

Assam General Sales Tax (Amendment) Act, 1998

08 of 1998

[30 May 1998]

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PREAMBLE

AN ACT

further to amend the Assam General Sales Tax Act, 1993.

Whereas it is expedient further to amend the Assam General Sales Tax Act, 1993 (Assam Act XII of 1993), hereinafter referred to as the principal Act, in the manner hereinafter appearing ;

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

1. Short title, extent and commencement :-

- (1) This Act may be called the Assam General Sales Tax (Amendment) Act, 1998
- (2) It shall have the like extent as the principal Act.
- (3) It shall come into force at once.

2. Amendment of section 8 :-

In the principal Act, in section 8, in sub-section (1), in clause (a), the existing Explanation shall be renumbered as Explanation 1 and thereafter the following shall be inserted as Explanation 2, namely

:-

"Explanation 2 :- When an Oil Company, as may be specified in the rules, sells within the State of Assam its products, as mentioned in Serial numbers 65, 66, 67, 68, 69 and 70 in Schedule II, to any other Oil. Company registered under the Assam General Sales Tax Act, 1993 (Assam Act XII of 1993), for the purpose of re-sale of the same within the State by such purchasing Oil Company, such inter-se sale between the Oil Companies shall not be treated as first point of sale for the purpose of levying tax and tax shall be levied, subject to such conditions as may be prescribed, on the purchasing Oil Company when they re-sale the goods within the State."

3. Insertion new section 8A :-

In the principal Act, after section 8 the following or section shall be inserted as section 8A, namely :-

8A. "Levy of additional tax.

(1) Notwithstanding anything contained in this Act, every dealer who is liable to pay tax under this Act shall pay for each year an additional tax on his taxable turnover at the rate of ten percentum of the tax payable by him under any other provisions of this Act, if his turnover liable to tax for that year exceeds rupees three lakhs Provided that in calculating the additional tax payable by the dealer, there shall not be taken into consideration the tax payable in respect of :--

(i) the sales or purchases of declared goods;

(ii) the sales of tea by Brokers in auction at Guwahati; and

(iii) the sales or purchases of any goods relating to any period prior to the date with effect from which additional tax is payable.

(2) (a) The additional tax shall be computed and paid by a dealer along with the tax payable under Section 7 at such intervals as mentioned in Section 16 and the corresponding rules prescribed with reference to that section;

(b) In the case of a dealer whose taxable turnover exceeds rupees three lakhs for the first time in any year, the additional tax shall be payable in respect of that year from the fast day of the month immediately succeeding the month during which his taxable turnover exceeds rupees three lakhs; and

(c) As for the year 1998-99, the additional tax shall be payable on and from the date on which the provisions of this Act come into force.

(3) Notwithstanding anything contained in this section, no dealer

shall be entitled to collect any sum by way of additional tax payable by him under this section.

(4) The provisions of this Act and rules framed thereunder shall, so far as may be, apply in relation to the additional tax payable under this Act."

4. Amendment of section 42 :-

In the principal Act, in section 42,-

(i) in sub-section (1), for the. word "dealer", occurring between the words "or" and "or",,, the word "dalal" shall be substituted ;

(ii) in sub-section (3), the words "by the Commissioner" shall be omitted ;

(iii) in sub-section (4), the word "dealer" occurring between the words "or" and "or", the word "dalal" shall be substituted and the words" in the manner prescribed", occurring between the words, "heard" and "direct" shall be omitted ;

(iv) in the. Explanation, in clause (i), for the word "Dealer", in the begining, the word "dale shall be substituted.

5. Amendment of section 43 :-

In the principal Act, in Section 43, in sub-section (3), the words "in the manner prescribed", occurring between the words "heard" and "that", shall be omitted.

