

ASSAM TAXATION (ON LUXURIES) ACT, 1997

8 of 1997

[4th April, 1997]

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SCHEDULE 1 :- SCHEDULE

ASSAM TAXATION (ON LUXURIES) ACT, 1997

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An Act to provide for imposition of tax on luxuries Preamble.
Whereas it is expedient to provide for the imposition of tax on luxuries and for matters connected therewith or incidental thereto ; It is hereby enacted in the Forty-eighth Year of the Republic of India as follows:

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Taxation (On Luxuries) Act, 1997.

(2) It extends to the whole of Assam.

(3) It shall come into force on such date as the State Government may by notification appoint.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,

(a) "licensed stockist" means a stockist to whom a licence has been granted under sub-S. (4) of S. 6;

(b) "luxuries" means the commodities, as specified in the Schedule, for enjoyment over and above the necessities of life ;

(c) "tax" means the tax payable under this Act;

(d) "notification" means notification published in the Official Gazette ;

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

(f) "Prescribed Authority" means the Commissioner of Taxes appointed under sub-S. (1) of S. 3 of the Assam General Sales Tax Act, 1993 ;

(g) "Schedule" means the Schedule appended to this Act;

(h) "State Government" means the Government of Assam ;

(j) "Stockist" means a person who has, in customary course of business, in his possession of, or control over, a stock of luxuries, whether manufactured, made or processed by him in Assam or brought by him into Assam, either on his own account or on account of others, from any place outside Assam;

(k) "Tribunal" means the Assam Sales Tax Appellate Tribunal constituted under S. 5 of the Assam General Sales Tax Act, 1993 (Assam Act XII of 1993);

(1) "turnover of stock of luxuries" in relation to a stockist in respect of any period as prescribed or part thereof, means the aggregate of the value of stock of luxuries;

(n) "Year" means the year commencing on the first day of April and ending on the 31 st day of March.

3. Taxing Authority :-

(1) The State Government shall appoint the prescribed authority and shall appoint such other persons as appointed under sub-S. (1) of S. 3 of the Assam General Sales Tax Act, 1993 (Assam Act XII of 1993) to assist the prescribed authority for carrying out the purposes of this Act with area or areas as specified under the said Act over which such persons have been exercising jurisdiction.

(2) Persons appointed under sub-S. (1) shall exercise such powers as may be conferred, and perform such duties as may be required by or under this Act,

(3) The prescribed authority and the persons appointed under sub-S. (1) shall be deemed to be public servants within the meaning of S. 21 of the Indian Penal Code (Central Act 45 of 1860).

(4) Subject to such conditions and restrictions as may be prescribed, the Taxing Authority may, by order in writing, delegate any of its powers and duties under this Act, except those under sub-S. (6) of S. 17 to any person appointed under sub-S. (1) to assist it.

(5) No suit, prosecution or other legal proceedings shall lie against the prescribed authority or the persons appointed under sub-S. (1) to assist it, for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

4. Incidence of tax :-

Every stockist shall be liable to pay a tax on his turnover of stock of luxuries at such rate, not exceeding twenty per centum, as the State Government may, by notification, fix in this behalf and different rates may be fixed for different class or classes of luxuries.

5. Levy of tax :-

The tax payable by a stockist under this Act shall be levied on his turnover of stock of luxuries during any period as prescribed.

6. Licence :-

(1) No stockist shall, while being liable to pay luxury tax under S. 4, hold any stock of luxuries in any premises, godown, warehouse or any other place in Assam unless he obtains, on application, a

licence in the prescribed Form.

(3) Every stockist required to obtain a licence under sub-S. (1) shall make an application in this behalf in the prescribed manner to the prescribed authority.

(4) If the prescribed authority is satisfied that the application for licence is in order, it shall, subject to such conditions and restrictions and in such manner as may be prescribed, grant the applicant a licence in the prescribed Form.

(5) Where a stockist makes an application for licence under sub-S. (3) within the period referred to in sub-S. (2), such stockist shall be deemed to have complied with the provisions of sub-S. (1) during the pendency of his application for the grant of the licence. :

(7) The prescribed authority may, on application or otherwise, from time to time, amend the licence of a stockist.

(8) Where the liability of a stockist to whom a licence has been granted under sub- S. (4) to pay the tax under this Act has ceased, such licence may, on application by him, be cancelled by the prescribed authority in the manner as may be prescribed.

7. Returns and payment of tax :-

(1) Every licensed stockist shall furnish returns of turnover of stock of luxuries to such authority, in such manner, for such period or periods, and by such date or dates as may be prescribed.

(2) Before any licensed stockist furnishes the returns under sub-S. (1), he shall, in the prescribed manner, pay into a Government treasury the full amount of tax due from him under this Act according to such returns, and shall furnish along with each such return a receipt from such Treasury showing the payment of such amount.

8. Interest :-

(1) If the amount of tax payable under S. 5 in respect of any period is not paid by the stockist referred to in S. 7 by the date prescribed under that section, such stockist shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the date as prescribed to the last day of the month prior to the month in which such tax is fully paid or up to the month prior to

the month of assessment under S. 9 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to return where return is furnished, or according to such assessment where return is not furnished, as remains unpaid at the end of each such month of default.

