

The U.P. Tax on Luxuries Act, 1995

UTTAR PRADESH

India

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Act 11 of 1995

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The U.P. Tax on Luxuries Act, 1995 U.P. Act No. 11 of 1995 Received the assent of the Governor on 14.3.1995, and published in the U. P. Gazette, Part IV, Section (Kha), dated 14.3.1995. (As passed by the both Houses of the Uttar Pradesh Legislature under Article 198 of the Constitution of India) An Act to provide for levy and collection of luxury tax on tobacco and matter connected therewith or incidental thereto It is hereby enacted in Forty-sixth Year of the Republic of India as follows :-

1. Short title and commencement.

(1) This Act may be called the Uttar Pradesh Tax on Luxuries Act, 1995. (2) Sections 2, 3, 4, 5, 6, 7, 8, 9 [except clauses (g) and (h) of sub-sections (1)], 10, 11, and 12 shall be deemed to have come into force on June 1, 1994, clauses (g) and (h) of sub-section (1) of Section 9 shall be deemed to have come into force on September 28, 1994 and the remaining provision shall come into force at once.

2. Definitions.

(1) In this Act—(a) "assessing authority" means the assessing authority referred to in Section 5; (b) "Commissioner" means the Commissioner of Luxury Tax referred to in Section 5; (c) "luxury tax" or "tax" means the tax levied under Section 3; (d) "place of business" includes an office or any other place which a tobacconist uses for the purpose of supplying tobacco or where he keeps his books of accounts; (e) "receipt" means—(i) in respect of supply of tobacco by a tobacconist made by way of sale, the amount or valuable consideration received or receivable by him for such sale including any sum charged for anything done by him in respect of the tobacco so sold at the time of or before the delivery thereof and the price if charged separately, of any primary or secondary packing, other than the cost of freight or delivery or the amount realised as luxury tax when such cost or amount is separately charged; and (ii) in respect of supply of tobacco by a tobacconist made otherwise than by way of sale, the normal price at which the tobacco is sold, and the term "normal price" shall have the same meaning as assigned to it in Section 4 of the Central Excises and Salt Act, 1944; (f) "registered tobacconist" means a tobacconist registered under Section 6; (g) "tobacco" means

unmanufactured and manufactured tobacco as described in the Notes and in the table in Chapter 24 in the Schedule to the Central Excise Tariff Act, 1985 and includes Pan Masala (by whatever name called) with or without tobacco but does not include cigarettes priced at rupees five or less per packet of ten and biris;(h)"tobacconist" means-(i)a manufacturer whose turnover of receipts, in a year exceeds one lakh rupees who supplies tobacco by way of sale or otherwise and includes any person who for the purpose of business gets the manufacturing done from any other person, whether or not on job work basis, but does not include any person who manufactures tobacco only on job work basis without obtaining any proprietary right over it at any stage;(ii)any person who for the purposes of business brings or causes to be brought tobacco in the State or to whom any tobacco is despatched from any place outside the State and who supplies such tobacco by way of sale or otherwise;(iii)any person who supplies tobacco from a place within the State to any place outside the State by way of sale or otherwise;(iv)any person who does not but or otherwise obtain unmanufactured tobacco under a brand name but supplies by way of sale or otherwise such unmanufactured tobacco in a sealed container under a brand name.Explanation.-For the removal of doubts, it is clarified that a person,-(1)who as an agriculturist exclusively supplies tobacco grown by himself or grown on any land in which he has an interest whether as an owner, usufructuary mortgagee, tenant or otherwise whether or not in a sealed container and whether or not under a brand name; or(2)who exclusively supplies unmanufactured tobacco whether or not in a sealed container but not under a brand name;shall not be deemed to be a tobacconist for the purposes of this clause;(i)"turnover of receipts" means the aggregate of the amounts of receipts of a tobacconist during a year in respect of the supply of tobacco by way of sale or otherwise;(j)"year" means the financial year.(2)Words and expressions used in this Act, but not defined shall have meaning assigned to them in the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948).

3. Levy of luxuries tax.

(1)Every tobacconist shall be liable to pay luxury tax on his turnover of receipts at such rate, not exceeding twenty-five per cent, as the State Government may, by notification, specify and different rates may be specified for different classes of tobacco :Provided that a tobacconist who does not manufacture or receive tobacco from outside the State shall be liable to pay tax on his turnover of receipts from the date his turnover of receipts exceeds two lakhs rupees :Provided further that in a chain of supply of tobacco, the tax shall be realised from the earliest of the tobacconists in the State and a successive tobacconist shall be exempted from payment of tax if he furnishes, in the manner prescribed, proof of payment of tax on such tobacco.

4. Exemption from tax.

- Notwithstanding anything in this Act, the State Government may, by notification, exempt any class of tobacco, or subject to such conditions and restrictions as it may impose, exempt from levy of tax any class of tobacconists.

