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LAW DEPARTMENT
NOTIFICATION
The 8th March, 2013

No.2755/Legis.- 15/2009/L.-The following Act of the Odisha Legislative Assembly having been assented to by the President on the 19th February, 2013 is hereby published for general information.

ODISHA ACT 10 OF 2013

TO PROVIDE FOR A COMPREHENSIVE LAW RELATING TO ALCOHOLIC
LIQUOR AND OTHER INTOXICANTS IN THE
STATE OF ODISHA BY MAKING ADEQUATE PROVISIONS
FOR PUNISHMENT OF THE OFFENDERS AND TO
MAKE PROVISIONS FOR MATTERS INCIDENTAL
THERE TO BY REPLACING THE BIHAR
AND ODISHA EXCISE ACT, 1915.

Be it enacted by the Legislature of the State of Odisha in the Fifty-ninth Year of the Republic of India as follows :-

CHAPTER - I PRELIMINARY

1. Short title, extent and commencement :- (1) This Act may be called the Odisha Excise Act, 2008.

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

(3) It shall come into force on such date as the State Government may, by notification, appoint.*

2. Definitions :- In this Act, unless the context otherwise requires, -

(a) **"Alcoholic beverage"** means any beverage which is intoxicating and is fit for human consumption;

(b) **"Beer"** means any liquor prepared from malt or grain with or without addition of sugar and hops and includes black beer, ale, stout, porter and such other substance as may be specified by the State Government;

* Published *vide* Odisha Gazette Ext. No. 391, Dt. 08.03.2013

This Act come into force from 1st April 2017, *vide* OGE. No. 351, Dt. 07.03.2017

- (c) **"Blending"** means mixing of two or more spirits of different strengths and different qualities;
- (d) **"Board"** means the Board of Revenue;
- (e) **"bottling of liquor"** means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not; and includes rebottling;
- (f) **"Compounding of Liquor"** means the artificial preparation of foreign liquor by addition to imported or locally made spirit of flavouring or colouring matter or both;
- (g) **"country liquor"** means all liquor produced or manufactured in India other than foreign liquor and India made foreign liquor and includes—
 - (i) Plain spirit which has been made in India from materials recognized as bases for country spirit, like rice, gur, treacle or molasses, and on which duty has not been imposed at the rate fixed for the importation of spirit into India,
 - (ii) tari or toddy,
 - (iii) all fermented liquors made from mohua, rice, millet or other grain according to indigenous processes, and
 - (iv) such other intoxicants as may be declared by the State Government to be country liquor;
- (h) (i) **"Denaturant"** means any substance as may be prescribed for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine or in any other way whatsoever;
- (ii) **"denature"** means to mix spirit with one or more denaturants in such manner as may be prescribed and "denatured spirit" means spirit so mixed;
- (i) **"excisable article"** means —
 - (i) any alcoholic liquor for human consumption, or
 - (ii) any other intoxicant;
- [j) **"excise duty"** and **"countervailing duty"** means duty leviable under this Act as excise duty or countervailing duty, as the case may be, which the State Government is empowered to impose under the law enacted under entry 51 of List-I of the seventh Schedule to the Constitution of India;
- (k) **"Excise Commissioner"** means the officer appointed under Sub-section (1) of Section 5;
- (l) **"Excise Officer"** means any officer or other persons appointed or invested with powers under Sub-sections (4) and (5) of Section 5 and includes the Collector of the District;
- (m) **"Excise Revenue"** means revenue derived or derivable from any duty, fee, tax or other payment (other than a fine imposed by a Criminal Court)

on confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or other intoxicant and includes any payment to be made to the State Government under Section 35;

- (n) **“Export”** means to take out of the State to any other State or Country;
- (o) **“Export fee”** means the fee prescribed by the Government for export of liquor, spirit or any intoxicant; .
- (p) **“foreign liquor”** means every liquor imported into India, other than India made foreign liquor and country liquor and such other intoxicants as may be declared by the State Government to be foreign liquor;
- (q) **“Import”** means to bring into State from any other State or Country;
- (r) **“Import fee”** means the fee prescribed by the Government for import of liquor, spirit or any intoxicant;
- (s) **“India made foreign liquor”** means liquor produced, manufactured or compounded in India and made in colour and flavour to resemble gin, brandy, whisky or rum imported from foreign countries into India and includes “milk punch” and other liquors consisting of or containing any such spirits, but does not include foreign liquor and such other intoxicants as may be declared by the State Government to be India made foreign liquor;
- (t) **“intoxicant”** means any liquor, other intoxicating substance other than Narcotic drug or a psychotropic substance regulated by the Narcotic Drugs and Psychotropic Substances Act, 61 of 1985 which the State Government may, by notification, declare to be an intoxicant and includes mohua flower and molasses;
- (u) **“liquor”** means an intoxicating liquor and includes
 - (i) spirits of wine, rectified spirits, wine, beer, tari, pochwai, fermented liquor made from mohua or molasses, plain spirit made from materials recognised as country spirit’ base and every liquor consisting of or containing alcohol; and
 - (ii) any other intoxicating substance which the State Government may, by notification, declare to be liquor for the purposes of this Act;
- (v) **“Local Bodies”** means the Municipalities and Panchayats as defined under Article 243 P of the Constitution of India;
- (w) **“manufacture”** includes –
 - (i) every process whether natural or artificial, by which any intoxicant is produced or prepared (including the tapping of tari producing trees and the drawing of tari from trees),
 - (ii) redistillation, and
 - (iii) every process for the rectification, flavouring, blending, or colouring of liquor, or for the reduction of liquor for sale;
- (x) **“molasses”** means the heavy dark coloured residual syrup drained away in the final stage of the manufacture of gur or sugar containing, in 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 purposes of this Act;

- (y) **“pachwai”** means fermented rice, millet or other grain whether mixed with any liquid or not, and any liquid obtained therefrom whether diluted or undiluted; but does not include beer;
- (z) **“place”** includes building, house, shop, booth, vessel, raft, vehicle or tent;
- (za) **“prescribed”** means prescribed by, rules made under this Act;
- (zb) **“retail licence”** in relation to the sale of foreign liquor and India made foreign liquor means licence to sale in sealed or capsule bottles, pouches and includes the sale of other intoxicants to individual consumers, of quantities not exceeding those declared under Section 4 at any one time or in one transaction;
- (zc) **“sale”** or **“selling”** includes any transfer including gift;
- (zd) **“spirit”** means any liquor containing alcohol obtained by distillation, whether it is denatured or not;
- (ze) **“spurious liquor”** means liquor which has been adulterated with an object to bring intoxication easily and is harmful to the consumers;
- (zf) **“State Government”** means the Government of Odisha;
- (zg) **“tari”** means fermented or unfermented juice drawn from any coconut, palmyra, date or other kind of palm tree;
- (zh) **“transport”** means to remove 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;
- (zi) **“wholesale licence”** in relation to the sale of liquor and other intoxicants means licence to sale to the holders of retail licence in excess of the quantities declared under Section 4.

3. Powers to declare what shall be deemed to be country liquor, foreign liquor and India made foreign liquor respectively :— The State Government may, by notification, declare from time to time what other intoxicants than those provided in clauses (g), (p) and (s) of Section 2 for the purposes of this Act shall be deemed to be, ‘country liquor’, ‘foreign liquor’ and ‘India made foreign liquor’ respectively.

4. Declaration of quantity for retail and wholesale – The State Government may, by notification declare, with respect either to the whole of the State or to any specified local area, and either for purchasers generally or for any specified class of purchasers, and either generally or for any specified occasion, what quantity of any intoxicant shall, for the purposes of this Act, be the limit of possession.

CHAPTER - II

ESTABLISHMENT, CONTROL, APPEAL AND REVISION

5. Appointment, powers and functions of Excise, Commissioner, delegations and withdrawal of powers :—(1) The State Government may, by notification, appoint an Officer as the Excise Commissioner who shall be the chief Controlling Authority for administration of this Act in the State.

(2) The powers and functions of the Excise Commissioner shall be—

- (a) to promote legitimate and ,competitive business in alcoholic beverages so as to protect consumer rights;
- (b) to regulate, control and monitor manufacture, possession, import, export, transport, sale and consumption of liquor;
- (c) to issue, suspend or cancel licence and permit with regard to liquor;
- (d) to curb illegal trade in liquor and illicit distillation;
- (e) to protect State Excise Revenue and ensure prompt recovery;
- (f) to submit returns and information as required by the Act or the Rules to the State Government upon all matters concerning excise;
- (g) to ensure social well-being through education for responsible drinking;
- (h) to have excise staff properly trained in preventive and detective work;
- (i) to coordinate with authorities of relevant laws;
- (j) to introduce e-governance in various aspects of excise administration and to maintain on the national, network information on manufacture, possession, import, export', transport, sale, *etc.* of liquor;
- (k) to submit to the State Government annual report on the administration of the Act in the format prescribed;
- (l) to perform such other functions and to exercise such other powers as may, from time to time, be entrusted or delegated to him,

(3) The excise administration and collection of excise revenue within a district shall ordinarily be under the charge of the Collector of the district.

