

Levy of Tolls Act, 1995 (1938 A.D.)

JAMMU & KASHMIR

India

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Act 8 of 1995

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Levy of Tolls Act, 1995 (1938 A.D.)(Act No. 8 of 1995)(Received assent of His Highness the Maharaja Bahadur on 4th July, 1938/21st Har, 1995 and published in Government Gazette dated 20th August, 1995)Whereas it is expedient to consolidate in one Act the provisions for levy of tolls upon public roads and bridges in the Jammu and Kashmir state;It is hereby enacted as follows:-

1. Short title, extent and commencement.

(1)This act may be called the Levy of Tolls Act of 1995.(2)It extends to the whole of Jammu and Kashmir State.(3)It shall come into force when after receiving the assent of His Highness the Maharaja Bahadur, it is published in the Government Gazette except with regard to items 8, 9, 10, 12 and 14 of the first schedule which shall come into force retrospectively with effect from 24th Baisakh , 1994.

2. Classes and powers of Toll Officers.

- There shall be the same classes of Toll Officers under this Act as under the (Excise Act, 1958), and in the absence of any orders of the Government to the contrary, and subject to the provisions of this Act, an officer of any class having jurisdiction within any local limits under the (Excise Act) shall be a Toll Officer of the same class having jurisdiction within the same local limits under this Act.

3. Rate of Tolls to be levied.

(1)The government may from time to time prescribe, annul or alter rates of tolls to be levied upon any road, ferry or bridge (in the state) and may place the collection of such tolls under such management as may appear to it proper, and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the (Excise) Revenue under the Jammu and Kashmir (Excise) Act, 1958.(2)The rates prescribed to be levied at the commencement of this Act, shall be the rates

mentioned in the first schedule hereto annexed. The rates shall continue to be levied till they are annulled or altered in accordance with the provisions of this section.(3)The power to annul or alter the rates vested in the Government under the forgoing provisions of this section may be exercised from time to time after [xxxx] publication in the Government Gazette. [xxx] The amendment and alteration shall have the same force and effect as if they had been contained in the first schedule.(4)The persons under whose management the tolls are levied at the commencement of this Act shall levy the tolls prescribed and shall be held to have been appointed for collection of tolls under the provisions of this Act.(5)The Government may, from time to time, notify the commodities in respect of which tolls may be levied on ad-valorem basis, subject to a maximum of 15% of the value of 'goods'.

4. Toll-gates or Stations.

- The Government may establish toll gates or stations at such places as the government may deem necessary. The toll-gates or stations in existence at the time of the commencement of this act shall be deemed to have been established under the provisions of this Act.

5. Exemption from tolls.

- The Government may from time to time define and grant exemption from payment of tolls levied under this Act.

5A. Recovery and refund of toll short levied or erroneously paid etc.

(1)When toll or charges have been short levied through inadvertence, error, collusion or misconstruction on the part of the Toll officer, or through mis-statement as to the quantity, number or description of the goods, animals or vehicles on the part of the owner, or when such toll or charges after having been levied has been owing to any such cause erroneously refunded, the person chargeable with toll, or the charge so short levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess on demand being made within twelve months from the date of the first assessment or the making of the refund and Toll officer may refuse to pass any goods, animals or vehicle(s) belonging to such person until the deficiency or excess be paid or repaid.(2)No toll or charges which have been paid and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction shall be refunded unless such claim is made within three months from the date of such payments.

6. Procedure in case of non-payment of tolls.

- In case of nonpayment of any tolls on demand, the officers appointed to collect the same, may, in the first instance, levy the same by sale of any goods of the person liable for the payment. In the event of the said goods being insufficient for the payment of the toll, the Toll officer may detain the carriage or animal on which the toll is chargeable for such period not exceeding 24 hours till the

payment is made. If any toll and the cost arising from such seizure remain undischarged for 24 hours, the case may be brought before the nearest Magistrate within the local limits of whose jurisdiction the toll-gate or station lies. The Magistrate shall thereupon proceed to enforce payment of the amount in like manner as if the amount had been a fine inflicted by himself.

6A. Recovery of Toll dues as arrears of land revenue.

(1)Notwithstanding anything contained in any other provision of this Act, any amount of toll , penalty, interest or any other sum payable under this Act shall, on the issue of certificate by the Toll Officer Incharge Toll Post in the prescribed form to the Collector or the Assistant Collector, be recoverable as arrears of land revenue. The copy of such certificate shall be delivered personally or forwarded to the defaulter on his last known address.(2)Any question as to whether toll, penalty, interest or any other sum is recoverable under this Act, the person from whom it is due and the amount as recoverable shall be determined by the Toll Officer Incharge Toll Post and his signatures over the certificate shall be final and conclusive proof both as to amount due and as to person from whom it is due.(3)For the purpose of recovery of toll, penalty, interest or any other sum payable under this Act such authority as the Government may prescribed shall exercise the powers vested in the Assistant Collector, Collector, Appellate or Revisional Authority under the Jammu and Kashmir Land Revenue Act, Samvat 1995 and the provisions of the said Act shall, as far as they may, apply mutatis mutandis to the recovery of the arrears as specified in the certificate.

6B. Levy of interest on delayed payment of Toll.

