

ASSAM ACT No. V of 1989

Received the assent of the Governor on 12th April 1989)

THE ASSAM TAX ON LUXURIES (HOTELS AND
LODGING HOUSES) ACT, 1989

An
Act

to provide for the imposition of a tax on luxuries in hotels and lodging houses.

Preamble.

Whereas it is necessary to make an addition to the revenues of Assam and, for that purpose, it is expedient to impose a tax on the luxuries in hotels and lodging houses and to provide for matters connected therewith.

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

**Short title,
extent and
commence-
ment.**

1. (1) This Act may be called the Assam Tax On Luxuries (Hotels and Lodging Houses) Act, 1989.

(2) It extends to the whole of the State of Assam.

(3) It shall be deemed to have come into force with effect from the first day of April, 1989.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) “assessing officer” in relation to any hotelier means the authority competent to assess the hotelier in accordance with section 5 of this Act;

(2) “business” includes the activity of providing residential accommodation and any other service in connection with, or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary consideration;

(3) “Commissioner” means the Commissioner of Taxes, Assam;

(4) "concessional rate" in relation to a luxury provided in a hotel, means a rate lower than the normal rate fixed by any Government, authority, or under any law for the time being in force;

(5) "hotel" includes a residential accommodation, a lodging house, an inn, a public house or a building or part of a building, where residential accommodation is provided by way of business;

(6) "hotelier" means, in relation to a hotel, the person who owns the hotel and includes a person who for the time being is in charge of the management of the hotel;

(7) "luxury provided in a hotel" means accommodation and other services provided in a hotel, the rate of charges for which including the charges for air-conditioning, telephone, television, radio, music, entertainment, extra beds and the like, is one hundred rupees per person per day or more; but does not include the supply of food and drinks where such supply is separately charged for;

(8) "person" includes any company or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a State Government and the Central Government;

(9) "place of business" includes an office, or any other place which a hotelier uses for the purpose of his business or where he keeps his books of accounts;

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

(11) "receipt" means the amount of monetary consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel;

(12) "registered hotelier" means a hotelier registered under Section 6 of this Act;

(13) "rules" means rules made under this Act;

(14) "State" means the State of Assam;

(15) "tax" means the tax levied on luxuries provided in a hotel payable under this Act;

(16) "turnover of receipts" means the aggregate of the amounts of monetary consideration received or receivable by a hotelier or by his agent in respect of the luxuries provided in a hotel during a given period.

Liability to tax.

3. (1) Subject to the provisions of this Act and the rules made thereunder there shall be levied a tax on the turnover of receipts of a hotelier.

(2) There shall be levied a tax on the turnover of receipts at the following rates, namely:—

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|--|--|
| (a) Where the charge for luxury provided in a hotel is less than one hundred rupees per day per person— | Nil. |
| (b) Where the charge for luxury provided in a hotel is one hundred rupees or more but does not exceed two hundred rupees per day per person— | Ten per centum of such turnover of receipts. |
| (c) Where the charge for luxury provided in a hotel exceeds two hundred rupees but does not exceed three hundred rupees per day per person— | Fifteen per centum of such turnover of receipts. |
| (d) Where the charge for luxury provided in a hotel exceeds three hundred rupees per day per person— | Twenty per centum of such turnover of receipts. |

Provided that, where the charges are levied otherwise than on daily basis or per person then the charges for determining the tax liability under this section shall be computed proportionately for

a day and per person based on the total period of occupation of the accommodation for which the charges are made and the number of persons actually occupying or permitted to occupy according to the rules or practice of the hotel.

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

(4) 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 tax on such luxury at the rates specified in sub-section(2), as if full charges for such luxury were paid to the hotelier.

(5) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, unless the additional person is a child occupying the room along with his parent or guardian and no separate charge is recovered for the child, in addition to the tax levied for luxury provided to the specified number of persons, there shall be levied and recovered separately the tax in respect of the charges made for the extra persons accommodated.

Explanation.— For the purpose of this sub-section, "child" means a person who has not completed twelve years of age.

