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Finance (No. 2) Act, No. 2 of 1963

Date of Assent : March 21, 1963

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L. D.—O. 40/62.

AN ACT TO PROVIDE FOR THE IMPOSITION AND LEVY OF AN EXCISE TAX ON LOCALLY MANUFACTURED ARTICLES, FOR THE CONTINUANCE OF THE SURCHARGE ON INCOME TAX, FOR THE VALIDATION OF CUSTOMS DUTIES LEVIED ON WIRELESS GOODS AND APPARATUS, AND TO MAKE CERTAIN AMENDMENTS IN THE MOTOR TRAFFIC ACT AND THE HEAVY OIL MOTOR VEHICLES TAXATION ORDINANCE HAVING FINANCIAL IMPLICATIONS.

[Date of Assent : March 21, 1963]

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 (No. 2) Act, No. 2 of 1963. Short title.

PART I

Imposition, Levy and Recovery of the Excise Tax

2. (1) Every article manufactured in Ceylon for the purpose of sale which is not an article of any class or description for the time being specified in the Schedule to this Act shall be an article which is liable to the imposition, levy and payment of the excise tax (in this Act referred to as a "taxable article"). Taxable articles.

(2) The House of Representatives may, from time to time, by resolution—

(a) amend or vary the provisions of the Schedule to this Act ; or

(b) repeal such Schedule and substitute a new Schedule therefor.

3. On and after such date as may be appointed by the Minister by Order published in the *Gazette* (in this Act referred to as the "appointed date"), the House of Representatives may, from time to time, by resolution impose and levy a tax (in this Act referred to as the "excise tax") on any taxable article specified in the resolution at such rate as shall be so specified.

Imposition
and levy of
the excise
tax on taxable
articles.

Increase or reduction of the rate of the excise tax on any taxable article and the abolition of such tax.

4. The House of Representatives may, from time to time, by resolution—

- (a) increase or reduce the rate of the excise tax on any taxable article for the time being subject to such tax ; or
- (b) abolish the excise tax on any taxable article for the time being subject to such tax.

Determination of the rate of the excise tax on any taxable article.

5. The rate of the excise tax on any taxable article may, having regard to the class or description of that article, be determined by reference to—

- (a) the value of that article, or of any particular weight, quantity, or amount of that article ; or
- (b) any particular weight, quantity, or amount of that article,

and accordingly different rates of such tax may be determined in respect of different classes or descriptions of taxable articles.

Excise Tax Orders.

6. (1) Where the Cabinet decides that a resolution should be introduced in the House of Representatives under the preceding provisions of this Part, being a resolution which will have the effect of—

- (a) imposing the excise tax on any taxable article for the time being not subject to such tax ; or
- (b) increasing or reducing the rate of such tax on any taxable article for the time being subject to such tax ; or
- (c) abolishing such tax on any article for the time being subject to such tax,

the Minister may make an Order with a view to giving immediate legal effect to such decision pending that resolution being passed by the House of Representatives.

(2) An Order made by the Minister under sub-section (1) is in this Act referred to as an "Excise Tax Order".

(3) An Excise Tax Order shall come into force on such date as may be specified in the Order or, if no date is so specified, on the date on which it is made by the Minister.

(4) An Excise Tax Order shall, so long as it remains in force, have the effect of law notwithstanding anything in any other provision of this Part or any resolution passed by the House of Representatives thereunder.

(5) Every Excise Tax Order shall be published in the *Gazette*.

(6) An Excise Tax Order shall cease to be in force—

- (a) on a date four months after the date on which such Order came into force ; or
- (b) on the date of the rejection by the House of Representatives of the resolution which was the subject-matter of the decision in relation to which such Order was made ; or
- (c) on the date of the withdrawal of such resolution from the House of Representatives ; or
- (d) on the date on which the House of Representatives adjourns *sine die* the consideration of such resolution ; or
- (e) on the date of the dissolution of Parliament ; or
- (f) on the date on which such resolution (whether with or without modification) is passed by the House of Representatives,

whichever date is the earlier date, but such cessation shall be without prejudice to anything previously done thereunder.