(4) The State Government for the whole or any part the State or in any district may appoint any person or officer to exercise all or any of the power and to perform all or any of the duties, conferred or imposed on a Collector by or under this Act, subject to such control as the State Government may direct.

(5) The Excise Commissioner may appoint officers of such classes and with such designation, powers and duties as may be considered necessary subject to sanction of posts by the State Government.

(6) The State Government may delegate its powers to the Excise Commissioner subject to such limitations and conditions as may be specified in the order of delegation.

(7) The Excise Commissioner and Collector may, by order, delegate their powers under this Act to any Subordinate Officer subject to such limitation and condition as may be specified in the order of delegation.

(8) The Excise Commissioner or the Collector as the case may be, may by an order, also withdraw from any officer or person any or all the powers delegated.

(9) The State Government may, by notification, invest in any Government functionary not being an Excise Officer, with powers to perform all or any of the functions of any Excise Officer under the Act, and such person shall, in the exercise of these functions, be deemed to be an Excise Officer.

6. Control, appeal and revision :— (1) The Collector shall, in all proceedings under this Act, be under the control of the Excise Commissioner who shall also be competent to exercise all the powers conferred on the Collector by this Act.

(2) Unless otherwise provided, orders passed under any provisions of this Act or any rules made thereunder shall be appealable in such case, to such authorities and under such procedure as may be prescribed.

(3) The State Government may revise any order passed by a Collector or the Excise Commissioner either on its own motion or on the application of any person aggrieved by such order.

(4) The Excise Commissioner may, on his own motion, for reasons to be recorded in writing, revise any order passed by any Excise Officer.

CHAPTER - III

IMPORT, EXPORT AND TRANSPORT

7. Restrictions on import :— (1) No intoxicant shall be imported unless –

- (a) the State Government have accorded permission, either by general or special order for its import;
- (b) the conditions, if any, as the State Government may impose, have been satisfied; and
- (c) the duty, if any, payable under Chapter V has been paid.

(2) Sub-section (1) shall not apply to any article which has been imported into India and was liable, on such importation, to duty under the Customs Tariff Act, 51 of 1975 or the Customs Act, 52 of 1962.

8. Restrictions on export or transport :— No intoxicant shall be exported or transported unless the duty, if any, payable under Chapter V has been paid.

9. Power to prohibit import, export or transport :— The State Government may, by notification, –

- (a) prohibit the import or export of any intoxicant into or from the State or any part thereof, or
- (b) prohibit the transport of any intoxicant.

10. Passes for import, export and transport :— (1) Unless otherwise provided in this Act, Collector shall be competent to grant passes for import, export and transport of intoxicant.

(2) No intoxicant exceeding such quantity as the State Government may prescribe

by notification, either generally or for any specified local area, shall be imported, exported or transported except under a pass granted by the Collector.

(3) Such passes may be either general for definite periods and particular kinds of intoxicant or special for specified occasions and particular consignments only.

CHAPTER - IV

MANUFACTURE, POSSESSION AND SALE

11. Licence required for manufacture :— (1) Unless otherwise provided in this Act, the Collector shall be competent to grant licence for the purpose as specified in this Act.

(2) No intoxicant shall be manufactured nor any bottling of liquor shall be made for sale nor any distillery or brewery shall be worked nor any person shall use, keep or have in his possession any materials, still utensil, implement or apparatus whatsoever, for the purpose of manufacturing any intoxicant other than tari, except under the authority and without a licence containing the terms and conditions, granted in that behalf by the Collector

Provided that any tari producing tree may be tapped, and tari may be drawn from any tree, without a licence under this Section, by the person in possession of the tree—

- (a) for the purpose of being used in the manufacture of gur; or
- (b) for the purpose of being used solely for the preparation of food for domestic consumption upto a limit of five litres and not for the purpose of being used -
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale.

12. Drawing of tari in notified areas :— Notwithstanding anything contained in the proviso to Section 11,—

- (a) no tari-producing tree shall be tapped, and
- (b) no tari shall be drawn from any tree, in any local area notified in this behalf by the State Government,
except under the authority and without a licence containing the terms and conditions granted in that behalf by the Collector:

Provided that, when any exclusive privilege of manufacturing tari has been granted under Section 20, the State the Government may declare that the written permission given to the grantee to draw tari shall have the same force and effect as a licence granted by the Collector under this Section :

Provided further that, in any local area specified by notification, the State Government may, by notification, declare that the same shall not apply to tari trees tapped or tari drawn under such special conditions as the State Government may prescribe.

13. Establishment of distilleries, breweries or warehouses :- (1) No distillery, brewery or warehouse as aforesaid shall be established except by or under the authority of the Excise Commissioner.

(2) The Excise Commissioner may, with the previous sanction of the State Government—

- (a) establish, or authorize the establishment of distilleries or breweries, in which liquor may be manufactured on such conditions as the Government may impose under a licence granted under Section 11;
- (b) discontinue any such distillery or brewery;
- (c) establish, or authorize the establishment of warehouses, wherein any intoxicant may be deposited and kept without payment of duty; and
- (d) discontinue any such warehouse.

14. Licence required for depositing or keeping intoxicant in warehouse or other place of storage :- No person shall, except under the authority and without a licence containing the terms and conditions, granted in that behalf by the Collector, deposit or keep any intoxicant in any warehouse or other place of storage established, authorized or continued under this Act :

Provided that such licence for keeping of intoxicants by a wholesaler may be granted only with the approval of the State Government.

15. Payment of duty on removal from distillery, brewery, warehouse or other place of storage :- No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized, or continued under this Act, unless the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof.

16. Possession of intoxicant not obtained from a licensed vender :- (1) No person shall have in his possession any intoxicant, which has not been obtained from a licensed vender of the same.

(2) Sub-section (1) shall not apply to —

- (a) any intoxicant lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act;
- (b) any intoxicant lawfully in the possession of a licensed vender of the same;
- (c) any intoxicant in the possession of a person who has lawfully imported it or who is authorized by the Collector to possess it;
- (d) any foreign liquor or India made foreign liquor in the possession of any common carrier or warehouse man as such, or purchased at a sale authorized by clause (a) of Sub-section (2) of Section 18;
- (e) tari intended to be used in the manufacture of gur;
- (f) tari intended to be used solely for preparation of food for domestic consumption, and not as an intoxicant or for the preparation of any intoxicating article or for the preparation of any article for sale;

- (g) tari intended to be used in the manufacture of bread by a person holding a permit to use tari for that purpose; and
- (h) tari, up to a limit of five litres, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption.

17. Possession of intoxicant generally :- (1) No person not being licensed to manufacture, collect or sell any intoxicant shall have in his possession any quantity of any intoxicant in excess of such quantity as the State Government has, under Section 4, declared to be the limit of possession, except under a permit granted by the Collector in that behalf.

(2) Sub-section (1) shall not apply to –

- (a) any foreign liquor or India made foreign liquor, other than denatured spirit, which is in the possession of any common carrier or warehouse man as such;
- (b) any foreign liquor or India made foreign liquor which has been purchased by any person for his bonafide private consumption and not for sale or for use in the manufacture of any article for sale;
- (c) tari intended to be used in the manufacture of gur; and
- (d) tari intended to be used solely for the preparation of food for domestic consumption and not as an intoxicant, or for the preparation of any intoxicating article.

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his licence any quantity of any intoxicant in excess of such quantity as declared under Section 4 to be the limit of possession, except under a permit granted by the Collector in that behalf.

(4) Notwithstanding anything contained in the foregoing sub-sections, the State Government may, by notification, prohibit the possession by any person or class of persons with such exceptions, if any, as may be specified in the notification, either in the whole or any part of the State of Odisha, any intoxicant either absolutely, or subject to such conditions as it may prescribe.

18. Licence required for sale :- (1) No intoxicant shall be sold except under the authority and without a licence containing the terms and conditions, granted in that behalf by the Collector :

Provided that a licence for sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorized in that behalf by the Excise Commissioner:

Provided further that such licence for wholesale may be granted only with the approval of the State Government:

Provided also that a licence for sale granted under any Excise Law in force in any other State may, on such condition as may be determined by the Excise Commissioner, be deemed to be licence granted under this Act.

(2) No licence shall be required for–

- (a) the sale of foreign liquor or India made foreign liquor lawfully procured by any person for his private use when such sale is made by such person himself or on his behalf upon his quitting a station. or on behalf of his representatives in interest after his death; or
- (b) the sale of tari lawfully possessed by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sale tari; or
- (c) the sale of tari lawfully possessed and intended to be used in the manufacture of gur; or
- (d) the sale of tari lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not-
 - (i) as an intoxicant. or
 - (ii) for the preparation of any intoxicating articles, or
 - (iii) for the preparation of any article for sale, or
- (e) the sale of tari lawfully possessed, intended to be used in the manufacture of bread, to a person holding a permit to use tari for the purpose of making bread.

(3) Within the limits of any military cantonment, and within such distance from those limits as the Union Government may in any case prescribe, no licence for the manufacture or sale of liquor shall be granted except with the previous consent of the Commanding Officer of that cantonment.

