

Himachal Pradesh Electricity (Duty) Act, 2009

13 of 2009

[17 September 2009]

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AN ACT

to re-enact the law to provide for the levy of electricity duty on consumption or supply of electricity in the State of Himachal Pradesh and matters connected therewith or incidental thereto.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixtieth Year of Republic of India as follows :-

1. Short title :-

This Act may be called the Himachal Pradesh Electricity (Duty) Act, 2009.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a)"Board" means the Himachal Pradesh State Electricity Board constituted under sub-section (1) of section 5 of the repealed Electricity (Supply) Act, 1948 (Act 54 of 1948);

(b)"Consumer" means any person or establishment who uses or consumes energy and includes categories of consumers specified under section 3 of this Act ;

(c)"consumption" in relation to electricity means electrical consumption per Kilowatt/KVA recorded as KWh. or KVAh. by a licensee or consumer;

(d) "energy" means electric energy;

(e) "Inspecting Officer" means a person appointed as such by the State Government under sub-section (1) of section 6;

(f) "meter" means a set of integrating instruments used to measure the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which include whole current meter and metering equipment such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories;

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

(h) "section" means section of this Act;

(i) "State Government" or "Government" means the Government of Himachal Pradesh;

(j) "supply" in relation to electricity means the sale of electricity to a licensee or consumer; and

(k) the words and expressions used in this Act, but not defined shall have the meanings as assigned to them in the Electricity Act, 2003 or the Indian Electricity Rules, 1956.

3. Levy of electricity duty on consumption or supply of energy :-

(1)There shall be levied and paid to the State Government on the energy, generated from any source, consumed by the Board, any licensee, electricity trader or generating company or supplied by the Board, such licensee, trader or company to the consumer, a duty to be called the electricity duty, in the following manner, namely :-

(i) domestic consumers - @ 3%,

(ii) non domestic non commercial consumers - @ 3%,

(iii) agricultural or irrigation or allied activities supply

consumers -@ 10%,
(iv) commercial consumers - @ 8%,
(v) industrial consumers,--
(a) small industrial consumers - @ 9%,
(b) medium and large industrial consumers - @ 13%,
(vi) water pumping supply consumers - @ 10%,
(vii) bulk supply consumers - @ 10%,
(viii) street lighting supply consumers - @ 10%,
(ix) temporary metered supply consumers - @ 4%,
(x) other categories of consumers not covered
under clauses (i) to (ix) above - @ 10% and,
(xi) In case of electrical energy generated by diesel
generating sets (or by what so ever mode) for use of
construction of power projects or captive/standby
for own consumption by the licensee or consumer,
electricity duty per unit -@ 30 paise:

Provided that the percentage mentioned against each categories shall be applicable on energy charges only (excluding meter rent, services charges etc.).

(2) Nothing in section 3 shall apply to the consumption or sale of electricity which is:-

(a) consumed by the Government of India, State Government or sold to the Government of India or other Government(s) within the territories of Indian Union for consumption or sale by that Government or other utilities engaged in power sector; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway; or

(c) consumed by a licensee or by consumer generating energy for their own consumption; provided the capacity of generator does not exceed 10 KW.

(3) For the purpose of computing the electricity duty, the consumption shown by the meter, starting after the first meter reading date, after the issuance of the notification under sub-section (1) of section 3 shall be taken into account.

4. Collection and payment of electricity duty :-

(1) The State Government shall have the first charge on the electricity duty and neither the Board nor any licensee shall,

without the previous sanction of the State Government, utilize this duty to reimburse itself for any amount, which the State Government may owe to the Board or the licensee/ or any other agency.

(2) It shall be the duty of the Board or the licensee consuming or supplying electricity for consumption to pay or collect the electricity duty from all the consumers in its area of consumption or supply in such form and pay the same to the State Government quarterly or in such manner, as may be prescribed.

(3) In case of captive or standby generation of electrical energy for own consumption through generating sets, by whatsoever mode, by the licensee or consumer, electricity duty, if any, shall be deposited quarterly by the concerned consumer directly to the State Government through Electrical Inspectorate in such manner as may be prescribed.

5. Records and returns :-

(1) If the State Government so directs, by a general or special order, the Board or a licensee or a person supplying, purchasing, generating or transmitting electricity, shall maintain such record, in such form and in such manner, as may be prescribed, showing -

(a) the units of electricity generated, transmitted or received for own consumption or for supply to any consumer or licensee;

(b) the units of electricity supplied to any consumer or consumed by it or him;

(c) the amount of electricity duty payable thereon and the electricity duty paid or recovered by him, under this Act; and

(d) such other particulars, as may be prescribed.

(2) The Board, the licensee or the person generating or purchasing electricity and directed under sub-section (1) to maintain such records, shall submit such returns in such form and in such manner and to such authority, as may be prescribed.

(3) For the purposes of clauses (a) and (b) of sub-section (1), the amount of energy shall, be ascertained by the Chief Electrical Inspector in such manner as may be prescribed.

6. Inspecting Officers :-

(1) The State Government may, by notification in the Official Gazette, appoint Chief Electrical Inspector and any other officer, to assist the Chief Electrical Inspector, to be the Inspecting Officer to inspect records and returns maintained under section 5.

