

The Punjab Forward Contracts Tax Act, 1951

HARYANA

India

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Act 7 of 1951

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The Punjab Forward Contracts Tax Act, 1951 Act No. 7 of 1951 Statement and Objects and Reasons. - Punjab is a deficit State and in addition has to spend large sums of money on rehabilitation of refugees. In order to bridge the gulf between income and expenditure, it is necessary to tap new sources of revenue. The business in forward contracts is conducted by well-to-do members of society. Accordingly it has been decided to levy a small tax on such business as in Uttar Pradesh. Published Punjab Government Gazette Extraordinary, dated the 27th March, 1951, page 238. Received the assent of His Excellency the Governor on the 20th April, 1951, and was first published in the Punjab Government Gazette Extraordinary, dated the 23rd April 1951. An Act to provide for the levy of a tax on forward contracts in [Haryana] [Substituted for the word 'Punjab' by Haryana Adoption of Laws Order, 1968.]. It is hereby enacted as follow:-

1. Short title, extent, and commencement.

(1) This Act may be called The Punjab Forward Contracts Tax Act, 1951. (2) It extends to the whole of the State of Punjab. (3) It shall come into force on such [date] [Vide Punjab Government Notification No. 2938-E and T-51/2576, dated 1.6.1951.] as the Government may, by Notification in the Official Gazette, specify.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context,-(a) "assessing authority" means and person authorised by Government to make any assessment under this Act; (b) "Commissioner" means the person appointed as such by the Government under sub-section (1) of section 3. (c) "dealer" means any persons, firm, Hindu Joint family or limited concern, including an arthi or "chamber" or association formed for the purpose of conducting business in forward contracts, who conducts such business in the course of trade in the State either on his own behalf or on behalf of any other person, arthi; "chamber" or association; Explanation. - Where a person residing outside the State carries on the business of forward contracts in the State through

an agent, such agent shall, in respect of such business, be deemed to be a dealer for the purposes of this Act;(d)"forward contract" means an agreement, oral or written, for sale of goods on a future date but on the basis of which actual delivery of goods is not made or taken but only the difference between the price of the goods agreed upon and that prevailing on the date mentioned in the agreement or any other date is paid or received by the parties;(e)"goods" means any movable commodity other than actionable claims, stocks, shares or securities, in respect of which a forward contract has been made;(f)"prescribed" means prescribed by rules made under this Act;(g)"registered" means registered under this Act;(h)"sale" means the final settlement in respect of an agreement to sell goods mentioned in a forward contract, and it shall be deemed to have been completed on the date originally fixed in the forward contract for this purpose or any other date on which the final settlement is made;(i)"Government" means the Government of the State of Punjab;(j)"year" means the financial year.

3. Taxing authority.

(1)For carrying out the purposes of this Act the Government may appoint a Commissioner and such other persons to assist him as may be deemed necessary.(2)The person appoint under sub-section (1) shall exercise such powers as may be conferred and perform such duties as may be required, by or under this Act.(3)All person appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

4. Rate of tax.

- Subject to the provisions of the Act, (Act XLV of 1860) there shall be levied each year on the business in forward contracts of a dealer a tax at such rates as the Government may by notification direct.

5. Liability of taxation.

- Every dealer shall be liable to pay the tax under this Act as long as he continues his business in forward contracts.

6. Registration of dealers.

(1)No dealer shall carry on business in for ward contracts unless he has been registered and possesses a registration certificate.(2)Every dealer required by sub-section (1) to be registered shall make an application in this behalf in the prescribed manner to the assessing authority.(3)If the assessing authority is satisfied that the application for registration is in order, he shall, in accordance with such rules and on payment of such fees as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form, which may be renewed in such manner or on payment of such fees as may be prescribed.(4)The Commissioner may from time to time amend or cancel any certificate of registration in accordance with information furnished under section 13 or otherwise received.

