

Himachal Pradesh Tax On Luxuries (In Hotels And Lodging Houses) Act, 1979

[Act No. 15 Of 1979]

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An Act to provide for the levy and collection of tax on luxury provided in hotels and lodging houses.

Himachal Pradesh Tax On Luxuries (In Hotels And Lodging Houses) Act, 1979

[Act No. 15 Of 1979]

Whereas it is expedient to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses and for matters connected with the purpose aforesaid; it is hereby enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows :--

1 - Short title, extent and commencement.

- (1) This Act may be called the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979.
- (2) It extends to the whole of the State of Himachal Pradesh.
- (3) It shall come into force from the date the Act is notified in the Official Gazette.

2 - Definitions.

In this Act, unless the context otherwise requires,--

- (a) "assessing authority" means the Excise and Taxation Officer or the Assistant Excise and Taxation Officer, appointed under sub-section (1) of section 3 of this Act and conferred the powers under sub-section (2) of section 3 for carrying the purposes of this Act;
- (b) "commissioner" means the Excise and Taxation Commissioner appointed under sub-section (1) of section 3;
- (c) "concessional rate" in relation to luxury provided in a hotel, means a rate lower than the normal rate fixed for such luxury by the hotel or than that fixed by any Government authority, or under any law for the time being in force;
- (d) "hotel" means a building or a part of a building where residential accommodation is by way of business provided for a monetary consideration and it includes a lodging house;
- (e) "luxury provided in hotel" means accommodation for residence provided in a hotel, rate of charges for which (including air-conditioning, telephone, television, radio, music or extra beds and the like, but excluding charges for food, drink and for other amenities) is twenty five rupees per person per day or more;
- (f) "proprietor" in relation to a hotel includes the person who for the time being is in-charge of the management of the hotel; and
- (g) "prescribed" means by the rules made under this Act.

3 - Taxing authorities.

- (1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Excise and Taxation Commissioner and such other persons to assist him as it thinks fit.
- (2) Persons appointed under sub-section (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-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

4 - Levy and collection or tax.

- (1) Subject to the provisions of this Act, there shall be levied and collected a tax in respect of any luxury provided in a hotel (hereinafter called the "luxury tax").
- (2) The luxury tax shall be payable by the persons residing at a hotel at the following rates, namely:--

(a) where the charges for residence is twenty-five rupees or more but does not exceed fifty rupees per day per person;

3 percentum of such charges.

(b) where the charges for residence exceeds fifty rupees but does not exceed seventy-five rupees per day per person;

5 percentum of such charges.

(c) where the charges for residence exceeds seventy-five rupees per day per person;

8 percentum of such charges:

Provided that, where any such charges are paid by any person other than the citizen of India, in any foreign exchange, than such person or where such charges are paid by any person or class of persons as the State Government may, by order, direct, such as foreigners staying as guests in India of any Government, or of any corporation or company owned or controlled by the Government, or such other person as in the opinion of the State Government, it is expedient in the public interest to exempt, then such person or persons shall be exempt from the payment of the luxury tax:

Provided further that, where the charges are levied otherwise than on daily basis or per person, then, charges for determining the tax liability under this section, shall be computed as for a day and per person based on the period of occupation of the residence for which the charges are made and the number of persons actually occupying or permitted to occupy according to the rules or custom of the hotel.

(3) Where luxury is provided in a hotel to the representatives or employees of any company and charges for such luxury are to be borne by the company, then there shall be levied and collected the luxury tax from such company.

Explanation:--In this sub-section "company" means any body corporate, and includes a firm or other association of individuals.

(4) The luxury tax under the foregoing sub-sections shall be collected by the proprietor and paid within such period into a Government treasury or the State Bank of India and in such manner as may be prescribed.

(5) In computing the luxury tax under this section, a fraction of a rupee which is not a multiple of five paise, shall be rounded off to the next higher multiple of five paise.

5 - Mode of collection of tax, etc.