(6) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier is liable to pay sales tax under the Assam Sales Tax Act, 1947 (Assam Act XVII of 1947).

(7) For the purposes of this Act, tax collected separately by the hotelier shall not be considered to be part of the receipt or the turnover of receipts of the hotelier.

Liability of
hotelier to
pay tax.

4. (1) Subject to the provisions of this Act and the rules made thereunder, there shall be paid by every hotelier who is liable to pay tax under this Act, the tax or taxes leviable in accordance with the provisions of this Act.

(2) If a person other than the owner (including part-owner) is for the time being in charge of the hotel, then such person and the owner (including part-owner) shall jointly and severally be liable to pay the tax.

Exercise of
powers and
authorities.

5. The authorities competent to assess, recover and enforce payment of tax under the Assam Sales Tax Act, 1947, hereinafter referred to as the sales tax law, shall, within their local jurisdiction under the sales tax law, be competent to assess, recover and enforce payment of tax due from any hotelier whose place of business is located within such jurisdiction as if the tax were a tax under the sales tax law and the hotelier a dealer, within the meaning of the sales tax law, carrying on business within such jurisdiction and, subject to the provisions of this Act and the rules, notifications and orders made thereunder, the said authorities, for this purpose, may exercise all or any of the powers they have under the sales tax law, and the provisions of the sales tax law, including provisions relating to inspections assessment, registration of the transferee of a business, imposition of tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of dissolution of such firm or partition of such family, appeals, revisions, references, refunds, rebates, payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall *mutatis mutandis* apply accordingly.

Registration.

6. (1) No hotelier liable to pay the tax under section 3 shall provide accommodation by way of business, unless he possesses a valid certificate of registration as provided by this Act:

Provided that, it shall be lawful for the hotelier to provide or continue to provide accommodation by way of business if the hotelier has applied for registration within the prescribed time.

(2) Every hotelier required to possess a certificate of registration shall apply in the prescribed form to the assessing officer within thirty days from the date on which the hotelier first becomes liable to pay the tax.

(3) If the assessing officer, after such enquiry as he deems fit, is satisfied that an application for registration is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4) The assessing officer may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time the certificate of registration.

(5) Where a registered hotelier discontinues, transfers or otherwise disposes of his activity of providing accommodation by way of business or where he ceases to be liable to pay the tax and he applies in the prescribed form to the assessing officer, the latter shall, after such inquiry as may be necessary, cancel the certificate of registration with effect from such date as he may fix in accordance with the rules.

(6) Where the assessing officer is satisfied that any registered hotelier has discontinued, transferred or otherwise disposed of the activity of providing accommodation by way of business and has failed to apply under sub-section (5) for cancellation of certificate of registration, the assessing officer may, after giving the hotelier a reasonable opportunity of being heard, cancel the certificate of registration with effect from such date as he may fix to be the date from which the said activity has been discontinued, transferred or otherwise disposed of :

Provided that the cancellation of certificate of registration on an application of the hotelier or otherwise shall not affect the liability of the hotelier to pay the tax (including any penalty or interest) due for any period upto the date of cancellation whether such tax (including any penalty or interest) is assessed before or after the date of cancellation.

Non-transferability of registration certificate. 7. Save as otherwise provided in section 9, certificate of registration shall be personal to the hotelier to whom it is granted and shall not be transferable.

Information to be furnished regarding changes in business, etc. 8. (1) If a hotelier liable to pay tax under this Act—

- (a) sells or otherwise disposes of his business or any part thereof, or effects or makes any other change to his knowledge in the ownership of the business, or,
- (b) discontinues his business, or changes the place thereof or opens a new place of business, or
- (c) changes the name or nature of his business, or
- (d) enters into a partnership or other association, in regard to his business, he shall, within the prescribed time, inform the prescribed authority accordingly.

(2) Where any such hotelier dies, his executor administrator or other legal representative or where any such hotelier is a firm and there is a change in the constitution of the firm or the firm is dissolved every person who was a partner thereof, shall in like manner, inform the said authority of such death, change in the constitution or as the case may be, dissolution.

