

THE ODISHA EXCISE ACT, 2005

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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

THE ODISHA EXCISE ACT, 2005

AN ACT TO PROVIDE FOR A COMPREHENSIVE LAW RELATING TO ALCOHOLIC LIQUOR AND OTHER INTOXICANTS IN THE STATE OF ORISSA BY MAKING ADEQUATE PROVISIONS FOR PUNISHMENT OF THE OFFENDERS AND TO MAKE PROVISIONS FOR MATTERS INCIDENTAL THERETO BY REPLACING THE BIHAR AND ORISSA 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

Short title,
extent and
commence-
ment.

1. (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.

Definitions.

2. 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;

- (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-II of the seventh Schedule to the Constitution of India;
- (k) "Excise Commissioner" means the officer appointed under of sub-section (1) of section 5;
- (l) "Excise Officer" means any officer or other persons appointed or invested with powers under sub-section (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, sprit 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, sprit 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, 1985 which the State Government may, by notification, declare to be an intoxicant and includes mohua flower and molasses;

61 Of 1985.

(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 objects to bring intoxication easily and is harmful to the consumers ;

(zf) "State Government" means 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.

Powers to declare what shall be deemed to be country liquor, foreign liquor and India made foreign liquor respectively.

3. 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.

Declaration of quantity for retail and wholesale.

4. 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

Appoint powers and functions of Excise Commissioner, delegations and withdrawal of powers.

5. (1) The 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 charged 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 to 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.

Control,
appeal and
revision.

6. (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

Restrictions on import.

7. (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, 1975 or the Customs Act, 1962.

51 of 1975.
52 of 1962.

Restrictions on export or transport.

8. No intoxicant shall be exported or transported unless the duty, if any, payable under Chapter V has been paid.

Power to prohibit import, export or transport.

9. 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.

Passes for import, export and transport.

10. (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

Licence
required for
manufacture.

11.(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 liters 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.

Drawing
of tari in
notified
areas.

12. 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 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.

Establishment of distilleries, breweries or warehouses.

13. (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.

Licence required for depositing or keeping intoxicant in warehouse or other place of storage.

14. 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.

Payment of duty on removal from distillery, brewery warehouse or other place of storage.

15. 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.

Possession of intoxicant not obtained from a licensed vendor.

16. (1) No person shall have in his possession any intoxicant, which has not been obtained from a licensed vendor 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 vendor 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.

Possession
of intoxicant
generally.

17.(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.

License
required for
sale.

18.(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 sell 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.

Wholesale trade in foreign liquor, India made foreign liquor and country liquor.

19. (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 at 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.

Grant of exclusive privilege of manufacture and sale of foreign liquor, India made foreign liquor and country liquor or other intoxicants etc.

20. (1) The State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege —

- (j) 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.

Exemption
in certain
cases.

21. Notwithstanding anything contained in this Act, except the provisions of section 27, it shall not be necessary for the State Government or any agency of State Government or a Corporation established, or incorporated under the Companies Act, 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.

1 of 1956.

Transfer of
exclusive
privilege.

22. 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 rights as such unless and until the Collector has, upon his application, granted him a licence to do so.

Maintenance
and use of
measures,
weights and
instruments
by licensed
manufacturers
and
vendors.

23. 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.

Prohibitions
of advertise-
ment etc.

24. (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.

Employment of children or women by licensed vendors.

25. (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 women 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.

Powers to close shops temporarily.

26.(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 Exciser 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.

Restiction
on grant of
license or
exclusive
privilege.

27. (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, except with the prior approval of the concerned Gram Panchayat accorded with the concurrence of the Gram 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 Gram Panchayat for its decision within a period of thirty days from the date of receipt of such reference, and if the Gram Panchayat fails to communicate its decision within the said period of thirty days, it shall be deemed that the concerned Gram Panchayat has accorded the required approval.

Explanation. — For the purposes of this section —

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

Odisha Act 1
of 1965.

CHAPTER V

DUTY AND TAX

Nature and components of excise revenue.

28. Excise duty and fees shall be levied and recovered under the following heads, namely: —

- (a) excise duty,
- (b) contravailing duty,
- (c) license fee,
- (d) VAT,
- (e) brand registration fee,
- (f) import duty,
- (g) export duty, and
- (h) other fees as may be prescribed

Excise duty and countervailing duty.

29. (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 to be imported, exported, manufactured, issued from any manufactory or institution or sold, under the provisions of this Act or any rule, notification, license 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 manufacture 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 license periods, such difference may be collected in respect of all stocks of liquor held by licensee at the close of the former period.