(2) Where a stockist fails to make payment of any tax payable after assessment made under sub-S. (1) or sub-S. (2) by the date specified in the notice issued under sub-S. (8) of S. 9 for payment thereof, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the date specified in such notice to the last day of the month prior to the month of full payment of such tax, or up to the month prior to the month of commencement of proceedings under sub-S. (10) of S. 9, whichever is earlier, upon so much of the amount of tax due from him according to such notice as remains unpaid at the end of each such month of default.

(3) Where as a result of an order under S. 14, the amount of tax on which interest was payable under this section is modified, the interest shall be payable on the modified amount.

(4) A stockist liable to pay interest under sub-S. (1) or sub-S. (2), shall pay into a Government Treasury the amount of such interest, in such manner and by such date or dates as may be prescribed.

(5) Notwithstanding anything contained in sub-S. (1) or sub-S. (2), no interest shall be payable in such cases or under such circumstances, and subject to such conditions, if any, as may be prescribed.

(6) The State Government shall, in the prescribed manner, pay a simple interest at the rate of two per centum for each English calendar month of delay in making refund of luxury tax paid in excess which arises out of an order passed under S. 14, from the first day of such month next following the expiry of three months from the date of passing of such order to the last day of the month prior to the month in which the refund is made upon the amount of tax refundable to him according to such order.

(7) In calculating the interest payable under this section, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be

increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

9. Assessment of tax, imposition of penalty and determination of interest :-

(2) If, upon information, the prescribed authority is satisfied that any stockist who has been liable to pay tax under S. 4, has failed to obtain licence, or has not been granted licence, the prescribed authority shall proceed in such manner as may be prescribed to assess to the best of its judgment the amount of tax due from such stockist in respect of any period or part thereof during which such stockist has either failed to obtain licence, or has not been granted licence, after giving him a reasonable opportunity of being heard.

(3) No assessment under sub-S. (1) shall be made after the expiry of two years, and no assessment under sub-S. (2) shall be made after the expiry of six years, from the end of the year in respect of which or part of which the assessment is made.

(4) In computing the period limited by sub-S. (3) for making any assessment under sub-S. (1) or sub-S. (2), the period during which the prescribed authority is restrained from commencing or continuing any proceeding for such assessment by an order of any Court shall be excluded.

(5) Where the prescribed authority is satisfied that a stockist is liable to pay interest under S. 8, it shall, in such manner as may be prescribed, determine the amount of interest payable by such stockist and if, on such determination, any additional amount is found to be payable by the stockist or any excess amount is found to be refundable to the stockist, the prescribed authority shall issue a notice, in the prescribed manner, to such stockist directing him to pay such additional amount or informing him of the amount of excess payment, as the case may be.

(6) No determination under sub-S. (5) of the interest payable under sub-S. (1) of S. 8 shall be made after the expiry of one year from the date of assessment of tax under sub-S. (1) in respect of the period for which such determination is made.

(7) Where there is an apparent mistake in the determination of interest under sub-S. (5), the prescribed authority may, on its own motion or upon application made by a stockist, within six months from the date of determination, rectify the amount of interest

payable by such stockist and issue a fresh notice in the prescribed manner.

(8) The amount of tax due from a stockist upon assessment made under sub-S. (1) or sub-S. (2), as the case may be, shall together with any penalty directed to be paid under sub-S. (1), be paid by the stockist into a Government Treasury by such date as may be specified in a notice issued by the prescribed authority for this purpose, and the due date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(9) The amount of interest that may become due from a stockist upon determination under sub-S. (S) shall be paid by the stockist into a Government Treasury by such date as may be specified in the notice issued under the sub-section by the prescribed authority, and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(10) Any amount of tax, penalty or interest which remains unpaid after the date specified in the notice under sub-S. (8) or sub-S. (9) shall be recoverable as an arrear of land revenue, as if it were payable to the Collector.

10. Refunds :-

The prescribed authority shall, in the prescribed manner, refund to a stockist any amount of tax, penalty or interest paid by such stockist in excess of the amount due from him under this Act, either by cash payment or by deduction from or adjustment in, the amount of tax, penalty or interest due in respect of any other period,

11. Accounts :-

Every stockist shall maintain and keep true and up-to-date account of the quantity and value of luxuries held in stock by him and vended, supplied or distributed by him during the period as prescribed and also keep documents in support of other charges, duties and tax, paid or payable by him, and if the prescribed authority considers that such account is not sufficiently clear or intelligible to enable him to make a proper check of the return referred to in S. 7, he may require such stockist to keep such accounts as he may direct.

12. Production and inspection of accounts and search of premises :-

(2) All accounts, registers and documents and luxuries kept in any place of business of a stockist shall, at all reasonable times, be open to inspection by the prescribed authority.

(3) If the prescribed authority, or any person appointed under sub-S. (1) of S. 3 to assist it, has reason to suspect that any stockist is attempting to evade payment of tax, he may enter into and search any place of business and for reasons to be recorded in writing, seize such accounts, registers or documents of the stockist as may be necessary, for determination of liability to pay tax by such stockist or for assessment of such tax or for determination of interest or for any other purposes as may be required by or under this Act.

