

Sales Tax Systems In India: A Profile

ASSAM

Assam situated in the north east corner of India, is basically an agrarian state while exploration, exploitation and refining petroleum form the bulk of the first industries in the State. In the State presently, apart from the Central Sales Tax Act, 1956, the following enactments are being administered for the purpose of levying sales tax.

- a. The Assam Sales Tax Act, 1947 amended up to date.
- b. The Assam Finance (Sales Tax) Act, 1956 amended upto date.
- c. The Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act. 1955 amended up to date.
- d. The Assam Purchase Tax Act, 1967.

1. Structure

Under the Assam Sales Tax Act every dealer whose turnover during the year exceeded Rs.20,000 is liable to pay tax. The taxable quantum in the case of Works Contract has been fixed at Rs.50,000 while for leases it is Rs.10,000 annually. Under the Assam Finance (Sales Tax) Act, 1956 and under the Assam (Sales of Petroleum and Petroleum products including motor spirit and lubricants Taxation Act 1955) no taxable quantum is specified like in

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the Assam Sales Tax Act 1947, a dealer becomes liable to pay taxes as soon as the dealer, sells/deals in taxable goods under such tax laws.

Point of Levy: The point of levy in the State of Assam under the Assam Sales Tax Act, 1947 is the last point of sale i.e. sale by a registered dealer to a person other than a registered dealer. Under the Assam Finance (Sales Tax) Act, 1956, however, the sales tax levy is the first point levy.

Rate Structure: In accordance with the provision laid in Section 4, Schedule II to the Act, specifies that declared goods are subject to tax at 4 per cent.

Other goods, other than the goods taxable under the Assam Finance (Sales Tax) Act, 1956 and the Assam (Sales of Petroleum and Petroleum products, including Motor Spirit and Lubricants Taxation Act, 1955) are taxable at the rate of 7 per cent. This is a last point levy. Under the Assam Finance (Sales Tax) Act, 1956, the first point levy of sales tax is in seven rate categories. The list in the schedule comprises of 75 items.

Purchase Tax: Under the Assam Purchase Tax Act 1967, the lowest rate of tax on the last point of purchase is on paddy at 2 per cent. Raw jute is taxed at 4 per cent; Raw hides and skin; bones of animals, birds, reptiles, fish are taxed at 3 per cent.

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The Assam (Sales of Petroleum and Petroleum products including Motor Spirit and Lubricants) Taxation Act 1955 levies tax on petroleum and petroleum products.

Works Contract, Hire-Purchase, Leasing: By amended Section 2(2) of the Assam Sales Tax Act, 1947 works contract has been brought under taxation with effect from 1.4.1989.

Works contract has been defined as any agreement for carrying out or executing for cash, deferred payment or other valuable consideration viz. the construction, fitting out, improvement or repair of any building, road, wall, bridge, embankment, dam or other immovable property, or the assembling, fabrication, installation repair, fitting out, altering, ornamenting, blending, finishing, improving, processing, treating or adapting any immovable 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 in the State.

The definitions of 'dealer' 'sale' have accordingly been enlarged (Section 2(3)(ii), Section 2(12)(b)) Explanation (3) to section 2(12) explains that there will be intra-state deemed sales in Works Contract when 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. Under clause 13(b) of Section 2, the full value of payment under works contract irrespective of whether the transfer of property in goods involved therein is in the form of goods or in any other form is taken to be the sale price. The contractee's supplies to the contractor, however, will be included at

their market value. Even the sub-contractor's receipts will form part of the sale price under works contract. Explanations 1 and 2 of clause (13)(b) of Section 2 consider part contract relating to the same work as one single contract and part-payments or advance payments as part of sale prices under certain conditions. Clause (15)(a) of Section 2 defines turnover of sales' in the context of works contract. The exclusion of any amount refunded or refundable by the dealer or withheld from any payment made to him by way of discount, rebate penalty, damages or other wise in respect of such contract has been provided for. Schedule IV describes the kinds of Works Contract as also percentage of exclusion towards labour and other charges. Rate of tax is 4 per cent, under each kind, on the net 'sale-price'.

Leasing: Leasing has been defined as transferring the right to use any goods for any purpose, whether for cash, deferred payment, commission, remuneration or other valuable consideration in the State. The definitions of 'dealer', "sale" have accordingly been expanded. Explanation to the relevant section identifies intra-state sale in the case of 'Leasing' as when the goods have 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. According to the explanation, 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

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purpose, whether or not for a specified period, for cash, deferred payment or other valuable consideration; the full value of the consideration received or receivable shall be taken as the sale-price. 'Turnover of sales' is defined as the aggregate of the amounts of sale price received or receivable during any period by the dealer, i.e. the 'lessor', in respect of the transfer of the right to use any goods for any purpose, including an advance received towards the sale price during the period.

Exemptions: Certain goods, about 66 in number, have been exempted from tax as listed in Schedule III of the Act,. All cereals including all forms of rice, fish, ghee, butter, cream (except when sold in sealed containers and excluding cooked food sold at one time to a person at a price exceeding ten rupees etc.), gur, molasses, mustard oil, sago, mathematical instruments, liquor sold to defence persons, educational materials (on certificates from heads of institutions) are exempt. Endi, muga cloth, potteries (produced and sold by producers co-operatives), khadi and/or products of village industries duly certified under Khadi and Village Industries Commission Act, 1956 or by the Statutory State Khadi and Village Industries Board, handwoven silk (Par) cloth, goods exported to Nepal/(on the strength of their certificate are also exempt from tax (Section 7).

