

No.211/XXXVI(3)/2018/28(1)/2018

Dated Dehradun, April 25, 2018

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of 'The Uttarakhand (The United Provinces Excise Act, 1910) (Adaptation and Modification Order, 2002) (Amendment) Act, 2018' (Adhiniyam Sankhya: 23 of 2018).

As passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 23 April, 2018.

The Uttarakhand (The United Provinces Excise Act, 1910) (Adaptation and Modification Order, 2002) (Amendment) Act, 2018

(Uttarakhand Act No. 23 of 2018)

An

Act

further to amend the United Provinces Excise Act, 1910 (UP Act no 4 of 1910) (as applicable to the State of Uttarakhand) to the context of the State of Uttarakhand,

Enacted by the Uttarakhand State Assembly in the Sixty-ninth Year of the Republic of India-

Short Title and Commencement

1. (1) This Act may be called the Uttarakhand (the U.P. Excise Act, 1910) (Adaptation and Modification Order, 2002) (Amendment) Act, 2018.
- (2) It extends to the whole of Uttarakhand.
- (3) It shall come into force at once.

Amendment of Section 3

2. In the United Provinces Excise Act, 1910 (UP Act no 4 of 1910) (as applicable to the State of Uttarakhand), hereinafter is referred to as the Principal Act, in Section 3-

(i) Clause (12) shall be substituted as follows, namely-

“(12) "intoxicating drug" means following intoxicating drug, namely-

Narcotics drugs and substances, other than leaves of hemp or drink prepared by it or any other intoxicating substances declared under the Narcotic Drugs And Psychotropic Substances, Act, 1985 which is notified by the State Government.”

(ii) Clause (16) shall be substituted as follows, namely-

(16) "sale" with its grammatical variations includes any transfer other than by way of service of liquor and its service and by gift in the hotel, restaurant, club and notified places under the licence in sale;

(iii) New clauses (23),(24),(25),(26),(27) and (28) shall be inserted after Clause (22) as follows, namely -

(23) "Hotel" : means a commercial establishment or a part of a building where residential accommodation is, by way of business, provided for a monetary consideration;

(24) "Club" : means any person or body of persons, registered under the Company Act, 2013 or the Uttarakhand Co-operative Society Act, 2003 or Society Registration Act, 1860 providing services, facilities or advantages, primary to its members, for a subscription or any other amount;

(25) "Restaurant": means a commercial establishment where meals are prepared and served to customers for a monetary consideration.

Explanation: Definition of restaurant given in UP Restaurant

Consumption of Liquor Rules, 1952(as adopted and modified in the Uttarakhand), shall be applicable for relevant purposes inspite of the said definition.

(26) "Notified place": means any building or part of a building and the premises appurtenant thereto and any specifically demarcated land wherein the supply of liquor in terms of a licence is permitted for consumption within such notified place;

(27) "Service and supply of liquor": means providing of liquor for consideration at clubs, restaurants, hotels and any other notified place on the basis of licence issued on the condition that such liquor shall be consumed within the premises of such hotel, club, restaurant or other notified place;

(28) "Shop of liquor": means such retail shop who have licence of sale liquor in the sealed bottle etc. in retail."

Amendment of section 17 3.

Sub section (1) of section 17 of the Principle Act shall be substituted as follows, namely-

"(1) (a) No intoxicant shall be manufactured ;

(b) no portion of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured shall be collected;

(c) no liquor shall be bottled for sale ; and

(d) no person shall use, keep or have in his possession any substantial, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than *tari*.

Except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector."

Amendment of section 24.A

4. In Section 24.A of the Principle Act,-

(i) Sub-section (1) and (2) shall be substituted as follows, namely-

"(1) Subject to the provisions of section 31, the Excise Commissioner may grant to any person a licence or licences for the exclusive or other privilege -

(a) of manufacturing or of supply by wholesale, or of both; or

(b) selling by retail; or

(c) of selling by wholesale

(d) of selling by retail at shops

any foreign liquor in any locality.

