

**Assam Amusements And Betting Tax (Amendment) Act,
2009**

02 of 2009

[06 February 2009]

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PREAMBLE

An

Act

further to amend the Assam Amusements and Betting Tax Act, 1939.

Whereas it is expedient further to amend the Assam Amusements and Betting Tax Act, 1939 (Assam Act VI of 1939), hereinafter referred to as the principal Act, in the manner hereinafter

appearing;

It is hereby enacted in the Sixtieth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Amusements and Betting Tax (Amendment) Act, 2009.

(2) It shall have the like extent as the principal Act.

(3) It shall come into force at once.

2. Amendment of section 2 :-

In the principal Act, in section 2,--

(i) in clause (2), between the word held and the punctuation mark ;, the words "and in case of entertainment through cable service and direct to home service or through other similar electronic devices each connection to a subscriber shall be deemed to be an admission to an entertainment" shall be inserted;

(ii) in clause (3B), for the existing explanation, the following shall be substituted, namely:-

"Explanation.--For the purpose of this clause, programme means any television broadcast and includes,--

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation;"

(iii) for the existing clause (4), the following shall be substituted, namely:--

"(4) Entertainment" means any exhibition, performance, amusement, game or sport, music, cultural and dramatic performances, entertainment by electronic devices and it includes,-

(i) cinematograph exhibition including video shows (ii) cable service, (iii) direct to home service, (iv) park or garden, (v) amusement park, (vi) video game parlour, (vii) recreation parlour where a game such as bowling, billiards, snooker or the like by whatever name called is provided, (viii) river cruise or boat ride or water sports or para sailing or boat skiing or any other similar activities, (ix) discotheques, (x) fashion show, (xi) beauty pageant, (xii) circus, (xiii) magic shows and (xiv) horse race;"

(iv) for the existing clause (7), the following shall be substituted, namely:-

"(7) "payment for admission" means any payment for seat or other

accommodation in any form in a place of entertainment and includes,--

- (i) any payment made for cable service or direct to home service;
- (ii) any payment by whatever name called for any purpose whatsoever connected with an entertainment which a person is required to make in any form as a condition of attending or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission;
- (iii) any payment made for the use of any instrument or contrivance which enables a person to get a normal or better view or hearing of the entertainment which, without the aid of such instrument or contrivance, such person would not get;
- (iv) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher rate of tax is required; and
- (v) any payment made in whatsoever manner for an entertainment by any modern electronic devices;

Explanation.--Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets or invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission;"

(v) for the existing clause (8), the following shall be substituted, namely:-

"(8) "proprietor" in relation to any entertainment means the owner and shall include,-

- (i) any person connected with the organization of the entertainment, or
- (ii) any person charged with the work of admission to the entertainment, or
- (iii) any person responsible for, or for the time being in charge of, the management thereof;
- (iv) in relation to a cable service,--
 - (a) a cable operator who provides cable service through a cable television network and otherwise controls or is responsible for the management and operation of a cable television network;
 - (b) owner of an hotel;
- (v) in relation to a direct to home service, the service provider of such service;"
- (vi) in clause (10), for the existing explanation, the following shall

be substituted, namely:-

"Explanation.--In case of a hotel or restaurant each room or premises where signals of cable television network or direct to home service are received shall be treated as a separate place of entertainment and, for that purpose, the proprietor of the hotel or restaurant shall be the subscriber for each of such rooms or premises that receive signals of cable television network or direct to home service;"

(vii) for existing clause (12), the following shall be substituted, namely:-

"(12) Mini Cinema Hall" means a mini cinema hall as defined under the Assam Cinema (Regulation) Act, 1953 (Assam Act XIV of 1953)."

3. Substitution of section 2A :-

In the principal Act, for the existing section 2A, the following shall be substituted, namely:-

2A. Taxing authorities.

(1) The State Government may, for carrying out the purposes of this Act, appoint a person to be the Commissioner and as many other officers as mentioned in sub-section (2) to assist him as it thinks fit.

(2) There shall be the following taxing authorities to assist the Commissioner:--

(a) Additional Commissioner of Taxes;

(b) Joint Commissioner of Taxes;

(c) Deputy Commissioner of Taxes (Appeals);

(d) Deputy Commissioner of Taxes;

(d) Assistant Commissioner of Taxes;

(e) Superintendent of Taxes;

(f) Inspector of Taxes;

(g) any other person appointed as such by the State Government.

