

Jammu and Kashmir Motor Spirit and Diesel Oil (Taxation of Sales) Act, 2005 (1948 A.D.)

(Act No. 5 of Samvat 2005)

Last Updated 17th August, 2019 [jk430]

[Promulgated by His Highness the Maharaja Bahadur under section 5 of the Jammu and Kashmir Constitution Act, 1996 and published in Government Gazette dated 6th Katik, 2005.]

An Act to provide for the levy of [tax and cess] on the retail sale of [Motor Spirit and Diesel Oil.]

Preamble. - Whereas, it is expedient to provide for the levy of [tax and cess] on the retail sale of [Motor Spirit and Diesel Oil.] ; Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, His Highness is pleased to enact as follows :-

Preliminary

1. Short title and commencement. - (1) This Act may be called the Jammu and Kashmir [Motor Spirit and Diesel Oil.] (Taxation of Sales) Act, 2005.

[(2) It shall come into force on such date as the Government may by notification appoint].

2. Definitions. - In this Act unless there be anything repugnant in the context,-

[(a) "*Chief Petrol Taxation Officer*" means an officer appointed by the Government under this Act ;

(a-1) "*Commissioner*" means a person appointed by the Government to discharge the functions of Commissioner under this Act ;

(a-2) "*Dealer*" means any person including a Department of Government who on commission or otherwise, sells any motor spirit or diesel oil to a consumer or to any other person or keeps stock of motor spirit or diesel oil for sale to a consumer or to any other person.]

[(a-3) "*diesel oil*" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons) with a flash point above 130oF but not exceeding 170oF which is ordinarily used for providing reasonable efficient motive-power for any form of motor vehicle or for internal combustion engines ;

(aa) "*magistrate*" means any magistrate exercising powers not less than those of a magistrate of the second class ;]

[(b) "motor spirit or diesel oil"] means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) which is ordinarily used for providing reasonably efficient motive powers and it shall also include Aviation Turbine Fuel (ATF) and Natural Gas ;]

[x x x x]

(c) "*penalty*" means a penalty imposed under section 9 of this Act ;

(d) "*Petrol Taxation Officer*" means such officer not below the rank of a gazetted officer, as may be appointed by the Government to discharge the duties of a Petrol Taxation Officer under this Act with reference to any particular areas ;

(e) "*prescribed*" means prescribed by rules under this Act ;

[x x x x]

[(h) "*sale*" means a transfer of motor spirit or diesel oil for cash or deferred payment or any other valuable consideration and includes its consumption by the dealer for his own use] ;

[(hh) "*Tribunal*" means the Appellate Tribunal constituted under [{section 12-A of the Jammu and Kashmir General Sales Tax Act, 1962}] ;

(i) "*vehicle*" includes any carriage or conveyance used on land or in water or air.

[3. Levy of tax. - Subject to the Provisions of this Act, every dealer shall pay to the Government a tax on the sale of motor spirit and diesel oil at such rate or rates not exceeding [forty percent], advalorem as may be specified by the Government by notification in the Government Gazette :

Provided that tax shall be chargeable on the first sale after import of motor spirit and diesel oil into the State :]

[Provided further that in respect of the sale of motor spirit and diesel oil lying in stock with the retail dealers on the date of enforcement of the Jammu and Kashmir Motor Spirit and Diesel Oil (Taxation of Sales) (Amendment) Act, 1978 (Act XVII of 1978), the tax shall be chargeable from such retail dealers on the sale of such stocks of motor spirit and diesel oil] :

[Provided further that the first sale in respect of the dealers registered under the name and style of M/s Indian Oil Corporation Ltd., M/s Bharat Petroleum Corporation Ltd., M/s Hindustan Petroleum Corporation Ltd. and M/s Indo Burma Petroleum Co. Ltd., who sell Motor Spirit and Diesel Oil shall be the sale by these dealers to a dealer other than the aforesaid dealers inter se for the first time within the State.]

