

**NAGALAND (SALES OF PETROLEUM AND PETROLEUM
PRODUCTS, INCLUDING MOTOR SPIRIT AND LUBRICANTS)
TAXATION ACT, 1967**

9 of 1967

[2nd November, 1967]

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SCHEDULE 1 :- SCHEDULE

NAGALAND (SALES OF PETROLEUM AND PETROLEUM PRODUCTS, INCLUDING MOTOR SPIRIT AND LUBRICANTS) TAXATION ACT, 1967

9 of 1967

[2nd November, 1967]

Preamble. Whereas it is expedient to repeal the Assam (Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants) Taxation Act, 1956 (Assam Act IV of 1956) and to re-enact one to impose tax on sales of petroleum and petroleum products, including motor spirit and lubricants, diesel oil and crude oil for the purpose of making an addition to the public revenue ; And whereas the previous sanction of the President of India has been obtained under the proviso to Art. 304 (b) of the Constitution of India ; It is hereby enacted in the eighteenth year of the Republic of India as follows :

1. Short title, extent and commencement :-

(1) This Act may be called the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967.

(2) It extends to the whole of Nagaland.

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

2. Definitions :-

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

(1) "Commissioner" means the Commissioner appointed under S. 5;

(2) "Crude oil" means crude petroleum in its natural state ;

(4) "Government" means the State Government of Nagaland ;

(5) "Lubricant" means and shall be deemed always to have meant any form of oil or other lubricating substance primarily used for lubricating the internal machinery or the external parts and fittings of motor vehicles, stationary internal combustion engines, steam turbines or engines, power pumps, refrigerators, dynamos and other machinery and shall include all forms of spindle oils, cutting oils and hydraulic brake fluids;

(6) "Motor spirit" means any substance which by itself or in admixture with other substances is ordinarily used directly or indirectly to provide reasonably efficient fuel for automotive or stationary internal combustion engines, and includes petrol, diesel oil and other internal combustion oils but does not include furnace oil, coal or charcoal;

(7) "Person" means any individual or association or body of individuals, and includes a Department of any Government, a Hindu undivided or joint family, a firm and a company, whether incorporated or not ;

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

(10) "Taxable goods" means such goods as are specified in sub- S. (1) of S. 3 of the Act ;

(11) "Year" means the financial year ;

(12) "Kerosene" shall have the meaning as assigned to it in the Schedule to this Act.

3. Liability to tax :-

(3) Any shortage in excess of one percent of the quantities of each consignment of motor spirit received into stock by a dealer for sale shall, unless the contrary is proved, be presumed to be due to sale,

for the purpose of sub-S. (1), and the tax shall be levied and collected from the dealer accordingly.

4. Exemptions :-

Notwithstanding anything contained in this Act, the Government may without conditions or upon conditions exempt any dealer from liability to pay any tax under this Act or may refund any tax or any portion thereof, collected under this Act : Provided that nothing shall be construed to oblige or impose a duty on the Government at any time to exercise the powers under this section conferred upon it.

5. Taxing authority :-

(1) The State Government may, for carrying out the purposes of this Act, appoint a Commissioner of Taxes, and such other persons to assist him as it thinks fit.

(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) All persons appointed under sub-S. (1) shall be deemed to be public servants within the meaning of S. 21 of the Indian Penal Code (Act XLV of 1860).

6. Compulsory registration :-

(1) No dealer shall, while being liable to pay tax under the provisions of this Act, carry on business as a dealer unless he has been registered and possesses a certificate of registration.

(2) Every dealer required by sub-S. (1) to be registered shall apply for registration to the Commissioner in the prescribed manner, and obtain a certificate of registration.

(3) On receipt of an application under sub-S. (2), the Commissioner shall, if he is satisfied after such enquiry as may be deemed necessary that the application is in order, register the applicant.

7. Registration by Commissioner :-

(2) Registrations made under sub-S. (1) shall take effect as if these had been made on the dealer's application under sub-S. (2) of S. 6.

8. Certificate of Registration :-

(1) A dealer registered under S. 6 or S. 7 shall be granted a

certificate of registration in such form as. may be prescribed, which shall specify the class or classes of goods in which at the time of the grant of the said certificate the dealer carries on business, and such other particulars as may be prescribed.