(3) The Commissioner shall have jurisdiction over the whole of the State of Assam and the other officers appointed to assist him shall have jurisdiction either over the whole of the State or over such areas as the State Government may specify.

(4) The Commissioner appointed under sub-section (1) and other officers appointed to assist him shall exercise such powers as may be conferred and perform such duties as may be required by or under this Act.

(5) The Commissioner shall have superintendence over all officers

and persons employed in the execution of this Act and he may,--

(a) make and issue general rules and specify forms for regulating the practice and proceedings of such officers and persons;

(b) issue such orders, instructions and directions to such officers and persons as he may deem fit, for the proper administration of this Act.

(6) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Deputy Commissioner of Taxes (Appeals) in the exercise of his appellate functions.

(7) No person shall be entitled to call in question in any proceedings, the jurisdiction of any taxing authority appointed under this section, after the expiry of thirty days from the date of receipt by that person of any notice issued by such taxing authority under this Act. Any objection as to the jurisdiction of any such taxing authority may be raised within the period aforesaid by submitting a memorandum to the authority concerned who shall refer the question to the Commissioner. The Commissioner shall, after giving the person raising the objection a reasonable opportunity of being heard, make an order determining the question of jurisdiction and his decision in this behalf shall be final."

4. Amendment of section 3 :-

In the principal Act, in section 3,--

(a) in sub-section (1),--

(i) for the words, "theatre, cinematograph exhibition, or circus or any class of entertainment to which the State Government may apply this sub-section", the words "class of entertainment" shall be substituted;

(ii) in clause (a), in the last portion, for the words, "twelve and a half percentum" the word "five percentum" shall be substituted;

(iii) for the existing clause (b), the following shall be substituted, namely:-

"(b) In the case of cinematograph exhibition, where the payment of admission is--

(i) rupee five or less--nil;

(ii) rupees twenty or less but more than rupee five--thirty percentum of such payment;

(iii) more than rupees twenty--fifty percentum of such payment:

Provided that the State Government may, by notification in the Official Gazette, in respect of such class or classes of cinematograph exhibitions and subject to such conditions and restrictions as may be notified, permit any proprietor of such cinematograph exhibition to pay in lieu of the amount of tax payable by him under this section, a lump-sum amount determined in the manner prescribed;"

(iv) for the existing clause (bbb), the following shall be substituted, namely:-

"(bbb) In case of cinematographic exhibition in mini cinema hall, where the payment for admission is--

(i) rupees five or less--nil;

(ii) rupees twenty or less but more than rupee five--twenty percentum of such payment;

(iii) more than rupees twenty--thirty percentum of such payment;"

(v) for the existing clause (c), the following shall be substituted, namely:-

"(c) In any other case,--ten percentum of such payment.";

(vi) for the existing clause (d), the following shall be substituted, namely:-

"(d) Notwithstanding anything contained hereinbefore in the subsection, in respect of a cinematograph exhibition, a tax at the rate of twenty percentum shall be charged and paid to the Government of Assam on any enhancement of the existing payment for admission as service charge. Such service charge shall not exceed--

(i) rupees five per ticket where the existing payment for admission is above rupees five;

(ii) rupees ten per ticket where the cinematograph exhibition hall provides dolby and digital sound system;

(iii) rupees eight per ticket where the cinematograph exhibition hall provides push back seat;

(iv) rupees seventeen per ticket where the cinematograph exhibition hall provides air conditioning system with back-up generator:

Provided that no service charge shall be collected where payment for admission is rupees five or less;"

(vii) in clause (e), in the second proviso for the figure and words "25 naye paise", the words "five rupees" shall be substituted;

(viii) in clause (e), after the existing third proviso, in the Explanation, for the words, "five naye paise", the words "fifty paise" shall be substituted;

(b) for existing sub-section (3), the following shall be substituted, namely:-

"(3) The State Government may, on the application of a proprietor of any entertainment, permit such proprietor, on such conditions as it may prescribe to pay a lump-sum amount in lieu of the amount of tax payable by him under this section.";

(c) after sub-section (6), the following new sub-section (7) shall be inserted, namely:-

"(7) The State Government may, by notification in the Official Gazette, vary the rates of tax under this Act and on such notification being issued, the rate of tax shall be deemed to have been amended accordingly:

Provided that the rate of tax to be specified or varied by the State Government in respect of any class of entertainment shall not exceed fifty per centum."