(2) The Inspecting Officer shall perform such duties and exercise such powers, as may be prescribed, for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

7. Penal duty to be paid in certain cases :-

(1) If in the opinion of the Inspecting Officer, the Board or the licensee or the electricity trader or the generating company or the consumer, as the case may be, evades or attempts to evade or wilfully omits or neglects the payment of duty, whether by maintaining or manipulating false records or by submitting false returns or by concealing the energy consumed or by any other means, the Board, the licensee, the electricity trader, the generating company or the consumer, as the case may be, shall pay by way of penalty, in addition to the duty payable under this Act, a sum not exceeding four times the amount of the electricity duty, as may be determined by the Inspecting Officer, by passing an order in this regard:

Provided that no penalty under this sub-section shall be imposed without affording a reasonable opportunity of being heard to the Board, the licensee, the electricity trader, the generating company or the consumer, as the case may be.

(2) An appeal shall lie against an order passed under sub-section (1) to such authority within such period and on payment of such fee, as may be prescribed.

(3) An order passed on appeal under sub-section(2), shall be final and binding on the parties to the dispute.

(4) An order for the payment of any penalty, made under this section, shall be without prejudice to any prosecution and other penalty which may be instituted or imposed, as the case may be, under this Act.

8. Recovery of duty :-

(1) Any electricity duty due under this Act, or penalty imposed under section 7, which remains unpaid, whether by a consumer to the Board or to the distributing licensee, or by the Board or the distributing licensee to the State Government, shall be recoverable as an arrears of land revenue or by deduction from the amounts payable by the State Government to the Board or the distributing licensee or such consumer.

(2) When any sum of electricity duty or penalty has fallen due, but has not been paid, the Inspecting Officer may, subject to the

provisions of the rules made in this behalf under this Act, make an application to the Collector to recover the sum due as if it were an arrears of land revenue.

(3) An application made under sub-section (2), shall state -

(i) the name and description of the defaulter,

(ii) the amount of arrear of which recovery is required; and

(iii) the circumstances, which have made the application necessary.

(4) On receipt of the application, the Collector shall proceed to recover the amount as arrears of land revenue under the Himachal Pradesh Land Revenue Act, 1954.

(5) Notwithstanding anything contained in any law for the time being in force, the moveable and immoveable property of the Board or any licensee, or electricity trader or a generating company shall not be liable to be taken in execution of a decree or order of any court, until the electricity duty payable by the Board or the licensee or the electricity trader or the

generating company, as the case may be, to the State Government has been paid.

Explanation.- The expression "Collector" shall have the same meaning as assigned to it under the Himachal Pradesh Land Revenue Act, 1954

9. Power to disconnect supply for non - payment of duty :-

Where the consumer fails to pay the electricity duty due from him in respect of the electricity supplied, the Board or the distribution licensee supplying electricity, as the case may be, may, after giving not less than fifteen days notice in writing, cut off the electricity supply to such person, until the entire electricity duty is paid.

10. Penalties :-

If any person-

(a) required under section 5 to maintain records or to submit returns, fails to keep or submit the same in the prescribed form or manner or submit a return which is false, or

(b) intentionally obstructs an Inspecting Officer in the exercise of his powers and discharge of his duties under this Act and the rules made thereunder, or

(c) contravenes any of the provisions of this Act or the rules made thereunder,

shall be liable to pay fine, not exceeding one lac rupees, as may be

determined by the prescribed authority.

11. Power to exempt from payment of electricity duty :-

(1) The State Government may, in public interest, by notification in the Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such conditions as may be specified in such notification.

(2) The State Government may, by notification, revise the rates of electricity duty not exceeding 50 %, at any one time, of the rates specified under section 3.

12. Inspecting Officers to be public servants :-

Every Inspecting Officer, appointed under section 6 of this Act, shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of Indian Penal Code, 1860.

13. Indemnity to persons acting under this Act :-

No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

14. Previous sanction of the Government :-

No prosecution for any offence, punishable under this Act, shall be instituted, except with the previous sanction of the State Government.

15. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner of payment and collection of electricity duty under sections 3 and 4;

b) the form and manner in which record shall be maintained under sub-section (1) of section 5;

(c) prescription of particulars under clause (d) of sub-section (1) of section 5;

(d) the manner of submitting the returns and the authority to whom these are to be submitted under sub-section (2) of section 5;

(e) the powers and duties to be exercised and performed by the Inspecting Officers under sub-section (2) of section 6;

(f) the authority to whom appeal shall lie, the period within which appeal shall lie and the fee for filing such appeal under sub-section (2) of section 7;

(g) the authority by whom the fine is to be determined; under section 10; and

(h) any other matter required to be prescribed or which may be prescribed by or under this Act.

(3) Every rule made under this section, shall be laid, as soon as may be after it is made, before the State Legislative Assembly while it is in session for a total period of not less than ten days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule 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.

16. Power to remove difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty.

(2) Every order under this section, shall be laid, as soon as after it is made, before the State Legislative Assembly:

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

17. Repeal and savings :-

(1) The Himachal Pradesh Electricity (Duty) Act, 1975 (11 of 1975) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken or purported to have been done or taken, any electricity duty levied, any rule, notification, inspection, order or notice made or issued, shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force and be deemed to have been done or taken or made in exercise of the powers conferred by or under the provisions of this Act as if this Act was in force on the date on which such thing was done or such action was taken unless and until it is superseded by or under this Act and the electricity duty and other amount due under the Act, so repealed, may be collected as if they have accrued under this Act.