

ASSAM ACT No. IV of 1989

(Received the assent of the Governor on 1st April 1989)

THE ASSAM TAXATION LAWS (AMENDMENT) ACT, 1989.

AN

ACT

further to amend the Assam Sales Tax Act, 1947, the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 and the Assam Finance (Sales Tax) Act, 1956.

Preamble. Whereas it is expedient further to amend the Assam Sales Tax Act, 1947, the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 and the Assam Finance (Sales Tax) Act, 1956.

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

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

(2) It shall be deemed to have come into force on the 28th day of March, 1989.

Amendment of Assam Act XVII of 1947.

2. In the Assam Sales Tax Act, 1947,

(i) in section 2,

(a) for clause (2), the following shall be substituted, namely —

“(2) “works contract” means any agreement for carrying out or executing for

cash, deferred payment or other valuable consideration —

- (i) the construction, fitting out, improvement or repair of any building, road, wall, bridge, embankment, dam or other immovable property, or
- (ii) the assembling, fabrication, installation, repair, fitting out, altering, ornamenting, blending, finishing, improving, processing, treating or adapting any moveable property, whether attached to any immovable property or not and includes a sub-contract for carrying out or executing the whole or any part of such work ; ” ;

(b) after clause (2) as so substituted, the following shall be inserted as clauses (2a) and (2b), namely :—

- “(2a) “contractee” means any person for whom or for whose benefit a works contract is carried out or executed ;
- (2b) “contractor” means the person carrying out or executing a works contract ; ” ;

(c) for clause (3) and the Explanation thereunder, the following shall be substituted, namely :—

- “(3) “Dealer” means any person who carries on the business of buying, selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments or of carrying out or executing any works contract or of transferring the right to use any goods for any purpose, whether for cash, deferred payment, commission, remuneration or other valuable consideration in the State and includes any society, club or association which sells or supplies goods to its members.

Explanation :—The manager or agent of a dealer who resides outside the State and carries on

business as aforesaid in the State shall in respect of such business be deemed to be a dealer for the purposes of this Act;”;

(d) for clause (12), the following shall be substituted, namely :—

“(12) “sale” with all its grammatical variations and cognate expressions means any transfer of property in goods for cash, deferred payment, commission, remuneration or other valuable consideration and includes—

(a) any delivery of goods on hire purchase or any system of payment by instalments;

(b) any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract specified in Schedule IV;

(c) any transfer of the right to use any goods specified in Schedule V for any purpose (whether or not for a specified period);

(d) and shall be deemed always to have included any supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such delivery, transfer or supply of any goods shall be deemed to be and, in a case falling under sub-clause (d) of this clause, shall always be deemed to have been, a sale of such goods by the person making the delivery, transfer or supply and a purchase of such goods by the person to whom such delivery, transfer or supply is made:

Explanation(1) :—Save as provided in this clause, “sale” does not include any transfer of goods by way of a mortgage, hypothecation, charge or

pledge or the resumption of possession of the goods by the transferor under an agreement for hire-purchase or any system of payment by instalments.

Explanation(2) :—A sale falling under sub-clause (a) shall be deemed to have taken place in the State if the goods are within the State at the time of their delivery.

Explanation(3) :—A sale falling under sub-clause (b) shall be deemed to have taken place within the State if the goods involved in the works contract are within the State at the time of their use, application or appropriation, for the execution of the contract.

Explanation(4) :—A sale falling under sub-clause (c) shall be deemed to have taken place in the State if the goods had not been purchased inside the State by the person transferring the right to use the goods irrespective of the place or places where the contract for such transfer is made or the goods are delivered for use or are actually used except where the goods are intended to be exclusively used in another State in which case the sale shall be deemed to have taken place in such other State.

Explanation(5) :—‘Transfer of the right to use any goods’ means the transfer by the owner of the goods of the possession or control or use of the goods specified in Schedule V to any other person for any purpose, whether or not for a specified period, for cash, deferred payment or other valuable consideration ;” ;

(e) for clause (13), the following shall be substituted,—namely :—

“(13) “sale price” shall mean and, in a case not falling under sub-clauses(a), (b) or (c) of clause (12) of this section, shall be deemed always to have meant the amount payable to a dealer as valuable consideration for the sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer with or in

respect of the goods at the time of, or before delivery thereof, other than the cost of freight or delivery or the cost of installation where such cost is separately charged and includes :—