19. Wholesale trade in foreign liquor, India made foreign liquor and country liquor :- (1) Notwithstanding anything contained in this Act, the Odisha State Beverages Corporation Ltd., which is a Corporation wholly owned and controlled by the State Government, or any other Agency as may be notified by the State Government, shall have the exclusive privilege of supplying, by wholesale, foreign liquor, India made foreign liquor and country liquor manufactured from molasses for the whole of the State of Odisha.

(2) The Odisha State Beverages Corporation Ltd., shall be granted the licence by the Excise Commissioner for the exercise of the exclusive privilege referred to in Sub-section (1) and such licence shall be subject to such terms and conditions as may be prescribed.

(3) The Odisha State Beverages Corporation Ltd., may open its branches or depots in the State at such places and subject to such conditions as the Excise Commissioner may specify and for each place of business, separate license shall be issued by the Excise Commissioner on payment of such fees as may be decided by the State Government from time to time.

(4) It shall be lawful for the State Government to grant licence to the Odisha State Beverages Corporation Ltd., on such conditions and restrictions and for such period, to exercise the exclusive or other privileges of importing, storing and selling foreign liquor, India made foreign liquor, as it may deem fit.

20. Grant of exclusive privilege of manufacture and sale of foreign liquor, India made foreign liquor and country liquor or other intoxicants etc.:— (1) The State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege—

- (i) of manufacturing, or of supplying by wholesale, 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 specified local area :

Provided that public notice shall be given of the intention to grant any such exclusive privilege under the preceding sub-section and that any objections made by any person residing within that area shall be considered before an exclusive privilege is granted.

(2) The State Government may, by notification, confer on any officer the power mentioned in Sub-section (1).

(3) No grantee of any privilege under Sub-section (1) shall exercise the same unless or until he has received a licence in that behalf from the Collector or the Excise Commissioner.

21. Exemption. in certain cases :— Notwithstanding anything contained in this Act, except the provisions of Section 27, it shall not be necessary for the State Government or an agency of State Government or a Corporation established, or incorporated under the Companies Act, I of 1956 and wholly owned and controlled by the State Government, to take licence or permit under this Act for production, manufacture, possession, import, export, transport, sale or purchase of any liquor, but such activities shall be subject to such rules as may be made in this behalf.

22. Transfer of exclusive privilege :— (1) A grantee of an exclusive privilege under Section 20 shall not let or assign the same or any portion thereof unless he is expressly authorized by a condition made under that Section to do so.

(2) Such letting or assignment shall be made only to a person approved by the Collector, and if the letting or assignment extends to more than one district, by the Excise Commissioner.

(3) The lessee or assignee shall not exercise any right, as such unless and until the Collector has, upon his application, granted him a licence to do so.

23. Maintenance and use of measures, weights and instruments by licensed manufacturers and venders :— Every person who manufactures or sells any intoxicant under a licence granted under this Act —

- (a) shall supply himself with such measures, weights and instruments as the Excise Commissioner may specify, and shall keep the same in good condition; and
- (b) when such measures, weights and instruments have been so specified, shall, on the requisition of any Excise Officer empowered by the Collector in this behalf, measure, weight or test any intoxicant in his possession, at such time and in such manner as such Officer may require.

24. Prohibitions of advertisement, etc.:— (1) No person shall print or publish in any newspaper, news sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter which—

- (a) commends, solicits the use of or offers any intoxicants; or
- (b) is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted thereunder.

(2) Save as otherwise provided in Sub-section (3) nothing in this Section shall apply to—

- (a) catalogues or price lists which may be generally or specially approved by the Excise Commissioner in this behalf; and
- (b) any other advertisement or matter which the State Government may, by notification, either generally or specially exempt from the operation of this Section.

(3) Notwithstanding anything contained in Sub-section (2) the State Government may, by notification, prohibit within the State the circulation, distribution or sale of any newspaper, news-sheet, book, leaflet, booklet or other publication printed and published outside the State which contains any advertisement or matter which -

- (a) commends, solicits the use of or offers any intoxicants; or
- (b) is calculated to encourage or incite any individual or class of individuals or the public generally to commit any offence under this Act or to commit a breach of or to evade the provision of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.

25. Employment of children or women by licensed venders :— (1) No person who is licensed to sell foreign liquor or India made foreign liquor for consumption on his premises shall employ or permit to be employed either with or without remuneration, any person under the age of eighteen years, in any part of such premises in which such liquor is consumed by the public.

(2) No person who is licensed to sell country spirit shall employ or permit to be employed, either with or without remuneration, any person under the age of eighteen years, in any part of the premises in which such spirit is sold.

(3) No person who is licensed to sell foreign liquor or India made foreign liquor for consumption on his premises shall employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which such liquor is consumed by the public .

(4) The State Government may, by notification, declare that Sub-section (3) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.

(5) Every permission granted under Sub-section (3) shall be endorsed on the

licence, and may be modified or withdrawn .

26. Powers to close shops temporarily :—(1) The District Magistrate or a Sub-Divisional 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 the preservation of the public peace :

Provided that if the closure is required for a continuous period of more than three days, the approval of the Excise Commissioner shall be taken.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any intoxicant is sold, any Executive Magistrate, or any Police Officer not below the rank of a Sub-Inspector who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When a direction is made by a Magistrate under Sub-section (1) or Sub-section (2), or any Police Officer under Sub-section (2), such Magistrate or Police Officer, as the case may be, shall forthwith inform the Collector of his action and of reasons therefor.

27. Restriction on grant of licence or exclusive privilege :—

(1) Notwithstanding anything contained in this Chapter or elsewhere in this Act, in the Scheduled areas -

- (a) in no case there shall be granted under this Act any licence for manufacture, possession or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, exclusive with the prior approval of the concerned Grama Panchayat accorded with the concurrence of the Grama Sasan; and
- (b) no licence or exclusive privilege which is granted in contravention of clause (a) shall have any effect for the purposes of this Act.

(2) For the purposes of clause (a) of Sub-section (1), the authority competent to grant licence for manufacture, possession, sale or exclusive privilege of manufacture or sale, of any intoxicant shall, before granting such licence or exclusive privilege refer every proposal therefor to the concerned Grama Panchayat for its decision within a period of thirty days from the date of receipt of such reference, and if the Grama Panchayat fails to communicate its decision within the said period of thirty days, it shall be deemed that the concerned Grama Panchayat has accorded the required approval.

Explanation :— For the purposes of this section—

- (i) ‘Grama Panchayat’ and ‘Grama Sasan’ shall have the same meaning as defined respectively in the Odisha Grama Panchayats Act, 1964, Odisha Act 1 of 1965; and.
- (ii) ‘Scheduled areas’ means the Scheduled. areas as referred to in clause (1) of Article 244 of the Constitution of India.

CHAPTER - V

DUTY AND TAX

28. Nature and components of excise revenue :—Excise duty and fees shall be levied and recovered under the following heads, namely, (a) excise duty, (b)

countervailing duty, (c) license fee, (d) VAT, (e) brand registration fee, (f) import duty (g) export duty and (h) other fees as may be prescribed.

29. Excise duty and countervailing duty :— (1) An excise duty or countervailing duty of such amount as the Government may, by notification specify from time to time shall, be levied on all liquors permitted imported to be imported, exported, manufactured, issued from any manufactory or institution or sold, under the provisions of this Act or any rule, notification licence or permit issued thereunder.

(2) The excise duty or the countervailing duty may be levied in one or more of the following ways, namely :—

- (a) by duty of excise to be charged in the case of liquor either on the quantity produced in or passed out of a manufactory or warehouse licensed or established under this Act, or in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as may be prescribed;
- (b) by import, export or transport duties assessed in such manner as the State Government may direct.

Provided that where there is a difference of duty as between two licence periods, such difference may be collected in respect of all stocks of liquor held by licensee at the close of the former period.

30. Declaration of ex-factory and maximum retail price :— Ex-factory price and Maximum Retail Price shall be declared by the manufacturer or the licensee alongwith the application for registration of brand and label to the Excise Commissioner. The Maximum Retail Price shall be determined based on declared ex-factory price, applicable duties, fees, margins to wholesalers and retailers and any other declared basis.

31. Recovery of excise duties and levies and lien on the property of defaulter :— (1) All duties, fees, taxes, fines payable to the Government under this Act may be recovered from the person liable to pay the same or from his surety or his agent, as if they were arrears of land revenue.

(2) In the event of default by any person licensed under this Act, his manufactory, warehouse, shop or premises and all fittings, apparatus, stocks of liquor or materials for the manufacture of the same, held therein shall be liable to be attached towards any claim for excise revenue or in respect of any loss incurred by the Government through such default and be sold to satisfy such claim which shall be a first charge upon the proceeds of such sale.