5. Amendment of section 3C :-

In the principal Act, in section 3C,--

(i) in sub-section (1),--

(a) the words "the service provider" occurring in between the word "and" and the word "of" shall be omitted;

(b) in between the words, "the" and "Government", the word "State" shall be inserted;

(ii) in sub-section (2), after the word "the" and before the word "Government", the word "State" shall be inserted;

(iii) in sub-section (3), in between the words, "the" and "Government", wherever they occur, the word "State" shall be inserted.

6. Amendment of section 4 :-

In the principal Act, in section 4,--

(i) In clause (a), in the beginning, before the words "with a ticket stamped", the words "in case of a cinematograph exhibition" shall be inserted;

(ii) in clause (b), for the words " State Government", wherever they occur, the word " Commissioner" shall be substituted;

(iii) in clause (c), for the words " State Government", wherever they occur, the word " Commissioner" shall be substituted;

(iv) in second proviso, the word "second" occurring in between the word "the" and the word "proviso" shall be omitted.

7. Amendment of section 4A :-

In the principal Act, in section 4A, for the words, "Any officer authorised by the State Government", the words "The Commissioner or any officer authorized in this behalf by him" shall be substituted.

8. Substitution of section 5 :-

In the principal Act, for the existing section 5, the following shall be substituted, namely:-

"5. Returns.

(1) Every proprietor shall furnish a correct and complete return in such form for such period, by such dates and to such authority, as may be prescribed:

Provided that different periods may be prescribed for different classes of entertainment for the purpose of filing return:

Provided further that in respect of an entertainment which is a single event or which is held for a duration less than a week, the proprietor shall submit such return, as may be prescribed, forthwith upon conclusion of such entertainment.

(2) If any proprietor having furnished a return under this section, discovers any omission or any other error in the return so filed, he may, without prejudice to the charge of any interest, furnish revised tax return in the prescribed manner and within the prescribed time.

(3) When the tax payable is required to be paid in accordance with return, every proprietor, before submitting such return as required by sub-section (1), shall, in the prescribed manner, pay the full amount of tax, interest and any other sum payable by him according to such return or the differential tax payable according to the revised return furnished, if any, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount into the Government account."

9. Substitution of section 5A :-

In the principal Act, for the existing section 5A, the following shall be substituted, namely:--

"5A. Assessment.

(1) If the Commissioner or any officer authorized in this behalf by him is satisfied that any return furnished by a proprietor is correct and complete and that the tax under the provisions of this Act due

thereon is paid in full, such return be accepted and assessment shall be deemed to have been made on the basis thereof.

(2) If any proprietor,--

(a) has failed to give information or take permission as required under Section 12B or has furnished incorrect particulars at the time of obtaining permission from the Commissioner or any officer authorized in this behalf by him; or

(b) has not furnished return in relation to an entertainment for any period by the prescribed date; or

(c) has furnished incomplete or incorrect return in relation to an entertainment for any period; or

(d) has not maintained any records or has failed to maintain records in accordance with the provisions of this Act,

the Commissioner or any officer authorized in this behalf by him shall, after giving the proprietor a reasonable opportunity of being heard and after making such enquiry as he considers necessary, assess to the best of his judgment any amount payable under this Act by such proprietor within a period of three years from the expiry of the year to which the period of entertainment relates and may also impose a penalty equal to twice the difference between the amount of tax so assessed and tax paid, if any.

(3) Where the Commissioner or any officer authorized in this behalf by him is of the opinion that any tax payable under this Act has escaped assessment or has been under-assessed or has been assessed at a lower rate, such authority may proceed to reassess, to the best of his judgment, tax so due within a period of five years from the expiry of the year to which the period of entertainment relates:

Provided that no order under this sub-section shall be passed without giving the proprietor an opportunity of being heard."

10. Substitution of section 6 :-

In the principal Act, for the existing section 6, the following shall be substituted, namely,--

"6. Interest.

If any proprietor fails to pay the amount of tax due within the time prescribed for its payment, such proprietor shall, in addition to the tax, be liable to pay simple interest, at the rate of one and half per cent, per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period, for the period commencing on the day following the date of expiry of the due

date to the date of payment or the date of assessment, whichever is earlier. If any dealer fails to pay interest along with return or revised return in accordance with the provisions of this sub-section, such interest shall be levied by the Commissioner or any officer authorized in this behalf by him.