- (a) in respect of any sale falling under sub-clause (a) of clause (12) of this section, the full value of the consideration payable had the goods been sold outright on the day the goods were delivered on hire-purchase or any system of payment by instalments ;
- (b) in respect of any sale falling under sub-clause (b) of clause (12) of this section, the full value of the consideration received or receivable under the contract for the transfer of property in goods involved therein (whether as goods or in any other form), including—
 - (i) in a case where any goods have been supplied to the contractor by the contractee or any other person for use in the works contract, whether for consideration or otherwise, the market value of the goods on the day they were so supplied; and
 - (ii) in a case where any part of the work is carried out or executed by a sub-contractor, the amount received or receivable by such sub-contractor;
- (c) in respect of any sale falling under sub-clause (c) of clause (12) of this section, the full value of the consideration received or receivable for the transfer of the right to use any goods for any purpose:

Explanation 1 :—Where there are several contracts relating to the same work or which are incidental or ancillary to each other, all such contracts shall, for the purpose of the aforesaid sub-clause (b), be deemed to constitute a single contract.

Explanation 2:—For the purpose of the aforesaid sub-clause (b) the transfer of property in the goods involved in a works contract (whether as goods or in some other form) shall be deemed to have taken place at the time and to the extent the whole or any part of the sale price or any advance towards the sale price under the contract is received or becomes receivable by the dealer ;” ;

(f) after clause (14) the following shall be inserted as clause (15) namely :—

“(15) “turnover of sales” means

(a) in relation to sales falling under sub-clause (b) of clause (12) of this section, the aggregate of the amounts of sale price received or receivable by the dealer during any period in respect of the carrying out or execution of a works contract whether executed fully or partly including any advance received or receivable by the dealer during that period towards the sale price but excluding any amount refunded or refundable by the dealer or withheld from any payment made to him by way of discount, rebate, penalty, damages or otherwise in respect of such contract and reduced by—

(i) such percentage of the turnover towards labour and other charges as may be specified in Schedule IV; and

(ii) such other amounts as may be prescribed ;

(b) in relation to sales falling under sub-clause (c) of clause (12) of this section, the aggregate of the amounts of sale price received or receivable during any period by the dealer in respect of the transfer of the right to use any goods for any

purpose, including any advance received towards the sale price during that period ;” ;

- (iii) in section 3, after sub-section (7), the following shall be inserted as sub-sections (8), (9), (10) and (11), namely,—

“(8) Notwithstanding anything contained elsewhere in this section or any other law for the time being in force every dealer shall be liable to pay tax under this Act in respect of every sale falling under sub-clause (b) or (c) of clause (12) of section 2 if his turnover of sales in any year commencing on the 1st day of April, 1989 or thereafter exceeds the “taxable quantum” specified in sub-section (11) of this section and he shall be so liable to pay tax on the expiry of one month from the date on which such turnover first exceeds the taxable quantum on all sales specified in this sub-section and effected after such expiry, and to that extent the provisions of sub-sections (1) to (7) of this section shall not apply to such dealer.

(9) Every dealer who has become liable to pay tax under sub-section (8) of this section shall continue to be so liable until the expiry of three consecutive years during each of which his turnover of sales has failed to amount to or exceed the “taxable quantum” specified in sub-section (11) of this section and on expiry of this period, his liability to pay tax under the aforesaid sub-section shall cease.

(10) Every dealer whose liability to pay tax under sub-section (8) of this section has ceased under sub-section (9), shall again be liable to pay tax under sub-section (8) of this section in accordance with that sub-section after his turnover of sales exceeds the “taxable quantum” specified in sub-section (11) again during any year.

(11) For the purposes of sub-section (8) of this section “taxable quantum” means

- (a) in relation to sales falling under sub-clause;
(b) of clause (12) of section 2, Rs 50,000,

- (b) in relation to sales falling under sub-clause (c) of clause (12) of section 2, Rs.10,000 ;” ;

(iii) in section 3B,

- (a) in sub-section (2), for the words “one paise”, the words “two paise” shall be substituted ;
- (b) in sub-section (4), for the words “sub-section (3) ”, the following shall be substituted, namely :—

“clause (b) of sub-section (1) of section 15 and sub-section (3) of that section” ;

(iv) after section 3B, the following shall be inserted as section 3C, namely :—

“Additional
tax on turn-
over” 3C(1) Notwithstanding anything contained else-
where in this Act or in any other law for the time
being in force,