32. Excise revenue to be paid irrespective of pendency of any writ petition, suit, etc.:— Notwithstanding that a writ petition has been preferred or a suit or other proceeding has been instituted in any Court or any appeal has been filed before any Tribunal or the Excise Commissioner or a revision has been filed before the Government any sum due to the Government, under this Act as a result of demand or order made or passed by any officer or authority, empowered in this behalf by or under this Act, shall be payable in accordance with such demand or order unless and until such payment has been stayed by the Competent Authority.

33. Accounts and returns :— Every licensee shall maintain such accounts and

submit to the authorized Excise Officers such returns in such forms containing such particulars relating to stock, apparatus, excise duty or fee payable and paid to the Government and such other information at such interval as may be prescribed.

34. Luxury tax :- A luxury tax on the sale of foreign liquor may be imposed either generally or in respect of any local area specified in that behalf by the State Government at such rates and in such manner as may be prescribed.

35. Payment for grant of privilege :- The State Government may, in addition to duty levied under this Act, accept payment of any sum or fees in consideration of any privilege granted or minimum guaranteed quantity determined under this Act.

36. Regulation and levy on other goods unfit for human consumption :- The State Government shall be competent to regulate and control the manufacture, import, transport, storage, sale and export of denatured spirit, methanol or methyl alcohol, ethanol or power spirit and of similar other goods and impose levy or fees of such nature as may be notified by the State Government.

CHAPTER - VI

LICENCES, PERMITS AND PASSES

37. Preparation of list of places of which it is proposed to grant licences for the retail sale of spirit :- Before the expiration of every period for which existing licences for the retail sale of spirit or tari are in force, the Collector shall prepare a list, in a form to be prescribed showing therein the kind of licences proposed to be granted for the retail sale of spirit or tari for consumption in the vendors premises, for the next period of settlement.

38. Publication of such list :- The Collector shall—

- (a) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a licence for the retail sale of spirit or tari thereat, or in the vicinity, for the next period of settlement;
- (b) if any site referred to in the said list is not at the time used for the retail sale of spirit or tari, cause a notice, to the effect that it is proposed to grant a licence for the retail sale of spirit or tari there at, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by beat of drum;
- (c) send to the Local Bodies extracts re-producing so much of the said list as relates to shops in the area of such Local Bodies for conspicuously affixing that in the notice board of their offices;
- (d) cause the said list, or any portion thereof, to be published in such other methods, if any, as may be prescribed for wide circulation;

inviting objections and suggestions, if any, to be submitted before the date as may be prescribed.

39. Time for preparation and publication of such list :- The list mentioned in

Section 37 shall be prepared, and published under Section 38 at such time as may be prescribed.

40. Submission of objections and suggestions to Collector :— Objections and suggestions to any proposal contained in any list prepared under Section 37 may be submitted to the Collector at any time prior to the date as may be prescribed by—

- (a) any person or persons residing in the vicinity of the shop to which such proposal relates; or
- (b) Local Bodies.

41. Grant of licences by Collector and submission of list, objections and suggestions to Excise Commissioner :— (1) After the date prescribed for receipt of objections and suggestions the Collector shall consider all the objections and suggestions submitted under Section 40 and if necessary, revise the said list, and shall decide for which places licences for the retail sale of spirit shall be granted :

Provided that no objections shall ordinarily be entertained for shops continuing in an area for more than three years, unless there are special reasons to be recorded in writing.

(2) The Collector shall there upon submit the said list, as so revised, and the said objections and suggestions and his own opinion and recommendations, if any, to the Excise Commissioner.

42. Decision of Excise Commissioner :— (1) The Excise Commissioner shall consider the list, objections and suggestions so sent to him, and may modify or annul any orders passed by the Collector and notwithstanding anything contained in Section 6 his orders shall be final subject to approval of the State Government.

(2) The Collector shall grant licence in accordance with the approval of Government.

43. Application of Sections 37 to 42 to licences for retail sale of intoxicants other than spirit :— The provisions of Sections 37 to 42 as to licences for the retail sale of spirit shall apply also in respect of licences for the retail sale, in any local area specified in any order made by the State Government in this behalf, of any other intoxicant specified in such order.

44. Exemptions of certain licences from Sections 37 to 43 :— Section 37 to 43 shall not apply in the case of any licence, which is proposed to be granted —

- (a) any person, for the retail sale of any intoxicant during any period not exceeding six months; or
- (b) to any person, for the retail sale of any denatured spirit; or
- (c) to any person, for the retail sale of any intoxicant in substitution for a licence which has been cancelled or surrendered before the expiration of the period for which it was granted; or
- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any intoxicant for medicinal purposes or
- (e) to any person having exclusive privilege granted by the State Government under Section 20.

45. Fees for terms and conditions and duration of licences, permits and passes :— (1) Every licence, permit or pass under this Act shall be granted on payment of such fees, if any, and subject to such restrictions and conditions as may be imposed and shall be in such form and contain such particulars, as the '[State Government]' may direct, from time to time.

(2) Every licence, permit or pass under this Act shall be granted for such period, as may be prescribed.

46. Counterpart agreement by licensee, or exclusive privilege and security or deposit :— (1) Any authority granting a licence or exclusive privilege under this Act may require the grantee to execute a counterpart agreement in conformity with the tenure of his licence, or exclusive privilege and to give such security for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

(2) No licence or exclusive privilege granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the licence or exclusive privilege or in any proceedings taken prior to the grant thereof.

(3) The decision of the Excise Commissioner, as to what is a technical defect, irregularity or omission, shall be final.

47. Power to cancel or suspend licence, permit or pass :— (1) Subject to such restrictions as may be prescribed, the authority granting any exclusive privilege, licence, permit or pass under this Act may cancel or suspend it irrespective of the period to which the same relates -

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or
- (b) if any duty or fee payable by the holder thereof has not been paid; or
- (c) 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 or conditions thereof; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue or of any cognizable and non-bailable offence; or
- (e) Where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under Section 20 on the requisition in writing of such holder; or
- (f) if the conditions of the exclusive privilege, licence, permit or pass provide for such cancellation or suspension at will.

(2) When an exclusive privilege, licence, permit or pass held by any person is cancelled under clause (a), (b), (c) or (d) of Sub-section (1), the authority aforesaid may cancel any other exclusive privilege, licence, permit or pass granted to such person under this Act, or under any other law for the time being in force relating to Excise.

(3) The holder of an exclusive privilege, licence, permit or pass shall not be

entitled to any compensation for its cancellation or suspension under this Section, or to the refund of any fee or consideration money paid or deposit made, in respect thereof.

(4) Before cancellation of the exclusive privilege, licence, permit or pass the authority cancelling it shall give to the grantee at least seven days' notice in writing of his intention to cancel it and offer an opportunity to him to show cause within the said period as to why his exclusive privilege, licence, permit or pass should not be cancelled.

48. Power to withdraw licences :- (1) Whenever the authority granting any licence or exclusive privilege under this Act considers that the licence or exclusive privilege should be withdrawn for any cause other than those specified in Section 47, it shall remit a sum equal to the amount of the fees or consideration money payable in respect thereof for fifteen days, and may withdraw the licence either -

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
- (b) forthwith, without notice.

(2) If any licence or grant of an exclusive privilege is withdrawn under clause (a) of Sub-section (1), the Excise Commissioner may, in special circumstances, direct the payment of such compensation as he may consider fit, in addition to the remission of the fee to the licensee or grantee of an exclusive privilege as aforesaid.

(3) When a licence or grant of an exclusive privilege is withdrawn under Sub-section (1), any fee paid in advance, or deposit made, by the licensee or grantee of an exclusive privilege in respect thereof shall be refunded to him, after deducting the amount, if any, due to the State Government.

(4) For the purpose of calculating the amount due to the State Government mentioned in Sub-section (2), the amount of fee or consideration money payable on account of the licence or exclusive privilege, as the case may be, for the period during which it was in force shall be taken to be the sum bearing the same proportion to the total fee or consideration money, for the whole period for which the licence or exclusive privilege was settled, as the period during which the licence or exclusive privilege was in force bears to the full period for which the licence or exclusive privilege was settled or granted.

49. Surrender of licences :- Any holder of a licence or exclusive privilege granted under this Act to manufacture and sell an intoxicant may, unless his licence or exclusive privilege is liable to cancellation or suspension under Section 47, surrender the same—

- (a) on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender it; and
- (b) on payment of the fees payable for the licence or the consideration money due for the exclusive privilege for the whole period for which it would have been current but for such surrender :

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for the surrender of an exclusive privilege or licence, he may remit to the holder thereof the sum, so payable on surrender and any fees or consideration money paid in advance or any portion of such sum or fees or consideration money.

Explanation – The expression "holder of a licence" as used in this Section, includes a person whose tender or bid or offer for an exclusive privilege has been accepted although he may not actually have received the licence.

50. Bar of right to renewal and to compensation :- No person to whom any licence or exclusive privilege has been granted under this Act shall have any claim to the renewal of such licence or exclusive privilege or any claim to compensation thereof.

51. Departmental management or transfer :- (1) If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under Section 20, contravened any provision of this Act or any rule made hereunder or makes default in complying with any condition imposed upon him by such licence, or privilege, the Collector may, in the case of licence, after the cancellation thereof and, in the case of an exclusive privilege, at any time -

- (a) take the grant under management, at the risk and loss of the person to whom it was made, or
- (b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any person.