(7) So long as an Excise Tax Order is for the time being in force in respect of the excise tax on any taxable article, the Minister shall not make a subsequent Excise Tax Order in respect of such tax on that article, and accordingly any such Order made by the Minister in contravention of the preceding provisions of this section shall be void and of no effect whatsoever.

(8) So long as an Excise Tax Order is for the time being in force in respect of the excise tax on any taxable article, then,—

(a) if such Order is an Order to impose and levy such tax on that article at the rate or rates specified in the Order, such tax shall be provisionally leviable and payable on that article at the rate or rates so specified, in lieu of such tax leviable and payable on that article under any resolution passed by the House of Representatives under this Part ; or

(b) if such Order is an Order abolishing such tax on that article, such tax shall be provisionally not leviable and payable on that article.

(9) Where an Excise Tax Order in respect of the excise tax on any taxable article ceases to be in force, then,—

(a) if such Order has so ceased to be in force by virtue of the operation of any of the provisions of paragraphs (a) to (e) of sub-section (6) of this section and the excise tax was leviable and payable on that article on the day immediately preceding the date on which such Order came into force, such tax shall be leviable and payable on that article at the rate which was in force on that date ; or

- (b) if such Order has so ceased to be in force by virtue of the operation of the provisions of paragraph (f) of sub-section (6) of this section and was not an Order abolishing such tax on that article, such tax shall be leviable and payable on that article at the rate specified in the resolution referred to in that paragraph.

7. (1) The excise tax on any taxable article for the time being subject to such tax shall be payable within the prescribed period by the person in the course of whose business that article was manufactured.

Payment of
the excise
tax on
taxable articles.

(2) The amount of the excise tax on any taxable article for the time being subject to such tax payable by any manufacturer of that article shall be paid to the Government Agent of the administrative district in which the premises at which that manufacturer carries on business is situated and shall be credited to the Consolidated Fund.

(3) Regulations may be made under this Act providing for the manner of payment of the excise tax on taxable articles. Different modes of payment may be so provided in respect of different classes or descriptions of taxable articles.

8. No person shall sell, or cause or permit to be sold, any taxable article for the time being subject to the excise tax unless and until that tax has been duly paid in accordance with the provisions of this Part.

Prohibition
of sale of
taxable articles
until the excise
tax is paid.

9. Any article manufactured in Ceylon by a person carrying on business as a manufacturer of that article shall, for the purposes of this Act, be presumed to be so manufactured for the purpose of sale until the contrary is proved.

Certain
articles to be
presumed until
the contrary is
proved to be
manufactured
for the purpose
of sale.

10. Where the excise tax on any taxable article for the time being subject to such tax which is due from any person is not paid to a Government Agent of an administrative district in accordance with the provisions of this Part, such Government Agent may, in his discretion, order that a sum not exceeding ten per centum of the amount of such tax shall be added to such tax and recovered therewith. Any sum so added to such tax shall be deemed to constitute a part of such tax.

Power to impose
and recover a
surcharge if
excise tax not
duly paid.

Recovery of
excise tax in
like manner
as a debt due
to the Crown.

11. Where the excise tax due from any person is not paid by him to the Government Agent of an administrative district in accordance with the provisions of this Part, such tax may be recovered from that person in like manner as a debt due to the Crown.

Registration of
manufacturers.

12. (1) On and after the expiration of a period of two months from the date on which any article becomes a prescribed taxable article, no person shall carry on business as a manufacturer of that article unless he has been registered by the Excise Commissioner as a manufacturer of that article for the purposes of this Part.

(2) Every application for registration as a manufacturer of any prescribed taxable article for the purposes of this Part—

(a) shall be made to the Excise Commissioner in such form as he may provide for the purpose ;

(b) shall contain all such particulars as may be required to be set out in such form ;
and

(c) shall be accompanied by the prescribed fee for such application.

(3) A person who is registered as a manufacturer for the purposes of this Part shall, when requested so to do by the Excise Commissioner, furnish to the Excise Commissioner such information relating to his business as such manufacturer as the Excise Commissioner may require for the purposes of this Part.

Powers of
entry and
inspection
of premises
and documents.

