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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT : LEGISLATIVE BRANCH

NOTIFICATION

The 3rd July, 1989

No. LGL. 33/89/135.—The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for general information.

ASSAM ACT NO. XVI OF 1989

(Received the assent of the Governor on 1st July, 1989.)

THE ASSAM TAXATION LAWS (SECOND AMENDMENT) ACT, 1989.

AN

ACT

further to amend the Assam Sales Tax Act, 1947 and the Assam Finance (Sales Tax) Act, 1956.

Preamble Whereas it is expedient further to amend the Assam Sales Tax Act, 1947 (Assam Act XVII of 1947) and the Assam Finance (Sales Tax) Act, 1956 (Assam Act XI of 1956) in the manner hereinafter appearing :

It is hereby enacted in the Fortieth Year of the Republic of India as follows :—

Short title and comment. 1. (1) This Act may be called the Assam Taxation Laws (Second Amendment) Act, 1989.

(2) Clauses (i) and (iii) of section 2 and clauses (i), (ii), (iv), (v), (vi) and (viii) of section 3 of this Act shall come into force at once and the remaining provisions shall be deemed to have come into force with effect from the 28th day of March, 1989.

Amendment of Assam Act XVII of 1947.

2. In the Assam Sales Tax Act, 1947,—

(i) in section 3B,—

(a) in sub-section (4), for the words "clause (b) of sub-section (1) of section 15 and sub-section (3) of that section", the following shall be substituted, namely :—

"sub-section (3)";

(b) after sub-section (4), the following shall be inserted as sub-section (5), namely :—

"(5) Where any tea which has suffered tax under this section is re-sold in the State, the amount of such tax shall be set off in such manner and subject to such conditions as may be prescribed against the tax due under the Act in respect of the re-sale of the tea in the State.";

(ii) Section 3 C shall be, and shall be deemed to have been, deleted with effect from the 28th day of March, 1989;

- (iii) for section 34A, the following shall be, and shall be deemed always to have been, substituted, namely :—

“Prohibition to collect excess tax.

34A. (1) No person shall collect any sum by way of tax in respect of sale of any goods on which by virtue of sections 3 and 3 B read with the Schedules attached to this Act no tax is payable.

(2) No person, who is not a registered dealer and liable to pay tax in respect of any sale, shall collect on the sale of any goods any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act.”

Forfeiture of excess tax etc.

34B. (1) If any person—

- (i) not being a dealer liable to pay tax under this Act, collects any sum by way of tax, or
- (ii) being a registered dealer collects any sum by way of tax in excess of the tax payable by him, or
- (iii) otherwise collects tax in contravention of the provisions of section 34A, any sum collected by that person by way of tax in contravention of section 34A shall be forfeited to the State Government and when any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.

(2) Where the Commissioner has reason to believe that any person has wilfully contravened the provisions of section 34A, the Commissioner may impose upon such person a penalty of an amount not exceeding two thousand rupees or double the sum collected by such person by way of tax in contravention of the provisions of section 34A, whichever is less:

Provided that no penalty shall be imposed in respect of any such contravention which occurred on a date prior to the publication of the Assam Taxation Laws (Second Amendment) Act, 1989, in the Official Gazette.

(3) If the Commissioner in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to forfeiture of any sum under sub-section (1), or both forfeiture of any sum under

sub-section (1), and penalty under sub-section (2), he shall serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why forfeiture or both forfeiture and or penalty of any sum as provided in sub-section (1) and sub-section (2) respectively should not be imposed on him.

(4) The Commissioner shall thereupon hold an enquiry and shall make such order as he thinks fit.

(5) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

Payment of
sum forfei-
ted etc.

34C (1) The amount of penalty (if any) levied under Section 34 B and the sum (if any) forfeited to the State Government under that section shall be paid by the dealer or the person liable therefor in Government treasury by such date as may be specified in a notice issued by the Commissioner for this purpose, being a date not earlier than thirty days from the date of service of the notice :

Provided that, the Commissioner may, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the date of payment, or allow him to pay the penalty (if any) imposed under section 34 B or the sum forfeited by instalments.

(2) Any penalty imposed or sum forfeited under section 34 B which remains unpaid after the date specified in the notice for payment or after the extended date of payment, and any instalment not duly paid shall be recoverable as an arrear of land revenue.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any sum collected by a person by way of tax in contravention of section 34 A, is forfeited to the State Government under section 34 B and is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected.

(4) A refund of any such sum or any part thereof may be claimed from the Government by the person from whom it was realised by way of tax, provided such tax was not passed on by him in any form or manner to some other person and if such tax was so passed on to some other person, the claim for refund may be made by such other person only.

(5) An application for such claim shall be made in writing in the prescribed form to the Commissioner, within one year from the date of the order of forfeiture.

(6) On receipt of an application under sub-section (5) the Commissioner shall hold such inquiry as he deems fit, and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered, and no draw-back, set-off, refund or remission in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.”;

(iv) in Schedule III,—

(a) for Serial No. 1, the following shall be, and shall be deemed to have been substituted with effect from the 28th day of March 1989, namely :—

“1. All cereals and pulses Except when sold in sealed including all forms of containers,”;
rice.

(b) in Serial No.11, the words “and excluding cooked food sold at one time to a person at a price exceeding ten rupees” shall be, and shall be deemed to have been, deleted with effect from the 28th day of March, 1989 ;

(c) in Serial No. 12, the words “Except cooked food sold at one time to a person at a price exceeding ten rupees” shall be, and shall be deemed to have been, deleted with effect from the 28th day of March, 1989.

Amend-
ment of
Assam Act
XI of 1956.

3. In the Assam Finance (Sales Tax) Act, 1956, in the Schedule,—

(i) against Item No. 10, for the figure and words “8 paise in the rupee”, the figure and words “4 paise in the rupee” shall be substituted;

(ii) for Item No. 17A, the following shall be substituted with immediate effect, namely :—

“17A. Tractors, power tillers, tractor trailers, tractor implements, tractor tyres, accessories of 7 paise in the tractors, parts and accessories of power tillers. rupee.”;

(iii) against Items No. 21, 22, 23, 27 and 34, for the figure and words “8 paise in the rupee”, the figure and words “7 paise in the rupee” shall be, and shall be deemed to have been, substituted with effect from the 28th day of March, 1989;

(iv) the Item No. 26A, for the figure and words “not exceeding Rs. 5.00”, the figure and word “not exceeding Rs. 20.00” shall be substituted;

- (v) against Item No. 65, for the figure and words "40 paise in the rupee", the figure and words "50 paise in the rupee" shall be substituted;
- (vi) against Item No. 68, for the figure and words "14 paise in the rupee", the figure and words "20 paise in the rupee" shall be substituted;
- (vii) against Item No. 71, for the figure and words "8 paise in the rupee", the figure and words "6 paise in the rupee" shall be, and shall be deemed to have been, substituted with effect from the 28th day of March, 1989;
- (viii) Item No. 75 shall be deleted with immediate effect

A. RAHMAN,
Secretary to the Govt. of Assam,
Legislative Department.