(2) If a licence or exclusive privilege granted to any person under this Act is withdrawn under Section 48, or surrendered under Section 49, the Collector may, after the withdrawal or surrender thereof take the grant under management, or transfer the unexpired portion of the grant to any other person.

CHAPTER - VII

OFFENCES, PENALTIES, CONFISCATION OF SEIZED PROPERTY AND COMPOUNDING OF OFFENCES

52. Penalty for un-lawful import, export, transport, manufacture, possession, sale, etc.:- Whoever in contravention of any provision of this Act or any rule, notification or order made or passed or condition of any licence or permit or pass granted thereunder -

- (a) manufactures, imports, exports, transports, collects, possesses, or sells any intoxicant or bottles liquor for sale or constructs or works any distillery or brewery or other manufactory in which liquor is manufactured, or
- (b) removes any intoxicant from any distillery, brewery, warehouse or other place of storage established, licensed or continued under this Act, or
- (c) uses, keeps or possesses any material, still, utensil, implement, instrument, apparatus or label whatsoever for the purpose of manufacturing any intoxicant other than tari, or
- (d) taps or causes to be tapped or draws, or causes to be drawn tari from any tari producing tree,

Shall, on conviction –

- (i) for an offence other than an offence under clause (d) be punishable with imprisonment for a term which shall not be less than three years and may extend to seven years and also with fine which shall not be less than ten thousand rupees and may extend up to

- fifty thousand rupees; and
- (ii) for an offence under clause (d) be punishable with imprisonment which may extend to one year and also fine which may extend to ten thousand rupees or both:

Provided that where any such person collects, possesses or sells mohua flower or possesses or sells tari or pachwai, he shall be liable to punishment provided in clause (ii) :

Provided further that where any person possesses or sells any outstill liquor manufactured out of Mahua flower not exceeding ten litres in contravention of this Act or any rule or order made thereunder, he shall, on conviction, be punishable with imprisonment for a term which shall not be less than one year, but may extend to two years and with fine which shall not be less than rupees five thousand but may extend to rupees ten thousand.

53. Presumption as to possession of intoxicant by the accused :— In an offence under, Section 52 of this Act, if it is established by chemical analysis or by adducing evidence of trained Excise Officer or otherwise that the seized liquid, materials or other things are—

- (a) intoxicant; or
- (b) still, utensil, implement or apparatus whatsoever for the manufacture of any intoxicant other than tari; or .
- (c) any material, which has undergone any process towards the manufacture of any intoxicant or from which an intoxicant has been manufactured;

the Court shall presume that the seized liquid or materials or other things are recovered from the conscious possession of the accused unless and until the contrary is proved.

Explanation :— ‘trained Excise Officer’ shall mean an officer who has undergone distillery training and obtained a certificate from the concerned Superintendent of Excise.

54. Penalty for contravention of Section 24 :— Whoever contravenes the provisions of Section 24 shall, on conviction, be punishable with imprisonment for a term, which shall not be less than two years but may extend to five years and also with fine which shall not be less than ten thousand rupees but may extend upto twenty-five thousand rupees.

55. Penalty for altering or attempting to alter any denatured spirit, etc.:— Whoever—

- (a) alters or attempt to alter any denatured spirit or methyl alcohol, whether manufactured in India or not, or, any preparation containing denatured spirit, with the intention that such spirit, alcohol or preparation may be used for human consumption, whether as a beverage or internally as a medicine or in any other way whatsoever, by any method whatsoever, or
- (b) has in his possession any spirit, alcohol or preparation’ having the knowledge or reasons to believe that any such alternation or attempt to alter has been made,

shall be punished with imprisonment for a term which shall not be less than

seven years but may extend to ten years and also to fine, which shall not be less than twenty-five thousand rupees but may extend to two lakhs rupees.

56. Presumption as to offence under Section 55 in certain cases :— In prosecutions under Section 55 when the accused person is proved to have been in possession of any spirit which is, or contains has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in Section 55 has been made, it may from the mere fact of such possession be presumed unless and until the contrary is proved that such person –

- (a) has himself made such alteration or attempt, or
- (b) knows or has reason to believe that such alteration or attempt has been made.

57. Presumption as to any spirit being or containing or having been derived from denatured spirit :— In any prosecution under this Act it may be presumed, until the contrary is proved, that any spirit, which is proved to contain any quantity of any denaturant, is or contains, or has been derived from, denatured spirit.

58. Penalty for adulteration by licenced manufacturer or vender or his servant :— If any licensed manufacturer or licensed vender, or any person in his employ and acting on his behalf mixes or permits to be mixed, with any intoxicant manufactured, sold or kept or exposed for sale by him any article prohibited by any rule made under Sub-clause (a) of clause XXV of Sub-section 90 and such mixing does not amount to an offence punishable under Section 272 of the Indian Penal Code, 45 of 1860 or has in his possession any intoxicant in respect of which such admixture has been made, he shall be punished with imprisonment for a term, which shall not be less than seven years but may extend to ten years and also to fine, which shall not be less than fifty thousand rupees but may extend to one lakh rupees.

59. Penalty for mixing noxious substance with liquor :— Whoever mixes or permits to be mixed with any liquor sold or manufactured or possessed by him any noxious drug or any foreign ingredient likely to cause grievous hurt or death to human beings, shall, on conviction, be punishable –

- (a) if as a result of such an act, death is caused to any person with imprisonment for life and shall also be liable to fine which may extend to ten lakh rupees;
- (b) if as a result of such an act, grievous hurt is caused to any person with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine which may extend to five lakh rupees;
- (c) in other cases which do not fall into sub-clauses (a) and (b), if as a result of such an act, any other consequential injury is caused to any person, with imprisonment for a term of one year and shall also be liable to fine which may extend to two lakh fifty thousand rupees; and
- (d) if as a result of such an act, no injury is caused to any person, with imprisonment for a term of six months and shall also be liable to fine which may extend to one lakh rupees or 5 times the value of liquor whichever is higher.

Explanation :— For the purpose of this section the expression “grievous hurt” shall have the same meaning as in Section 320 of the Indian Penal Code, 45 of 1860.

60. Penalty for fraud by licensed manufacturer or vender or his servant :— If any licensed manufacturer or licensed vender, or any person in his employ and acting on his behalf—

- (a) sells, or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under Section 417 or Section 418 of the Indian Penal Code, 45 of 1860, or
- (b) marks any bottle; case, package or other receptacle containing country liquor, or the cork of any such bottle, or deals with any bottle, case, package or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, and such making or dealing does not amount to an offence punishable under Section 482 of the India Penal Code, 45 of 1860, shall be punishable with imprisonment for a term which shall not be less than three years but may extend to five years and also to fine which shall not be less than ten thousand rupees but may extend to fifty thousand’ rupees.

61. Penalty for certain unlawful acts of licensed venders or their servants :— (1) If any licensed vender, or any person in his employment and acting on his behalf,—

- (a) in contravention of Section 25, employs or permits to be employed, in any part of his licensed premises referred to in that section any person under the age eighteen years; or
- (b) sells any intoxicant to a person who is drunk or intoxicated; or
- (c) sells or delivers any spirit to any person apparently under the age of twenty-one years whether for consumption by such person or by any other person, and whether for consumption on or off the premises of such venders; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vender; or
- (e) Permits any persons whom he knows, or has reason to believe to have been convicted of any non-bailable offence, to meet, or any such person to remain on the premises of such vendor, whether for the purposes of crime or not;

he shall be liable to fine, which may extend to twenty thousand rupees.

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vender, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the vender and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

62. Penalty for possession of intoxicant in respect of which an offence has been committed :- (1) If any person, without lawful authority, has in his possession any quantity of any intoxicant knowing, or having reason to believe the same to have been unlawfully imported, transported or manufactured, or knowing or having reason to believe that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to three years or to fine which may extend to ten thousand rupees, or both.

(2) Any owner or occupant of a place, if found to have stored or caused to be stored any intoxicant for which an offence has been committed under this Act, shall be liable to pay fine which shall not be less than rupees ten thousand but may extend to rupees five lakhs.

63. Penalty for consumption in chemist's shop, etc.:- (1) If any chemist, druggist, apothecary or keeper of dispensary allows any intoxicant which has not been bonafide medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to three years and to fine which may extend to fifty thousand rupees.

(2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be liable to fine which may extend to five thousand rupees.

64. Penalty for certain acts by licensee or his servant :- If any holder of a licence, permit or pass granted under this Act, or any person in his employment and acting on his behalf -

- (a) fails to produce such licence, permit or pass on the demand of any officer empowered by the State Government, by notification, to make such demand; or
- (b) in any case not provided for in Section 52, wilfully contravenes any rule made under Section 90; or
- (c) wilfully does any act in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act;

he shall be liable, in case of clause (a), to fine which may extend to twenty thousand rupees and in case of clause (b) or (c) to fine which may extend to fifty thousand rupees.