6. Amendment of section 44 :-

In the principal Act, in section 44,--

(i) in sub-section (3), for the words and figure "under Section 57", occurring between the word "prosecution" and the word "and", the words "for any offence punishable under this Act" shall be substituted;

(ii) In sub-section (5),--

(a) in clause (b), the words "in the manner prescribed", occurring between the words "heard" and "to", shall be omitted ;

(b) in clause (c), full stop occuring at the end shall be omitted and thereafter after the existing provisions the following shall be inserted, namely :--

"in the form of a demand draft or a call deposit drawn on a Scheduled Bank";

(c) in clause (e), between the words "paid" and "or", the word "forthwith" shall be inserted ;

(d) in clause (f), for the words in the prescribed manner", appearing at the end, the words "with the approval of the next higher authority" shall be substituted.

7. Amendment of section 46 :-

In the principal Act, in section 46,--

(i) sub-section (2) shall be re-numbered as sub-section (2), clause (a) and after the provisions of sub-section (2) (a) so re-numbered, the following shall be inserted as clauses (b) (c) (d) (e) and (f), namely :--

"(b) The authority referred to in clause (a) shall have the power to seize any goods found in any such office, shop godown, vessel, receptacle, vehicle or arty other place of business or building or place as mentioned in clause (a), if such goods are found not properly accounted for or if the said authority has reason to suspect that evasion of tax payable under this Act may take place in respect of the goods :

Provided that a list of all goods seized under this clause shall be prepared by such officer and be signed by the officer and the carrier or the bailee or the person in-charge of the goods and by not less than two witnesses ;

(c) The authority reffered to in clause (b) shall, in a case where the carrier or the bailee or the person in-charge of the goods fails to produce any evidence or satisfy the said authority regarding the proper accounting of the goods, impose a penalty, after giving a reasonable opportunity of being heard to such carrier or bailee or the person in-charge Of the goods, which shall be equal to three times the amount of tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid :

Provided that where the person liable to pay the tax in respect of the goods is not a registered dealer under this Act or under the Central sales Tax Act, 1956, security equivalent to tax on the goods shall be paid by the carrier or the bailee or the person in charge of the goods, in addition to the penalty imposed under this clause, before release of the goods ;

(d) If the carrier or the bailee or the person in-charge of the goods, as mentioned in clause (b), demands time for production of necessary documents in support of proper accounting of the goods, the authority referred to in clause (b) shall release the goods on the condition that the carrier or the bailee or the person in-charge of the goods deposits before release of the goods a security in the

form of a bank draft or a call deposit or a guarantee from a Scheduled Bank, equivalent to--

(i) three times the tax calculated on the value of the goods, if the person liable to pay tax on the goods is a registered dealer under this Act or under the Central Sales Tax Act, 1956;

(ii) four times the, tax calculated on the value of the goods, if the person liable to pay tax on the goods is not a registered dealer under this Act or under the Central Sales Tax Act, 1956;

(e) if the penalty imposed under clause (c) is not paid or the security as provided in clause (d) is not furnished forthwith or the goods are not claimed by any person, the authority referred to in clause (b) shall arrange for safe custody of the goods;

Provided that in case the goods are subject to speedy and natural decay, the said authority shall sell such goods in open auction with the prior permission in writing of the next higher authority and shall keep the sale proceeds in the form of call deposit to be disposed of in the following manner :--

(i) if any person claims the ownership of the goods with sufficient proof and produces evidence to the satisfaction of the said authority that the goods are properly accounted for, within fifteen days from the date of seizure of the goods, he shall be paid the sale proceeds after deducting the expenses of the sale and other incidental charges and the amount of tax due under this Act in respect of sale or purchase of the goods in question;

(ii) in all other cases, the sale proceeds shall be appropriated in the manner provided in clause (e) of sub-section (5) of section 44;

(f) provisions of clauses (e) and (f) of sub-section (5) and those of sub-section (6) and (7) of section 44 in so far as these may be applicable and in so far as these are not provided in the foregoing clauses of this sub-section, shall be applicable in case of this sub-section." ;

(ii) after sub-section (14), the following shall be inserted as sub-section (14 A), namely :--