(2) The grant of licence or licences under clause (d) of sub-section (1) in relation to any locality shall be without prejudice to the grant of licences for the retail sale of foreign liquor in the same locality in hotels, restaurants, clubs and notified places for consumption on their premises

(ii) New sub-section (5) and (6) shall be inserted after sub-section (4) as follows, namely-

"(5) **Exclusive privilege for service and supply of Liquor :** Licence may be granted for service and supply for consumption of liquor within the premises of hotel, restaurant, club and notified places. Every hotel, club, restaurant or any notified place having a licence shall be entitled to engage in the service and supply of liquor to members, guests or other persons for consumption of such liquor within the premises of such club, hotel, restaurant or notified place, irrespective of whether such club, hotel, restaurant or notified place, is located on or near any State or National Highway:

Provided that if any persons obtains permit for serving of liquor at a private place, then such place shall be considered as notified place for the purpose of this section.

(6) Any licence issued to any hotel, club, restaurant or other notified place for the sale of liquor shall be deemed to have been and always be deemed to have been issued for the service and supply of liquor and all relevant provisions of this Act and the rules made there under shall continue to apply as they did for sale of liquor.

Explanation- For the removal of doubt, it is hereby clarified that all taxes, duties, cess or other levies as applicable to sale of liquor shall apply to service and supply of liquor unless otherwise specified in this or any other Act, rule or notification made thereunder."

Amendment of section 36 5. Section 36 with title of Principle Act shall be substituted as follows, namely-

“Surrender of licence regarding retail sale or service and supply of liquor :

Any holder of a licence regarding retail sale or service and supply of liquor under this Act may surrender his licence on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the licence for the whole period for which it would had been continued if such surrender not done ;

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrender such a licence, he may remit to the holder thereof the sum so payable on surrender, or any portion thereof.

Explanation- The words "holder of a licence" as used in this section, also include a person whose tender or bid for a licence has been accepted, although he may not actually have received the licence.”

Amendment of section 41

6. Clauses (a),(b),(c) of section 41 in Principle Act shall be substituted as follows, namely-

“(a) regulating the manufacture, supply, storage or sale of any intoxicant including-

(i) the erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fittings implements and apparatus to be maintained therein ;

(ii) the collection of portions of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured and the manufacture of any intoxicating drug therefrom;

(b) regulating the deposit of any intoxicant in a warehouse and the removal of any intoxicant from any such warehouse or from any distillery or brewery ;

(c) prescribing the scale of fees or manner of fixing, the fees payable for any licence, permit or pass including any consideration for the grant of any exclusive or other privilege granted under section 24 or section 24-A or for storing of any intoxicant :

Provided that nothing contained in this clause shall be construed to prevent the State Government from levying any fee, including vend fee, as part of consideration for the granting of any such privilege by notification made from time to time.

Explanation—

(1) Fees may be prescribed under this sub-clause at different rates for different class of licences, permits, passes or storage and for different areas.

(2) The manner of fixing such fee or consideration includes any one or more of the following manners; namely-

- (i) auction,
- (ii) invitation of tenders,
- (iii) assessment on the basis of sales made or quota lifted under the licence, permit or pass;
- (iv) any other provision in addition to aforesaid.

Amendment of section 60

7. Sub-section (1) of section 60 in Principle Act shall be substituted as follows, namely -

“(1) Whoever, in contravention of this Act or of any rule or order made thereunder, or of any licence, permit or pass obtained thereunder -

- (a) imports, exports, transport or possesses any intoxicant; or
- (b) collects or sells any portion of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured; or
- (c) constructs or runs any distillery, brewery or vintnery; or
- (d) uses, keeps or has in his possession any material, stills,

utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than *tari*; or

(e) removes any intoxicant from any distillery, brewery, vintnery or warehouse licensed, established or continued under this Act; or

(f) bottles any liquor for purposes of sale; or

(g) sells any intoxicant, save in the case provided in section 61; or

(h) taps or draws *tari*, from any producing tree in the areas notified under section 42;

shall be punished with imprisonment which may extend to two years and with fine which shall, in the case of an offence under clause (i) not be less than ten times the amount of duty which would have been leviable if such intoxicant had been dealt with in accordance with this Act, and the rules and orders made thereunder or in accordance with any licence, permit or pass obtained thereunder, and in any other case, not be less than ten times the amount of such duty, or five thousand rupees, whichever is greater.