Taxation of Inputs: Eligible dealers as per Assam Industries (Sales Tax concession) Act, 1986 are allowed to purchase inputs on a concession without payment of tax for the purpose of manufacture.

Incentives to Industries: Goods manufactured by new Industries are exempted from tax on their sales for a period of 5 years from the date of commencement of production. They are also extended the benefit of exemption of tax on their purchases.

2. Registration

Apart from registration under the Assam Sales Tax Act 1947, all the dealers, importers, manufacturers are liable to get themselves registered under the Assam Sales Tax Act 1947. A dealer with a gross turnover of Rs.20,000 is required to obtain registration under the Act.

3. Assessment

Returns: Every registered dealer/liable dealer shall furnish return by the prescribed date and pay tax due and enclose treasury receipt as also certain evidences in special cases, once in every quarter. In respect of Assam Finance (Sales Tax) Act, also the return is to be submitted quarterly.

Payment of Tax: as per sections 16 and 34 is to be ensured by the dealer.

Rebate of Tax: For regular submission of return and payment of tax, a rebate upto 1 per cent of tax is granted to the dealer.

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Mode of Assessment: Ordinarily assessments for a half year period (or for a business closing within the period) and assessment under the Purchase Tax Act and Petroleum Act are concluded quarterly either by accepting the return without verifying the books of accounts or after serving a notice on dealer to appear, produce evidence in support of his return and after giving him opportunity to be heard.

If the dealer fails to make a return, as required, or fails to comply with the terms of notice, he is assessed to the best of assessing authority's judgement by determining the tax payable by him on that basis. On reasonable grounds to be given by the dealer within one month of the date of issue of demand notice, cancellation of assessment and fresh assessment can be made (Section 18).

There are special provisions for assessment of defaulting dealers who fail to get registered and to make return (Section 19) as also of those dealers whose taxable turnover has escaped or has been under assessed or wrong reductions have been made (Section 19-A). The period of limitation for initiation of such assessment is eight years from the end of the period concerned.

4. Penalty and Prosecution

Penalty: For unreasonable failure to furnish return or to comply with the notice under Act, or for concealment/deliberate furnishing of in-accurate particulars of turnover or for tax evasion, there is provision for imposition of penalty of one and half times the tax payable in addition to the tax (Section 21).

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Prosecution: The penalty for the following offences, only on conviction, has been provided for:

- a. Failure to get registered or contravention of the provisions.
- b. Unreasonable, delayed submission of return or submission of false return.
- c. Registered dealer falsely claiming advantageous purchases of goods not included in his certificate of registration.
- d. An unregistered dealer falsely claiming advantageous purchases as a registered dealer.
- e. Failure to keep account or record of sales as required.
- f. Failure to produce accounts, evidence or documents, furnish information as required.
- g. Failure to comply with statutory requirement.
- h. Deliberate production of incorrect accounts, registers, document or furnishing of incorrect information.
- i. Fraudulent evasion of due tax or concealment of liability.
- j. Failure to pay assessed tax/penalty within the time allowed.
- k. Prevention of, obstruction to, entry, inspection by the competent officer.
- l. Prevention of, obstruction to, officer in-charge of checkpost in the discharge of his duties.
- m. Charging sales-tax from purchasers on sales of exempted goods (under Section 6 and under Section 7 - Schedule III).

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On conviction, the defaulter shall, in addition to any tax or penalty or both, be punishable with imprisonment for the period upto 6 months or with fine upto Rs.1,000 or with both. When the offence is a continuing one, a daily fine upto Rs.50 during the period of continuance of the offence is imposable.

5. Administrative Organisation

Assam has the Commissioner of Taxes, a Senior I.A.S. Officer, as the head of the Department of Taxation. This department also administers Electricity duty, Entertainment tax, Profession Tax and Agricultural Income Tax Acts. There are 2 Joint Commissioners, 6 Deputy Commissioners and 13 Assistant Commissioners and other Officers.

For the purpose of administration, Assam is divided into 10 zones each of which is supervised by an Assistant Commissioner of Taxes. The Superintendents of Taxes who are fairly large in number are entrusted with the work of assessment, registration etc. who are in turn assisted by the Inspectors of taxes.

6. Appeal/Revision (Remedial Measures)

The first appellate authorities are the two Assistant Commissioners (Appeals). The next appeal can be made to the Commissioner of Taxes for revision or to the Board of Revenue, whichever is preferred by the Assessee. The Commissioner may revise any order either suo moto or on application by the dealer if he finds the assessment to be

prejudicial to the interests of revenue. There is a provision for second revision by the Commissioner under specific circumstances.

Reference to the High Court only on points of law and interpretation can be made (Section 32).

Provision for rectification of mistakes apparent from records is also laid down.

The Assam (Sale of Petroleum and Petroleum products including Motor Spirit and Lubricants) Taxation Act 1955

The basic provisions of the Assam (Sale of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 are such as to fix the specific rate of tax at first point of sale of aviation spirit at 25 paise in a rupee, of motor spirit at 12 paise in a rupee, of diesel at 11 paise in a rupee, 10 paise in a rupee of lubricants and crude oil at 4 paise in a rupee.

7. Checkposts

There is a provision for setting up and erection of checkposts, barriers in the State to prevent evasion of tax payable. There are six checkposts working at present. These checkposts are erected to stop vehicles, to verify the nature and quantity of goods carried and pass on the information to assessing authorities for purposes of assessment. Every person transporting goods shall file before the checkpost/barrier incharge, a correct and complete declaration, in the prescribed form, of the goods

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being carried before he crosses the checkpoint/barrier. Interception, detention and search powers have been vested with the officers incharge of checkpoints/barriers.