7. Payment of tax and returns.

(1)The tax payable under this Act shall be paid in the manner hereinafter provided and at such intervals as may be prescribed.(2)Such dealers as may be required so to do by the assessing authority, by notice served in the prescribed manner, and every registered dealer shall furnish such returns to the assessing authority by such dates as may be prescribed.(3)Before any registered dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him under this Act according to such returns, and shall furnish along with the returns a receipt from such Treasury or Bank showing the paying of such amount.(4)If any dealer discovers any omission or the other error in any return furnished by him, he may, at any time before the date prescribed for submission of the next return by him, furnish a revised return, and if the revised return shows a greater amount of tax as due than was shown in the original return, it shall be accompanied by the receipt showing payment of the extra amount in the manner provided in subsection (3).

8. Assessment of tax.

(1)If no returns are finished by a registered dealer in respect of any period by the prescribed date, or if the assessing authority is not satisfied that the returns furnished are correct and complete, the assessing authority shall, within two years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed, in such manner as may be prescribed, to assess to the best of his judgment the amount of tax due from the dealer.(2)If upon information received the assessing authority is satisfied that a dealer who was liable to pay tax under this Act in respect of any period had nevertheless willfully failed to apply for registration, the assessing authority shall, at any time within two years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed, in such manner as may be prescribed, to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods, and the assessing authority may direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding one and a half times that amount.(3)The amount of tax -(a)due where the returns are furnished without receipt showing full payment thereof, or(b)assessed under sub-section (1), less the sum, if any, already paid by the dealer in respect of the said period, or(c)assessed under sub-section (2), together with the penalty directed to be paid under that sub-section, shall be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the assessing authority for this purpose, and the date to be specified shall not be less than 30 days from the date of service of such notice:Provided that the assessing authority may, in respect of any particular dealers and for reasons to be recorded in writing, extend the date of such payment, or allow such dealer to pay the tax due and the penalty (if any) by instalments.(4)Any amount of tax, which remains unpaid after the date specified in the said notice, shall be recoverable as arrears of land revenue.(5)Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence against this Act.

9. Refunds.

- The assessing authority shall, in the prescribed manner refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act either by a refund voucher, or at the option of the dealer, by deduction of such excess from the amount of tax due in respect of any other period.

10. Accounts.

- Every dealer, whether registered or not, upon whom a notice to furnish returns has been served under sub-section (2) of section 7, shall keep a full and correct account of all forward contracts in respect of each class of goods made by or through him; and if the assessing authority considers that such account is not sufficiently clear and intelligible to enable him to make a proper check of the returns referred to in that sub-section, he may require such dealer by notice in writing to keep such account as may be prescribed.

11. Production and inspection of accounts and documents.

- The assessing authority or an officer authorised in writing by the assessing authority may subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents or to furnish any information as may be necessary for the purposes of this Act. In case of default, the assessing authority may draw such inference against the dealer as the assessing authority may deem fit.

12. Delegation of powers.

- Subject to such restrictions and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers under this Act to any person appointed under section 3 to assist him.

13. Information to be furnished regarding change of business.

- If any dealer to whom sub-section (2) of section 7 applies -(a)sell or otherwise disposes of his business or any place of business, or(b)discontinues his business or changes his place of business or opens a new place of business, or(c)changes the name or nature of his business. He shall within the prescribed period inform the assessing authority accordingly, and if any such dealer dies, his legal representative shall in like manner inform the said authority.

14. Tax payable by transferee of business.

- When the ownership of the business in forward contracts remaining unpaid at the time of a registered dealer is transferred, any tax payable in respect of his business in forward contracts remaining unpaid at the time of the transfer shall be payable by the transferee as if he were the

registered dealer. The transferee shall be liable to pay tax from the date of transfer and he shall, within 7 days of the transfer, apply for registration under section 6. The transferee shall be competent to carry on the business until the application is disposed of, and the registration shall have retrospective effect from the date of transfer.

15. Bar of certain proceedings.

- Save as provided in this Act, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called in question in any Civil Court; and save as provided in sections 16 and 17, no appeal or revision shall lie against any such assessment or order.

16. Appeal.

(1) Within 30 days from the receipt of a notice issued under sub-section (3) of section 8, any dealer may, in the prescribed manner, appeal against such assessment to such authority as may be prescribed: Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed on the dealer has been paid. (2) Subject to such rules of procedure as may be prescribed the said authority in disposing of any appeal under sub-section (1) may -(a) confirm, reduce, enhance or annul the assessment; (b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.

