

Act No. 9 of 2010

THE HIMACHAL PRADESH TAX ON ENTRY OF GOODS INTO LOCAL AREA

ACT, 2010

(ASASSENTED TO BY THE GOVERNOR ON 7TH APRIL, 2010)

AN

ACT

to provide for the levy and collection of a Tax on Entry of Goods into Local Area in the State of Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-first Year of the Republic of India as follows:-

1. Short title and extent

(1) This Act may be called the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010.

(2) It shall extend to all the local areas in Himachal Pradesh.

2. Definitions.

(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "bringing goods into a local area" means causing the entry of goods into a local area by bringing them inside the local area or causing the goods to be brought inside the local area from any place outside the local area including a place outside the State for consumption, use or sale therein;

(b) "bring motor vehicle into a local area" means causing the entry of motor vehicle into a local area by bringing it inside the local area or causing it to be brought inside the local area from any place outside the local area including a place outside the State for consumption, use or sale therein;

(c) "business" includes,-

(i) any trade, commerce, manufacture, any adventure or concern, in the nature of trade, commerce or manufacture, whether or not; such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues therefrom; and

(ii) any transaction in connection with or ancillary to such trade, commerce, manufacture, adventure or concern;

(d) "Commissioner" means the Excise and Taxation Commissioner appointed under sub-section (1) of section 3 of the VAT Act;

(e) "dealer" means any person who, in the course of business, whether on his own account or on account of a principal or any other person, brings or causes to be brought into a local area any goods or takes delivery or is entitled to take delivery of goods on its entry into a local area and includes a casual dealer and all other persons specified in sub-clauses (i), (ii), (iii) and (iv), including Explanation-I, Explanation-II, Explanation-III, of clause (g) of section 2 of the VAT Act;

(f) "entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside thereof including a place outside the State for consumption, use or sale therein;

(g) "gross turnover" used in relation to any dealer means the aggregate amount of the value of goods which such dealer brings or receives in any local area or consumption or use therein during any given period;

(h) "law relating to local authority" means the Himachal Pradesh Panchayati Raj Act, 1994, the Cantonment Act, 2006, the Himachal Pradesh Municipal Act, 1994 and the Himachal Pradesh Municipal Corporation Act, 1994, as the case may be;

(i) "local area" means the area comprised within the limits of a local authority;

(j) "local authority" means an authority constituted under a law relating to local authority;

(k) "local goods" in relation to a local area means goods of local origin as distinct from goods which enter into that local area;

(l) "receives any goods" means to take delivery or possession of any goods, whether actual or constructive, or cause the goods to be received by any other person;

(m) "Schedule" means a Schedule appended to this Act;

(n) "State" means the State of Himachal Pradesh;

(o) "State Government" means Government of Himachal Pradesh;

(p) "tax" means the tax leviable under this Act;

(q) "taxable turnover" means the aggregate amount of the value of the goods liable to tax as determined under section 7;

(r) "VAT Act" means the Himachal Pradesh Value Added Tax Act, 2005 (12 of 2005);

(s) "Works contract" means any agreement for-

(i) the construction, fitting out, improvement, maintenance or repair of any building, road, bridge or any other immovable property; or

(ii) manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair, conversion or commissioning of any movable property, for cash, deferred payment or other valuable consideration; and

(t) "Year" means the financial year.

(2) All those expressions, which are used but are not defined in this Act and are defined in the VAT Act, 2005, shall have the meanings assigned to them in that Act.

(3) Any reference in this Act to the expression "has effected entry of goods" with its grammatical variations and cognate expressions, whether used in isolation or in conjunction with any other words, shall, wherever necessary, be construed as including a reference to "has caused to be effected entry of goods"

3. Incidence of taxation.

(1) There shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II, into each local area for consumption, use or sale therein.

(2) The tax under sub-section (1) shall be payable on the taxable turnover of a dealer at the rates specified in column (3) of Schedule-II and such tax shall be paid by every dealer.

(3) Every dealer who brings any goods into a local area of a value of one lakh rupees in a year, for use in manufacture or processing of goods and every other dealer who brings into a local area any goods of the value of two lakh rupees in a year, shall be liable to pay tax under this Act.

