



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LEGISLATIVE DEPARTMENT : : : LEGISLATIVE BRANCH

NOTIFICATION

The 5th April, 2017

No. LGL.64/2006/34.– The following Act of the Assam Legislative Assembly which received the assent of the Governor on 30th March, 2017 is hereby published for general information.

ASSAM ACT NO. XVIII OF 2017
(Received the assent of the Governor on 30th March, 2017)
THE ASSAM ELECTRICITY DUTY
(AMENDMENT AND VALIDATION) ACT, 2017

AN ACT

further to clarify and amend the Assam Electricity Duty Act, 1964 and to validate certain actions.

Preamble

Whereas under Article 246 of the Constitution of India, read with Entry 53 of List II of the Constitution of India the States have the plenary power to impose taxes on the consumption or sale of electricity; and

Whereas in the year 1964, the State of Assam enacted the Assam Electricity Duty Act, 1964 [hereinafter referred to as "the principal Act"] in order to levy a duty on the consumption or sale of electricity; and

Assam Act
No. XXX of
1964.

Whereas in the Preamble of the principal Act, it has been unequivocally stated that it has been enacted to levy a duty on the sale or consumption of electricity; and

Whereas section 3(1)(c) of the principal Act provides for levy of duty on captive consumption of electricity, i.e. on the consumption of electricity by a person generating it for own use or consumption; and

Whereas section 3(3) of the principal Act stipulates that the electricity duty under section 3 shall be computed and levied on the basis of the monthly consumption as shown in the electricity consumption meter; and

Whereas the levy of electricity duty under section 3(1)(c) is and has always been on the consumption of electricity by a person generating it for own use or consumption; and

Whereas the consumption of electricity by the same person who generates it would be liable to be taxed under the statutory provisions enacted in terms of Entry 53 of List II of the Constitution of India; and

Whereas in a recent judicial pronouncement, it has been held that section 3(1)(c) of the principal Act is ultra vires the Constitution of India and is beyond the legislative competence of the State; and

Whereas it has become necessary and expedient to clarify beyond all doubts and declare that the levy of electricity duty under section 3(1)(c) read with section 3(3) is and has always been on the consumption of electricity by the person generating it for its own consumption; and

Whereas as a matter of abundant caution, it has also become necessary and expedient to validate all actions taken in terms of section 3(1)(c) of the principal Act;

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

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| Short title, extent and commencement. | 1. (1) This Act may be called the Assam Electricity Duty (Amendment and Validation) Act, 2017.
(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, in sub-section (1), for clause (c), the following shall be deemed to have been substituted with effect from the 1 st day of April, 1965, namely:-

“(c) consumed by any person or any organization generating energy.” |
| Validation | 3. Notwithstanding anything contained in any judgment, decree or order of any Court or other authority to the contrary, electricity duty levied or collected or purported to have been levied or collected as the electricity duty under the Assam Electricity Duty Act, 1964, as amended from time to time, and all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued under the said Act shall, for all purposes, be deemed to be and to have always been validly levied, collected, taken, done, made or issued under the provisions of this Act, as if this Act were in force at all material times and accordingly, -

(a) no suit or other proceeding shall be maintained or continued in, or before any court, tribunal or other authority for the refund of any amount received or realized by way of such electricity duty;

(b) no Court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realized by way of such electricity duty;

(c) any proceeding, act or thing which could have been validly taken, continued or done for the levy or collection of such electricity duty at any time under the provisions of the said Act but which had not been taken, continued or done, may be taken, continued or done. |

S. M. BUZAR BARUAH,

Commissioner & Secretary to the Government of Assam,
Legislative Department, Dispur.