

KARNATAKA ACT NO 23 OF 2016
THE KARNATAKA FOREST (AMENDMENT) ACT, 2016
Arrangement of Sections

Sections:

1. Short title and commencement
2. Amendment of section 2
3. Amendment of Chapter XIA

STATEMENT OF OBJECTS AND REASONS

Amending Act 23 of 2016.-

1. It is considered necessary further to amend the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964) (hereinafter called the Act) to remove doubts regarding the nature, ambit and scope of the levy of Forest Development Tax (FDT). As explained below, the objects of this amendment Bill, to be made retrospective from the 16th day of August, 2008, are:-
 - (i) to declare the meaning and purpose of the words “a body notified by the State Government” occurring in section 98A;
 - (ii) to re-state the nature of levy and declare that it is in the nature of a fee;
 - (iii) to validate the collection of Forest Development Tax or Forest Development Fee from 2008 onwards.
2. The amendments to sections 98A and 98B are being made retrospectively from 16th day of August, 2008 when Notification No.FEE 248 FDP 2006 dated 16-08-2008 Bangalore was issued. Although section 98A came into force from 24.12.1975, the present amendment is being made retrospectively only from the date of this notification to avoid unnecessary hardship to entities who are covered by Chapter XI-A of the Forest Act, 1963.
3. Section 98A of the Act was amended to include the words “or by a corporation, owned or controlled by or a body notified by the State Government” by Amendment Act 10 of 1989. The said amendment was made with the intention of including all persons, who are disposing of forest produce by way of sale or otherwise, including State-owned and controlled corporations as well as entities such as private individuals, firms, companies or anybody else, within the purview or ambit of the levy under section 98 A of the Act. The latter category, which were neither State-owned nor State controlled, were intended to be included within the expression “a body” in section 98A(1). This was done with the object of augmenting revenue for the purpose of “afforestation”, amelioration of environment, enhancing the tree cover and activities ancillary thereto as mandated under Section 98B by levying a fee on disposal of forest produce.
4. Thus, the intention of the legislature was always to ensure that all entities whether State-owned, State-controlled or not, that were disposing of forest produce by way of sale or otherwise were brought within the purview or ambit of the levy of Forest Development Tax (FDT). There was never an intention of restricting the statutory mandate of collecting and paying the levy only to State Government and its Undertakings and excluding all non-Government entities and undertakings of the Central Government. It was never the intention of the Legislature that Forest Development Tax was to be collected only when entities acted together as an association or conglomeration. Indeed, such an interpretation would not only defeat the object of amending section 98A but also seriously jeopardize the programmes for development and regeneration of forests in the State of Karnataka.
5. The State of Karnataka issued Notification No.FEE 248 FDP 2006 dated 16.8.2008 under Section 98A(1) of the Act whereby all lease-holders of mines and quarries situated in the forest area were notified in exercise of the powers conferred by section 98A(1). The validity of this notification and certain other issues came up for consideration before the Division Bench of the Karnataka High Court in W.P. No 2462 of 2009 (and other connected matters) and the judgment was rendered on 03.12.2015. The Hon'ble High Court, *inter alia*, was pleased to quash the notification on the ground that the expression “a body” would not include leaseholders of mines and quarries, whether as an individual or as other juristic entity. According to the Hon'ble High Court, leaseholders could be individuals, partnership firms, societies, co-operative societies, companies

incorporated under the Companies Act or any other association or persons. Unless all of them constituted themselves into "a body", which would inevitably be a juristic entity having a legal persona, such as a federation in which the leaseholders are members, or a company, wherein they are shareholders, or, a society, wherein they are members and one of the activities of such federation or company or society is disposal of minerals as forest produce by sale or otherwise, they could not be treated as a body that could be notified by the State Government. Thus, independent or separate lease holders, whether they are private individuals or partnership firms or companies or any other juristic entity, could not be construed to come within the expression "a body" under sub-section (1) of Section 98-A of the Act. This interpretation has resulted in numerous leaseholders of mines and quarries situated in forest area not being liable to collect and pay the "forest development tax" (FDT). This was clearly never the intention of the legislature because the word "a body" was never intended to apply to only juristic entities consisting of a conglomeration of leaseholders, either as individuals or companies or firms and so on. It is also clear that lease holders of mines and quarries situated in forest area will never collectively act as an association or a conglomerate while purchasing or selling or disposing of forest produce.