Explanation.--For the purpose of calculating interest:--

(a) month shall mean thirty days;

(b) where the period of default is in respect of a period of less than one month, the interest shall be computed proportionately."

11. Amendment of section 7 :-

In the principal Act, in section 7,--

(i) for sub-section (1), the following shall be substituted, namely:-

"(1) The proprietor shall be liable to pay the amount of the tax payable under this Act,-

(a) in the case, of admission by stamped tickets, by means of stamps to be affixed on the tickets in the prescribed manner; or

(b) in accordance with returns of the payments for admission to the entertainment and on account of tax; or

(c) in accordance with results recorded by any mechanical contrivance or electronic device, which automatically registers the number of persons admitted to the entertainment.";

(ii) sub-section (2), shall be omitted;

(iii) in sub-section (3), for the word, "State Government", wherever they occur, the word "Commissioner" shall be substituted;

(iv) in sub-section (4), for the word, letter and bracket "clause (c)" the word, letter and bracket "clause (d)" shall be substituted.

12. Insertion of new section 9A :-

In the principal Act, after section 9, a new section 9A shall be inserted, namely:-

9A. "Applicability of the provisions of the Assam Value Added Tax Act, 2003.

Subject to the provisions of this Act and rules made thereunder, sections 44, 45, 46, 55, 61, 79, 80, 81, 82, 83, 98, 99, 100, 102 of the Assam Value Added Tax Act, 2003 and the rules made thereunder, orders, notifications issued thereunder shall mutatis mutandis apply to a proprietor in respect of any tax levied and payable under this Act, as if those sections were mutatis mutandis incorporated in this Act and the rules framed and orders and notification issued under those sections were mutatis mutandis

issued under the relevant sections so incorporated under this Act."

13. Substitution of section 10 :-

In the principal Act, for the existing section 10, the following shall be substituted, namely:-

"10. Recovery of tax.

Any sum due on account of tax, interest, penalty under any provision of this Act shall, without prejudice to any other mode of recovery available to the Government under any other law for the time being in force, be recoverable as arrears of land revenue."

14. Substitution of section 10A :-

In the principal Act, for the existing section 10A, the following shall be substituted, namely:-

"10A. Composition of offences.

(1) The Commissioner or any officer authorised in this behalf by him may, either before or after the institution of proceedings of prosecution for any offence punishable under this Act, accept from any person charged with such offence, by way of composition,--

(a) where the offence consists of the failure to pay or the evasion of, any tax recoverable under the provisions of this Act, in addition to the tax so recoverable, a sum of money not exceeding double the amount of tax recoverable:

Provided that such authority shall not accept any sum by way of composition which is less than twenty-five percent of the amount of tax recoverable;

(b) in any other case, a sum of money not exceeding fifty thousand rupees subject to a minimum of rupees two thousand, in addition to the tax recoverable.

(2) The Commissioner or any officer authorised in this behalf by him shall not compound an offence under this section and pass an order for payment of the composition money unless the person concerned admits in writing that he has committed the offence.

(3) Where such authority compounds an offence under this section, the order,--

(a) shall be in writing and specify the offence committed, the sum of money to be paid, the due date for the payment, and date by which the proof of such payment is to be produced;

(b) shall be served on the person who committed the offence; and

(c) shall be final and not subject to any appeal.

(4) On payment of the full composition money, no further

proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall not be further proceeded with."

15. Amendment of section 11 :-

In the principal Act, in section 11, sub-section (2) shall be omitted.

16. Amendment of section 11A :-

In the principal Act, in section 11A, for the words, "An officer authorised by the State Government in this behalf, the words "The Commissioner or any officer authorised in this behalf by him" shall be substituted.

17. Substitution of section 12 :-

In the principal Act, for section 12, the following shall be substituted, namely:-

"Rules 12.

(1) The State Government may, subject to the condition of previous publication, make rules, by notification, for carrying out the purposes of this Act:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, if any, it may make any rules without such previous publication:

Provided further that any rule under this Act may be made so as to have the retrospective effect.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,--

(a) for the supply and use of stamps or stamped tickets, or for the stamping of tickets sent to be stamped; and for securing the defacement of stamps when used;

(b) for the use of tickets covering the admission of more than one person and the calculation of the tax thereon; and for payment of the tax on the transfer from one part of a place of entertainment to another and on payments for seats or other accommodation;

(c) for controlling the use of barriers or mechanical contrivances (including the prevention of the use of the same barrier or mechanical contrivance for payments of a different amount), and for securing proper records of admission by means of barriers or mechanical contrivances;