65. Import, export, transport, manufacture, sale or possession by one person on account of another :- (1) When any intoxicant has been imported, exported, transported, manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport manufacture or sale was, or that such possession is on his account the article shall, for the purposes of this Act, be deemed to have been imported, exported, transported, manufactured or sold by or to be in possession of, such other person.

(2) Nothing in Sub-section (1) shall absolve any person, who imports exports, transports, manufactures, sells or has possession of an intoxicant on account of another person, from liability to any punishment under this Act for unlawful import, export,

transport, manufacture, sale or possession of such article.

66. Criminal liability of licensee for acts of servants :- When any offence, punishable under Section 52, 58, 60, 61, 62 or 63 is committed by any person in the employ and acting on behalf of the holder of a licence permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offences unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

67. Penalty on Excise Officer making vexatious search seizure, detention or arrest and refusing to do duty :- (1) Any Excise Officer or other person who vexatiously and without reasonable ground for suspicion—

- (a) enters or searches or causes to be entered or searched any closed place under colour of exercising any power conferred by this Act, or
- (b) seizes the moveable property of any person on the pretext of seizing or searching for any article liable to confiscation under this Act, or
- (c) searches, detains or arrests any person, or
- (d) in any other way exceeds his lawful powers under this Act, shall, on conviction be punished with fine which may extend to ten thousand rupees.

(2) Any 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 Excise 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 may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

68. Penalty for offences not otherwise punishable :- Any person who commits any act in contravention of any of the provisions of this Act, or of any rule, notification, or order made, issued or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to fifty thousand rupees.

69. Penalty for abetment and attempt to commit offence :- Whoever abets or attempts to commit any offence punishable under this Act shall be liable to the same punishment as provided for such offence.

70. Enhanced punishment after previous conviction :- If any person, having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of an offence under this Act, he shall be liable to twice the punishment, which might have been imposed on a first conviction subject to the maximum punishment provided for the same offence and with fine twice the amount provided under the first conviction or both.

71. Seizure of property liable to confiscation :- (1) (a) When there is reason to believe that any offence under this Act has been committed, the intoxicant, materials, stills, utensils, implements, apparatus, receptacles, package, coverings, animals, carts, vessels, rafts, vehicles, or any other conveyances or articles or materials used in committing any such offence may be seized by the Collector or any Officer of the

Excise Police, Customs or Revenue Departments.

(b) any intoxicant lawfully imported, transported, manufactured in possession or sold alongwith, or in addition to, any intoxicant which is liable to seizure under clause (a) and the receptacles, packages and coverings in which any such intoxicants as aforesaid, or any such materials, stills, utensil, implement or apparatus as aforesaid, is found and the other contents, if any, of such receptacles or packages, and the animals, carts, vessels, rafts, vehicles or other conveyances used in carrying the same, shall likewise be liable to seizure.

(2) Every officer seizing any property under this section shall, except where the offender agrees in writing to get the offence compounded under Section 75, produce the property seized before the Collector, or an officer, not below the rank of a Superintendent of Excise, authorized by the State Government in this behalf by notification (hereinafter referred to as 'Authorized Officer').

(3) Where the Collector or the Authorized Officer seized any property under Sub-section (1) or where the property seized is produced before him under Sub-section (2) and he is satisfied that an offence under this Act has been committed in respect thereof, he shall, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of the property so seized or produced together with all other materials, articles, vehicles or conveyances used in committing such offence, whether or not a prosecution is instituted for the commission of such an offence.

(4) No order confiscating any property shall be made under Sub-section (3) unless the person from whom the property is seized is given

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice; and
- (c) a reasonable opportunity of being heard in the matter.

(5) Without prejudice to the provisions of Sub-section (4), no order of confiscation under Sub-section (3) of any articles, materials, vehicles or conveyances shall be made if the owner thereof proves to the satisfaction of the Collector or the Authorized Officer, as the case may be, that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of such property, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(6) Any person aggrieved by an order passed under Sub-section (3) may, within thirty days from the date of such order, appeal to the Excise Commissioner, who shall after giving an opportunity to the parties to be heard, pass such order as he may think fit.

(7) The property seized under this Section shall be kept in the custody of the Collector, the Authorized Officer or the other officer seizing such property or with any third party, until the amount for compounding the offence or the sum equal to the prevailing market value of the seized property or both are paid or until it is confiscated as the case may be :

Provided that the seized property shall not be released during pendency of the

confiscation proceedings even on the application of the owner of the property for such release.

(8) Whenever property seized is liable to confiscation under this section and the offender or the person entitled to possession is not known or can not be found, the case shall be inquired into and determined by the Collector or the Authorized Officer, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing of the property to be confiscated, or without hearing any person who may claim any right within the said period and the evidence if any, which he produces in support of his claim.

(9) If the property seized is liable to speedy and natural decay, or if the Collector or the Authorized Officer, as the case may be, is of the opinion that sale would be for the benefit of its owner, such officer may, at any time, direct it to be sold and the provisions of this section shall, as nearly may be practicable, apply to the net proceeds of the sale.

(10) Subject to the rules as may be made by the State Government under Section 90, the Collector or the Authorized Officer, while making an order of confiscation, may also order that such of the properties to which the order of confiscation relates, which in his opinion to be recorded in writing cannot be preserved or not fit for human consumption, may be destroyed.

(11) Where the Collector or the Authorized Officer after passing an order confiscation under Sub-section (3) 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 of departmentally.

(12) The Collector or the Authorized Officer shall submit a full report of all particulars of confiscation to the Excise Commissioner within twenty-four hours of such confiscation.

(13) The Collector or the Authorized Officer shall, for the purposes of this Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 5 of 1908, while making inquiries under this section in respect of the following matters namely :—

- (a) receiving evidence on affidavit;
- (b) summoning and enforcing the attendance of any person and examining him on oath; and
- (c) compelling the production of documents,

72. Bar of other proceedings during pendency of confiscation proceedings :—

Notwithstanding anything contained in the Code of Criminal Procedure 2 of 1974, when the Collector or the Authorized Officer or the Appellate Authority is seized with the matter of confiscation of any seized property under Section 71, no Court shall entertain any application in respect of the same property and the jurisdiction of the Collector or the Authorized Officer or the Appellate Authority with regard to the disposal of the same shall be exclusive.

73. Result of criminal proceeding not to affect the order of confiscation :—

The result of criminal proceeding, either acquittal or conviction or otherwise, under the provisions of this Act, will have no bearing on the order of confiscation passed under this Act.

74. Property when to vest in the State Government :- When an order for the confiscation of any property passed under Section 71 has become final in respect of the whole or any portion of the property, such property or the portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

75. Compounding of offences and releasing property liable to confiscation :-
(1) The Collector or any Excise Officer specially empowered by the State Government in this behalf, not below the rank of Superintendent of Excise may, subject to any restrictions as may be prescribed, accept from any person whose exclusive privilege, licence, permit or pass is liable to be cancelled or suspended under clause (a), (b) or (c) of Sub-section (1) of Section 47 or who is reasonably suspected of having committed an offence punishable under any section of this Act other than Sections 55, 58, 59 and 67, payment of a sum of money as may be prescribed in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be, and in any case in which any property has been seized being liable to confiscation under Section 71, may release the property on payment of equal sum of the prevailing market value thereof as estimated by the Collector or such Excise Officer :

Provided that where such person intended to evade excise revenue, the sum to be paid by such person in lieu of cancellation or suspension or by way of composition for such offence as aforesaid shall in no case be less than five times of such revenue intended to be evaded :

Provided further 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.

(2) When the payments referred to in Sub-Section (1) have been duly made, the person, if in custody, shall be discharged, and the property seized if any, shall be released and no further proceedings shall be taken against such person or property.

CHAPTER - VIII

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES AND PROCEDURE

76. Power to enter and inspect and power to test and seize measures, etc.:-
The Excise Commissioner or the Collector or any Excise Officer not below the rank of a Sub-Inspector of Excise may, subject to any restrictions as may be prescribed,-

- (a) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant;
- (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 licensed person;
- (c) examine the accounts and registers maintained in any such place as

aforesaid;

- (d) examine, test, measure or weigh any materials, stills, utensils, implements and apparatus of intoxicant found in any such place as aforesaid; and
- (e) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.

77. Power to arrest without warrant, to seize articles liable to confiscation, and to make searches :- Any Excise Officer may, subject to any restrictions as may be prescribed,—

- (a) arrest without warrant any person found committing an offence punishable under Section 52, 54, 55, 58, 59, 62, or 63 ;
- (b) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the 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.

78. Power of Court to issue warrant of arrest :- Any Judicial Magistrate of the first class, or any Special Court constituted under this Act having jurisdiction to try offences punishable under this Act, may issue a warrant for the arrest of any person whom such Magistrate or the Special Court has reason to believe to have committed or abetted or attempted to commit any offence punishable under Section 52, 54, 55, 58, 59, 62 or 63.