6. It is, therefore, necessary to amend section 98A(1) retrospectively and declare that the word "a body" included and, has always included, even leaseholders of mines and quarries situated in forest area even if they did not constitute themselves collectively, as a federation, company or society or an association of persons. Significantly, the Hon'ble High Court has accepted this view that the expression "a body" will include any autonomous or private body in which the State Government did not have any control in any manner whatsoever. The proposed amendments are intended to declare that all lease-holders of mines and quarries in forest area come within the definition of "a body" and are liable to collect and pay Forest Development Tax or Forest Development Fee as this levy is critical for the development and regeneration of forests. The proposed amendments will cure the infirmity and remove the defect which was found in the existing provisions. The Bill also contains a validation clause that is dealt with later.

Tax and Fee:

- 7 In *Guru Siddappa v State of Karnataka* AIR 1981 Kar 216, the Division Bench of the Karnataka High Court had held that the Forest Development Tax (FDT) levied on the purchase price of forest produce was within the legislative competence of the State under Entry 54 of List-II and constitutionally valid. Although the unamended section 98A(1) refers to the levy of a tax, the impost is more in the nature of a fee. The amount collected by way of forest development tax is earmarked for development and regeneration of forest and does not go to the general revenue of the State to be spent for general public purpose. This is also made clear by section 98B of the Act which specifies that the Forest Development Tax (FDT) and interest that is levied and collection under section 98A will form part of the Karnataka Forest Development Fund. The Forest Development Tax (FDT) and other amounts specified in section 98B(2), although credited to the Consolidated Fund of the State, is later appropriated and transferred to the aforesaid Karnataka Forest Development Fund.
- 8 In *State of Maharashtra v Salvation Army* AIR 1975 SC 846, the Supreme Court held that an impost which initially was in the nature of a fee would subsequently assume the characteristics of a tax. The converse is equally true. The decision of the Karnataka High Court was rendered in 1981 and Forest Development Tax (FDT) was treated as a tax coming within Entry 54 of List-II.
- 9 Since the Forest Development Tax (FDT), as a fee, will be levied at the time of disposing by way of sale or otherwise of forest produce, the fee is being levied in exercise of the powers of the State Legislature under Entry 66 of List-II of Schedule VII of the Constitution. In *Corporation of Calcutta v. Liberty Cinemas* AIR 1965 SC 1107. Hon'ble Supreme Court held that the fee can also be under an enactment relating to the imposition of a tax. In any event, the State Government has the authority to levy such fee under Entry 47, List III.

Validation:

- 10 .1 The State Government has levied and collected more than Rupees 3500 crores as Forest Development Tax (FDT) after the impugned notification was issued in 2008. All the petitioners in the above judgment conceded that they were disputing the levy only upto 2011. However, it is proposed to validate such collections both by the lease holders of mines and quarries situated in forest area and by the Monitoring Committee, from the purchasers of minerals till

date. The present Bill seeks to achieve the objects as mentioned above and also to provide for the validation of the levy and collection of Forest Development Tax (FDT). Clause 6 of the Bill, *inter alia*, provides that any demand and/or any action taken under the provisions of the Act as in existence prior to this amendment Bill shall be deemed to have taken or levied under the new law after the amendment. This will validate the demand made by deeming it to have been made under the amended law and thus protect the revenue of the State. This Bill thus cures the infirmity and removes the defect found in the existing provisions and makes adequate provisions in the validation clause for a valid imposition of the Forest Development Tax and Forest Development Fee.

10.2 The State Government proposes to recompute the Forest Development Fee as per prescribed rules or guidelines. If the demand as computed as per new rules or guidelines is lesser than the amount of Forest Development Fee demanded under the erstwhile section 98A or any notification issued thereunder, the lesser amount will be payable as Forest Development Fee.