Amendment of section 61

8. Clauses (a) and (b) of section 61 in Principle Act shall be substituted as follows, namely-

“(a) in contravention of section 22 sells or delivers any liquor or intoxicating drug to any person apparently under the age of twenty one years; or

(b) in contravention of section 23 employs or permits to be employed on any part of his licensed premises referred to in that section, any person under the age of twenty one years or any woman; he shall be punished with fine which may extend to ten thousand rupees."

Amendment of section 62

9. Section 62 with title in the Principle Act shall be substituted as follows, namely-

"Penalty for rendering denatured spirit fit for human consumption:

Whoever renders attempts to render fit for human consumption any spirit whether manufactured in India or not which has been denatured, or has in his possession any denatured spirit which has been rendered fit for human consumption or in respect of which any attempt has been made to render it so fit shall be punished with imprisonment for a term which shall not be less than six months, and which may extend to three years, and shall also be liable to fine of five thousand rupees which may extend to fifty thousand rupees.

Explanation— For the purpose of this section, it shall be presumed that any spirit which is proved to contain any quantity of any denaturant, is or contains or has been derived from denature spirit."

Amendment of section 63

10. Section 63 with title in the Principle Act shall be substituted as follows, namely-

"Penalty for possession of intoxicant un-lawfully imported, etc.

Whoever, without lawful authority, has in his possession any quantity of any intoxicant knowing them same to have been unlawfully imported, transported or manufactured or knowing the prescribed duty not to have been paid thereon, shall be punished with imprisonment for a term which may extend to one year or with fine which shall not be less than five thousand rupees and which may extend to ten times or with both."

Amendment of section 64

11. In section 64 with title in the Principle Act shall be substituted as follows, namely-

"Penalty of certain acts by licensee or his servant:

Whoever, being the holder of a licence, permit or pass granted under this Act or being in the employment of such holder and acting on his behalf-

(a) fails to produce such licence, permit or pass on the demand of any Excise Officer or of any other officer duly empowered to make such demand; or

(b) willfully does or omits to do anything in breach of any of the conditions of the licence, permit or pass, not otherwise provided in this Act;

(c) save in a case provided for by section 60, willfully contravenes any rule made under section 40;

shall for each such contravene be punished with fine which may extend to twenty thousand rupees."

Amendment of section 64A

12. Section 64 A with title in the Principle Act shall be substituted as follows, namely-

"Penalty for acculturation by licence vendor or manufacturer:

(1) Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act or a person in the employment of such holder, mixes or permits to be mixed with the intoxicant sold or manufactured by him any noxious drug or any improper ingredient likely to add to its actual or apparent intoxicating quality or strength or any Article prohibited by any rule made under the Act, when such mixture does not amount to an offence of adulteration under section 272 of the Indian Penal Code, shall be punished with imprisonment for a term which shall not be less than six months and which may extend to three years and also with fine which shall not be less than ten thousand rupees and which may extend to twenty thousand rupees.

(2) Whoever being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employment of such holder sells or keeps or exposes for sale as foreign liquor which he knows or has reason to believe to be country liquor shall be punished with imprisonment for a term which may extend to

three years and with fine which may extend to twenty thousand rupees :

Provided that the punishment shall not be less than -

(i) imprisonment for three months and fine of two hundred rupees for the first offence; and

imprisonment for six months and fine of five hundred rupees for each of the second of subsequent offences."

Amendment of section 65

13. Section 65 with title in the Principle Act shall be substituted as follows, namely-

"Penalty for consumption in chemists shop, etc.