79. Power to search :- (1) The Collector or Sub- Divisional Magistrate, or Judicial Magistrate of the first class, or any Special Court constituted under this Act, having jurisdiction to try offences punishable under this Act upon information, received and after such inquiry, if any, as he or it thinks necessary, if he or it has reason to believe that any offence punishable under Section 52, 54, 55, 58, 62, or 63 has been or is likely to be committed or abetted, may by warrant authorize, any Police or Excise Officer above the rank of a Police or Excise Constable, as the case may be, to enter, with such assistance as may be required, any place and search, for any intoxicant, material, stills, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be, committed or abetted, or any document which throws or is likely to throw any light on the alleged offence.

(2) Whenever an Excise Officer not below such rank as the State Government may, by notification, specify, has reason to believe that an offence punishable under Section 52, 54, 55, 58, 59, 62 or 63 has been or is being, or is likely to be, committed or abetted, and that a search warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence, he may, after recording the grounds of his belief, at any time by day or night, enter and search any place and may seize anything found therein which he has reason to believe to be liable to seizure under this Act, and may detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to have committed or abetted

any such offence as aforesaid.

80. Power to prevent commission of offence :— Every Excise Officer shall prevent and may interpose for the purpose of preventing the commission of any offence under this Act.

81. Landholders, Officers and other to give information :— (1) Whenever any liquor is manufactured, exported, imported or transported, collected or possessed or sold, in contravention of this Act, the owner or occupier of such land or building or his agent, Village Officer or village Police, chairperson/members of local bodies and every Officer of Police, Forest and Land Revenue department shall, in the absence of reasonable excuse, be bound to give notice of the fact to Magistrate or to an Officer of the Excise Department as soon as the fact comes to their knowledge.

(2) All such Officers including Officers of Departments of Police, Forest and Revenue, Chairperson, members or persons as are referred to in 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 Excise Officer in carrying out the provisions of this Act.

(3) every Excise Officer shall be bound to give immediate information either to his immediate superior or to an Excise Sub-Inspector, of all breaches of any of the provisions of this Act, which may come to his knowledge under Sub-section (1) or otherwise.

82. Excise Stations :— (1) The State Government or the Excise Commissioner as may be empowered by the State Government may declare generally or specially by notification in the Official Gazette, any post or place to be an Excise Station which may include any local area specified in that behalf by the State Government or the Excise Commissioner, as the case may be.

(2) There shall be an Officer in charge for every Excise Station who shall be an Excise Officer not below the rank of Sub-Inspector and when such Officer in charge is absent from the Excise Station or unable from illness or otherwise to perform his duties the Excise Officer present at the Excise Station who is next in rank to such Officer in charge and is above the rank of Constable of Excise, shall be treated to be the Officer in Charge.

83. Powers of Excise Officers to investigate offences :— (1) The Officer in charge of an Excise Station or any other Excise Officer superior to him may, without the order of a Judicial Magistrate, investigate any offence punishable under this Act which a Court having Jurisdiction over the local area would have power to inquire into or try under the provisions of Chapter XIII of the Code of Criminal Procedure, 2 of 1974, relating to the place of inquiry or trial.

(2) Any other Excise Officer above the rank of Constable of Excise, specially empowered in this behalf by the State Government, by a notification, published in the Official Gazette in respect of all or any of the offences punishable under this Act may, without the order of a Judicial Magistrate, investigate any such offence which a Court

having jurisdiction over the local area to which such Officer is appointed would have power to enquire into or try under the aforesaid provisions.

(3) Excise Officers superior in rank to an Officer in charge of an Excise Station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such Officer within the limits of his station.

84. Powers and duties of Excise Officers investigating offences :— (1) For the purposes of investigation of offences under this Act the Officer in Charge of an Excise Station shall exercise the same powers as are conferred upon an Officer in Charge of Police Station by the Code of Criminal Procedure, 2 of 1974.

(2) The Investigating Officer shall, unless he proceeds under Section 75; after completion of investigation of any offence under this Act, submit a report through the Officer in Charge of the Excise Station, if he is below the rank of Officer in Charge of the Excise Station to the Judicial Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of the offence if it appears that there is sufficient evidence to justify the forwarding of the accused to such Magistrate.

85. Provisions as to bail in offences other than non- bailable offence :— (1) Whenever any person, other than a person accused of a non- bailable offence, is arrested or detained under this Act otherwise than under a warrant or appears or brought before a Court and is prepared at any time while in custody of the Officer arresting him or at any stage of the proceeding before such Court to give bail, such person shall be released on bail, with or without surety at the discretion of the Officer or the Court releasing him,

(2) The State Government may, by notification, specify, which other officers below the rank of Excise Officer may release such person referred in Sub- section (1) on bail with or without surety.

86. Report of arrests, seizures and searches :— When any Excise Officer below the rank of an Officer in Charge of an Excise Station makes or receives information of any arrest, seizure or search under this Act. he shall, within twenty- four hours of such arrest, seizure or search make a full report thereof to the Officer- in Charge of Excise Station within the local limits of whose jurisdiction the arrest, seizure or search was made.

87. Establishment of special Courts for trial of offences :— (1) The State Government may, for the purpose of providing speedy trial of offences under this Act, in consultation with the Chief Justice of the Court of Odisha, constitute as many special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 2 of 1974.

(3) Till a Special Court is constituted under Sub-section (1), any offence committed under this Act shall be tried by such Court, empowered to try such offence under part II of the first Schedule of the Code of Criminal Procedure, 2 of 1974.

88. Application of certain provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 :- (1) An Excise Officer shall be deemed to be a Police Officer within the meaning and for purposes of Code of Criminal Procedure, 2 of 1974 and the Indian evidence Act. 1 of 1872 for the purposes of this Act.

(2) Any authorized Excise Officer may for the purpose of investigation of offences under this Act, search any place; seize any article, arrest or detain any person if there is a reasonable doubt about them being involved in commission of any offence under this Act.

Provided that no search shall be deemed to be irregular by reason only of the fact that witness for the search is not inhabitant of the locality in which the place searched is situated.

(3) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 2 of 1974 relating to search, seizure, arrest, detention, summon, investigation shall apply, as far as may be, to all action taken in these respects under this Act.

89. Compensation to the victims consuming spurious liquor, etc. :- Whoever, in contravention of the provisions of this Act or any other law for the time being in force, manufactures, transports, possesses or sells liquor or any other intoxicant, the consumption of which causes any injury to or death of any person, he shall be liable to pay due compensation, as may be decided by the Court trying the offence, to the person injured or to the legal heirs of the deceased, as the case may be.

CHAPTER - IX

POWER TO MAKE RULES

90. Power to make rules :- (1) The State Government may make rules to carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the State Government may make rules for—

- (i) prescribing the powers and duties of the Excise Officers;
- (ii) regulating the delegation of powers by the State Government. the Excise Commissioner or Collector;
- (iii) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rules made hereunder, and for prescribing the time and manner for presenting and the procedure for dealing with, such appeals;
- (iv) regulating the import, export or transport of any intoxicant;
- (v) regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted, and the number of such licences which may be granted for any local area;
- (vi) prohibiting the grant of licences for the retail sale of any intoxicant at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed;

- (vii) prohibiting the grant to specified class of persons of licences for the retail sale of any intoxicant;
- (viii) declaring, either generally or in respect of any area described in the rule the persons or classes of persons to whom any intoxicant may or may not be sold;
- (ix) regulating the procedure to be followed and prescribing the matters to be ascertained before any licence for the wholesale or retail sale of any intoxicant is granted for any locality;
- (x) regulating the time, place and manner of payment of duty on intoxicants and fees under different provisions of this Act and payment of the sum under Section 29.
- (xi) restricting the exercise of any of the powers conferred by Sub-section (1) of Section 75 and by Sections 76 and 77.
- (xii) declaring the Excise Officers to whom and the manner in which, information or aid should be given under Section 81;
- (xiii) the grant of expenses to witnesses;
- (xiv) the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested and to persons charged before a Judicial Magistrate with offences punishable under this Act and subsequently acquitted;
- (xv) ¹[prescribing the manner of fixation of fee payable in respect of any licence, permit or pass granted under this Act and the manner of storing of any intoxicant;]
- (xvi) ¹[prescribing the nature of any other fee to be payable in respect of any intoxicant;]
- (xvii) ²[x x x]
- (xviii) ²[x x x]
- (xix) regulating the manufacture, supply or storage of any intoxicant and in particular and without prejudice to the generality of this provision, may make rules for regulating the-
 - (a) establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant and the provisions and maintenance or fittings, implements and apparatus therein;
 - (b) bottling of liquor for the purposes of sale;
 - (c) tapping of tari-producing trees and the drawing of tari from trees; and
 - (d) marking of tari- producing trees in areas notified under Section 12, and maintenance of such marks;

1. Substituted *vide* Odisha Gazette Ext. No. 2008, Dt. 07.11.2016

2. Ommited *vide* Odisha Gazette Ext. No. 2008, Dt. 07.11.2016

- (xx) fixing the strength [x x x] or quantity in excess of or below which any intoxicant shall not be supplied or sold and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any intoxicant;
- (xxi) declaring how spirit manufactured in all the States of India shall be denatured;
- (xxii) causing spirit so manufactured to be denatured through the agency or under the supervision of the Government Officers;
- (xxiii) ascertaining whether any spirit so manufactured has been denatured;
- (xxiv) regulating the deposit of any intoxicant in a warehouse established, authorized or continued under this Act, and the removal of any intoxicant from any such warehouse or from any distillery or brewery;
- (xxv) prescribing the restrictions under which or the conditions on which any licence, permit or pass may be granted, and in particular and without prejudice to the generality of this provision, may make rules for-
 - (a) prohibiting the admixture with any intoxicant of any article deemed to be noxious or objectionable;
 - (b) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;
 - (c) prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold, and prescribing the notices to be exposed at such premises;
 - (d) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business;
 - (e) prohibiting the sale of any intoxicant except for cash;
 - (f) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions;
 - (g) prescribing the accounts to be maintained and the returns to be submitted by licensees; and
 - (h) regulating the transfer of licences;
- (xxvi) prescribing the particulars to be contained in licences, permits or passes granted under this Act;
- (xxvii) the payment of compensation to licensees whose premises are closed under Section 26 or under any rules made under sub- clause (f) of the clause (xxv);
- (xxviii) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use; and
- (xxix) regulating the disposal of things confiscated under this Act.