17. Revision.

- The Commissioner may, of his own motion or an application made to him, call for the record of any proceedings which are pending before or have been disposed of by, any assessing or appellate authority appointed under this Act, for the purpose of satisfying himself as to the legality of such proceedings or of any order made therein, and may pass such orders in relation thereto as he may think fit: Provided that no order which adversely affects the rights of an assessee or other person upon whom an obligation is imposed by or under this Act shall be passed without giving such assessee or other person a reasonable opportunity of being heard. (2) The Government may, by notification, confer upon any officer the powers of the Commissioner under sub-section (1), to be exercised subject to such conditions, and in respect of such arrears, as may be specified in the notification,

18. Offences and penalties.

(1) Whoever -(a) carries on business as a dealer in contravention of sub-section (1) of section 6; or (b) fails, without sufficient cause, to submit any return as required by sub-section (2) of section 7, or submits false return; or (c) not being a registered dealer, falsely represents that he is registered dealer; or (d) fails when required so to do under section 10 to keep prescribed accounts; or (e) refuses to comply with any requirements made of him under section 11; or (f) knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information on; or (g) neglects to

furnish any information required by section 13; shall be punishable with fine not exceeding one thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees for every day of the period during which the offence is continued.(2)No court shall take cognizance of any offence under this Act or under the rules made thereunder except on a complaint in writing by the assessing authority, and no court inferior to that of a Magistrate of the first class shall try any such offence.

19. Compounding of offences.

(1)Subject to such conditions as may be prescribed, the Commissioner may accept from any person charged with an offence under sub-section (1) of section 18 or under any rules made under this Act, by way of composition of the offence, a sum not exceeding one thousand rupees or where the offence charged is under clause (a) or clause (b) of that sub-section, not exceeding double the amount of tax which would have been payable by the dealer had he complied with the provisions of this Act, whichever is greater.(2)On payment of such sum an may be determined by the Commissioner under sub-section (1), the accused person shall be discharged or acquitted, as the case may, be, and no further proceedings shall be taken against him in respect of the same offence.

20. Indemnity.

- No suit, prosecution or other legal proceedings shall lie against the Government or any officer or servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules framed thereunder.

21. Returns, etc, to be confidential.

(1)All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than proceedings before a Criminal Court, shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872, (Act I of 1872) no court shall, save as aforesaid, be entitled to require any officer, of the Government to produce before it any such statement, return, accounts, document or record or any part thereof, or to give evidence before it in respect thereof.(2)Save as provided in sub-section (3), if any officer of the Government discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.(3)Nothing in this section shall apply to the disclosure of any of the particulars referred to in sub-section (1) for the purposes of a prosecution under the Indian Penal Code (Act XLV of 1860) in respect of any such statement, return, accounts, documents or evidence, or for the purposes of a prosecution under this Act or for the departmental use of officials of the Income-tax Department of the Government of India.

22. Power to make rules.

(1)The Government may, subject to the condition of previous publication, make [rules] [Punjab Government Notification No. 4239-E&T-51/2796 dated 22.6.1951.] for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may prescribe -(a)the procedure for the payment of fees in respect of, and other matters incidental to, the registration of dealers or the grant of certificates of registration and the form of such certificates;(b)the intervals at which, and the manner in which, the tax under this Act shall be payable under section 7;(c)the returns to be furnished under sub-section (2) of section 7 and the dates by which and the authority to which, such returns shall be furnished;(d)the dates by which returns for any period are to be furnished and the procedure to be followed for assessment under section 8;(e)the manner in which refunds under section 9 shall be made;(f)the account and forms thereof required by section 10;(g)the conditions under which the production of accounts or documents or the furnishing of information may be required under section 11;(h)the restrictions and conditions subject to which the Commissioner may delegate his powers under section 12;(i)the manner in which appeals against assessment may be preferred under section 16;(j)the procedure for and other matters (including fees) incidental to the disposal of appeals and applications for revisions under sections 16 and 17;(k)the conditions under which offences may be compounded under section 19;(l)the manner in which, and the period within which, the applications shall be made, information furnished, and notice served under this Act.(3)In making any rule the Government may direct that a breach thereof shall be punishable with the fine not exceeding five hundred rupees; and, when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.