[3A. Levy of cess. - (1) Every dealer liable to pay tax under section 3 shall also be liable to pay a cess on the volume of [Motor Spirit and Diesel Oil other than Aviation Turbine Fuel (ATF) and Natural Gas] sold within the State at a rate not exceeding Rs. 5 per litre, and subject to such conditions, as the Government may by notification in the Government Gazette specify from time to time.

(2) The provisions of this Act in regard to assessment, payment and recovery of tax and all other matters in cluding liability to pay interest connected therewith shall apply

mutatis mutandis to the assessment, payment, recovery of such cess as if it were a tax leviable under section 3 of this Act.]

[3B. Omitted].

4. Recovery of taxes as arrears of land revenue. - When the payment of any tax or penalty under this Act falls due the amount may be recovered as if it were an arrears of land revenue.

5. Power to determine certain questions. - (1) Any question as to whether a tax or penalty is recoverable under this Act, the person from whom it is due and the amount so recoverable shall be determined by the Petrol Taxation Officer for the area where the sale takes place.

(2) No such order shall be made final until an opportunity has been given to any person concerned to appear in person or by duly authorised agent before the Petrol Taxation Officer ; but once the order has been made final a certificate given under the hand of the Petrol Taxation Officer, shall, subject to the provisions of this Act with regard to appeal, review and revision, be final and conclusive proof both as to the amount of the tax or penalty which is due and as to the person from whom it is due.

Licensing Of Retail Dealers

6. No person to trade without a licence. - After the expiry of a period of two months from the commencement of this Act, no person shall carry on business as [***] dealer unless he is in possession of a valid licence.

7. Grant of licence. - Except as provided hereunder, a licence shall be granted to any person applying therefor to the Petrol Taxation Officer on payment of a fee of not more than [one hundred] rupees, if any, as may be prescribed.

(2) Every such licence shall be valid without renewal only up to end of [March] following the date on which it is granted, but may be renewed annually [on payment of rupees fifty.]

(3) The grant or renewal of licence may be refused if any previous licence of the applicant has been cancelled or if the tax payable by him or the amount of penalty imposed, if any, is found due from him on the date of expiry of the licence or if the Petrol Taxation Officer is satisfied that the application has been made only for the purpose of enabling any person to carry on business as a 1[] dealer without a licence.

(4) No licence under this Act shall be granted to any person who does not hold a licence of the storage of dangerous petroleum under the Petroleum Act, [1934] and if any such licence granted under that Act is cancelled, suspended or is not renewed, any licence granted under this Act to the holder thereof shall be deemed to be cancelled, suspended or not renewed, as the case may be.

(5) If an application for the renewal of a licence under this Act is made without such time before its expiry as may be prescribed by Government, the holder of the licence shall be deemed to be in possession of a valid licence until the licence is renewed or until he is informed that the renewal of the licence has been refused :

[Provided that the holder of a licence has paid into the Government Treasury in full the amount of tax collected by him on the sales effected before the expiry of the date of licence.]

8. Suspension or cancellation and restoration of a licence. - (1) The Petrol Taxation Officer may, after giving the licensee an opportunity to be heard, suspend or cancel a

licence for a breach of any of the conditions which may be prescribed as the conditions subject to which a licence is granted.

(2) A licensee shall not be entitled to any compensation for the suspension or cancellation of his licence under the foregoing sub-section.

(3) A licence cancelled or suspended under this section may be restored by the Petrol Taxation Officer on payment of such fee as may be prescribed.