Certificate of registration to continue in certain circumstances. 9. Where a registered hotelier—

- (a) effects changes in the name of his business, or

- (b) is a firm, and there is a change in the constitution of the firm without dissolution thereof, or
- (c) is a trustee of a trust, and there is change in the trustees thereof, or
- (d) is a guardian of a ward, and there is a change in the guardian, then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the hotelier, or the firm with the changed constitution, or the new trustees or new guardian, to apply for a fresh certificate of registration and on information being furnished in the manner required by section 8, the certificate of registration shall be amended.

Returns. 10. (1) Every registered hotelier shall furnish returns for such period, by such dates, and to such authority, as may be prescribed.

(2) If any hotelier, having furnished return under sub-section (1), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return.

Prohibition against collection of tax in certain cases. 11. (1) No person shall collect any sum by way of tax in respect of his business to the extent that he is not liable to pay it under the Act.

(2) No person who is not a registered hotelier and liable to pay tax in respect of luxury provided in any hotel, shall collect any sum by way of tax from any other person and no registered hotelier shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act:

Provided that, this sub-section shall not apply where a person is required to collect such amount of the tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

Bill or cash memorandum to be issued to customer.

12. A registered hotelier shall issue to the customer or customers a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of not less than eight years from the date of the transaction.

Accounts.

13. (1) Every hotelier liable to pay tax under this Act, and every hotelier who is required so to do by the assessing officer by notice served on him in the prescribed manner shall keep a true account of the luxury provided by him in the hotel.

(2) If the assessing officer considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine whether or not a hotelier is liable to tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the statement furnished, the assessing officer may require such hotelier by notice in writing to keep such accounts in such form or manner as in his opinion is necessary for the purpose of proper assessment and as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any hotelier, or by notification in the Official Gazette, direct any class of hoteliers to maintain accounts and records showing such particulars regarding their business in such form, and in such manner, as may be specified by him.

(4) Every registered hotelier shall ordinarily keep all his accounts, registers and documents relating to his business at the place or places of business specified in his certificate of registration or, with the previous approval of the assessing officer, at such other place as may be approved by the assessing officer.

Hotelier to
declare the
name of ow-
ner of busi-
ness.

14. Every hotelier, who is liable to pay tax, and who is a Hindu undivided family, or an association or club or society or firm or company, or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed send to the authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who is the owner or who are the owners of the hotel. Such declaration may be revised from time to time.

Imposition
of penalty
for contra-
vening cer-
tain provi-
sions.

15. (1) If any person—

(a) (i) not being a hotelier to pay tax under this Act, collects any sum by way of tax, or

(ii) being a registered hotelier, collects any amount by way of tax in excess of the tax payable by him, or

(iii) otherwise collects tax in contravention of the provisions of section 11, or

(b) being a hotelier liable to pay tax under this Act, or being a hotelier who was required so to do by the assessing officer by a notice, served on him, fails in contravention of sub-section (1) of section 13, to keep a true account of his turnover of receipts or fails when directed so to do under that section to keep any accounts or record in accordance with the direction,

he shall be liable to pay, in addition to any tax for which he may be liable, a penalty of an amount as follows :—

(A) where there has been contravention referred to in sub-clause (i) or (ii) of clause (a), a penalty of an amount not exceeding two thousand rupees or double the sum collected by way of tax, whichever is less,

(B) where there has been a contravention referred to in sub-clause (ii) of clause (a) or in clause (b), penalty of an amount not exceeding two thousand rupees, and in addition any sum collected by the person by way of tax in contravention of section 11, shall be forfeited to the State Government.

(2) If the assessing officer, in the course of any proceeding under this Act or otherwise, has reason to believe that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under sub-section (1), he shall serve on such person a notice in the prescribed manner requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in sub-section (1) should not be imposed on him.

(3) The assessing officer shall thereupon hold an enquiry and shall make such order as he thinks fit.

(4) 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.

(5) When any order of forfeiture is made, the assessing officer 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.

Payment
of tax.

16. (1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.

