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**GOVERNMENT OF ASSAM**

**THE ASSAM ELECTRICITY DUTY ACT, 1964\***

**(Assam Act No. XXX of 1964)**

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*[Received the assent of the President on the 23rd December, 1964]*

## **An Act to levy a duty on the sale or consumption of electricity.**

### ***Preamble.***

Whereas it is expedient to levy a duty on the sale or consumption of electrical energy in the State of Assam.;

It is hereby enacted in the Fifteenth Year of the Republic of India as follows:

## **COMMENTS**

***Preamble.*** This Act has been enacted to levy a duty on the sale or consumption of electricity. The Indian Electricity Act, 1910 provides for amending the law relating to the supply and use of electrical energy. The Electricity (Supply) Act, 1948, provides for the rationalization of the production and supply of electricity, and generally for taking measures conducive to electrical development.

### **1. Short title, extent and commencement.**

- (1) This Act may be called the Assam Electricity Duty Act, 1964.

- (2) It extends to the whole of the State of Assam.
- (3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

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[\*Published in the Assam Gazette, Extraordinary, dated 30th December, 1964.]

## **2. Definitions.**

In this Act, unless the context otherwise requires -

- (a) **“Board”** means the Assam State Electricity Board constituted under Chapter III of the Electricity (Supply) Act, 1948;
- (b) **“Consumer”** means a person, other than a licensee, who is supplied with energy -
  - (i) by a license; or
  - (ii) by the Board;
- (c) **“energy”** means electrical energy;
- (d) **“licensee”** means any person licensed under Part II of the Indian Electricity Act, 1910, to supply energy and includes any person who has obtained the sanction in

that behalf of the State Government under S. 28 of the said Act;

- (e) **“prescribed”** means prescribed by rules made under this Act;
- (f) **“unit”** in relation to the energy, means kilowatt-hour; and
- (g) words and expressions not defined in this Act but defined in the Indian Electricity Act, 1910, have the meaning assigned to them in that Act.

### **3. Levy of electricity duty.**

- (1) There shall be levied and paid to the State Government a duty, to be called the **“electricity duty”** at the rate of three naye paise per unit of energy –
  - a. supplied to a consumer by the Board; or
  - b. supplied to a consumer by a licensee generating energy or procuring energy in bulk from the Board; or
  - c. generated by a person for his own use or consumption.
- (2) Notwithstanding anything in sub-S.(1) shall apply to the consumption or sale of energy which is-
  - (a) consumed by or sold to the Government of India for consumption by that Government; or

- (b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway.
  
- (3) For the purpose of computing the electricity duty under this section, the consumption shown by the meters starting after the first meter reading date after the commencement of this Act shall be taken into account and consumption in a month shall form the basis of calculation.

### **COMMENTS**

This section specifies the levy of electricity duty at the rate detailed therein. Sub-section (1) thereof was substituted by Assam Act XXII of 1972, and the sub-section read as follows:

- “ (1) There shall be levied and paid to the State Government a duty, to be called the “electricity duty”, at the rate of two naye paise per unit of energy -
- (a) supplied by the Board to a consumer or a licensee; or
  
  - (b) supplied by a licensee generating energy to a consumer; or

(c) generated by a person for his own use or consumption.”

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**4. Collection and payment of electricity duty.**

The electricity duty shall be collected and paid to the State Government by the Board or a licensee or a person who generates energy for his own use or consumption, as the case may be.

**5. Licensee not to reimburse himself from consumer without sanction of State Government.**

No licensee shall, without the previous sanction of the State Government and subject to such conditions as the State Government may impose, recover from any person to whom energy is sold, the duty which fails to be paid by the licensee under this Act.

***Explanation.*** Where the State Government permits a licensee to charge duty from the consumer, the duty shall not be deemed to be part of the price charged for the energy by the licensee.

**6. Records and returns.**

(1) If the State Government so directs by a general or special order, the Board or a licensee or a person generating energy for his own use or consumption shall maintain such record and in such form and manner as may be prescribed showing -



- (a) the units of energy generated or received by it or him for supply to the consumer;
  - (b) the units of energy supplied to the consumer or consumers by it or him;
  - (c) the amount of the duty payable thereon and the duty paid or recovered by him under this Act; and
  - (d) such other particulars as may be prescribed.
- (2) The Board, the licensee, or the person generating energy for his own use or consumption who has been directed under sub - S. (1) to maintain a record shall submit such returns, in such form and manner and to such authority as may be prescribed.
- (a) The amount of energy shall, for purposes of Cls. (a) and
  - (b) (b) of sub - S. (1), be ascertained in such manner as may be prescribed.