13. Search and seizure :-

(1) If the prescribed authority, or any person appointed under sub-S. (1) of S. 3 to assist him has reasons to believe that a person in holding a stock of any of the luxuries manufactured by him in Assam or brought by him into Assam from any place outside Assam in any premises and that he is attempting to evade payment of tax, such authority, or the person appointed under sub-S. (1) of S.3 to assist it may, subject to such conditions and restrictions as may be prescribed, enter into such premises and conduct search therein and seize such luxuries to secure payment of tax that may become payable on assessment under S. 9.

(2) While making seizure, the prescribed authority, or the person who seizes luxuries, shall grant a receipt thereof in the prescribed manner ; Provided that when the prescribed authority, or the person appointed under sub- S. (1) of S. 3 to assist it, thinks it necessary not to seize such luxuries for the time being, he shall seal in the prescribed manner any room, godown or warehouse or any container found within such premises.

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(4) If a stockist fails to pay the amount of tax as may become payable under S, 5 or due from him under S. 9 and penalty payable under sub-S. (2) of S. 6, if any, within such period as may be prescribed, the luxuries so seized Shall, subject to such condition and restrictions and in such manner as may be prescribed be sold in open auction or otherwise by the prescribed authority, and the sale proceeds thereof shall be remitted to a Government Treasury after deducting therefrom the incidental expenses, if any.

(5) The amount of tax due from a stockist after assessment under S. 9 together with penalty, if any, that may be directed to be paid under sub-S. (2) of S. 6, shall be recovered out of the sale proceeds of the luxuries sold under sub-S. (4) and the balance amount of the sale proceeds, if any, shall be refunded to such stockist in the prescribed manner on application made by him within the period as prescribed.

14. Appeal, revision and review :-

(5) Before any order is passed under this section, any person who is likely to be affected thereby adversely, shall be given a reasonable opportunity of being heard.

15. Bar to certain proceedings :-

No assessment made and no order passed under this Act or the rules made thereunder by the prescribed authority or any person appointed under sub-S. (1) of S. 3 to assist it, and no order passed under this Act or the rules made thereunder by the Tribunal, shall be called in question in any civil court, and save as otherwise provided in S. 14, no appeal or application for revision or review shall lie against any such assessment or order.

16. Power to take evidence :-

The Tribunal, the prescribed authority or any person appointed under sub-S. (1) of S. 3 to assist the Prescribed Authority shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses; and any proceeding under this Act before the Tribunal, the prescribed authority or any person appointed under sub-S. (1) of S. 3 to assist the Prescribed Authority shall be deemed to be a judicial proceeding within the meaning of S. 193 and S. 228, and for the purposes of S. 196, of the Indian Penal Code (Central Act 45 of 1860).

17. Offences, penalties and prosecution :-

(2) Whoever holds a stock of luxuries in contravention of the provisions of sub-S. (1) of S. 6 shall be punishable with simple imprisonment which may extend to one year or with minimum fine of five thousand rupees or with both and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(3) Whoever obstructs the prescribed authority or any person appointed under sub-S. (1) of S. 3 to assist it, making inspection, search or seizure under S. 12 or S. 13, shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever abets any of the offences referred to in sub-S. (2) or sub-S. (3) shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

(6) No court shall take cognizance of any offence under sub-S. (1), sub-S. (2), sub-S. (3) or sub-S. (4) or the rules made under this Act except with the previous sanction of the Prescribed Authority and no court inferior to the court of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try such offence.

(7) The offence punishable under sub-S. (1), sub-S. (2) or sub-S. (4) shall be cognizable and bailable and the offence punishable under sub-S. (3) shall be cognizable and non-bailable.

18. Liability to prosecution :-

(2) Notwithstanding anything contained in sub-S. (1), where an offence under this Act, has been committed by a stockist, being a company within the meaning of the Companies Act, 1956, 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, as the case may be, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

19. Compounding of offences :-

(1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence referred to in Cl. (f) or Cl. (g)

of sub-S. (1) or sub-S. (2) of S. 17 may, either before or after the commencement of any proceedings in respect of such offence, at his option, compound such offence by paying to prescribed authority such sum, not exceeding twenty thousand rupees, as may be determined by the prescribed authority.

20. Power to make rules :-

(1) The State Government may, by notification, make rules for carrying out the purposes mis Act.

(3) In making any rule, the State Government may direct that a breach thereof shall be punishable with fine not exceeding five hundred rupees and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.

21. Power to remove difficulties :-

If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by oder, do anything which appears to it to be necessary or expedient for the purposes of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

SCHEDULE 1

SCHEDULE

SCHEDULE

[See Clause (b) and Clause (g) of Section 2]

1. Cheroots.
2. Cigarettes.
3. Cigar.
4. Scented tobaccoo including Zarda.
5. Smoking mixtures for pipes and cigarettes.
6. Mill-made textile fabrics priced at Rs. 600 (Rupees six hundred) or more per metre.