9. Suspension or cancellation of registration certificate :-

(2) The holder of a registration certificate shall not be entitled to any compensation for any loss or damage directly or indirectly suffered by him for its suspension or cancellation under sub-S. (1).

10. Returns :-

(1) Every registered dealer shall furnish such returns of his turnover by such date and to such authority as may be prescribed.

(2) In the case of any other dealer whose business, in the opinion of the Commissioner, is such as to render him liable to pay tax under this Act for any year or part thereof, the Commissioner may serve within three years of the completion of that year a notice in the prescribed form upon him requiring him to furnish a return of his turnover ; and such dealer shall thereupon furnish the return within the period and to the authority mentioned in the notice.

(3) If any dealer discovers any omission or other error in any return furnished by him either under sub-S. (1) or sub-S. (2), he may furnish a revised return at any time before assessment is made on the original return.

11. Assessment :-

(1) If the Commissioner is satisfied that a return furnished under S. 10 in respect of that quarter are correct and complete, he shall, by an order in writing, assess the dealer and determine the tax payable by him on the basis of such return.

(2) If the Commissioner is not satisfied that a return furnished under S. 10 is correct and complete, he shall serve on the dealer a notice requiring him, on the date and at the hour and place specified therein, either to attend in person or to produce or cause to be produced any evidence on which he may rely in support of his return.

(3) On the day specified in the notice under sub-S. (2) or as soon afterwards as may be, the Commissioner, after hearing such evidence as the Commissioner may require, shall, by an order in

writing, assess the dealer and determine the tax payable by him on such assessment.

12. Cancellation of assessment :-

Where a dealer, in the case of an assessment completed under sub-S. (4) of S. 11, satisfies the Commissioner, within one month from the date of service of a notice of demand as hereinafter provided, that he was prevented by sufficient cause from making the return required by S. 10 or that he did not receive the notice issued under sub-S. (2) of S. 11 or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of the notice, the Commissioner shall cancel the assessment and make a fresh assessment in accordance with the provisions of S. 11.

13. Assessment and penalty in case of evasion by unregistered persons :-

If upon information which has come into his possession, the Commissioner is satisfied that any person while being liable to pay tax under this Act in respect of any period, has nevertheless wilfully failed to apply for registration and to pay the tax, he shall, after giving the person a reasonable opportunity of being heard, assess to the best of his judgement, the amount of tax, if any, due from him in respect of such period and all subsequent periods and the Commissioner may also direct that, in addition to the amount so assessed, a sum not exceeding that amount shall be recovered from the defaulter by way of penalty.

14. Assessment and penalty in case of evasion by registered persons :-

If upon information which has come into his possession, the Commissioner is satisfied that any person registered under this Act has not paid the amount of tax due from him or a part thereof for any period, he shall proceed against such person in the manner laid down in S. 13.

15. Rectification :-

(2) Where any such rectification has the effect of reducing the assessment, a refund shall be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, a notice of demand shall be issued for the sum payable.

16. Recoveries :-

Any sum due under this Act shall be recoverable as an arrear of public demand under the Bengal Public Demand Recovery Act, 1913.

17. Penalties :-

(2) No order under sub-S. (1) shall be made unless the dealer has been heard or has been given reasonable opportunity of being heard.

(3) No penalty under this section shall be imposed by an officer appointed to assist the Commissioner without the previous sanction of the Commissioner.

18. Assessment not to bar prosecution or penalties :-

Any assessment made under this Act shall be without prejudice to any prosecution or penalty instituted or imposed under the provisions of this Act.

19. Appeal :-

(2) Every appeal under sub-S. (1) shall be presented in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority shall fix a day and place for hearing of the appeal, and may from time to time, adjourn the hearing and make or cause to be made, such further enquiry as may be deemed necessary.

(5) Every order passed in appeal under this section shall, subject to the provision of revision under S. 19, be final.

20. Revision by Commissioner :-

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by person appointed under S. 5 to assist him, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the dealer an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such orders thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) In the case of any order other than an order to which sub-S.

(1) applies, passed by any person appointed under S. 5 to assist him, the Commissioner may, either of his own motion or on a petition by a dealer for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made, and subject to the provisions of this Act, may pass such orders thereon, not being an order prejudicial to the dealer, as he thinks fit.

21. Appeal to the State Government :-

(1) Any dealer aggrieved by an order passed in appeal under S. 19 or passed in revision under sub-S. (1) of S. 20 may appeal to the State Government within sixty days of the date on which such order was communicated to him.