(1) If any chemist, druggist, apothecary or keeper of dispensary allows any intoxicant which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty thousand rupees, or with both.

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

Amendment of section 74

14. Section 74 with title in the Principle Act shall be substituted as follows, namely-

“Compounding of offences:

(1) Any Excise Officer specially empowered by the State Government in that behalf may accept from any person whose licence, permit or pass is liable to be cancelled or suspended under section 34, or who is reasonably suspected of having committed an offence punishable under section 64 or section 68, a sum of money not exceeding One Lakh rupees in lieu of such cancellation or suspension or by way of composition for the offence, which may have been committed, as the case may be, and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof (as estimated by such officer).

(2) Any officers specially empowered by the State Government in that behalf may subject to any general or special order of the State Government compound, whether before or after the institution of the prosecution, any offence punishable under clause (a) of sub-section (1) of section 60 or section 63, where the quantity of the intoxicant involved does not exceed the quantity notified by the State Government in that behalf, or any offence punishable under sub-section (3) of section 60, on payment of such sum of money as composition fee as he think fit, which shall not be less than five thousand rupees ;

Provided that minimum amount of compound shall not be less than the fine mentioned in section 60(1),60(3) and 63.

(3) On the payment by such person of sum of such money or such value or both, as the case may be, such person, if in custody, shall be set at liberty and all the property seized may be released and no proceeding shall be instituted or continued against such person in any criminal court. The acceptance of such sum of money by way of composition shall be deemed to amount of an acquittal and in no case shall any further proceeding be taken against such person or property with reference to the same act.”

Amendment of section 74A

15. Section 74A with title in the Principle Act shall be substituted as follows, namely-

“Imposition of penalty:

(1) If a holder of a licence, permit or pass granted under this Act or an employee of such holder contravenes any of the conditions of the licence, permit or pass or any rule made under this Act, any Excise Officer authorized by the State Government in this behalf may impose a penalty not exceeding (1,00,000/-)One Lakh rupees.

- (2) No order imposing a penalty shall be made under sub-section (1) unless the holder of the licence, permit or pass or the employee concerned is given –
- (a) a notice in writing informing him of the ground of which it is proposed to proceed under this section;
 - (b) a reasonable opportunity of making a representation in writing, within such time as may be specified in the notice, against such grounds; and
 - (c) a reasonable opportunity of being heard in the matter.
- (3) No person on whom a penalty is imposed under sub-section (1) shall be liable to prosecution in respect of any offence under this Act on the same fact.”

By Order,

Meena Tiwari,
Principal Secretary.

कारण और उद्देश्य

संयुक्त प्रान्त आबकारी अधिनियम, 1910 (सं०प्रा० अधिनियम सं० 4 वर्ष 1910) (उत्तराखण्ड राज्य में यथाप्रवृत्त) में मादक भेषज, विक्रय, होटल, क्लब, रेस्टोरेट, अधिसूचित स्थान, शराब परोसना, शराब की दुकान को वर्तमान परिप्रेक्ष्य में पुनः परिभाषित किया जाना आवश्यक है, जिस हेतु धारा-3 के खण्ड (12) व (16) में संशोधन तथा खण्ड-22 के उपरान्त 06 खण्ड(23),(24),(25),(26), (27) तथा (28) जोड़े जाने हैं। इसके अतिरिक्त अन्य परिणामिक संशोधन करने के लिए संयुक्त प्रान्त आबकारी अधिनियम, 1910 (उत्तराखण्ड राज्य में यथाप्रवृत्त) की धारा 17, 24क, 36, 41, 60, 61, 62, 63, 64, 64क, 65, 74, तथा 74क को संशोधित/प्रतिस्थापित किया जा रहा है। ये संशोधन वर्तमान परिप्रेक्ष्य में आवश्यक और अपरिहार्य हैं।

2- प्रस्तुत विधेयक उपरोक्त उद्देश्यों की पूर्ति करता है।