(2) A registered hotelier furnishing return as required by sub-section (1) of section 10, shall first pay into a Government treasury, in the prescribed manner, whole of the amount of tax due from him according to such return.

(3) A registered hotelier furnishing a revised return in accordance with sub-section (2) of section 10, which revised return shows that a larger amount of tax than already paid is payable, shall first pay into a Government treasury the extra amount of tax.

(4) (a) The amount of tax—

(i) due when returns have been furnished without full payment thereof, or

(b) the amount of penalty levied under section 15, or

(c) the sum (if any) forfeited to the State Government under section 15,

shall be paid by the hotelier or the person liable therefor into a Government treasury by such date as may be specified in a notice issued by the assessing officer for this purpose, being a date not earlier than thirty days from the date of service of the notice :

Provided that, the assessing officer may, in respect of any particular hotelier or person, and for reasons to be recorded in writing, allow him to pay the tax, interest or penalty (if any) or the sum forfeited, by instalments.

(5) Any tax, penalty or interest or sum forfeited, which remains unpaid after the date specified in the notice for payment, and any instalment not duly paid, shall be recoverable as an arrear of land revenue.

(6) 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 11, is forfeited to the State Government under section 15 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.

A refund of such sum or any part thereof can be claimed from Government by the person from whom it was realised by way of tax, provided that an application for such claim is made by him in writing in the prescribed form to the assessing officer, within one year from the date of the order of forfeiture. On receipt of any such application, the assessing officer shall hold such inquiry as he deems fit, and if he 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, he shall refund the sum or any part thereof, which is found due to the person concerned.

Rounding off
the tax, etc.

17. The amount of tax, penalty, interest, composition money, fine or any other sum payable under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored :

Provided that, nothing in this section shall apply for the purpose of collection by the hotelier of any amount by way of tax under this Act.

Offences and
penalties.

18. (1) Whoever, knowingly furnishes a false return shall, on conviction, be punished-

- (i) in case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs.10,000 with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine ;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(2) Whoever, knowingly keeps false account of the receipts in contravention of section 13, shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever—

(i) wilfully attempts, in any manner whatsoever, to evade any tax leviable under this Act, or

(ii) wilfully attempts, in any manner whatsoever, to evade any payment of any tax or penalty or interest under this Act, shall, on conviction, be punished—

a) in case where the amount involved exceeds Rs. 50,000 during a period of half-year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(b) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(4) Whoever aids or abets any person in commission of any act specified in subsections (1) to (3), shall, on conviction, be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine.

(5) Whoever—

(a) carries on business without being registered in wilful contravention of section 6, or

- (b) fails, without sufficient cause, to furnish any information required by section 8, or
- (c) fails, without sufficient cause, to furnish any return as required by section 10, by the date and in the manner prescribed, or
- (d) contravenes, without reasonable cause, any of the provisions of section 11, or
- (e) fails, without sufficient cause, to issue a bill or cash memorandum as required under section 12, or
- (f) fails, without sufficient cause, when directed under section 13, to keep any account or record, in accordance with such direction, or
- (g) voluntarily obstructs any officer making inspection or search or seizure, shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine.

(6) Whoever commits any of the acts specified in sub-sections (1) to (5) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with a daily fine of not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishment provided under this section.

(7) Notwithstanding anything contained in sub-sections (1) to (6), no person shall be proceeded against under these sub-sections for the acts referred to therein, if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a half-year.

(8) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed by the assessing officer under any provisions of this Act.

Power to
make rules.

19. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the State

Government may make rules for all or any of the following matters, namely :—

- (a) the manner of payment of tax ;
- (b) the form in which accounts and registers shall be maintained by a hotelier ;
- (c) any other matter which is required or allowed by this Act to be prescribed.

(3) The power to make rules, except on the first occasion of the exercise thereof, shall be subject to the condition of the rules being made after previous publication.

Power to
remove diffi-
culties.

20. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order, do anything not inconsistent with such provision which appears to it to be necessary or expedient for the purpose of removing the difficulty.

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