Explanation :- Fees may be prescribed under clause (xv) at different rates for different classes of licences, permits, passes or storage and for different areas.

91. Publication and effect of rules and notifications :- All rules made and notifications issued under this Act shall be published in the Official Gazette.

92. Power of the State Government to declare what shall be deemed to be liquor :- The State Government may by notification declare as to what shall be deemed to be liquor for the purposes of this Act or Rules framed thereunder.

93. Power of the State Government to regulate consumption and to enforce prohibition :- The State Government may issue such order and take such measures as may be deemed appropriate to regulate consumption of liquor or to enforce prohibition in whole or in any part of the State.

94. Power of the State Government to regulate molasses, black jaggery, mohua flower, etc. and to enforce prohibition :- The State Government may frame rules to regulate movement, possession and sale of molasses, black Jaggery, mohua flower ect. indicating terms and conditions as are necessary and expedient to prevent their misuse for illicit distillation.

CHAPTER - X

MISCELLANEOUS

95. Recovery of dues :- (1) The following money, namely—

- (a) all Excise Revenue,
- (b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under Section 51, and
- (c) all amounts due to the State Government by any person on account of any contract relating to the Excise Revenue,

may be recovered from the person primarily liable to pay the same or from his surety, if any, by distress and sale of his immovable property or by the process prescribed for the recovery of arrears of land revenue.

(2) When a grant has been taken under management by the Collector or has been transferred by him under Section 51, the Collector may recover in any manner authorized by Sub- section (1) any money due to the grantee by any lessee or assignee.

(3) When any money is due, in respect of an exclusive privilege, to a grantee referred to in Section 22 from any person holding under him, such grantee may apply to Collector and the Collector may recover such money on his behalf in either of the ways provided by Sub- Section (1):

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

96. Power of State Government to exempt intoxicants from provisions of this Act :- The State Government may, by notification, either wholly or partly, and subject to such conditions, if any, as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of this Act, either in whole or in any part of the state or for any specified period of occasion or as regards any specified class of persons.

97 Bar of certain suits, prosecutions and limitations, etc :- (1) No suit shall lie in any Civil Court against the State Government or any Officer exercising powers under this Act. for damages for any act in good faith done or omitted to be done or ordered to be done in pursuance of the provisions of this Act or rules, notifications or orders made or passed thereunder or any other law for the time being in force relating to the Excise Revenue.

(2) No Civil Court shall try any suit against the State Government in respect of any thing done, or alleged to have been done by any Officer in pursuance of this Act, and except with the previous sanction of the State Government no Judicial Magistrate shall take cognizance of any charge made against any Officer exercising powers under this Act. or any other law relating to the Excise Revenue.

(3) No Civil Court shall try any suit against any other person under this Act, and no Judicial Magistrate shall take cognizance of any charge against such persons, unless the suit or prosecution, as the case may be, is instituted within six months after the date of the act complained of.

98. Certain proceedings under the Act to be judicial proceedings :- Every proceeding under this Act, before-

- (a) the Collector, or
- (b) before the Authorized Officer under Sub-Section (2) of Section 71, or
- (c) before any Officer of such rank as the State Government may, by notification, specify, who is exercising the powers of the Collector.

shall be deemed to be a judicial proceeding within the meaning of clause (i) of Section 2 of the Code of Criminal Procedure, 2 of 1974 and any offence committed in such proceeding shall be punishable as per the provision of Section 228 of the Indian Penal Code, 45 of 1860.

99. Forfeiture of illegally acquired properties :- (1) Any property acquired by any person convicted of an offence under this Act or the Bihar and Odisha Act 2 of 1915 either in his name or in the name of other persons as may be prescribed, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under this Act, shall stand forfeited to the State free from all encumbrances.

(2) Copy of the judgment in case of conviction for an offence under this Act. shall be forwarded by the Special Court to the Collector of the District for taking appropriated action under Section 101.

100. Competent Authority for forfeiture of illegally acquired property :- The Presiding Officer of every Special Court constituted under this Act shall be the Competent Authority for the purpose of forfeiture of illegally acquired property under Section 99 :

Provided that the Courts exercising the powers of Special Courts under Sub-Section (3) of Section 87 shall be Competent Authority till Special Courts under the said section are constituted.

101. Submission of details of property for forfeiture :- (1) The Collector or any other Officer authorized by the State Government, in this behalf, shall submit details of the property of the persons mentioned in Section 99 alongwith an application to the Competent Authority within a period of one year from the date of Judgment for forfeiture.

(2) If the Collector or the Officer authorized under Sub- section (1) has reason to believe that such illegally acquired property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property, he may make an order for seizing such property and, where it is not practicable to seize such property he may make an order that such property shall not be transferred or otherwise dealt with except with prior permission of the Competent Authority and a copy of such order shall be served on the person concerned and to the concerned Regional Transport Authority in respect of motor vehicles and Registration Officer in respect of immovable properties.

(3) The Collector or the officer authorized as aforesaid, as the case may be, shall submit a copy of the order issued under Sub- section (2) to the Competent Authority within a period of two working days of its issue and such order shall cease to have effect after of sixty days from its issue unless it is continued by the Competent Authority within the said period.

102. Issue of notice to persons likely to be affected :- The Competent Authority may, on receipt of application for forfeiture, send notice to the person or persons likely to be affected, calling upon him or them within a period of thirty days specified in the notice, to show cause and substantiate the source of their income, earning or assets, out of which or by means of which he or they acquired such property, why all or any of such properties shall not be forfeited to the State free from all encumbrances.

103. Findings of the Competent Authority :- The Competent Authority may, after considering the reply, if any, to the notice issued under Section 102 and the materials before it and after giving the person affected, a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties :

Provided that if the person affected does not appear before the competent authority or represent his case before it within a period of thirty days specified in the aforesaid notice, the Competent Authority may proceed to record a finding under this Sub- section *ex parte* on the basis of the evidence available before it.

104. Forfeiture of illegally acquired property to State :- Where the Competent Authority records a finding under Section 103 that any property has been illegally acquired, it shall declare that such property shall stand forfeited to the State free from all encumbrances.

105. Burden of proof to lie on the persons affected :- For the purpose of proceedings under this Chapter the burden of proving that any property is not illegally acquired, lies on the persons affected.

106. Fine in lieu of forfeiture :- (1) Where the Competent Authority makes a declaration under Section 104 that any property stands forfeited to the State, and it is a case where the source of only a part of illegally acquired property has not been proved

to the satisfaction of the Competent Authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under Sub-section (1) the person affected shall be given a reasonable opportunity of being heard

(3) Where the person affected pays the fine due under Sub-section (1), the Competent Authority may, by order, revoke the declaration of forfeiture under Section 104 and thereupon such property shall stand released.

107. Appeal on the orders of Competent Authority :— Any person aggrieved by an order of the Competent Authority may, within thirty days from the date of passing of such order prefer an appeal to the Court Sessions.

108. Bar of suits and prosecution against the State and Officers :— No suit, prosecution or other legal proceedings shall lie against the State Government or any other Officer of the State Government exercising any powers or discharging any functions or performing duties in relation to the forfeiture of illegally acquired property for thing done or intended to be done in good faith under this Act.

109. Repeal and savings :— (1) The Bihar and Odisha Act 2 of 1915 in its application to the State of Odisha is hereby repealed.

(2) Notwithstanding such repeal, all rules, orders, notification licences, permits, passes or exclusive privileges made, issued or granted under the provisions of the said repealed enactment which are not inconsistent with any provisions of this Act shall be deemed to have been respectively made, issued or granted under the corresponding provision of this Act.

(3) The repeal will not effect the operation and its process and procedures, as laid down in the repealed Act, if the same was done before the date of repeal.

By Order of the Governor

S. K. MOHANTY

Principal Secretary to Government, I/c.