(4) Notwithstanding anything contained in sub-sections (1), (2) or (3), no tax under this section shall be levied-

(i) in respect of the goods specified in Schedule-I;

(ii) in respect of the goods on which Value Added Tax has been paid or has become payable to the State, except goods specified at Sr. Nos. 6 and 7 of Schedule-II;

(iii) in respect of goods specified in Schedule-II, which after entry into a local area are sold in the same form outside the State or in the course of *inter-State* trade or commerce or in the course of export out of the territory of India; and

(iv) in respect of goods on the entry of which it is proved to the satisfaction of the Assessing Authority that such goods have already been subjected to tax under this Act:

Provided that if any dealer who has effected entry of any goods specified in Schedule-II into a local area for the purpose of re-sale, consumes such goods in any form or deals with such goods in any other manner, except reselling the same, he shall be liable to pay tax in respect of such goods:

Provided further that notwithstanding anything contained in this Act, where a dealer liable to pay tax under this Act in the course of his business, purchases goods from a person or a dealer other than a registered dealer who has effected entry of such goods into the local area prior to such purchase, the tax shall be paid by the dealer who has purchased such goods.

Explanation.— For the purpose of this sub-section the entry of goods into a local area for consumption or use therein in the execution of a works contract shall be deemed to be the entry of goods in the course of business and the person who has effected the entry of such goods into a local area shall be deemed to be a dealer.

(5) The State Government may, by notification, add to or delete from the Schedule-I or Schedule-II any goods, or otherwise amend these Schedules, including rates of tax, and thereupon the Schedules shall be deemed to have been amended accordingly.

4. Special provisions of levy of tax on motor vehicles.

(1) Notwithstanding anything contained in section 3 of this Act, there shall be levied and collected a tax on the entry of a motor vehicle by a person into a local area for use or sale therein, provided that such motor vehicle is liable for registration or assignment of a new registration mark in the State under the Motor Vehicles Act, 1988:

Provided that no Registering and Licensing Authority, functioning under the Motor Vehicles Act, 1988, shall register such motor vehicle unless the person making application for registration furnishes proof of having deposited the tax payable under this section from the Assessing Authority:

Provided further that no tax shall be levied and paid in respect of a motor vehicle which was registered in any Union Territory or any other State under the Motor Vehicles Act, 1988, for a period of fifteen months or more before the date on which it is registered in the State under that Act.

(2) The tax shall be levied on purchase value of a motor vehicle at the rate equal to the difference between the rate of value added tax notified under the VAT Act and the rate of value added tax or the central sales tax charged, on the sale of the motor vehicle, in the invoice relating to the purchase of the vehicle:

Provided that for the purpose of this section, the rate of value added tax applicable in the State shall be taken as on the date mentioned in the invoice relating to the purchase of the motor vehicle:

Provided further that if no invoice in respect of purchase of the motor vehicle is produced or if the invoice does not show the rate of the value added tax applicable in

the concerned State or the central sales tax, as the case may be, charged, then the rate of tax leviable under this section shall be calculated at the rate of value added tax applicable in Himachal Pradesh on the date of assessment.

5. Exemption of tax on motor vehicles in certain circumstances.

Where any person brings a motor vehicle into a local area for his personal use within a period of fifteen months from the date of its registration in any Union Territory or any other State under the Motor Vehicles Act, 1988 (59 of 1988), and that such entry is occasioned as a result of shifting the place of his residence from such Union Territory or State into this State, the Commissioner or any other officer duly authorized by him, may, by order in writing, on application made to him in this regard, exempt such person from the payment of entry tax on entry of such vehicle subject to production of proof.

6. Principles governing levy of tax under section 3.

The tax payable by a dealer under sub-section (1) of section 3 or by any person under sub-section (1) of section 4 shall be levied in accordance with the following principles:-

(a) tax shall not be payable unless the dealer or other person effects entry of goods specified in the Schedule into a local area;

(b) where any such goods are consumed, used or sold in a local area by a dealer or as the case may be, by such other person it shall be presumed until the contrary is proved by him, that such goods had entered into that local area for consumption, use or sale therein; and

(c) when a dealer purchases goods specified in the Schedule in a local area from a person or a dealer who is not a registered dealer, it shall be presumed, unless the contrary is proved by him, that the entry of such goods had been effected by him into such local area before they were purchased by such dealer.