**7. Inspecting officers.**

- (1) The State Government may, by notification in the official Gazette, appoint inspecting officers to inspect records maintained under S. 6.
- (2) The inspecting officers shall perform such duties and exercise such powers as may be prescribed for the

purpose of carrying into effect the provisions of this Act and the rules made there under.

- (3) Every inspecting officer appointed under this section shall be deemed to be a public servant, within the meaning of S. 21 of the Indian Penal Code, 1860.

**8. Penal duty to be paid in certain cases.**

- (1) If in the opinion of an authority prescribed in this behalf, the Board, the licensee other person generating energy for his own use or consumption evades, or attempts to evade the payment of duty whether by maintaining false records, submitting false returns, concealing the energy supplied or by any other means, the Board, the licensee or such person, as the case may be, shall pay by way of penalty, in addition to the duty payable under this Act, a sum not exceeding four times the amount of the duty to be determined by the prescribed authority:

Provided that no action under this sub-section shall be taken without affording a reasonable opportunity of being heard to the Board, the licensee or such person.

- (2) An appeal shall lie against an order passed under sub-S. (1) to such authority, within such period and on payment of such fees as may be prescribed.
- (3) An order passed on appeal under sub-S (2) shall be final.

- (4) An order for the payment of any penalty made under this section shall be without prejudice to any prosecution instituted for an offence under this Act.

## **COMMENTS**

For the purposes of appeal under this section, reference may be made to R. 11 of the Assam Electricity Duty Rules, 1964

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### **9. Recovery of duty.**

Any duty due under this Act or penalty imposed under S. 8 which remains unpaid whether by a consumer to the Board or a licensee or a person generating energy for his own use or consumption, to the State Government, shall be recoverable as an arrear of land revenue or by deduction from amounts payable to the state Government to the Board or the licensee or such person.

### **10. Power to disconnect supply for non-payment of duty.**

Where a consumer or a licensee fails to pay the electricity duty to the Board or a consumer fails to pay such duty to a licensee who is authorised to recover the duty from the consumers under S. 5, the Board or the licensee may exercise the power conferred on a licensee by sub-S. (1) of S. 24 of the Indian Electricity Act, 1910, for the recovery of any charge or sum due in respect of energy supplied by it or him.

## COMMENTS

Under this section, if the consumer or a licensee fails to pay the electricity duty to the Board or if the consumer fails to pay such duty to the licensee, then the supply of energy would be liable to be disconnected as provided under S. 24 of the Indian Electricity Act, 1910, which reads as follows:

“Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply for energy to him, the licensee may, after giving not less than seven clear days’ notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.”

Where there is a *bona fide* dispute between the parties as to what is payable by the consumption, resort to this section cannot be taken. The failure to pay under such circumstances will not amount to “neglect” to pay.

The Bombay High Court in the Maharashtra State Electricity Board v. M/s Madhusudandas [AIR 1966 Bom 498], held that, “in view of the bona fide dispute between the parties the plaintiff was not justified in cutting off the electric supply.” Their Lordships further held that, “..... it can discontinue the supply only if the conditions of S. 24 (1) are satisfied, i.e., there must be neglect on the part of the consumer to pay the electrical energy.”

The Allahabad High Court in the case of Janpal Sharma v. The Western U.P. Electric Power and Supply Co. [AIR 1966 All 117], held that “the power to discontinue supply of energy to the premises is a power given in addition to the right to realize the arrears. The consumer having failed to pay the arrears the company was entitled to disconnect the supply of power.”

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## **11. Penalties.**

If any person -

- (a) required by S, 6 to keep record or to submit returns fails to keep or submit the same in the prescribed form or manner or submits a return which is false, or
- (b) intentionally obstructs an inspecting officer appointed under S. 7 in the exercise of his powers and duties under this Act and the rules made there under, or
- (c) contravenes any such rule,

he shall be liable, on contravention before a Magistrate, to a fine not exceeding one thousand rupees.

## **12. Power to exempt.**

The State Government may in public interest by notification in the official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such terms and conditions as may be specified in such notification.