Penalties and Powers to Prevent Evasion

[9. Penalty. - If any person,-

(a) contravenes any of the provisions of the Act and the rules made thereunder, or

(b) fails to pay the tax due within the time allowed, or

(c) fails to furnish the returns within the time allowed, or

(d) furnishes in-accurate particulars in the return, or

(e) prevents or obstructs inspection, search or seizure by an officer authorised under this Act,

the Petrol Taxation Officer shall in addition to the amount of tax payable by him impose by way of penalty-

(i) in respect of clause (a), a sum not exceeding the amount of tax payable but not less than 50% of such tax ;

(ii) in respect of clause (b), a sum not exceeding the amount of tax payable but not less than 20% of such tax ;

(iii) in respect of clause (c), a sum not exceeding 25% of the amount of tax payable but not less than 10% of the such amount ;

(iv) in respect of clause (d), a sum not exceeding double the amount of tax sought to be evaded but not less than 50% thereof ; and

(v) in respect of clause (e), a sum not exceeding Rs. 500 but not less than Rs. 100 :

Provided that no such penalty shall be imposed unless the person liable to penalty is given an opportunity of being heard :

Provided further that if in respect of a default specified in clause (b) or clause (c) the person in default proves to the satisfaction of Petrol Taxation Officer that he was prevented by a sufficient cause from paying the tax or furnishing the return in time, the Petrol Taxation Officer may not impose the penalty :

Provided also that no person shall be prosecuted under section 10 in respect to an offence for which a penalty has been imposed under this section.

Explanation. - For the purpose of this section the tax sought to be evaded means the excess of the tax assessed over the tax payable on the basis of return filed.]

[9A. Interest on delay in payment of tax etc. - If any amount of tax, penalty or any other sum payable under this Act, except the amount payable under this section, is not paid within the time prescribed or specified in the notice of demand, as the case may be, the person who is in

default shall in addition to such tax, penalty or any other sum pay interest at 2% per month for each month of default.

Explanation. - (1) Interest shall be charged for full month and not for a part thereof.

(2) If tax or any amount payable under the Act is paid by the cheques or draft, the date of encashment of the cheque or the draft shall be treated to be the date of deposit of tax or such other sum.]

10. Punishment for unauthorised sale. - [(1) Whoever contravenes the provisions of section 6 shall be punishable with fine which may extend to one thousand rupees or to a sum double the amount of the tax due in respect of the sale of any [motor spirit or diesel oil] conducted by or on behalf of such person, whichever is greater.

(2) No court shall take cognizance of an offence under this section except on a complaint in writing by the Chief Petrol Taxation Officer having jurisdiction over the area.]

[10A. Power to set up check posts and road barriers. - (1) For purposes of preventing evasion in the payment of tax under this Act or the rules made thereunder, the Government may by notification in the Government Gazette setup check-posts and road barriers at such places and in such manner as it may specify in the notification.

(2) Every person transporting Motor Spirit or Diesel Oil whether by means of a vehicle or otherwise shall-

(a) stop at the check-post or the road barriers, as the case may be, set up under sub-section (1) ;

(b) produce, if so demanded by an officer authorised by the Government in this behalf, a bill of lading in triplicate in such form as may be prescribed ;

(c) allow such officer to inspect the motor spirit or diesel oil, as the case may be.

(3) Any person contravening the provisions of sub-section (2) shall be punishable with fine which may extend to one thousand rupees.]

11. Issue of warrants. - (1) A Magistrate may issue a warrant-

(a) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act, or

(b) for the search, whether by day or by night, of any building, vessel, vehicle or place in which he has reason to believe that any [motor spirit or diesel oil] is sold or is kept for sale.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1989, by a Police Officer or if the officer issuing the warrant deems fit, by any other person.

12. Searches how made. - All searches made under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1989.

13. Procedure for arrest without warrant. - The provisions of section 61 of the Code of Criminal Procedure, 1989, shall apply to all arrests without warrant made under the provisions of this Act.

14. Duty of certain persons to report offences,etc. - Every person employed by Government, by any local body or by the Court of Wards, every village headman, village accountant and village watchman shall give immediate information to the [Deputy

Commissioner] of the commission of any offence or of the intention of preparation to commit any offence punishable under this Act which may come to his knowledge.

15. Power of investigation. - [(1) An officer not below the rank of Petrol Taxation Officer shall have power to investigate all offences punishable under this Act within the area for which he is appointed.]