Declaration of ex-factory and maximum retail price.

30. Ex-factory price and Maximum Retail Price shall be declared by the manufacturer or the licensee along with 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.

Recovery of excise duties and levies and lien on the property of defaulter.

31. (1) All duties, fees, taxes, fines payable to the Government under this Act may be recovered from the persons 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.

Excise revenue to be paid irrespective of pendency of any writ petition, suit, etc.

32. 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.

Accounts and returns.

33. 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.

Luxury tax.

34. 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.

Payments for grant of privilege.

35. 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.

Regulation and levy on other goods unfit for human consumption.

36. 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

Preparation of list of places of which it is proposed to grant licences for the retail sale of spirit.

37. 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.

Publication of such list.

38. 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.

Time for preparation and publication of such list.

39. The list mentioned in section 37 shall be prepared, and published under section 38 at such time as may be prescribed.

Submission of objections and suggestions to Collector.

40. 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.

Grant of licences by Collector and submission of list, objections and suggestions to Excise Commissioner.

41.(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.

Decision of Excise Commissioner.

42. (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.

Application of sections 32 to 37 to licences for retail sale of intoxicants other than spirit.

43. 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.

Exemptions of certain licences from sections 37 to 43.

44. Sections 37 to 38 shall not apply in the case of any licence, which is proposed to be granted —

- (a) to 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.

Fees for terms and conditions and duration of licences, permits and passes.

45. (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 Commissioner 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.

Counterpart agreement by licensee, or exclusive privilege and security or deposit.

46. (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.

Power to cancel or suspend licence, permit or pass.

47. (1) Subject to such restrictions as may 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.

Power to
withdraw
licences.

48. (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 intension 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.

Surrender of
licence.

49. 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.

Bar of right to renewal and to compensation. **50.** 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.

Departmental management or transfer. **51.** (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 un-expired portion of the grant to any other person.

CHAPTER VII

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

Penalty for un-lawful import, export, transport, manufacture, possession, sale etc. **52.** 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 liters 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.

Presump-
tion as to
possession
of intoxicant
by the
accused.

53. 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.

Penalty for contravention of section 24.

54. 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 up to twenty-five thousand rupees.

Penalty for altering or attempting to alter any denatured spirit, etc.

55. 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 alteration 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.

Presumption as to offence under section 55 in certain cases.

56. In prosecutions under section 55 when the accused person is proved to have been in possession of any spirit which is, or contains or 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.

Presumption as to any spirit being or containing or having been derived from denatured spirit.

57. 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.

Penalty for adulteration by licenced manufacturer or vendor or his servant.

58 If any licensed manufacturer or licensed vendor, 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 (2) of section 90 and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, 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.

45 of 1860.

Penalty for mixing noxious substance with liquor.

59. 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 grevous 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 "grevous hurt" shall have the same meaning as in section 320 of the Indian Penal Code, 1860.

45 of 1860.

Penalty for fraud by licenced manufacturer or vender or his servant.

60. If any licensed manufacturer or licensed vendor, 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, 1860, or

45 of 1860.

- (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 Indian Penal Code, 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.

45 of 1860.

Penalty for certain un-lawful acts of licensed vendors or their servants.

61. (1) If any licensed vendor, 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 of 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 vendors; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor; 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 vendor, 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 vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

Penalty for possession of intoxicant in respect of which an offence has been committed.

62. (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.

Penalty for consumption in chemist's shop etc.

63. (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.

Penalty for certain acts by licensee or his servant.

64. 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.

Import, export, transport, manufacture, sale or possession by one person on account of another.

65. (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.

Criminal liability of licensee for acts of servants.

66. When any offence, punishable under sections 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.

Penalty on Excise Officer making vexatious search, seizure, detention or arrest, and refusing to do duty.

67. 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.

Penalty for offences not otherwise punishable.

68. 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.

Penalty for abetment and attempt to commit offence.

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

Enhanced punishment after previous conviction.

70. 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.

Seizure of property liable to confiscation.

71. (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 along with, 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 the '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 its 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 as 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 of 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, 1908, while making inquiries under this section in respect of the following matters namely: —

5 of 1908.

- (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.

Bar of other proceedings during pendency of confiscation proceedings.

72. Notwithstanding anything contained in the Code of Criminal Procedure 1973, 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 appellant authority with regard to the disposal of the same shall be exclusive.

2 of 1974.

Result of criminal proceeding not to affect the order of confiscation.

73. 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.