10.3 A provision is also proposed to exempt or reduce Forest Development Tax (FDT) or Forest Development Fee by Government by notification prospectively or retrospectively in public interest by any specific clause of person or in respect of any specified forest produce.

Penalty:

11 It is made clear that no penal proceedings will be commenced as a consequence of the retrospective amendments that are proposed in the Bill. This will also ensure compliance with Article 20(1) of the Constitution.

Rate of Tax or Fee:

12 Demand were raised at the rate of 12% on the disposal of minerals, although section 98A(1) prescribed a rate of 8% tax on forest produce other than those mentioned in the erstwhile proviso and Table thereto. The Karnataka Forest (Amendment) Act, 2015 imposed a levy of 12% but omitted to amend the rate retrospectively. It is now made clear that 8% shall be retrospectively increased to 12% from 16th August, 2008 onwards. Indeed, demands have been made at this rate from 16th August, 2008.

13 By order dated 02.09.2011 and 23.9.2011, the Supreme Court in WP(C) 562 of 2009 directed that the Monitoring Committee shall collect Forest Development Tax (FDT) "as applicable". Accordingly, all buyers of iron ore, extracted from the leases in forest area (including the petitioners before the Karnataka High Court in W.P. No. 2642 of 2009 and other connected matters), have paid Forest Development Tax (FDT) at the rate of 12% to the Monitoring Committee without any protest or demur. No application was ever made to seek a clarification that the applicable rate of Forest Development Tax (FDT) was 8% and not 12%. Accordingly it has been uniformly accepted that Forest Development Tax (FDT) would be 12%. The petitioners before the Karnataka High Court have also restricted their claim only for the period before 23.09.2011. Thus, the rate of Forest Development Tax or Forest Development Fee is retrospectively amended to be 12% from the 16th day of August, 2008.

Rules for computing Forest Development Fee.

14 The rules or guidelines for computing Forest Development Fee are also being finalised. These rules will also have to be applicable retrospectively from 16th day of August, 2008. Accordingly clause 3 of the Bill enables such rules to be inserted with retrospective effect.

Hence the Bill.

[L.A. Bill No. 23 of 2016, File No. Samvyashae 32 Shasana 2016]

[Entry 17A and 47 of List III of the Seventh Schedule to the Constitution of India.]

KARNATAKA ACT NO 23 OF 2016

(First Published in the Karnataka Gazette Extra-ordinary on the Twenty Seventh day of July, 2016)

THE KARNATAKA FOREST (AMENDMENT) ACT, 2016

(Received the assent of the Governor on the Twenty Sixth day of July, 2016)

An Act further to amend the Karnataka Forest Act, 1963.

Whereas it is expedient further to amend the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964), for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the sixty- seventh year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Karnataka Forest (Amendment) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 2.- In the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964) (hereinafter referred to as the principal Act) in section 2, after clause (1), the following clause shall be deemed to have been inserted with effect from the 16th day of August, 2008, namely:-

"(1-A) "Consideration" means the price received or receivable on the sale of forest produce and computed in such manner and shall also include such other amount as may be prescribed by the State Government."

3. Amendment of Chapter XIA.- In the principal Act, in Chapter XIA,-

(1) including the headings and in section 98A and 98B for the word "tax" wherever it occurs, the word "fee" shall be deemed to have been substituted with effect from the 16th day of August, 2008;

(2) in section 98A,-

(i) in sub section (1),-

(a) for the words "or controlled by" the words "or controlled by the State Government" shall be deemed to have been substituted with effect from 16th day of August, 2008;

(b) The second proviso shall be omitted with the effect from the date of commencement of the Karnataka Forest (Amendment) Act, 2015 (Karnataka Act 41 of 2015); and

(c) after the second proviso to sub-section (1) the following proviso shall be deemed to have been inserted with effect from the 16th day of August, 2008; namely:-

"Provided also that, in respect of minerals which is a forest produce the rate of Forest Development fee shall be twelve percent."