13. For the purpose of verifying the correctness of any information furnished by any person registered as a manufacturer of any prescribed taxable article in pursuance of this Part, or for the purpose of securing compliance with the provisions of this Part or of any regulations made thereunder, the Excise Commissioner may—

(a) enter any premises used by such person for the purposes of his business as such manufacturer ; and

- (b) inspect and take copies of any such documents or records as are kept by such person (whether in pursuance of this Part or the regulations made thereunder or otherwise) in relation to his business.

14. (1) Any person who—

Offences.

- (a) contravenes any of the provisions of this Part or of any regulations made thereunder ; or

- (b) furnishes any false information to the Excise Commissioner or any person exercising, performing or discharging any power, duty or function of the Excise Commissioner ; or

- (c) furnishes any false return to the Excise Commissioner or any person referred to in paragraph (b) of this sub-section,

shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

(2) It shall be a defence for any person charged with the offence of contravening the provisions of sub-section (1) of section 12 by carrying on business as a manufacturer of any prescribed taxable article without registration after the expiration of the period referred to in that sub-section to prove that at the time of such alleged contravention such person had applied under this Part for such registration but his application had not been disposed of.

15. No prosecution for an offence under this Act shall be instituted except by, or with the written sanction of, the Excise Commissioner.

Prosecutions
to be by, or
with written
sanction of,
the Excise
Commissioner.

Regulations.

16. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Part.

(2) In particular but without prejudice to the generality of the powers conferred by sub-section (1) of this section, the Minister may make regulations for or in respect of all or any of the following matters :—

(a) any matter stated or required by this Part to be prescribed or for which regulations are authorised by this Part to be made ;

(b) any matter relating to the making and disposal of applications for registration, and the mode of the levy, payment and recovery of the excise tax in respect of which the provisions of this Part need to be supplemented ;

(c) the circumstances in which the registration of a person as a manufacturer may be cancelled or suspended ;

(d) the compulsory use of banderols, labels or stamps on taxable articles in respect of which the excise tax is leviable, the manner in which such banderols, labels or stamps shall be affixed on such articles or boxes containing such articles, the issue and sale by the Excise Commissioner or Government Agents of such banderols, labels and stamps, and the prices or fees to be recovered therefor ; and

(e) any matter connected with or incidental to any of the aforesaid matters.

(3) Every regulation made under this section shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every such regulation shall as soon as convenient after the date of its publication in the *Gazette* be brought before the Senate and the House of Representatives for approval ; and any

such regulation which the Senate or the House of Representatives refuses to approve shall cease to be in force with effect from the date of such refusal, but without prejudice to the validity of anything previously done thereunder.

(5) Notification of the approval under subsection (4) of any regulation shall be published in the *Gazette*, and upon such publication the regulation shall be as valid and effectual as though it were herein enacted.

17. (1) The Excise Commissioner may accept from any person whose registration as a manufacturer is liable to be suspended or cancelled under this Act, or who is reasonably suspected of having committed an offence under this Part, in lieu of such suspension or cancellation or by way of composition for the offence which may have been committed, as the case may be, either such sum of money, not exceeding one thousand rupees, as may be specified in the notice sent by post or otherwise delivered to such person by the Excise Commissioner if the sum so specified is tendered by such person before the expiry of fourteen days after the date of such notice, or the sum so specified and such additional amount, not exceeding ten per centum of the sum so specified, as may be determined by the Excise Commissioner if the sum so specified and the additional amount so determined are tendered by such person before the expiry of twenty-eight days after the date of such notice.

Powers to compound and search without a warrant.

(2) Where the Excise Commissioner has reason to believe that an offence under this Part is being, or is likely to be, committed in respect of any taxable article, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or concealing evidence of the offence, the Excise Commissioner may, after recording the grounds of his belief, at any time by day or night, enter and search any place and may seize that article, and any other thing found therein which he has reason to believe will be, or was, used in connection with the commission of that

offence ; and may detain and search and, if he thinks fit, arrest any person found in such place whom he has reason to believe to be guilty of that offence.

Powers, etc., of
Excise
Commissioner
by whom
exercisable.