- (a) every dealer whose gross turnover during the last year ending on or before the 31st day of March, 1989 exceeds rupees ten lakhs, shall, in addition to any other tax payable by him under this Act or any other law for the time being in force, be liable to pay from the 1st day of April, 1989, a turnover tax at the rate specified in sub-section (3) of this section on such part of his turnover as specified in sub-section (2);
- (b) every other dealer whose gross turnover during any year ending after the 1st day of April, 1989, exceeds rupees ten lakhs shall, in addition to any other tax payable by him under this Act or any other law for the time being in force, be liable to pay from the first day of the year immediately following such year a turnover tax at the rate specified in sub-section (3) of this section on such part of his turnover as specified in sub-section (2) ;

(c) every dealer who has become liable to pay turnover tax under clause (a) or clause (b) of this sub-section shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover does not exceed rupees ten lakhs and on the expiry of such period of three years his liability to pay turnover tax shall cease;

(d) every dealer whose liability to pay turnover tax has ceased under clause (c) of this sub-section, shall, if his gross turnover during any year again exceeds rupees ten lakhs, be liable to pay from the first day of the year immediately following such year the turnover tax at the rate specified in sub-section (3) of this section on such part of his turnover as specified in sub-section (2) .

(2) The turnover tax shall be levied at the rate specified in sub-section (3) of this section on that part of the gross turnover of the dealer during any period which remains after deducting therefrom his turnover during the period on—

(a) sales of goods specified in section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(b) sales of goods exempted by or under section 7 ;

(c) sales of goods exempted under clauses (b) and (c) of sub-section (1) of section 15;

(d) sales of goods in respect of which he is not required to pay tax under the Assam Finance (Sale Tax) Act, 1956, and the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955;

- (e) sales of goods taking place in the course of inter-State trade or commerce or outside the State or in the course of import or export as contemplated in sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(3) The turnover tax shall be levied at the rates specified below if the gross turnover of the dealer liable to pay such tax during the period in respect of which or part of which turnover tax is levied fulfils the condition specified against each :—

Rate of tax	Turnover limits
(a) One and one-half of one per centum	If gross turnover exceeds rupees twelve lakhs fifty thousand.
(b) One per centum	If gross turnover exceeds rupees six lakhs twenty five thousand.
(c) One-half of one per centum	In other cases.

Explanation :—For the purpose of sub-sections (2) and (3) of this section period means the period prescribed under section 16.

(4) The tax payable by a dealer under sub-section (3) of this section in respect of any period shall not exceed :—

- (a) in a case falling under clause (a) of sub-section (3) of this section, a sum equivalent to the aggregate of two thirds of the tax payable in accordance with the said clause (a) and fifteen per centum of the amount by which his gross turnover for the period exceeds rupees twelve lakhs fifty thousand ; and
- (b) in a case falling under clause (b) of the said sub-section (3), a sum equivalent to the

aggregate of one half of the tax payable in accordance with the said clause (b) and ten per centum of the amount by which his gross turnover for the period exceeds rupees six lakhs twenty five thousand.

(5) No dealer shall realise from his purchaser the turnover tax payable by him under this section. ;”;

(V) in section 4,

(a) in sub-section (1), between the words “shall” and “be”, the following shall be inserted, namely:—“subject to sub-section (3),” ;

(b) after sub-section (2), the following shall be inserted as sub-section (3), namely :—
“(3) The tax payable by a dealer under the Act, in respect of sales falling under sub-clauses (b) and (c) of clause (12) of section 2, shall be at the rates specified in Schedules IV and V respectively.” ;

(vi) in section 5,

(a) the punctuation mark “.” (full stop) at the end of the section shall be deleted;

(b) and after the word “dealer”, the following shall be inserted, namely :—

“and in case of sales falling under clauses (b) and (c) of sub-clause (12) of section 2, on the turnover of sales of a dealer making such sales.” ;

(vii) in section 15, in sub-section (1), in clause (b), for sub-clause (i), the following shall be substituted, namely :—

“(i) goods specified in the purchasing dealer’s certificate of registration as being intended by him for resale in the State,” ;

(viii) in Schedule II, against Serial No.3, for the "figure and words" "6 paise in the rupee", the figure and words "7 paise in the rupee" shall be substituted;

(ix) in Schedule III

(a) for Serial No. 1, the following shall be substituted, namely :—

"1. All cereals including all forms of rice, Except when sold in sealed containers and excluding cooked food sold at one time to a person at a price exceeding ten rupees";

(b) against Serial No. 11, after the words "Except when sold in sealed containers", the following, shall be inserted, namely:-

"and excluding cooked food sold at one time to a person at a price exceeding ten rupees";

(c) against Serial No. 12, under the Heading "Conditions and exceptions subject to which exemption has been allowed", the following shall be inserted, namely:-

