

GOVERNMENT OF GOA

LAW COMMISSION

Reforms in Excise Laws

Report No. 20

December 2011

LAW COMMISSION, GOA

(REPORT No. 20)

Reforms in Excise Laws

Forwarded to the Chief Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the 25th day of March 2012.

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

The Commission consists of the Chairman, and the two Members.

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.

**The text of this Report is available on the internet
www.goalawcommission.gov.in**

**Any enquiry relating to this Report should be addressed to the O.S.D. to
Chairman/ Acting Secretary and sent either by post to the Law
Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa or email to
chairman-glc.goa@nic.in or rdkhalap@rediffmail.com**

Report

The Government proposes to modify, amend and redraft the Goa Excise Duty Act 1964 and the Rules made thereafter. Accordingly, the file was referred to us.

As the Government had not outlined its views and parameters of change it desired to bring about, we addressed a few queries to the Government.

- (i) The nature of defects in the existing Excise Legislations noticed/brought to their notice in the course of implementation of the Excise Act and Rules there under.
- (ii) The nature of reforms/changes which according to the Government are necessary to be brought about
- (iii) Broad perspectives/principles upon which the Excise Legislations must be framed.
- (iv) Objectives sought to be achieved by the Government through the new legislation.
- (v) Any other issues which may impinge upon or affect favourably or adversely the ongoing Excise regime in Goa.

The Commissioner of Excise furnished his reply as follows-

“There are number of loopholes in the Act broadly as under:

- 1) The offences and the quantum of punishment are not matching. The fines and penalties are not matching. Even when the Department notices any illegality like transportation of excisable articles illegally the fine ranges only upto Rs.10,000/- which is not matching with the quantum of offence committed. In some cases only the competent court has the powers to try the offence and on conviction a fine Rs.10,000/- maximum can be imposed.**
- 2) In case the Department notices any one is manufacturing spurious liquor or adulterated liquor which results in the death of a person the quantum of punishment is not mentioned in the present Act whereas in other states in case of death of a person occurs due to spurious liquor the punishment ranges to death penalty and fine.**

- 3) If a person gets involved repeatedly in the illegal manufacture and sale of the same the Act does not prescribe attachment of the said premise for misusing till the enquiry is over.**
- 4) In case of any disturbance under CRPC only the Police or the Collector has the powers to close down the Bars and Restaurants in the particular vicinity. When the Commissioner of Excise is authorized to issue the licence the Act does not specify these powers to the Commissioner of Excise.**
- 5) For all offences the appeal should only lie with the District Courts and not below whereas in the present Act for any offence they can appeal to JMFC. If the Act is very stringent it will discourage people to commit any offence.**
- 6) In other states the vehicles transporting excisable articles illegally the excise officials are empowered to confiscate the same alongwith the goods even though they are not owned goods. In our present Act many times the vehicle owners who are directly involved in illegal transportation later take the plea that they are not aware of the goods and the vehicles are released.**
- 7) For the services rendered by Excise Inspector who is posted at unit the salary, H.R.A are paid by the unit. This treats as if unit management is doing a favour by giving salary. If in the Act itself it can be amended saying the percentage of salary shall be paid in lieu of services rendered by the staff.”**

Based on the replies furnished by the Commissioner of Excise and discussions held with his officers we have drafted the Excise Duty (Amendment) Bill 2012.

The Draft Bill, inter alia, provides

- i) a definition of “adulterated excisable article”
- ii) powers of Commissioner of Excise to seal and attach premises used in contravention of the Excise Act.
- iii) imprisonment extending to life imprisonment and a fine of Rs.10 lakhs for offences involving death due to consumption of adulterated excisable article.

We hope the draft Bill will meet the expectation of the Government.

RECOMMENDATIONS

The Draft Bill “Reforms in Excise Laws” may be passed in the Legislative Assembly

We recommend accordingly.

(Ramakant D. Khalap)

Chairman

(Cleofato Coutinho)

Member

(Mario Pinto Almeida)

Member

The Excise Duty (Amendment) Bill 2012
(Bill No.of 2012).

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BILL

Further to amend the Excise Duty Act 1964 (Act No. 30 of 1964.

Be it enacted by the Legislative Assembly of the State of Goa in the Sixtieth Year of the Republic of India as follows:

1. Short title and commencement:

- (1) This Act may be called the Goa Excise Duty (Amendment Bll) 2012.
- (2) It shall come into force with immediate effect.

Section 1.- In Section 2 incorporate the following :

“adulterated excisable article” means and includes excisable article if it is so processed as to affect injuriously the nature, substance and quality thereof and it becomes injurious to health and does not meet the requirements of the prescribed standards whether under this law or any other law in force

2.- Incorporate the following after the sub-section 2 of section 25

“25(3) . In case any premises is used for manufacture and sale of excisable article in contravention of this law the Commissioner of Excise shall have the powers to seal and attach the said premises for a period of thirty days and in case the Commissioner is of the opinion that the sealing and attachment should continue for further period he shall take appropriate orders from the Court which is empowered to try offences under the Act .

25(4) No order of sealing and attachment shall continue in force beyond a period of seven days under Section 25(3) unless the owner of such premises is given a reasonable opportunity of being heard in the matter

3,- Amendment to Section 29 A of the Act .

In section 29A after the words “ Sub-Divisional Magistrate ‘include the words “or The Comissioner of Excise “

4.- Amendment to section 30 of the Excise Duty Act 1964 (Act No. 30 of 1964).

In Section 30 the words “ten thousand rupees “ be substituted by “ten lakh rupees “

5. Amendment to sections 31 and 32 of the Act

In Section 31 and 32 the words “ten thousand rupees” be replaced by “one lakh rupees “

6.- Inclusion by Amendment of Section 32 A of the Act

Incorporate Section 32 A after Section 32 as under:

“32 A.- In case of a death due to consumption of adulterated excisable article the manufacturer and the seller of such adulterated excisable article shall be liable to be punished with a fine of ten lakhs rupees and imprisonment for a term which may extend to life imprisonment .