


भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 1
PART II—Section 1

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 5] नई दिल्ली, बुधस्वतिवार, फरवरी 3, 1983/माघ 14, 1904
No. 5] NEW DELHI, THURSDAY, FEBRUARY 3, 1983/MAGHA 14, 1904

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह जलग संकलन
के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 3rd February, 1983/Magha 14, 1904 (Saka)

The following Act of Parliament received the assent of the President on the 2nd February, 1983 and is hereby published for general information:—

**THE CONSTITUTION (FORTY-SIXTH AMENDMENT)
ACT, 1982**

[2nd February, 1983.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Forty-sixth Amendment) Act, 1982. Short title.

2. In article 269 of the Constitution,—

(a) in clause (1), after sub-clause (g), the following sub-clause shall be inserted, namely:—

Amend-
ment
of article
269.

“(h) taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.”;

(b) in clause (3), for the words “sale or purchase of goods”, the words “sale or purchase of, or consignment of, goods” shall be substituted.

Amend-
ment
of article
286.

3. In article 286 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

“(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause

(d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”.

Amend-
ment
of article
366.

4. In article 366 of the Constitution, after clause (29), the following clause shall be inserted, namely:—

“(29A) “tax on the sale or purchase of goods” includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

5. In the Seventh Schedule to the Constitution, in List I—Union List, after entry 92A, the following entry shall be inserted, namely:—

“92B. Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such

Amend-
ment of
Seventh
Schedule.

consignment takes place in the course of inter-State trade or commerce.”.

6. (1) For the purposes of every provision of the Constitution in which the expression “tax on the sale or purchase of goods” occurs, and for the purposes of any law passed or made, or purporting to have been passed or made, before the commencement of this Act, in pursuance of any such provision,—

Validation
and ex-
emption.

(a) the said expression shall be deemed to include, and shall be deemed always to have included, a tax (hereafter in this section referred to as the aforesaid tax) on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) for cash, deferred payment or other valuable consideration; and.

(b) every transaction by way of supply of the nature referred to in clause (a) made before such commencement shall be deemed to be, and shall be deemed always to have been, a transaction by way of sale, with respect to which the person making such supply is the seller and the person to whom such supply is made, is the purchaser,

and notwithstanding any judgment decree or order of any court, tribunal or authority, no law which was passed or made before such commencement and which imposed or authorised the imposition of, or purported to impose or authorise the imposition of, the aforesaid tax shall be deemed to be invalid or ever to have been invalid on the ground merely that the Legislature or other authority passing or making such law did not have competence to pass or make such law, and accordingly:—

(i) all the aforesaid taxes levied or collected or purporting to have been levied or collected under any such law before the commencement of this Act shall be deemed always to have been validly levied or collected in accordance with law;

(ii) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any court, tribunal or authority of any decree or order directing the refund of, any such aforesaid tax which has been collected;

(iii) recoveries shall be made in accordance with the provisions of such law of all amounts which would have been collected thereunder as such aforesaid tax if this section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax—

(a) where such supply has been made, by any restaurant or eating house (by whatever name called), at any time on or after the 7th day of September, 1978 and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time; or

(b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972 and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time:

Provided that the burden of proving that the aforesaid tax was not collected on any supply of the nature referred to in clause (a) or, as the case may be, clause (b), shall be on the person claiming the exemption under this sub-section.

(3) For the removal of doubts, it is hereby declared that,—

(a) nothing in sub-section (1) shall be construed as preventing any person—

(i) from questioning in accordance with the provisions of any law referred to in that sub-section, the assessment, reassessment, levy or collection of the aforesaid tax, or

(ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under any such law; and

(b) no act or omission on the part of any person, before the commencement of this Act, shall be punishable as an offence which would not have been so punishable if this Act had not come into force

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.