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THE INDIAN EXPLOSIVES (AMENDMENT) ACT, 1978

No. 32 OF 1978

[18th August, 1978.]

An Act further to amend the Indian Explosives Act, 1884.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Indian Explosives (Amendment) Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of long title and preamble.

2. In the long title of, and the preamble to, the Indian Explosives Act, 1884 (hereinafter referred to as the principal Act), for the words "transport and importation", the words "transport, import and export" shall be substituted.

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Amendment of section 1.

3. In section 1 of the principal Act, in sub-section (1), the word "Indian" shall be omitted.

Substitution of new section for section 4. Definitions.

4. For section 4 of the principal Act, the following section shall be substituted, namely:—

4. In this Act, unless the context otherwise requires,—

(a) "aircraft" means any machine which can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface, and includes balloons, whether fixed or free, airships, kites, gliders and flying machines;

(b) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled;

(c) "District Magistrate", in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes—

(a) any such Deputy Commissioner of Police, exercising jurisdiction over the whole or any part of such area, as

may be specified by the State Government in this behalf in relation to such area or part; and

(b) an Additional District Magistrate;

(d) "explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-trinitramine, penta-erythritol-tetranitrate, tetryl, nitroguanidine, lead azide, lead styphnate, fulminate of mercury or any other metal, diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;

(e) "export" means taking out of India to a place outside India by land, sea or air;

(f) "import" means to bring into India from a place outside India by land, sea or air;

(g) "master",—

(a) in relation to any vessel or aircraft means any person, other than a pilot, harbour master, assistant harbour master or berthing master, having for the time being the charge or control of such vessel or aircraft, as the case may be; and

(b) in relation to any boat belonging to a ship, means the master of that ship;

(h) "manufacture" in relation to an explosive includes, the process of—

(1) dividing the explosive into its component parts or otherwise breaking up or unmaking the explosive or making fit for use any damaged explosive; and

(2) re-making, altering or repairing the explosive;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation whether propelled by oars or otherwise and anything made for the conveyance, mainly by water, of human beings or of goods and a caisson.

5. In section 5 of the principal Act,—

(a) in sub-section (1), for the words "transport and importation", the words "transport, import and export" shall be substituted;

Amendment of section 5.

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(b) in sub-section (2),—

(i) in clause (e), the word “and” shall be omitted;

(ii) after clause (e), the following clauses shall be inserted, namely:—

“(ee) the authority to which appeals may be preferred under section 6F, the procedure to be followed by such authority and the period within which appeals shall be preferred, the fees to be paid in respect of such appeals and the circumstances under which such fees may be refunded;

(eea) the total quantity of explosives that a licensee can purchase in a given period of time;

(eeb) the fees to be charged by the Chief Controller of Explosives or any officer authorised by him in this behalf, for services rendered in connection with the manufacture, transport, import or export of explosives;”;

(iii) in clause (f), after the words “any explosives”, the words “or any person or class of persons” shall be inserted;

(c) sub-section (3) shall be omitted.

Insertion of new section 5A.

Persons already in business in respect of certain explosives to carry on such business without licence for a certain period.

6. After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A. Notwithstanding anything in section 5 or in the rules made thereunder where, immediately before the commencement of the Indian Explosives (Amendment) Act, 1978, any person was carrying on the business of manufacture, sale, transport, import or export of any explosive [for which no licence was required under this Act before its amendment by the Indian Explosives (Amendment) Act, 1978], then, such person shall be entitled to continue to carry on such business without licence in respect of such explosive—

(a) for a period of three months from the date of such commencement; or

(b) if before the expiry of the said period of three months, such person has made an application for grant of licence under this Act for such business in such explosive, until the final disposal of his application,

whichever is later.”

Amendment of section 6.

7. In section 6 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Customs Act, 1962 shall have effect in relation to any explosive with regard to the importation of which a notification has been issued under this section and the vessel, carriage or aircraft containing such explosive as that Act has in relation to any article the importation of which is prohibited or regulated

thereunder and the vessel, carriage or aircraft containing such article.”;

(b) sub-section (3) shall be omitted.

8. After section 6 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 6A, 6B, 6C, 6D, 6E and 6F.

“6A. Notwithstanding anything in the foregoing provisions of this Act,—

Prohibition of manufacture, possession, sale or transport of explosives by young persons and certain other persons.

(a) no person,—

(i) who has not completed the age of eighteen years, or

(ii) who has been sentenced on conviction of any offence involving violence or moral turpitude for a term of not less than six months, at any time during a period of five years after the expiration of the sentence, or

2 of 1974.

(iii) who has been ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973, a bond for keeping the peace or for good behaviour, at any time during the term of the bond, or

(iv) whose licence under this Act has been cancelled, whether before or after the commencement of the Indian Explosives (Amendment) Act, 1978, for contravention of the provisions of this Act or of the rules made thereunder, at any time during a period of five years from the date of cancellation of such licence,

shall,—

(1) manufacture, sell, transport, import or export any explosive, or

(2) possess any such explosive as the Central Government may, having regard to the nature thereof, by notification in the Official Gazette, specify;

(b) no person shall sell, deliver or despatch any explosive to a person whom he knows or has reason to believe at the time of such sale, delivery or despatch,—

(i) to be prohibited under clause (a) to manufacture, sell, transport, import, export or possess such explosive, or

(ii) to be of unsound mind.

6B. (1) Where a person makes an application for licence under section 5, the authority prescribed in the rules made under that section for grant of licences (hereinafter referred to in this Act as the licensing authority), after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing either grant the licence or refuse to grant the same.