(2) The State Government may admit an appeal after the expiration of the sixty days referred to in sub-S. (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

(3) An appeal to the State Government shall be in the prescribed form and shall be verified in the prescribed manner, and shall be accompanied by a fee of twenty-five rupees.

(4) The State Government may, after giving the dealer an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the dealer and to the Commissioner.

22. Reference :-

(1) Within sixty days from the date of service of any order under S. 21, the dealer may, by petition in writing, require the State Government to refer to the High Court any question of law arising out such order of the State Government or the State Government may make such reference out of its motion. Where the petition is made by a dealer, it shall be accompanied by a fee of one hundred rupees.

(2) Within sixty days of the receipt of the petition under sub-S. (1) the State Government shall, subject to the provisions in sub-S. (3), draw up, after hearing such an enquiry as may be considered necessary, a statement of the case and refer it with its opinion thereon to the High Court.

(3) The State Government may reject the application under sub- S.

(1) and refuse to state the case on the ground that it is time barred or otherwise incompetent, or that no question of law arises and the applicant may, within thirty days of such refusal, withdraw the application and if he does so, the fee paid shall be refunded.

(4) Where the application under sub-S. (1) is rejected on the ground that no question of law arises and where no action is taken by the applicant under sub-S. (3), he may, within ninety days from the date of such rejection, apply to the High Court against the order rejecting the application, and if upon receipt of such application, the High Court is not satisfied with the correctness of the decision, it may require the State Government to state the case and refer it, and on receipt of any such requisition, the State Government shall state and refer the case accordingly.

(5) Where the application under sub-S. (1) is rejected on the ground that it is time barred and where no action is taken by the applicant under sub-S. (3), he may, within ninety days of the date of such rejection, apply to the High Court against the order rejecting the application, and if upon receipt of such an application, the High Court is not satisfied with the correctness of the decision it may require the State Government to treat the application under sub-S. (1) as made within time.

(6) Where the High Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the questions of law raised thereby, it may refer the case back to the State Government to make such additions thereto or such alterations therein as may be directed and the State Government shall thereupon comply with the directions and resubmit the case accordingly.

(7) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the State Government a copy of such judgment under the seal of the Court and signature of the Registrar, and the State Government shall, on receipt of the copy of the judgment, order disposal of the case accordingly.

(8) Where a reference is made on the application of a dealer, the costs shall be in the discretion of the High Court.

(9) Notwithstanding that a reference has been made under this section to the High Court, payment of tax shall not be stayed

pending disposal of such reference ; but where the amount of tax is reduced as the result of the reference, the excess shall be refunded in accordance with the provisions of this Act.

(10) Section 5 of the Indian Limitation Act, 1908 shall apply to an application to the High Court by a dealer under this section.

23. Payment of tax :-

(1) Tax payable under this Act shall be paid in the manner hereinafter provided.

(2) Before any registered dealer furnishes the returns required by sub-S. (1) of S. 10, he shall, in the prescribed manner, pay into a Government treasury the full amount of tax due from him under this Act on the basis of such returns, and shall furnish along with the returns a receipt from such treasury in token of payment of such tax.

(5) Where a dealer is in default, the Commissioner may, in his discretion direct that in addition to the amount due, a sum not exceeding that amount shall be recovered from the defaulter by way of penalty.

24. Refunds :-

The Commissioner shall, in the prescribed manner, refund to a dealer any sum paid by such dealer in excess of the sum due from him under this Act, either by cash payment or at the discretion of the Commissioner by set off against the sum due from him in respect of any other period.

25. Remission :-

The State Government, for reasons to be recorded in writing, may remit the whole or part of the amount of the tax or penalty payable in respect of any period by any registered dealer who has suffered heavy loss due to any natural calamity.

