carrying out the provision of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for total period of fourteen days which may be comprised in one session or in two successive sessions, and if before expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rules should not be made the rules shall thereafter have effect only in such modified form or be of no effect as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. Repeal and Savings.—(1) The Bihar Luxuries in Hotels Ordinance 1987 (Bihar Ordinance no. 32, 1987) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action in exercise of any power conferred by or under the said Ordinance, shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act was in force on the day on which such thing or action was done or taken.

Comments & Case-law

Unless there is anything to the contrary in the repeal is completely effaced from the statute book. In the absence of any revival statute, a law which has been repealed is dead for all times. In case of Amendment of provisions of a statute, where the amending provisions are later struck down by courts, it is deemed that the Amending statute never came into being and the pre-amendment provisions come back into existence. *Shital Rai vs. State of Bihar*, 1990(1) PLJR 672 (FB).

The repealed provision is treated as if it never existed. *Dagi Ram Pindi Lali vs. Trilok Chand Jain*, (1992) 2 SCC 13.