- Notwithstanding anything contained in this Act, if any amount due under this Act is not paid on demand, the person from whom amount is due shall be liable to pay interest on such amount from the date it was payable to the date of actual payment on the following rates :-(a)if the default is for a period not exceeding six months at 2% per month and(b)if the default is for a period exceeding six months at 3% per month.

7. Police Officers bound to assist Toll Officers.

- All Police Officers shall be bound to assist Toll Officers when required, in the execution of this Act and for that purpose shall have the same power which they have in the exercise of their ordinary police duties.

8. Offences.

- "Whoever trans-ships, abets or attempts the trans-shipment of goods from a carriage or animal on which the toll is chargeable at a higher rate to a carriage or animal on which the toll is chargeable at a lower rate, or vice versa, or whoever adopts any device to evade payment of toll at a toll-gate or station, shall be liable to a fine which may extend to 5 times the amount of actual toll leviable or [500 rupees], whichever be greater."

9. Obstruction to Toll Officers.

- If any person intentionally obstructs any toll Officer, or any other person duly employed in the collection of tolls in the exercise of any powers given under this Act to any officers or person, he shall be liable to imprisonment not exceeding six months, or to fine not exceeding 1,000 rupees, or to both.

10. Connivance at fraud or breach of duty by Toll Officers.

- If any Toll Officer or other person employed for the collection of toll, practices or attempts to practice any fraud for the purpose of injuring the toll revenue or abets or connives at any such fraud, or if any such officer or person is guilty of a wilful breach of the condition of this Act, he shall be liable to imprisonment for any term not exceeding two years, or to a fine not exceeding 1,000 rupees, or to both. The punishment prescribed under the provisions of this section shall be in addition to any departmental punishment which may be inflicted on the offender under the departmental punishment and appeal rules.

11. For offences not otherwise provided for.

(1)Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act or of any rule or order made under this Act and not otherwise provided for in this Act, shall, on conviction before [a Judicial Magistrate] of the first class, be punished for each such wilful act or omission with fine which may extend to one hundred rupees.(2)Whoever having been previously convicted of an offence under this Act is again convicted of an offence punishable under this Act shall be liable for every such subsequent offence to punishment not exceeding double the punishment provided therefor by this Act.

12. Penalty on unauthorised person demanding tolls and for illegal demand.

- Every person, other than the person appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the law full toll, or under colour of this Act seize or sell any property knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable on conviction before [a Judicial Magistrate] to imprisonment for any term not exceeding six months, or to fine not exceeding "Rs. 5000/- or with both" any part of which fine may be awarded by the Magistrate to the person aggrieved but this remedy shall not be deemed to bar on effect his right to have redress by suit in the civil court.

13. Offences by whom punishable.

(1)The Officer-in-charge of the toll-gate or station may, by order, impose fine on any person guilty of any offence under section 8.(2)Before passing an order under sub-section (1) such officer shall give

the person in the default an opportunity of being heard.(3)The fine imposed under sub-section (1) may, on a requisition being made in this behalf by the officer inflicting fine, be realised by a Magistrate having jurisdiction as if it had been inflicted by himself.(4)Copy of the order passed under sub-section (1) shall be sent to the Excise Commissioner if officer incharge is a Deputy Excise Commissioner and to the Deputy Excise Commissioner if the officer is other than a Deputy Excise Commissioner.

14. Appeal and revision.

(1)Any person aggrieved by an order passed under sub-section (1) of section 13 may, within a period of three months from the date of such order, prefer an appeal before the Deputy Excise Commissioner (Executive) of the province where such order has been passed by an officer below the rank of Deputy Excise Commissioner and in any other case, before Excise Commissioner.(2)Every order passed in appeal under this section shall, subject to the powers revision conferred by sub-sections (3) and (4), be final.(3)The Excise Commissioner may, at any time, call for and examine the record of any order passed by the Deputy Commissioner under sub-section (1), for the purpose of satisfying himself as to the legality of such order and may pass such order in reference thereto, as he may deem fit.(4)The Government may, at any time, call for and examine the record of any order passed by the Excise Commissioner under sub-section (1) for the purpose of satisfying itself as to the legality of such order and may pass such order in reference thereto, as he may deem fit:Provided that no order under sub-section (3) or sub-section (4), which is prejudicial to any person, shall be passed without giving such person an opportunity of being heard.]

15. Deposit pending appeal.

- Where any toll or penalty has been demanded under the provisions of this Act, the person desirous of appealing against such decision or order shall, notwithstanding his intention of appealing or filing an appeal, deposit in the hands of the Toll Officer at the toll-gate or station the amount demanded by the officer passing such decision or order.

16. No compensation for loss or injury except on proof of neglect or wilful act.

- No person liable to pay tolls in respect of a carriage or animal shall be entitled to claim any compensation from any Toll Officer for any loss or damage to him at any time while the carriage or animal are lawfully detained at any toll-gate or station, unless it be proved that such loss or damage was occasioned by the wilful neglect or malicious act of the Toll Officer.

17. Power to make rules.

- The Government may, by notification in the Jammu & Kashmir Government Gazette, make rules from time to time for the purpose of carrying out the provisions of this Act

18. Repeal.

- All orders and notifications having the force of law issued regarding the levy of road toll upon public roads and bridges shall be repealed with effect from the date this Act comes into force. Without prejudice to the generality of the foregoing provisions the enactments mentioned in the second schedule hereto annexed are hereby repealed to the extent specified in the 3rd column thereof but not so as to render invalid anything done in accordance with any of them.