5. Authorities under this Act.

(1) For carrying out the purposes of this Act, the Commissioner of Trade Tax of Uttar Pradesh shall be the Commissioner of Luxury Tax. (2) The "assessing authority" the "appellate authority" and the "Tribunal" and the "revising authority" under the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948) shall respectively be the "assessing authority" the "appellate authority" the "Tribunal" and the "revising authority" for the purposes of this Act. (3) The superintendence and control for the proper execution of the provisions of this Act and the rules made thereunder relating to the levy and collection of the tax shall vest in the Commissioner.

6. Registration.

(1) Every tobacconist liable to pay tax under this Act shall, within one month from the date on which he first becomes liable to pay tax, apply for registration to the assessing authority in such form and manner along with such fees not exceeding one thousand rupees, as may be prescribed. (2) If the assessing authority, after making such enquiry as he deems fit, is satisfied that the application is in order, it shall register the applicant and issue to him a certificate of registration in such form as may be prescribed. (3) The registration shall, subject to the provisions of this Act and the rules made thereunder, remain in force for so long as the tobacconist continues to be subject to registration under this Act. (4) A certificate of registration granted to a tobacconist under this section may be cancelled by the assessing authority by an order in writing giving reasons therefor either on the application of the tobacconist or on its own motion, where such assessing authority is satisfied that the person to whom it was granted has ceased to be a tobacconist or has ceased to be subject to registration under this Act or where for any other sufficient reasons such assessing authority considers it proper so to do. (5) The assessing authority may amend a registration certificate granted under this section either on the application of the tobacconist, or on its own motion, when the tobacconist has changed the name or place of his business or closed down any branch or opened a new branch, or for any other sufficient reason: Provided that a certificate of registration shall not be cancelled by the assessing authority under sub-section (4) or amended under sub-section (5), on its own motion unless the tobacconist is given a reasonable opportunity of being heard: Provided further that the cancellation of a certificate of registration shall not affect the liability of such tobacconist to pay the tax (including any penalty on interest) due for any period up to the date of cancellation whether such tax (including any penalty or interest) is assessed before or after the cancellation. (6) No person who is not a registered tobacconist shall, in respect of supply of tobacco made by or through him by way of sale or otherwise, realise from any person any amount by way of luxury tax, or any amount in lieu of luxury tax by giving it a different name or colour. (7) No registered tobacconist shall, in respect of any supply of tobacco made by or through him by way of sale or otherwise, realise from any person, other than a person to whom tobacco is supplied by him, any amount by way of luxury tax or any amount in lieu of luxury tax by giving it a different name or colour.

7. Security in the interest of revenue.

(1)Where it appear to the assessing authority to whom an application is made under Section 6 to be necessary so to do for the proper realisation of the tax payable, it may, by an order in writing and for reasons to be recorded therein impose as a condition for the issue of a certificate of registration, a requirements that the tobacconist shall furnish in the prescribed manner and within such time as may be specified in the other such security as may be so specified for all or any of the purposes of this Act.(2)Where it appears to the assessing authority to be necessary so to do for the proper realisation of tax payable under this Act, it may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the tobacconist to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or if the tobacconist has already furnished any security in pursuance of an order under this sub-section or sub-section (1), such additional security, as may be specified in the order, for the aforesaid purpose.(3)No tobacconist shall be required to furnish any security under sub-section (1) or under sub-section (2) by the assessing authority unless he has been given a reasonable opportunity of being heard and the amount of security that may be required to be furnished by any tobacconist under either of, or both, the aforesaid sub-sections shall in no case exceed the tax payable, in accordance with the estimate of the assessing authority, on the turnover of receipts of the tobacconist for the year in which such security is required to be furnished.(4)Where the security furnished by a tobacconist under sub-section (1) or sub-section (2) is in the form of a surety bond and any surety dies or becomes insolvent the tobacconist shall, within thirty days of the occurrence of any of the aforesaid events, inform the assessing authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.(5)The assessing authority may, by order in writing and for sufficient cause, forfeit the whole or any part of the security furnished by a tobacconist for realising any amount payable by the tobacconist under this Act :Provided that no order shall be passed under this sub-section without giving the tobacconist a reasonable opportunity of being heard.(6)Where by reason of an order under sub-section (5) the security furnished by any tobacconist is rendered insufficient, he shall make up the deficiency in such manner and within such time, as may be directed by the assessing authority.(7)If a tobacconist fails to comply with an order under sub-section (1) or sub-section (2) or with the provisions of sub-section (4) or sub-section (6), the assessing authority may, after affording the tobacconist a reasonable opportunity of being heard, reject the application for registration or if the tobacconist is already registered under this Act, cancel his registration certificate. In the event of rejection of application for registration, or cancellation of the certificate of registration, the tobacconist shall be deemed to have failed to apply for registration.