(1) Where the rate of charges for luxury provided in a hotel is inclusive of the charges for food or drink, or other amenities, if any, being amenities referred to in clause (e) of section 2, then the Commissioner or any other officer, not below the rank of the Deputy Excise and Taxation Commissioner, authorised in writing may, from time to time after giving the proprietor an opportunity of being heard, fix separate rates of charges for such luxury and for food or drink or other amenities, if any, being amenities referred to in clause (e) of section 2, for the purpose of calculating the luxury tax under this Act.

(2) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated by the proprietor and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.

(3) Where luxury provided in a hotel to any person (not being an employee of the hotel) is not charged at all, or is charged at a concessional rate, nevertheless there shall be levied and collected the luxury tax on such luxury, as if full charges for such luxury were paid to the proprietor of the hotel.

(4) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then in addition to the luxury tax paid for luxury provided to the specified number of persons, there shall be levied and recovered separately the luxury tax in respect of the charge made for the extra persons accommodated.

(5) Where any proprietor fails' or neglects to collect the luxury tax payable under this Act, the luxury tax shall be calculated and paid as if the tax was recovered from the person liable to pay the same.

6 - Returns.

(1) Every proprietor liable to pay luxury tax under this Act shall submit a return in the prescribed form to the assessing authority of the district concerned within eight days after the end of the month to which the return relates.

(2) Every such return shall show the number of rooms or other accommodation in the hotel which is intended to be occupied, the number of persons who occupied such rooms or accommodation, the periods of their stay, the day of arrival and departure, the amount of charges recovered from them, together with such other information as may be prescribed;

(3) Every such return shall be accompanied by a receipt for payment on Government account into a Government treasury or the State Bank of India of the full amount of luxury tax for the period to which the return relates.

(4) Every return shall be verified in the prescribed manner.

7 - Assessment and collection of tax.

(1) On receipt of a return under section 6, the assessing authority of the district concerned shall assess the luxury tax payable in respect of the period to which the return relates, and if the amount has not already been paid as aforesaid, he shall cause a notice to be served upon the proprietor concerned requiring him to pay the amount assessed within ten days of the service of the notice.

(2) If the proprietor fails to submit in due time the return referred to in section 6 the assessing authority shall, after giving him a reasonable opportunity of being heard, assess to the best of his judgment, the amount of luxury tax payable and the provisions of sub-section (1) in respect of notice shall apply as if such assessment has been made on the basis of a return furnished by such proprietor.

(3) If the luxury tax is not paid within the prescribed period the assessing authority may, after giving an opportunity of being heard, levy a penalty equal to a sum not exceeding one and a half times of the amount of the luxury tax payable under this

Act.

8 - Appeal.

Any person aggrieved by any order passed by the assessing authority under this Act may, in the prescribed manner, appeal to the Deputy Excise and Taxation Commissioner within 90 days from the date of receipt of such order:

Provided that no appeal shall be entertained by the Deputy Excise and Taxation Commissioner, unless he is satisfied that the amount of tax assessed and the penalty, if any, imposed on the proprietor has been paid:

Provided further that if the Deputy Excise and Taxation Commissioner is satisfied that the proprietor is unable to pay the tax assessed or the penalty, if any, imposed or both, he may for reasons to be recorded in writing entertain the appeal without the tax or penalty or both having been paid.

(2) Subject to the rules of procedure as may be made in this behalf by the State Government the Deputy Excise and Taxation Commissioner, may pass such orders in relation thereto as he may think fit.

9 - Revision.

(1) The Commissioner may, sua-motu or on application, call for and examine the record and proceedings which are pending before, or have been disposed of by any assessing authority or the appellate authority under section 8 for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit:

Provided that no application under this section shall be entertained if it is not made within the period of 120 days from the date of order:

Provided further that, before rejecting any application for revision of any such order, the Commissioner shall record reasons for such rejection.

(2) No order shall be passed under this section which is likely to affect any person adversely, unless such person has been given a reasonable opportunity of being heard by the Commissioner.

