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4th Session 1968-69



Finance (Amendment) Act, No. 50 of 1968

Date of Assent: December 24, 1968

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Finance (Amendment) Act, No. 50 of 1968

L. D.—O. 46/68.

AN ACT TO AMEND THE FINANCE ACT, NO. 11 OF 1963.

[Date of Assent: December 24, 1968]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Finance (Amendment) Act, No. 50 of 1968.

Short title.

2. Section 119 of the Finance Act, No. 11 of 1963, hereinafter referred to as the "principal Act", is hereby amended as follows:—

Amendment of section 119 of the Finance Act, No. 11 of 1963.

(1) in sub-section (1) of that section, by the substitution, for the words "carries on in any place in Ceylon", of the words "carries on in Ceylon"; and

(2) in sub-section (5) of that section, by the substitution, for the words "for any year of assessment in respect of", of the words "for any year of assessment ending on or before September 30, 1968, in respect of".

3. Section 120 of the principal Act is hereby amended as follows:—

Amendment of section 120 of the principal Act.

(1) by the insertion, immediately after sub-section (1) of that section, of the following sub-section:—

"(1A) Where a person is chargeable with business turnover tax in respect of any business carried on by him and a change of ownership of that business occurs, then notwithstanding the provisions of sub-section (1), the new owner of that business shall be chargeable with business turnover tax as though he had been the owner of that business immediately before the occurrence of the change of ownership.";

(2) in sub-section (2) of that section—

(a) by the substitution in paragraph (a) of that sub-section, for the words "shall

be deemed to be a separate business; and ”, of the following:—

“ shall—

(i) for any year of assessment ending on or before September 30, 1968, be deemed to be a separate business, and

(ii) for any year of assessment commencing on or after October 1, 1968, be deemed to be a part of the same business; ” ;

(b) by the insertion, immediately after paragraph (a) of that sub-section, of the following paragraph:—

“ (aa) where businesses of a like nature are carried on by a person in the same place or in different places, the businesses so carried on by him shall, for every year of assessment commencing on or after October 1, 1968, be deemed to be one business; and ”; and

(3) by the repeal of sub-section (3) of that section and the substitution therefor of the following sub-section:—

‘ (3) (a) For the purposes of this Part of this Act “ business ” in relation to any year of assessment ending on or before September 30, 1968, includes any trade or vocation but does not include—

- (i) any profession;
- (ii) any agricultural undertaking;
- (iii) any undertaking for the export of any manufactured or processed article;
- (iv) the business of a banker, financier, moneylender, pawnbroker, commission agent or broker;
- (v) any insurance business;

- (vi) the business of carrying on an educational establishment; and
- (vii) any other business the turnover from which may be exempted from the business turnover tax by Order made by the Minister, approved by the House of Representatives and published in the *Gazette*.

(b) For the purposes of this Part of this Act "business" in relation to any year of assessment commencing on or after October 1, 1968, includes any trade, profession, vocation, or the business of any person taking commissions or fees in respect of any transactions or services rendered, or the business of an independent contractor but does not include—

- (i) any undertaking for the production of unmanufactured or unprocessed agricultural or animal produce;
- (ii) any undertaking for the purpose of rearing livestock or poultry;
- (iii) any undertaking for the manufacture of copra, desiccated coconut, coconut fibre, crepe rubber, sheet rubber or tea (other than an undertaking for the blending of tea);
- (iv) any undertaking for the export of any manufactured or processed article;
- (v) the business of a banker, financier, moneylender or pawnbroker;
- (vi) any insurance business;
- (vii) the business of carrying on an educational establishment; and
- (viii) any other business the turnover from which may be exempted from the business turnover tax by Order made by the Minister, approved by the House of Representatives and published in the *Gazette*.

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Amendment of section 122 of the principal Act.

4. Section 122 of the principal Act is hereby amended by the addition, at the end of that section, of the following sub-section:—

“(4) Where upon the final determination of an appeal made under section 138, any tax in default to which any sum or sums under sub-section (3) has or have been added is reduced, then such sum or sums shall be calculated on the tax ~~as~~ so reduced.”.