Grant of licences.

(2) The licensing authority shall grant a licence—

(a) where it is required for the purpose of manufacture of explosives if the licensing authority is satisfied that the person by whom licence is required—

(i) possesses technical know-how and experience in the manufacture of explosives; or

(ii) has in his employment or undertakes to employ a person or persons possessing such technical know-how and experience; or

(b) where it is required for any other purpose, if the licensing authority is satisfied that the person by whom licence is required has a good reason for obtaining the same.

Refusal of licences.

6C. (1) Notwithstanding anything contained in section 6B, the licensing authority shall refuse to grant a licence—

(a) where such licence is required in respect of any prohibited explosive; or

(b) where such licence is required by a person whom the licensing authority has reason to believe—

(i) to be prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive; or

(ii) to be of unsound mind; or

(iii) to be for any reason unfit for a licence under this Act; or

(c) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of opinion that it will not be in the public interest to furnish such statement.

Licensing authority competent to impose conditions in addition to prescribed conditions.

6D. A licence granted under section 6B may contain in addition to prescribed conditions such other conditions as may be considered necessary by the licensing authority in any particular case.

Variation, suspension and

6E. (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the holder of

licence by notice in writing to deliver up the licence to it within such time as may be specified in the notice.

revoca-
tion of
licences.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence,—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for the licence; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying the conditions of a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(7) An order of suspension or revocation under sub-section (6) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(8) The Central Government may, by order in the Official Gazette, suspend or revoke, or direct any licensing authority to suspend or revoke, all or any licences granted under this Act throughout India or any part thereof.

(9) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

Appeals.

6F. (1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against an order made by, or under the direction of, the Central Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963, with respect to the computation of periods of limitation thereunder.

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(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

Amendment of section 7.

(8) 9. In section 7 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a),—

(1) for the words "any place, carriage or vessel", the words "any place, aircraft, carriage or vessel" shall be substituted;

(2) for the words "transported or imported", wherever they occur, the words "transported, imported or exported" shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) to seize, detain and remove any explosive or ingredient thereof found therein and, if necessary, also destroy such explosive or ingredient."

(b) in sub-section (2), for the words "Code of Criminal Procedure", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

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10. In section 8 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "any carriage or vessel", the words "any aircraft, carriage or vessel" shall be substituted;

(ii) for the words "the master of the vessel", the words "the master of the aircraft or vessel" shall be substituted;

(iii) for the words "Chief Inspector of Explosives in India", the words "Chief Controller of Explosives" shall be substituted;

(b) sub-section (2) shall be omitted.

11. In section 9 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "any place, carriage or vessel", the words "any place, aircraft, carriage or vessel" shall be substituted;

(ii) for the words "the Indian Forces", the words "Armed Forces of the Union" shall be substituted;

(iii) the brackets and words "(or in a Presidency-town, the Commissioner of Police)" shall be omitted;

(b) in sub-section (2), for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted;

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(c) in sub-section (4), in clauses (b), (c) and (d), for the words "Chief Inspector of Explosives in India", the words "Chief Controller of Explosives" shall be substituted.

12. In section 9A of the principal Act, in sub-section (1), for the words "Chief Inspector of Explosives in India", the words "Chief Controller of Explosives" shall be substituted.

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Amend-
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Insertion of new sections 9B and 9C.

Punishment for certain offences.

13. After section 9A of the principal Act, the following sections shall be inserted, namely:—

"9B. (1) Whoever, in contravention of rules made under section 5 or of the conditions of a licence granted under the said rules—

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine, which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under section 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both, and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,—

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of section 6A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of section 8 fails to give notice of any accident shall be punishable,—

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.

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9C. (1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences A
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Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

14. For section 11 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section
for sec-
tion 11.

"11. Where the owner or master of any aircraft or vessel is adjudged under this Act to pay a fine for any offence committed with, or in relation to, that aircraft or vessel, the Court may, in addition to any power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of,—

Distress
of air-
craft or
vessel.

(a) the aircraft and its furniture or so much of the furniture, or

(b) the vessel and the tackle, apparel and furniture of such vessel or so much of the tackle, apparel and furniture thereof,

as is necessary for the payment of the fine."

15. In section 13 of the principal Act,—

(a) for the words "ship or boat", the words "aircraft or vessel" shall be substituted;

(b) for the words "conservator of the port", the words "conservator of the port or officer in charge of the air port" shall be substituted.

Amend-
ment of
section 13

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Amendment of section 14.

16. In section 14 of the principal Act,—

(a) in clause (a) of sub-section (1), for the words "Indian Forces", the words "Armed Forces of the Union, and Ordnance factories or other establishments of such Forces" shall be substituted;

(b) in sub-section (2), for the words "any explosive from all or any of the provisions of this Act", the words "any explosive and any person or class of persons from all or any of the provisions of this Act or the rules made thereunder" shall be substituted.

Amendment of section 15.

17. In section 15 of the principal Act,—

(a) for the words and figures "Indian Arms Act, 1878", the words and figures "Arms Act, 1959" shall be substituted;

(b) in the proviso, the word "Indian" shall be omitted.

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54 of 1959.

Insertion of new section 17A.

18. After section 17 of the principal Act, the following section shall be inserted, namely:—

Power to delegate.

"17A. The Central Government may, by notification in the Official Gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under sections 5, 6, 6A, 14 and 17 may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed also by—

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government."

Amendment of section 18.

19. In section 18 of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."