26. Offences and penalties :-

Whoever

(1) carries on business as a dealer and acts in contravention of any of the provisions of this Act ; or

(2) fails, without reasonable cause, to submit in due time any return as required by or under the provisions of this Act, or submits a false return ; or

- (3) fails, when required by or under the provisions of this Act, to keep accounts or records of sales ; or
- (4) fails, when required by or under the provisions of this Act, to produce any accounts, evidence or documents or to furnish any information ; or
- (5) fails or neglects to comply with any requirement made of him under the provisions of this Act ; or
- (6) knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information ; or
- (7) fraudulently or wilfully evades the payment of any tax due under this Act, or conceals his liability to such tax ; or
- (8) fails to pay within the time allowed any tax assessed or any penalty levied on him ; or
- (9) prevents or obstructs inspection or entry by any officer acting under the provisions of this Act ; or
- (10) demands or charges from any purchaser sales-tax as such at a rate higher than that payable under the provisions of the Act ; shall, on conviction before a Magistrate and in addition to any tax or penalty or both that may be due from him, be punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

27. False statement in declaration :-

Whoever makes a statement in a verification or declaration in connection with any proceedings under this Act which is false and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.

28. Maintenance of accounts :-

Every registered dealer or other dealer on whom a notice has been served to furnish return under the provisions of this Act, shall keep a true account of taxable goods produced, made or processed by him or brought by him into Nagaland from any place outside Nagaland for the purpose of sale in Nagaland, and if sales, and if the accounts maintained in the ordinary course do not, in the

opinion of the Commissioner, enable him to apply a proper check on the returns furnished under the provisions of the Act, he may require the dealer to keep such accounts in such form as he may, subject to anything that may be prescribed in that connection, direct.

29. Power to order production of accounts, etc :-

Subject to such conditions and restrictions as may be prescribed, the Commissioner may, for the purposes of this Act, require any dealer to produce before him any accounts, registers, vouchers or other documents relating to the production, making, processing, import, sale or purchase of taxable goods or matters connected therewith.

30. Issue of warrants :-

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) by a Police Officer, or, if the Commissioner deems fit, by any other person.

31. Power for entry, inspection, search, Seizure, detention and arrest without warrant :-

The Commissioner may-

(a) inspect at all reasonable times all accounts and vouchers relating to stock, purchases, sales and deliveries of taxable goods kept by manufacturers, importers and dealers and the stock of taxable goods with them ;

(b) enter and search, at any time, by day or by night, any building, vessel, vehicle or place in which he has reason to believe that any taxable goods liable to confiscation under this Act is kept or concealed ;

(c) seize any taxable goods or any other article which he has reason to believe is liable to confiscation under this Act ; and

(d) detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

32. Searches how made :-

All searches made under S. 31 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898).

33. Procedure for arrest without warrant :-

The provisions of S. 61 of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to all arrests without warrant made under S. 31.

34. Power of investigation :-

(1) Every officer appointed under S. 5 not below the rank of Inspector or any officer specially empowered by the Commissioner shad, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

35. Power to grant bail :-

Any officer empowered under S. 34 shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) to any person arrested without warrant for an offence punishable under this Act.

36. Procedure of seizure :-

When anything has been seized by an officer exercising powers under S. 31, such officer, after such enquiry as may be necessary

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the person to the Magistrate to whom such thing is forwarded or for his appearance before whom bail has been taken;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send a report of the particulars of the seizure to the Commissioner and be guided by the orders which he will receive on such report ; and

(c) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to the Commissioner accordingly.

37. Punishment for vexatious search or arrest :-

Any officer or person exercising powers onder this Act, who

(a) without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, vehicle or place ; or

(b) vexatiously or unnecessarily seizes the property of any person on the pretext of seizing or searching for anything liable to confiscation under this Act ; or

(c) vexatiously and unncessarily detains, searches or arrests

any person, shall, on conviction before a Magistrate, be punishable with fine which may extend to five hundred rupees.

38. Punishment for vexatious delay in forwarding an arrested person :-

Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall, on conviction before a Magistrate, be punishable with fine which may extend to two hundred rupees.

39. Things liable to confiscation :-

Whenever an offence punishable under this Act is committed, the taxable goods or any other article in respect of which the offence has been committed shall be liable to confiscation.

40. Procedure in making confiscation :-

(1) When in any case tried by a Magistrate, the Magistrate decides that anything is liable to confiscation under S. 39, he may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation or may give the owner option to pay such fine as the Magistrate deems fit in lieu of confiscation.

41. Power to compound offences :-

(2) On the payment of such sum of money and the tax, if any, payable under S. 3 to the Commissioner, the accused person shall be discharged, the property seized, if any, shall be released and no further proceedings shall be taken against such person or property in respect of such offence.