(ii) after sub-section (1), the following explanations shall be deemed to have been inserted with effect from the 16th day of August, 2008, namely:-

"Explanation: (1) For the removal of doubts, it is hereby declared that for the purposes of this sub-section, the words "a body notified by the State Government" shall mean and include all entities directly or indirectly engaged in disposing of forest produce found in, or brought from, a forest, as individuals or other entities including Hindu Undivided Family, Company or foreign Company, partnership firms, societies, cooperative societies, other bodies corporate, trusts, lease holders of mines and quarries situated in forest area or any other association or committee or person, whether or not such individuals or entities constituted themselves into a juristic entity and whether or not such individuals or entities collectively come together and act as a group or body.

Explanation: (2) For the removal of doubts, it is hereby declared that for the purpose of this sub-section, the words, "or otherwise" includes disposal through captive consumption.

Explanation: (3) For the removal of doubts, it is hereby declared that Forest Development Fee shall be levied on the disposal of the forest produce irrespective of whether such forest produce is intended for sale inside or outside the State of Karnataka or for the purpose of export or for captive consumption. "

(iii) after the sub section (1-A), the following shall be inserted, namely:-

"(1-B) Notwithstanding anything contained in subsection(1), no fee shall be levied on the forest produce which is not found in or not brought from the forest except when it is disposed of by the State Government;

(1-C) Notwithstanding anything contained in subsection(1), no Forest Development Fee on forest produce shall be payable to the State Government, for which no demand was raised during the period from 16th August of 2008 till the commencement of the Karnataka Forest (Amendment) Act, 2015 (Karnataka Act 41 Of 2015); and

(1-D) The State Government may make rules regarding manner of Levy, computation and collection of Forest Development fee from a retrospective date."

(3) after section 98B, the following new section shall be inserted, namely:-

"98C. Power of State Government to exempt or reduce Forest Development fee.- (1) The State Government may, if in its opinion it is necessary in public interest so to do, by notification and subject to such restrictions and conditions and for such period as may be specified in the notification, exempt or reduce either prospectively or retrospectively the forest Development fee payable under this Act, by any specified class of persons or in respect of any specified forest produce;

(2) The State Government may, by notification cancel or vary any notification issued under sub-section (1).

(3) Where any restriction or condition specified under sub-section (1) is contravened or is not observed by a person or a declaration furnished under the said sub-section is found to be wrong, then such person shall be liable to pay by way of penalty an amount equal to twice the difference between the fee payable at the rates specified by or under the Act and the fee paid at the rates specified under the notification on the consideration of such forest produce in respect of which such contravention or non-observance has taken place or a wrong declaration is furnished:

Provided that before taking action under the sub-section the person shall be given a reasonable opportunity of being heard."

4. For the removal of doubts it is hereby declared that, the levy assessment and collection of Forest Development tax under the principal Act as amended by this Act or any rules, notification, order letter or guidelines shall be deemed to have always been levied and collected as Forest Development Fee.

5. No penal proceedings shall be commenced against any person for any contravention of the provisions of chapter XIA of the Principal Act that may arise as a consequence of the retrospective amendments made by this Act.

6. Validation of Levy and collection of any amount as Forest Development Tax or Fee.- Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority to the contrary levy, assessment or collection of any amount as tax or fee on Forest produce as Forest development Tax or fee made or purporting to have been made and any action or thing taken or done (including any notices or orders issued or assessment made) and all proceedings held and any levy and collection of tax, fee or amount purported to have been collected by way of tax or fee in relation to such levy assessment or collection under the provisions of the Principal Act or any rules, notification, order, guidelines or letters before the commencement of this Act shall be and shall be deemed to be valid and effective for all purposes as if such levy, assessment or collection or action or thing had been made, taken or done under the Principal Act as amended by this Act and accordingly:-

- (a) all acts, proceedings or things done or any action taken by the Government or as the case may be the Forest Department officers in connection with the levy, assessment or collection of any amount as forest Development tax or Forest Development fee for all purposes be deemed to be, and to have always been made done or taken in accordance with law;
- (b) no suit or other proceedings shall be maintained or continued in any Court or Tribunal or before any authority for the refund of any such tax or fee; and
- (c) no Court shall enforce any decree or order directing the refund of any such tax or fee.

By Order and in the name of the Governor of Karnataka

K. DWARAKANATH BABU
Secretary to Government
Department of Parliamentary Affairs