Insertion of new section 123A in the principal Act.

5. The following new section is hereby inserted immediately after section 123, and shall have effect as section 123A, of the principal Act:—

“Forms.

123A. The Commissioner may from time to time prescribe the forms to be used for all or any of the purposes of this Act; and any form so prescribed may from time to time be amended or varied by the Commissioner, or some other form may be substituted by the Commissioner in place of any form so prescribed.”.

Amendment of section 125 of the principal Act.

6. Section 125 of the principal Act is hereby amended as follows:—

(a) by the renumbering of that section as sub-section (1) of section 125;

(b) by the addition, immediately after the renumbered sub-section (1), of the following sub-section:—

“(2) Where an assessment is made under sub-section (1) in respect of any person for any quarter in any year of assessment, the amount so assessed shall be deemed to be business turnover tax in default for that quarter and accordingly such person shall, from the date on which such person should have paid the tax for that quarter under section 122 (2), be liable to the penalty under section 122 (3) in respect of such amount.”.

Amendment of section 128 of the principal Act.

7. Section 128 of the principal Act is hereby amended in paragraph (c) of that section by the substitution, for the words “money received”, of the words “money received or receivable”.

Amendment of section 138 of the principal Act.

8. Section 138 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section by the substitution, for the words “by such assessment or additional assessment.”, of the words “by

such assessment or additional assessment together with any penalty imposed on him by this Part of this Act:

“ Provided that the Commissioner, upon being satisfied that owing to absence from Ceylon, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal. ”; and

(2) by the insertion, immediately after sub-section (1), of the following sub-sections:—

“(1A) Where the assessment appealed against has been made in the absence of a return, the petition of appeal shall be sent together with a return duly made.

(1B) A petition of appeal shall be rejected by the Commissioner—

(a) if it is made after the expiry of the period allowed under sub-section (1) for the making of an appeal, or

(b) if the appellant has failed to comply with the provisions of sub-section (1A). ”.

9. The following new section is hereby inserted immediately after section 138, and shall have effect as section 138A, of the principal Act:—

Insertion of new section 138A in the principal Act.

“ Appeals on a question of law to the Supreme Court.

138A. (1) The decision of the Board shall be final:

Provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained unless it is made in writing and delivered to the Clerk to the Board, together with a fee of fifty rupees, within one month of the date of the Board's decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him.

(2) The stated case shall set forth the facts, the decision of the Board, and the amount of the business turnover tax in dispute where such amount exceeds five thousand rupees, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the same.

(3) For the purpose of the application of the provisions of the Stamp Ordinance—

(a) all proceedings before the Supreme Court on any case stated under this section or incidental to the hearing, determination or disposal of any such case, shall be deemed to be civil proceedings before the Supreme Court of the value of five thousand rupees, or of such greater amount as may be set forth by the Board under sub-section (2) as the amount of the business turnover tax in dispute;

(b) every such case stated shall, together with all books, documents and papers annexed thereto by the Board, be deemed to be a single exhibit in civil proceedings before the Supreme Court; and

(c) the Commissioner, if he is the appellant, shall be deemed to be a Government officer suing, or if he is the respondent to the appeal, a Government officer being sued, in a suit *virtute officii*.

(4) At or before the time when he transmits the stated case to the Supreme Court, the party requiring it shall send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.

(5) Any two or more Judges of the Supreme Court may cause a stated case to be sent back for amendment, and thereupon the case shall be amended accordingly.

(6) Any two or more Judges of the Supreme Court shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the court upon such question confirm, reduce, increase, or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the court thereon. Where a case is so remitted by the court, the Board shall revise the assessment as the opinion of the court may require.

(7) In any proceedings before the Supreme Court under this section, the court may make such order in regard to costs in the Supreme Court and in regard to the sum paid under sub-section (1) as to the court may seem fit.