18. Any power, duty or function of the Excise Commissioner under this Part, other than the power to sanction a prosecution conferred by section 15 and the power to compound an offence conferred by section 17, may be exercised on his behalf by any other officer of the Excise Department acting under the general or special directions of the Excise Commissioner.

Interpretation.

19. In this Part unless the context otherwise requires—

Cap. 392.

“ administrative district ” means an administrative district established under the Administrative Districts Act ;

“ article ” means any commodity by whatsoever name called ;

“ Excise Commissioner ” includes any officer not below the rank of Assistant Commissioner of Excise ;

“ Government Agent ” includes an Additional Government Agent, an Assistant Government Agent, and an Additional Assistant Government Agent ;

“ manufactured ”, in relation to any article, includes the assemblage or joinder of that article, whether by chemical process or otherwise ;

“ manufacturer ”, in relation to a taxable article, means a person carrying on business as a manufacturer of that article ;

“ prescribed ” means prescribed by regulations made under this Part ;

“ sale ” includes supply or distribution, and an offer to sell, supply or distribute ;

“ this Part ” means the Part of this Act in which the expression occurs.

PART II

Special provisions having financial implications

20. (1) Every person who is chargeable with income tax for the year of assessment commencing on April 1, 1962, shall, notwithstanding anything contained in any other written law or in any convention, grant or agreement, be liable to pay a surcharge equivalent to twenty per centum of the amount of the income tax payable by him for that year of assessment.

Every person chargeable with income tax for the year of assessment commencing on April 1, 1962, liable to pay a surcharge equivalent to twenty per centum of the income tax payable by him for that year.

(2) The surcharge referred to in sub-section (1) shall, in the case of a non-resident company, be reckoned on the amount of income tax that would have been payable by such company for the year of assessment commencing on April 1, 1962, if the sum equal to six per centum of the taxable income of such company for that year of assessment, which should have formed part of the amount of income tax in accordance with the provisions of section 53C of the Income Tax Ordinance, had not been included in the amount of income tax.

Cap. 242.

(3) The surcharge referred to in sub-section (1) shall, in the case of any person who is entitled to a set-off under sub-section (4) of section 45, or under sub-section (6) or sub-section (7) or sub-section (8) of section 53D, of the Income Tax Ordinance, be reckoned on the amount of income tax that would have been payable by such person for the year of assessment commencing on April 1, 1962, if such set-off had not been made.

(4) For the purposes of the assessment, payment and recovery of the surcharge referred to in sub-section (1), the provisions of Chapter X, Chapter XI, Chapter XII, and Chapter XIII of the Income Tax Ordinance shall apply in all respects as though the surcharge were income tax payable for the year of assessment commencing on April 1, 1962.

(5) Where any person is under section 89 of the Income Tax Ordinance entitled to have refunded any amount paid by him as income tax in excess of the amount which he was properly chargeable for the year of assessment commencing on April 1, 1962, such person shall, if he has paid the surcharge referred to in sub-section (1), be in addition entitled to have refunded an amount representing twenty per centum of the amount refunded under the said section 89.

Amendment of
Chapter 203.

21. The Motor Traffic Act is hereby amended as follows :—

(a) in sub-section (4) of section 7 of that Act, by the substitution, for the expression “prescribed form.”, of the expression “prescribed form, and by the prescribed fee for the entry in the register, as required by sub-section (5) of section 9, of the name of that person as the absolute owner thereof.”;

(b) in section 9 of that Act by the insertion, immediately after sub-section (6) of that section, of the following new sub-section :—

“(7) Within a period of fourteen days after the termination of a hire-purchase agreement in respect of a motor vehicle, the person who so let that vehicle shall forward to the Registrar a written application for the deletion from the entry in the register relating to that vehicle of the name of the absolute owner thereof entered under sub-section (5). Such application shall be accompanied by the prescribed fee for such deletion.”;

(c) in sub-section (2) of section 13 of that Act, by the substitution, for the expression “prescribed form.”, of the expression “prescribed form and by the prescribed fee for the entry in the register, as required by sub-section (4) of section 14, of the name of that person as the absolute owner thereof.” ;

(d) in section 14 of that Act by the insertion, immediately after sub-section (5) of that section, of the following new sub-section :—

“(6) Within a period of fourteen days after the termination of a hire-purchase agreement in respect of a motor vehicle, the person who so let that vehicle shall forward to the Registrar a written application for the deletion from the entry in the register relating to that vehicle of the name of the absolute owner thereof entered under sub-section (4).