**13. Power to make rules.**

- (1) The State Government may, by notification in the official gazette, make rules for the purpose of carrying into effect the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for -
  - (a) the manner of calculating the duty (including marginal adjustment) under S. 3;
  - (b) the manner of collection and payment to the State Government of the electricity duty by the Board, licensees and persons generating energy for their own use or consumption;
  - (c) the time and manner of the electricity duty to be paid by consumers;
  - (d) the powers and duties to be exercised and performed by inspecting officers;
  - (e) any other matter for which provisions, in the opinion of State Government, necessary for giving effect to the provisions of this Act.
- (3) Every rule made under this section shall be laid, as soon as may be after it is made before the Assam Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in

none session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assam Legislative Assembly agree in making any modification in the rule or the Assam Legislative Assembly agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### **COMMENTS**

Empowered under this section, vide Notification No. ETX/32/61/80, published in Assam Gazette dated 28-4-1965, the Government has exempted industrial concerns in Assam from payment of the electricity duty, to the extent specified below, when such energy is exclusively consumed for industrial production.

This shall be deemed to have had effect as from 1st April, 1965.

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Quantum of energy consumed per month.	Extent of exemption.
1. For the first 15,000 units... ..	One paisa per unit.
2. For the next 25,000 units ... ..	One and half paisa per unit.
3. For the rest of units... ..	Full exemption.

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অসম



ৰাজপত্ৰ

# THE ASSAM GAZETTE

অসাধাৰণ

**EXTRAORDINARY**

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

**PUBLISHED BY THE AUTHORITY**

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT :: LEGISLATIVE BRANCH

## NOTIFICATION

The 7th September, 2010

No. LGL. 64/2006/16.-- The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for general information.

ASSAM ACT NO. XXIX OF 2010

(Received the assent of the Governor on 31st August, 2010)

**THE ASSAM ELECTRICITY DUTY (AMENDMENT) ACT, 2010**



AN

ACT

further to amend the Assam Electricity Duty Act, 1964.

Preamble.

Whereas it is expedient further to amend the Assam Electricity Duty Act, 1964, hereinafter referred to as the principal Act, in the manner hereinafter appearing;

Assam  
Act XX  
of 1964.

It is hereby enacted in the Sixty-first Year of the Republic of India as follows:-

Short title, extent  
and commence-  
ment.

1.(1) This Act may be called the Assam Electricity Duty (Amendment) Act, 2010.

(2) It shall have the like extent as the principal Act.

(3) It shall come into force at once.

Amendment of  
section 3.

2. In the principal Act, in section 3,--

(i) in sub-section (1), in clause (a), the words "within the State or to any consumer outside the State" shall be omitted;

(ii) in sub-section (2),--

(a) in clause (b), for the punctuation mark ".", the punctuation mark ";" shall be substituted and after the punctuation mark ";" so substituted, the word "or" shall be inserted;

(b) after clause (b), a new clause (c) shall be inserted, namely:-

"(c) generated by the State Government for own use or consumption.";

(iii) after sub-section (3), a new sub-sections (4) shall be inserted, namely :-

"(4) The State Government may, by notification in the Official Gazette, vary the rate of electricity duty under this Act and on such notification being issued, the rate of duty shall be deemed to have been amended accordingly:

Provided that the State Government shall not vary the rate of duty so as to enhance it, in any case, exceeding twenty paise per unit of energy."

Insertion of section 3A.

3. In the principal Act, after section 3, a new section 3A shall be inserted, namely:-

**“3A. Composition of tax liability.--** Notwithstanding anything contained in this Act, the State Government may, by notification published in the Official Gazette and subject to such conditions and restrictions as it may specify therein, permit a person generating energy for own use or consumption to pay at his option in lieu of amount of electricity duty payable under the provisions of this Act by such person, an amount by way of composition as may be fixed by the State Government in such notification on the basis of capacity of the generator or some other basis.”

Insertion of section 5A.

4. In the principal Act, after section 5, a new section 5A shall be inserted, namely:-

**“5A. Registration.--** (1) Every licensee or any person referred to in clause (c) of sub-section (1) of section 3 generating energy for own use or consumption shall obtain registration from inspecting officer having jurisdiction over such licensee or person.

(2) The application for registration shall be made in such manner and in such form and on payment of such fee as may be prescribed.