(d) for the checking of admission, the keeping of accounts and the furnishing of returns by the proprietors of entertainment to which the provisions of section 3, sub-section (3), are applied or in respect of which the arrangements approved by the State Government for furnishing returns are made under section 4;

(e) for the renewal of damaged or spoiled stamps and for the procedure to be followed on applications for refund under this chapter or under the rules made thereunder;

(f) for the keeping of accounts of all stamp used under this chapter;

(g) for the presentation and disposal of applications for exemption from payment of the entertainments tax or for the refund thereof, made under the provisions of this chapter;

(h) for proper maintenance of accounts and submission of returns;

(i) for the time and manner of payment and collection of the tax, interest and penalty under this Act;

(j) for completion of assessment and issuing a demand notice;

(k) for any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act, and

(l) for the rates of fees, for petitions, certificates and other matters.

(3) The State Government shall cause every rule made under this Act and every notification issued under this Act to be laid, as soon as may be, after it is published before the State Legislature 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 in which it is so laid or the sessions immediately following, and if the State Legislature agrees in making any modification in the rule or notification or that the rule or notification should not be made, the rule or notification 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 or notification."

18. Amendment of section 12A :-

In the principal Act, in section 12A,--

(i) in sub-section (1),--

(a) after the words, "the Commissioner", occurring in between the word "If and the punctuation mark ",", the words "or any officer authorised in this behalf by him" shall be inserted;

(b) in clause (b), for the words "one thousand", the words "fifty thousand" shall be substituted;

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

19. Substitution of section 13 :-

In the principal Act, for the existing section 13, the following shall be substituted, namely:-

13. "Offences and prosecution.

(1) Whoever,-

(a) fails, without sufficient cause, to furnish any information required before holding an entertainment; or fails to obtain the required permission in respect of an entertainment or holds an entertainment while it has been prohibited by the Commissioner or any officer authorised in this behalf by him; or

(b) fails without sufficient cause, to furnish any return or furnishes a false return; or

(c) fails to deposit the tax due before furnishing the return in accordance with the provisions of this Act, or fails to pay without reasonable cause the amount of any demand under the provisions of this Act; or

(d) fails, without sufficient cause, to maintain true accounts or fails, when directed, to keep any accounts or record in accordance with such direction or fails to produce accounts and records as required or knowingly keeps false accounts; or

(e) refuses to permit or prevents or obstructs, in any manner, the Commissioner or any officer authorised in this behalf by him under this Act, to enter, inspect and search the place of entertainment or any other place where any accounts, registers or other documents are believed to have been kept or refuses to display material in a computer or in a computer floppy or refuses to allow copies or printout of the material in a computer or its floppy to be taken in accordance with the provisions of this Act; or

(f) prevents or obstructs, in any manner, any officer to seize the goods or the accounts, registers or other documents, or prevents or obstructs an officer empowered under this Act from performing any of the functions under this Act or the rules made thereunder; or

(g) sells any ticket in contravention of the provision of the Act or willfully evades or attempts to evade tax leviable under this Act or willfully attempts, in any manner whatsoever, to evade payment of any tax, penalty or interest or any other sum or all of them under this Act; or

(h) refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnishes information which is false in any material particular or refuses or fails to comply with any requirement made of him under the provisions of this Act; or
(i) willfully acts in contravention of any provisions of this Act or the rules made thereunder, for the contravention of which no express provision for punishment is made by this Act,
shall, without prejudice to his liability under any other law for the time being in force and in addition to recovery of tax or any other dues payable by him under this Act, on conviction be punishable with simple imprisonment for a period which shall not be less than six months but which may extend to three years and with fine of minimum of rupees ten thousand and maximum of rupees fifty thousand.

(2) Whoever aids or abets or induces any person in commission of any act specified in sub-sections (1) shall, on conviction, be punished with simple imprisonment which shall not be less than three months but which may extend to three years with fine not exceeding fifty thousand rupees.

(3) Notwithstanding anything contained in sub-sections (1) and sub-section (2), no person shall be proceeded against under these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than rupees one thousand during the period of a year.

(4) Where a proprietor is accused of an offence specified in sub-sections (1), the person deemed to be the manager of the business of such dealer shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(5) Where an offence under this Act or the rules made thereunder has been committed by a company, every person who at the time when the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company or if 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 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.

(6) No Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act."