Such application shall be accompanied by the prescribed fee for such deletion." ; and

(e) by the repeal of section 18 of that Act and the substitution therefor of the following new section :—

"Cancellation of registration of a motor vehicle.

18. Where a motor vehicle which is registered has been permanently removed from Ceylon, or destroyed, or dismantled and broken up, or otherwise rendered permanently un-serviceable, the Registrar shall cancel the registration of that vehicle upon the receipt of a written application in that behalf from the registered owner of that vehicle accompanied by the prescribed fee for such cancellation :

Provided, however, that the Registrar may, of his own motion, cancel the registration of a motor vehicle if he is satisfied that the registered owner thereof is dead, or cannot be found, and that such vehicle has ceased to be a motor vehicle."

22. The Heavy Oil Motor Vehicles Taxation Ordinance is hereby amended by the insertion, immediately after sub-section (6) of section 2 of that Ordinance, of the following new sub-section :—

Amendment of Chapter 249.

"(7) (a) The rates prescribed in the First Schedule to this Ordinance may, from time to time, be varied by the Minister of Finance by Order published in the *Gazette*.

(b) Every Order made under paragraph (a) of this sub-section shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified in the Order, and shall be brought before the House of Representatives within a period of one month from the date of the publication of such Order in the *Gazette*, or, if no meeting of the House of Representatives is held within such period, at the first meeting of that House held after the expiry of such period, by a motion that such Order shall be approved. There shall be set out in a Schedule to any such motion the text of the Order to which the motion refers.

(c) Any Order made under paragraph (a) of this sub-section which the House of Representatives refuses to approve shall, with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of anything done thereunder. Notification of the date on which any such Order is deemed to be revoked shall be published in the *Gazette*."

Retrospective
modification
of a Revenue
Protection
Order and a
Customs
resolution.
Cap. 250.

23. (1) The Order made by the Minister of Finance under section 2 of the Revenue Protection Ordinance and published in *Gazette Extraordinary* No. 12,559 of July 27, 1961, shall be deemed at all times, while it was in force, to have had effect subject to the following modification, namely, as though for the item "Wireless goods and apparatus" appearing in the Schedule thereto, there had been substituted, in the appropriate columns of that Schedule, the following new item :—

"Wireless goods and apparatus—

Complete sets for receiving and transmitting—

(i) assembled sets : 55% 57½%

(ii) unassembled sets imported for assembly in Ceylon in respect of which the Director of Development has issued a certificate that he is satisfied that the degree of assembly involved justifies the levy of a lower rate of duty : 15% 17½%

(iii) other unassembled sets : 55% 57½%

Other wireless goods and apparatus, including spare parts and batteries: 30% 32½%.”.

(2) The resolution under section 9 of the Customs Ordinance passed by the House of Representatives and published in *Gazette Extraordinary* No. 12,738 of November 1, 1961, shall be deemed at all times, while it was and remains in force, to have had, and to have effect, subject to the following modification, namely, as though for the item “Wireless goods and apparatus” appearing in the Schedule thereto, there had been substituted, in the appropriate columns of that Schedule, the following new item :—

Cap. 235.

“Wireless goods and apparatus—

Complete sets for receiving and transmitting—

(i) assembled sets : 55% 57½%

(ii) unassembled sets imported for assembly in Ceylon in respect of which the Director of Development has issued a certificate that he is satisfied that the degree of assembly involved justifies the levy of a lower rate of duty : 15% 17½%

(iii) other unassembled sets : 55% 57½%

Other wireless goods and apparatus, including spare parts and batteries: 30% 32½%.”.

[Section 2]

SCHEDULE

Articles which are not taxable articles

Cap. 52.

1. An excisable article within the meaning of the Excise Ordinance.