(3) Where a person could have appealed under section 8 and no appeal has been filed by him, no proceedings under this section shall be entertained upon the application of such person.

10 - Court fees.

Notwithstanding anything contained in the Himachal Pradesh Court Fees Act, 1968 (8 of 1968) an appeal preferred under section 8 or an application for revision made under section 9 shall bear court fee stamp of such value as may be prescribed.

11 - Recovery as arrears of land revenue.

Any luxury tax or penalty recoverable under this Act and remaining unpaid shall be recoverable as an arrear of land revenue.

12 - Service of notice.

A notice under the provisions of this Act may be served by post or by delivering or

tendering it to the person to whom it is addressed or to his agent or in such manner as may be prescribed.

13 - Power to inspect accounts and document etc and search of premises.

(1) The assessing authority may, subject to such conditions as may be prescribed, require any proprietor to produce before him the working records of accounts, registers or documents or to furnish any information relating to the business of the hotel as may be necessary for the purpose of this Act.

(2) All working records of accounts, registers or documents relating to the business of any hotel shall, at all reasonable time, be open to, inspection by the assessing authority, and the assessing authority may, take or cause to be taken such copies of or extracts from any of the said records or accounts as may be necessary for the purpose of testing accuracy of any return or charges of such luxury or for informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder as would appear to him necessary.

(3) If the assessing authority has reasons to believe that any proprietor has evaded or is attempting to evade the payment of luxury tax due from him, he may, for reasons to be recorded in writing, seize such records of accounts, registers or documents of the proprietor as may be necessary and shall grant a receipt for the same and shall retain the same so long as may be necessary in connection with any proceedings under this Act or for a prosecution.

(4) For the purposes of this Act, the assessing authority may enter and search any hotel or any place of business of the proprietor or any other place where the assessing authority has reason to believe that the proprietor keeps or is for the time being keeping, any records of accounts, registers or documents of his business in relation to the hotel.

14 - Penalty.

(1) Any person who being a proprietor liable to pay the luxury tax under this Act,--

(a) submits or allows or causes to be submitted an incorrect or incomplete return or fails to submit the return as required by or under the provisions of this Act; or

(b) fraudulently evades or allows to be evaded the payment of any luxury tax due from him; or

(c) fraudulently makes or causes or allows to be made any wrong entry in or fraudulently omits or causes or allow to be omitted any entry from any statement submitted or any accounts or register; or

(d) contravenes, or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to the imposition of penalty not exceeding double of the amount of tax involved.

(2) The Officer of the rank of the Excise and Taxation Officer/the Assistant Excise and Taxation Officer, appointed under sub-section (2) of section 3, may, after affording to the person concerned reasonable opportunity of being heard, impose

penalty specified under sub-section (1).

15 - Offences by companies.

(1) Where an offence under this Act has been committed by the 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, as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any, such person liable to any punishment provided in this Act if he proves that the offence committed was without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section" (1), where an offence under this Act has been committed by a company 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 or secretary or any officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means a body corporate and includes a firm or other association of individuals;

(b) "director" in relation to a firm means a partner in the firm.

16 - Indemnity.

No suit prosecution or other legal action shall lie against the Government or any, officer of the Government for anything which is in good faith done or intended to be done by or under this Act or the rules made thereunder.

17 - Power to make rules.

(1) The State Government may make rules for securing payment of the luxury tax on hotels, and generally 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 form in which the return shall be submitted under section 6, further information to be furnished with the returns and the manner in which returns shall be verified;

(b) the form of notice to be served under section 7 and the procedure to be followed for assessment and collection of the assessed dues;

(c) the procedure for, and other matters incidental to, the disposal of appeals under section 8;

(d) fixation of the value of court fee stamp to be affixed on an appeal or application for revision under section 10;.

(e) the other manner in which a notice may be served under section

(f) the procedure for inspection and taking copies of records and accounts under section 13;

(g) the fees to be paid for any of the matters provided in this Act: and

(h) any other matter which is required to be or may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides 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.