(2) Every such officer shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1989, upon an officer- in-charge of a Police Station for the investigation of a cognizable offence.

(3) Every such officer may enter at any reasonable time the premises of any [***] dealer and with or without notice examine and take copies or extracts from any account books or registers for the purpose of testing the accuracy of any prescribed returns or of informing himself as to any particulars regarding which information is required for the purposes of this Act or of any rules thereunder.

(4) Every such officer may detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

16. Offences to be bailable. - All offences punishable under this Act shall be bailable.

17. Punishment for vexatious search or arrest. - Any officer or person exercising powers under this Act who,-

(a) without reasonable ground of suspicion, enters or searches, or causes to be entered or searched any building, vessel, vehicle or place ; or

(b) vexatiously and unnecessarily detains, searches or arrests any person ;

shall on conviction be punishable with fine which may extend to five hundred rupees.

18. Punishment for vexatious delay. - Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall, on conviction, be punishable with fine which may extend to two hundred rupees.

19. Power to compound offences. - (1) The [Commissioner] may accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money not exceeding one thousand rupees or a sum double the amount of the tax payable under section 3 in respect of any sale conducted by such person, whichever is greater.

(2) On the payment of such sum of money the accused person, if in custody, shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

Miscellaneous

20. Powers. - The powers of Government to appoint any person or to invest any person with any authority prescribed by the Act may be exercised by the Minister-in-Charge, subject to the orders of Government.

21. Protection of persons acting in good faith and limitation of suits and prosecution. - (1) Any civil or criminal proceedings instituted against any person in respect of any act done or purporting to be done in the exercise of any powers or the execution of duty under this Act shall be dismissed unless the court is satisfied that the act complained of was not done in good faith.

(2) No suit shall be instituted against the State and no prosecution or suit shall be instituted against any person in respect of anything done or intended to be done, under

this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

[22. Appeals. - (1) A dealer or any other assessee objecting to an order passed by the Petrol Taxation Officer may within 30 days from the date on which he is served with a notice of demand appeal to such Appellate Authority as the Government may authorise in this behalf : Provided that such Authority may admit an appeal after the said period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period : Provided further that no appeal shall be entertained by such Authority unless it is satisfied that-

- (a) where the return or returns for the month or year has/have been filed, the amount of tax due under this Act on the turnover of sales admitted by the appellant in the return or returns filed by him or at any stage in any proceedings under this Act, whichever is higher, has been paid ; or
- (b) where some of the returns for the period under appeal have not been filed or no return has been filed for the period under appeal, the amount of tax due under this Act, admitted by the appellant in the returns, if any filed by him or at any stage in any proceedings under this Act, or 50% of the amount of tax assessed, whichever is higher, has been paid ; or
- (c) in case the appeal is against the imposition of penalty, 50% of the penalty levied has been paid :

Provided that the Appellate Authority may for reasons to be recorded in writing stay the recovery of the disputed amount of tax and penalty. However, the stay will not cover the amount of tax or penalty payable under clauses (a), (b) and (c).

Exception. - Nothing in this section shall apply to the cases where the Commissioner makes an order extending the date of payment under clause (c) of section 23-B.]

[22A. Appeals to the Tribunal. - (1) Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by an order passed under section 22 may within three months from the date of such order prefer an appeal to the Tribunal.

(2) The Tribunal may, after calling for and examining the relevant records and giving the parties reasonable opportunity of being heard,-

- (a) confirm, cancel such order or pass any other order which it may deem fit, or
- (b) set aside such order with the directions to pass fresh order after such enquiry as it may direct.

(3) During the pendency of appeal the Tribunal may for reasons to be recorded in writing stay the recovery of the disputed amount of tax and penalty.

22B. Revision. - (1) The Commissioner may, of his own motion call for the records of any proceedings which are pending before the Petrol Taxation Officer or have been disposed of by the Appellate Authority for the purpose of satisfying himself as to the correctness, legality or propriety of such proceedings or any order made therein and may pass such order in relation thereto as he may think fit.