"(14 A) If in any case, the said Officer, after making the enquiry as provided in sub-clause (ii) of clause (b) of sub-section (5) is satisfied that there is a wilful attempt of evasion of tax payable under this Act on any goods carried by a goods vehicle or a boat, he shall seize the goods from the driver or the person in-charge of the goods vehicle or a boat or the owner or the person in-charge of the goods, in the manner as provided in clause (b) of sub-section (2) and shall thereafter apply the provisions of clauses (c), (d), (e) and (f) of sub-section (2), in so far as these provisions may be

applicable in such case.";

(iii) sub-section (15) shall be substituted as follows, namely:-

"(15) (a) When a goods vehicle or a boat coming from any place outside the State of Assam and bound for any place outside the State and carrying the goods passes through the State, the driver or any other person in-charge of such vehicle or boat shall apply for and obtain a transit pass in such form and in such manner as may be prescribed, from the Office-in-charge of the entry check post or barrier, after his entry into the State of Assam and produce it at the time of his exit from the State to the Officer-in-charge of the exit check-post or barrier or any other Officer as may be directed, and obtain his endorsement with his seal and signature, in proof of such exit from the State;

(b) in a case where it appears to the Officer-in-charge of the entry check-post or barrier that the driver or the person in-charge of the goods vehicle or is not giving correct and complete documents relating to the consignment or goods and correct information about the ownership of the goods and their destination and also in a case where the carrier or the transporter of the goods has no permanent address within the State, the Officer-in-charge of the entry check-post shall, before issuing the transit pass, require the driver or the person in-charge of the goods vehicle or boat to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit guarantee from a Scheduled Bank.

The security so furnished shall be released to the person who furnished the security on submission of the transit pass as per provision of clause (d). If, however the transit pass is not submitted in time as provided in clause (d) or is submitted without due endorsement (s) as provided in the same clause, the amount of such security shall be adjusted against the amount of tax that may be assessed under the said clause and shall be deposited into the Government account:

(c) in a case where goods carried by a goods vehicle or a boat coming from any place outside the State of Assam and bound for any other place outside the State are required to be unloaded temporarily at any place within the State for the purpose or transshipment or for any other purpose, the driver or the person in-charge of the vehicle or boat shall give a declaration to this effect before the Officer-in-charge of the entry check-post or barrier mentioning the exact place of such temporary unloading while applying for the transit pass. Before unloading, even temporarily,

any goods for which a transit pass has been issued, at any place within the State, the driver or the person in-charge of the vehicle or boat or the carrier or the transporter of the goods shall inform the Superintendent of Taxes or the Inspector of Taxes of the Unit within the jurisdiction of which the place of such unloading falls and such unloading and subsequent loading in the same vehicle or in a different vehicle shall be done in presence of the Superintendent of taxes or the Inspector of Taxes concerned and an endorsement of the Superintendent of Taxes or the Inspector of Taxes to this effect with his seal and signature shall be obtained on the transit pass;

Provided that the Commissioner may, for the purpose of this clause, constitute a separate group of Superintendent of Taxes and Inspectors of Taxes for any place in the State, who shall supervise such unloading and re-loading at that place and shall put the endorsement on the transit pass accordingly ;

(d) the driver or the person in-charge of the goods vehicle or boat or the transporter or the carrier of the goods shall submit the transit pass with the endorsement of the Officer-in-charge of the exit check-post or barrier or any other Officer as mentioned in clause (a) and also the endorsement of the Superintendent of Taxes or the Inspector of Taxes as provided in clause (c) in case a transshipment of the goods had taken place within the State, to the Officer-in-charge of the concerned entry check-post within thirty days from the date of its issue, failing which it shall be presumed that the goods carried by the vehicle or the boat have been sold within the State by the owner or the person in-charge of the goods vehicle or boat or the transporter or the carrier of the goods and all the provisions of this Act shall, so far as may be applicable, be applicable as if such transporter or carrier or the driver or other person in-charge of the vehicle or boat were a dealer within the meaning of clause (10) of section 2 and the Officer-in-charge of the entry check-post or barrier were an assessing Officer in respect of this dealer."