(3) The inspecting officer may, on receipt of an application and after such enquiry as he considers necessary, grant to the applicant a certificate of registration to such licensee or person .”

Substitution of section 6.

5. In the principal Act, for section 6, the following shall be substituted, namely:—

**“6.(1) Records and returns.--** The Board or a licensee or a person generating energy for his own use or consumption shall maintain such record and in such form and in such manner as may be prescribed.

(2) Such Board, licensee, or the person shall submit return, in such form and in such manner as may be prescribed, to the inspecting officer having jurisdiction over such Board, licensee or person.”

Insertion of section 6A.

6. In the principal Act, after section 6, a new section 6A shall be inserted, namely:-

**“6A.(1) Assessment.--** If no return in respect of any period is submitted by the Board, licensee or the person required to submit return under section 6 or if the return submitted by such Board, licensee or person appears to the inspecting officer to be incorrect or incomplete, such authority shall, after giving such Board, licensee or person, as the case may be, a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of electricity duty payable under this Act by such Board, licensee or person.

- (2) No assessment under this section shall be made after the expiry of eight years.

Explanation:- For the purpose of this section, "year" means the year commencing on the first day of April and ending on the last day of March."

Substitution of  
section 7

7. In the principal Act, for section 7, the following shall be substituted, namely:—

**"7.(1) Inspecting officer and exercise of powers.--** The taxing authorities appointed by the State Government under section 3 of the Assam Value Added Tax Act, 2003, hereinafter referred to as VAT law, shall also be deemed to have been appointed for the purpose of the administration of this Act and the authorities competent to register, receive returns, assess or re-assess, recover and enforce payment of tax and impose penalty under VAT law, shall, within their local jurisdiction under the VAT law, be competent to register, receive returns, assess or re-assess, recover and enforce payment of duty including imposition of penalty due from the Board, licensee or any person whose place of business is located within such jurisdiction as if the electricity duty were a tax under the VAT law and the Board, licensee or person was a dealer, within the meaning of the VAT law carrying on business within such jurisdiction and for this purpose they may exercise all or any of the powers conferred upon them by or under the VAT law.

Assam  
Act  
VIII of  
2003.

- (2) Subject to the provisions of this Act and the rules made thereunder, the provisions of the Assam Value Added Tax Act, 2003 and the rules, orders or notifications made or issued thereunder relating to security, interest, assessments and re-assessments, recovery of tax, interest, penalty or any other sum including special mode of recovery, first charge, period of limitation, refund, retention of accounts, requirement to provide information, transfer of liability of any firm or Hindu undivided family to pay tax in the event of dissolution of such firm or partition of such family, inspection, search and seizure, appeals, revisions, references, refunds, offence and penalties, compounding of offences, power to call for information, bar to certain proceedings, indemnity, automation, treatment of documents furnished by dealer as confidential and other matters for which no specific provision has been made in this Act and the rules made thereunder, shall mutatis mutandis apply to the Board, licensee or any person in respect of electricity duty levied and payable under this Act, as if those provisions were mutatis mutandis incorporated in this Act and the rules framed and orders and notification issued under those provisions were mutatis mutandis framed or issued under the relevant provisions so incorporated under this Act."

Assam  
Act  
VIII of  
2003.

Substitution of  
section 11

8. In the principal Act, for section 11, the following shall be substituted, namely:-

“11. Offences and prosecution.-- Whoever,—

- (a) being liable to pay duty under this Act, does not get himself registered;
- (b) fails to keep true and proper record or knowingly prepares or produces incorrect record;
- (c) fails to submit return, without any reasonable cause or submits a false or incorrect return;
- (d) fails to pay duty in accordance with the provision of the Act or fails to deposit any demand under the provision of the Act;
- (e) intentionally obstructs an inspecting officer in the exercise of his powers and duties under this Act and the rules made thereunder; or
- (f) willfully evades or attempts to evade duty leviable under this Act;
- (g) willfully acts in contravention of any provision of this Act or the rules made thereunder,—

shall, without prejudice to his liability to pay duty and other dues payable by him under this Act, on conviction before a Magistrate, be punished with simple imprisonment for a period which shall not be less than six months but may extend to three years and shall also be liable to pay a fine not exceeding fifty thousand rupees.”

**MOHD. A. HAQUE,**  
Secretary to the Government of Assam,  
Legislative Department, Dispur.