"Except cooked food sold at one time to a person at a price exceeding ten rupees";

(x) after Schedule III, the following shall be inserted as Schedules IV and V, namely;

"SCHEDULE IV

List of Works Contracts for Charge of Tax on Transfer of Property in Goods Involved Therein

[See section 2 (12) (b)]

Sl.No.	Description of works contract.	Percentage of exclusion towards labour and other charges.	Rate of tax
(1)	(2)	(3)	(4)
1.	Fabrication and installation of lifts, rolling shutters, collapsible and other varieties of gates, grills, doors, windows and frames and overhead tanks.	10	4 paise in the rupee.
2.	Supply and fixing of tiles, slabs, stone sheets, flooring, roofing, sanitary and water fitting, drainage and sewerage.	30	4 paise in the rupee.

SCHEDULE V

List of Goods for Charge of Tax on Transfer of the Right to Use any Goods for any Purpose.

[See section 2 (12) (c)]

Sl. No.	Description of goods	Rate of tax
1.	Video cassettes- and audio cassettes-	20 paise in the rupee.
2.	Television sets, video cassette recorders and players and video games equipment-	20 paise in the rupee.
3.	Internal communication and closed circuit TV equipments-	20 paise in the rupee."

Amendment
of Assam in
Act XI of
1956.

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

- (i) against Items No. 10, 15B, 16A, 17A, 18A, 19, 21 to 26, 26A, 27, 29, 29A, 30 to 34, 39, 46A, 47 to 50, 52 to 61, 63, 64, and 66, for the figure and words "7 paise in the rupee", the figure and words "8 paise in the rupee" shall be substituted ;
- (ii) against Item No. 20, for the figure and words "10 paise in the rupee", the figure and words "12 paise in the rupee" shall be substituted ;
- (iii)(a) in Item No- 36, between the words "including" and "confectionery", the words and punctuation mark "butter sold in packets," shall be inserted ;
- (b) against Item No 36, as so amended, for the figure and words "7 paise in the rupee", the figure and words "8 paise in the rupee" shall be substituted ;
- (iv) against Item No. 71, for the figure and words "6 paise in the rupee", the figure and words "8 paise in the rupee" shall be substituted ;
- (v) after Item No. 73, the following shall be inserted as Items No. 74 and 75, namely :—
 - "74. Dried betel nuts or 8 paise in the rupee
Supari
 75. Pulses in all forms (but excluding cooked pulse sold at one time to a person at a price exceeding ten rupees), that is to say—
 - (a) gram or gulab gram;

- (b) tur or arhar;
- (c) moong or green gram;
- (d) masur or lentil;
- (e) urad or black gram;
- (f) moth;
- (g) lakh or kesari; 1 paisa in the rupee”,

(vi) after Item No. 75, as so inserted, the following “Explanation” shall be inserted namely :—

“**Explanation** :—Each of the pulses referred to in Item No. 75, whether whole or separated, and whether with or without husk, shall be treated as single commodity for the purposes of levy of tax under this Act.”.

Amendment
of Assam
Act IX
of 1956.

4. In the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955, in section 3, in sub-section (1).

- (i) against clause (i), for the word “fifteen” the words “twenty-five” shall be substituted ;
- (ii) against clause (i-a), for the word “ten”, the word “twelve” shall be substituted ;
- (iii) against clause (ii), for the word “nine”, the word “ten” shall be substituted ;
- (iv) against clauses (viii) and (ix), for the word “seven” wherever it occurs, the word “eight” shall be substituted.

Exemption.

5. Notwithstanding anything contained in section 2 of this Act, any supply of the nature referred to in sub-clause (d) of clause (12) of section 2 of the Assam Sales Tax Act, 1947, as inserted by this Act, shall be exempt from tax under the aforesaid Act of 1947,

- (a) where such supply had been made, by any restaurant or eating house (by whatever name called), at any time on or after the 7th day of September, 1978 and before the commencement of this Act and the aforesaid tax has not been collected

on such supply on the ground that no such tax could have been levied or collected at that time ; or

- (b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972 and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time :

Provided that the burden of proving that the aforesaid tax was not collected on any supply of the nature referred to in clause (a) or as the case may be clause (b), shall be on the person claiming the exemption under this section.

Explanation :—For the removal of doubts it is hereby declared that no act or omission on the part of any person in relation to any supply of the nature referred to in this section before the commencement of this Act, shall be punishable as an offence which would not have been so punishable if this Act had not come into force.

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