(8) For the purpose of enabling the Commissioner or any other party to appeal to Her Majesty in Council against any order of the Supreme Court under sub-section (6) and for the purpose of the application of the provisions of the Appeals (Privy Council) Ordinance—

(a) an order made by the Supreme Court under sub-section (6) shall, together with any order of that court under sub-section (7), be deemed to be a final judgment of the Supreme Court in a civil action between the Commissioner and such other party;

(b) the value of the matter in dispute in such civil action shall be deemed to be five thousand rupees:

Provided that where the Board has, under sub-section (2), set forth a higher amount

than five thousand rupees as the amount of the tax in dispute, the value of the matter in dispute in such civil action shall be the higher amount so set forth by the Board; and

(c) the Commissioner on any appeal to Her Majesty in Council, shall not be required to make any deposit or pay any fee or furnish any security prescribed by or under the Appeals (Privy Council) Ordinance. ” .

Amendment of section 151 of the principal Act.

10. Section 151 of the principal Act is hereby amended in sub-section (5) of that section, as follows:—

(1) by the insertion, immediately after paragraph (a) of that sub-section, of the following paragraph:—

“ (aa) open and examine any receptacle where any book of account, register, record or other document may be found and make an inventory of any of the articles found therein; ”;

(2) in paragraph (b) of that sub-section, by the substitution, for the words “ take copies of, ”, of the words “ examine and take copies of, ”; and

(3) by the insertion, immediately after paragraph (b) of that sub-section, of the following paragraph:—

“ (bb) count and make a record immediately of the cash found in such place or building; ”.

Amendment of section 152 of the principal Act.

11. Section 152 of the principal Act is hereby amended as follows:—

(1) by renumbering of that section as sub-section (1) of that section; and

(2) by the addition, immediately after the renumbered sub-section (1), of the following sub-section:—

“ (2) Where it is proved to the satisfaction of the Commissioner by claim made in writing that any person has paid any sum referred to in sub-section (3) of section 122 which is in

excess of the sum which he should have paid if such sum were calculated in accordance with the provisions of sub-section (4) of that section, such person shall be entitled to have refunded the amount so paid in excess, if such claim is made within three years of the end of the year of assessment in which the sum referred to in the aforesaid sub-section (3) was paid."

12. Section 154 of the principal Act is hereby amended in sub-section (4) of that section by the substitution, for the words "necessary for the performance of any duty under this Part of this Act and the Commissioner may," of the words "necessary for the performance of any duty under this Part of this Act or under any such other written law and the Commissioner may,".

Amendment of section 154 of the principal Act.

13. (1) Section 159 of the principal Act is hereby amended in sub-section (1) of that section as follows:—

Amendment of section 159 of the principal Act.

(a) by the substitution, for the definition of "authorized representative", of the following new definition:—

"authorized representative" means any individual—

(1) who is authorized in writing by a person to act on his behalf for the purposes of this Act and who is—

(a) in any case—

- (i) a member of the Institute of Chartered Accountants of Ceylon,
- (ii) an accountant approved by the Commissioner,
- (iii) an advocate or a proctor, or
- (iv) an employee regularly employed by the person concerned;

(b) in the case of an individual, a relative;

(c) in the case of a company, a director or the secretary;

(d) in the case of a partnership, a partner;

(e) in the case of a body of persons, a member of such body; or

(2) who is authorized in writing from time to time, by a person to act on his behalf for the purposes of this Act in respect of matters relating to such year of assessment as is specified in the authorization and who, being an individual registered as an auditor under the Companies (Auditors) Regulations, is approved by the Commissioner; ;

(b) in the definition of "body of persons", by the substitution, for the words "and any Hindu undivided family but does not include a company or a partnership;", of the words "any partnership and any Hindu undivided family;"; and

(c) in the definition of "turnover", by the substitution, for the words "in respect of that business", of the words "in respect of that business or for services performed in carrying on that business".

(2) The amendment made in the principal Act by paragraph (b) of sub-section (1) of this section shall be deemed to have come into force on January 1, 1964.