8. Establishment of barriers or check posts and inspection of tobacco in transit.

- The State Government, if it is of the opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act, it may, by notification, direct the establishment of check posts or barriers at such places within the State as may be specified in the notification :Provided that the check post and barriers established under Section 28 of the Uttar Pradesh Trade Tax Act, 1948 shall be deemed to be the check posts and barriers established under this section and

for import of tobacco into the State and for transit of tobacco by road through the State, the provisions of Section 28-A and 28-B of the Uttar Pradesh Trade Tax Act, 1948 shall mutatis mutandis apply for the purposes of this Act.

9. Penalties in certain cases.

(1) If the assessing authority is satisfied that any tobacconist, - (a) has, without reasonable cause, failed to furnish the return of his turnover of receipts along with the tax due under this Act within the time allowed and in the manner prescribed; or (b) has submitted a false return of turnover of receipts under this Act or has concealed the particulars of his turnover of receipts or has deliberately furnished inaccurate particulars of such turnover of receipts; or (c) has, without reasonable cause, failed to pay, within the time allowed, the tax assessed on him; or (d) being liable for registration under this Act supplies or continues to supply tobacco by way of sale or otherwise without obtaining registration certificate; or (e) realises any amount as luxury tax where no luxury tax is legally payable or in excess of the amount of tax legally payable under this Act; or (f) refuses to permit or refuses or neglects to produce for inspection any book, accounts, register or document; or (g) imports or transports or attempts to import or transport or abets the import or transport of tobacco in contravention of the provisions of Section 8; or (h) fails to obtain authorisation for transit of tobacco or deliver the same in contravention of the provisions of Section 8; or (i) otherwise acts in contravention of the provisions of this Act or the rules made thereunder; it may, after such enquiry, as it may deem necessary, direct such tobacconist to pay, by way of penalty, in addition to tax, if any, payable by him, - (i) in a case referred to in clause (a) or (c), a sum not less than ten per cent but not more than twenty five per cent of the tax due; (ii) in a case referred to in clause (b), a sum not less than fifty per cent but not more than one and a half times of the amount of tax which would thereby have been avoided; (iii) in a case referred to in clause (d), a sum of rupees one hundred for each month or part thereof during which the default continues; (iv) in a case referred to in clause (e), a sum not less than the amount of tax illegally realised but not more than three times of that amount; (v) in a case referred to in clause (f) or (i), a sum not exceeding five thousand rupees; (vi) in a case referred to in clause (g) or (h), a sum not exceeding forty per cent of the value of tobacco. (2) No order under sub-section (1) shall be made, unless the tobacconist has been given a reasonable opportunity of being heard. (3) The penalty imposed under this section shall be deposited in the manner prescribed and within thirty days of the service of the order imposing such penalty;

10. Machinery to assess, re-assess, collect and enforce payment of tax, interest and penalty.

- Subject to the provisions of this Act and the rules made thereunder, the authorities empowered to assess, re-assess, collect and enforce payment of tax under the Uttar Pradesh Trade Tax Act, 1948 shall assess, reassess, collect and enforce payment of tax including penalty payable under this Act as if it was a tax or penalty payable under the said Act of 1948 and for this purpose they may exercise all or any of the powers they have under the said Act of 1948 and the rules made thereunder and the provisions of the said Act of 1948 including the provisions relating to returns, payment and recovery of tax, liability to tax of dissolved firm and transferee composition of tax liability, appeal, revision, rectification, assessment of reconstituted or new firm and change of partnership, recovery from

third party, check post and barriers, refunds, certain information to be confidential, making transfer to defraud revenue void, charging and giving interest, indemnity and bar to certain proceeding power to summon witnesses, maintenance of accounts, power to order production of accounts and power of entry and inspection power to seize goods, determination of disputed questions and offences by companies shall mutatis mutandis apply.

11. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, or by reasons of anything contained in this Act to any other enactment for the time being in force, the State Government may, as occasion requires, by a notified order, direct that this Act shall have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deemed to be necessary and expedient. (2) No order under sub-section (1) shall be made after the expiration of the period of two years from the commencement of this Act. (3) The provisions made by an order under sub-section (1) shall have effect as if enacted in this Act and any such order may be made so as to be retrospective to any date not earlier than the date of commencement of this Act. (4) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of State Legislature and the provisions of sub-section (1) of Section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

12. Power to make rules.

- The State Government may make rules for carrying out the purposes of this Act.

13. Repeal and savings.

- The State Government Tax on Luxuries (Second) Ordinance, 1994 (U.P. Ordinance No. 22 of 1994) is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken or rules made or notification issued under the Ordinance referred to in sub-section (1) or under the Uttar Pradesh Tax on Luxuries Ordinance, 1994 shall be deemed to have been done, taken, made or issued under this Act as if the provisions of this Act were in force at all material times.