(2) No order shall be made under this section which adversely affects the rights of a dealer without giving him a reasonable opportunity of being heard.

(3) All cases or proceedings on applications, made by the assesseees or dealers under section 22 and pending on the date of commencement of the Jammu and Kashmir

Taxation Laws (Amendment) Act, 2001 before the Commissioner shall stand transferred to the Tribunal for disposal as if these applications were made before the Tribunal.

22C. Application of Limitation Act. - The provisions of section 5 and section 12 of the Limitation Act, Samvat 1995, shall apply to appeals, revisions filed under this Act before Appellate Authority, Reviewing Authority or the Tribunal.

[22D. Powers of the Tribunal. - In discharging its functions under this Act, the Tribunal shall have the same powers as are exercisable by it under the Jammu and Kashmir General Sales Tax Act, 1962].

[22E. Statement of case to the High Court. - The provisions of section 12-D of the Jammu and Kashmir General Sales Tax Act, 1962 shall mutatis mutandis apply for referring any question of law under this Act to the High Court.]]

23. Review. - Any order made under this Act, other than an order made by a Criminal Court, may be reviewed by the officer making it or his successor, but not to the disadvantage of the person against whom it is made, unless he has done anything to mislead the officer passing the order.

[23A. Refunds. - The Petrol Taxation Officer shall, in the prescribed manner, refund to dealer any amount of tax, penalty or any other amount paid in excess of the amount due from him under this Act :

Provided that no refund shall be made unless the claim for refund is made within twenty-four months from the date of the order giving rise to the refund.

23B. Powers of Commissioner. - The Commissioner shall superintend the administration and the collection of tax leviable under this Act and shall also have the following powers:-

- (a) issuing instructions not inconsistent with the provisions of this Act or the rules made thereunder as he may consider necessary from time to time ;
- (b) transfer a case from a Petrol Taxation Officer to any other officer not below the rank of Petrol Taxation Officer at any stage of proceedings ;
- (c) extend the time limit for payment of tax under this Act on an application by a dealer subject to such conditions as he may consider necessary without prejudice to the provisions contained in section 9-A of this Act.]

24. Power to make rules. - (1) The Government may make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for the purpose of -

- (a) the recovery of the tax leviable under section 3 including the fixing of the time when the tax is to be paid ;
- (b) the fixing of licence fees ;
- (c) imposing on [***] dealers the duty of furnishing returns and of keeping records and registers of stocks and daily sales prescribing forms for such returns, and register of stocks and daily sales and the particulars to be contained therein, respectively, and the manner in which the same are to be verified and all such

other conditions thereof as may be necessary and prescribing a period within which such returns must be submitted ;

- (d) prescribing the localities in which [motor spirit or diesel oil] may be sold, the assessment of tax and the issue of notices requiring payment and for the recovery of unpaid tax ;
- (e) providing for or restricting the assignment or transfer of licences and the manner in which licences granted to firms are to operate during the period of or on the dissolution of, a partnership ;
- (f) prescribing the arrangements to be made when a licensee dies or becomes subject to a legal disability, the period during which, and the persons by whom, the business of such a licensee may be carried on without a licence ;
- (g) requiring the production of licences on demand ; and
- (h) prescribing the period (which shall not be less than one month from the date of the order appealed against) within which an appeal under section 22 of this Act may be presented ; and prescribing the manner in which such appeal shall be presented.

(3) In making any rule the Government may provide that a breach thereof shall be punishable with fine which may extend to one hundred rupees, and where the breach is a continuing one, with further fine which may extend to twenty rupees for every day after the first day during which the breach has continued.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition that rules shall be made after previous publication.

25. Delegation of powers by Government. - The Government may, by a general or special order, empower any person to perform any functions exercisable by Government under this Act, subject to such conditions as may be prescribed by Government in that behalf.