42. Cognizance of offence :-

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

(2) All offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

43. Protection of persons acting in good faith and limitation of suits and proceedings :-

(1) No suit, prosecution or other legal proceedings shall be

instituted against any officer of the Government for anything done or intended to be done under this Act or the rules made there under in good faith.

(2) No suit shall be instituted against the Government and no suit, prosecution or other proceedings shall be instituted against any officer of the Government in respect of anything done or intended to be done, under this Act unless the suit, prosecution or other proceeding is instituted within four months from the date of the act complained of.

44. Restriction on movement :-

No person shall transport from any railway station, airport, post office, or any other place whether of similar nature or otherwise, notified in this behalf by the State Government any consignment of taxable goods exceeding such quantities and except in accordance with such conditions as may be prescribed. Such conditions shall be made with a view to ensuring that there is no evasion of the tax imposed by this Act.

45. Delegation of Commissioners powers :-

Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by notification in the official Gazette, delegate any of his powers under this Act to any official subordinate to him and such official shall thereupon exercise the said powers.

46. Computation of the period of limitation :-

In computing the period of limitation prescribed for an appeal or revision, the day on which the order complained of was served and the time requisite for obtaining a certified copy of such order, shall be excluded,

47. Information to be furnished regarding change of business :-

If any dealer

(a) sells or otherwise disposes of his business or any part of his business or any place of business or effects or comes to know of any other change in the ownership of the business, or

(b) discontinues his business or changes his place of business or opens a new place of business, or

(c) changes the name or nature of his business, he shall within the prescribed time inform the Commissioner accordingly, and if any

such dealer dies, his legal representative shall in like manner inform the Commissioner.

48. Power to make rules :-

(1) The Government may, subject to the conditions of previous publication, make rules for carrying out the purposes of this Act.

(3) In making any rule, the Government may direct that a breach thereof shall be punishable on conviction before a Magistrate, with a fine not exceeding one thousand rupees or imprisonment not exceeding three months or both, and where the breach is a continuing one with further fine which may extend to one hundred rupees for every day after the first during which the breach has been persisted in.

(4) Every rule made under this section shall be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the sessions immediately following, the Nagaland Legislative Assembly agree in making any modification in the rules or the Nagaland Legislative Assembly agree that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

49. Repeal :-

The Assam (Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants) Taxation Act, 1956 as extended to Nagaland shall stand repealed :

SCHEDULE 1

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[Vide Section 2 (12)]

(1) "Kerosene superior" means the Kerosene referred to in item No. 7 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944).

(2) "Kerosene inferior" means

(a) the kerosene referred to in the said item No. 7 and having all the following characteristics also

(i) it is not lighter in colour than a solution with the following composition ;

Quarter normal aqueous solution of

(a) Ferric Chloride;

(b) Cobaltous Chloride :-

(c) Copper Sulphate, mixed in the ratio of 6 : 3 : 1 ; and

(ii) it has a flashing point below one hundred and fifty degrees of Fahrenheit's thermometer ; or

(b) any mineral oil produced in the States of Assam and Bihar conforming to the following characteristics :

(i) it is not higher in colour than solution with the following composition :

Quarter normal aqueous solution of

(a) Ferric Chloride,

(b) Cobaltous Chloride, and

(c) Copper Sulphate, mixed in the ratio of 6 : 3 : 1 ;

(ii) it is ordinarily used as an illuminant in oil burning lamps ;

(iii) it has a flashing point below one hundred and fifty degrees of Fahrenheit's thermometer ;

(iv) it has a flame height by the prescribed treat, or not less than-

(a) twelve millimetres (with a tolerance of 1 millimetre in favour of the party in border-line cases), if produced in the district of Kamrup in the State of Assam or in the State of Bihar ;

(b) thirteen millimetres, if produced in any place in the State of Assam other than the District of Kamrup ;

(c) it has a pour point of fifty-five degrees of Fahrenheit's

thermometer or above process of viscosity-

(i) of not more than 29 seconds Redwood 1 Visco-meter at 100 of Fahrenheit's thermometer and has a diesel index of less than 40 as determined by the method prescribed in the Indian Standards, if produced in the district of Kamrup in the State of Assam or in the State of Bihar ;

(ii) of less than 27 seconds by Redwood 1 Viscometer at 100 of Fahrenheit's thermometer and has a Diesel Index of less than 40 if produced in any place in the State of Assam other than the district of Kamrup.