7. Deductions from gross turnover.

(1) In calculating the taxable turnover for any period, a dealer may deduct from his gross turnover of goods during that period, -

(a) the value of goods specified in Schedule-I;

(b) the value of goods which, without use, consumption or sale, have been delivered outside the local area;

(c) the value of goods which have been subjected to tax once as such or in the same form under this Act; and

(d) the value of such other goods as are specifically exempted or are not taxable under any provision of this Act.

Explanation.—For the purpose of this sub-section, deduction of value of only such goods shall be admissible which forms part of gross turnover of the dealer and if value of certain goods has been deducted under one clause then it shall not be deducted under any other clause.

(2) The deductions claimed under sub-section (1) shall be subject to production of such proof in such form and in such manner as the State Government may notify. The Assessing Authority may ask for any relevant evidence to satisfy itself about the genuineness and correctness of the proof furnished.

8. Set off in certain cases.

Where entry tax is payable by a dealer or by any person in respect of the entry of goods into a local area comprised within the limits of a Cantonment Board and a tax in the nature of a tax or octroi is levied by the Cantonment Board on the entry of goods into that local area for consumption, use or sale therein, such dealer or person shall be entitled to a set off of an amount equal to either the tax proved to have been actually paid by him to the Cantonment Board or the tax payable under this Act, whichever is less:

Provided that no set off shall be admissible under this section unless such dealer or person furnishes the certified documentary evidence of having paid a tax or octroi recovered by the Cantonment Board.

9. Burden of proof.

(1) The burden of proving-

(a) that a dealer has not effected the entry of any goods specified in the Schedule into a local area for consumption, use or sale therein;

(b) that a dealer has not effected the entry of any goods into a local area for consumption or use therein in the execution of a works contract;

(c) that a dealer is entitled to deduction in respect of value of local goods for the purpose of the computation of taxable purchase value;

(d) that goods purchased by a dealer in a local area from a person or a dealer who is not a registered dealer had not entered into that local area before they were purchased by him; and

(e) that a dealer is entitled to any other deductions in computing the taxable turnover;

shall be on the dealer.

(2) For purposes of claiming deduction in respect of the purchase value of local goods which have been consumed, used or sold in the same local area in relation to which such goods are local goods, the dealer shall produce a bill, invoice or cash memo in the

manner specified in section 11 obtained from the registered dealer from whom he has purchased the local goods in that local area as provided in sub-sections (1) and (2) of section 11.

10. Registration.

Every dealer who is liable to pay tax under sub-section (1) of section 3 of this Act shall be liable to be registered under this Act:

Provided that if such dealer is registered under the VAT Act, 2005 (12 of 2005), he shall be deemed to have been registered under this Act.

11. Registered dealers to issue bill etc. Stating that goods sold are local goods.

(1) Every registered dealer who, in the course of his business, manufactures, produces or grows any goods specified in the Schedule in a local area in such manner that the goods become local goods in relation to that local area, shall, on the sale of such local goods to any other registered dealer, issue to him a bill, invoice or cash memo, specifically stating that the goods being sold are local goods in relation to such local area and that no entry tax has been paid on such goods.

(2) Where the goods mentioned in sub-section (1) are purchased and sold in the course of their business by a chain of registered dealers, the selling registered dealer shall issue a bill or invoice or cash memo, containing the statement referred to in sub-section (1).

(3) Every registered dealer referred to in sub-sections (1) and (2) shall maintain a separate account of purchases and consumption, use or sale of local goods and separate bill books and invoices for the sales of goods effected by him in the same local area in relation to which the goods are local goods.

(4) Where a registered dealer-

(a) referred to in sub-section (1) or sub-section (2) has, in the course of his business, sold local goods to other registered dealer and has failed to make the statement referred to in subsection (1), and

(b) referred to in sub-section (2) in the course of business has sold local goods purchased by him to other registered dealer and a bill, cash memo or invoice has not been issued by him as required by sub-section (2),

it shall be presumed that he has facilitated evasion of tax on the local goods so sold and accordingly he shall be liable for each of such contravention to pay penalty equal to one and a half times the amount of entry tax payable on such goods as if they were not goods of local origin.

12. Certain provisions of VAT Act to apply.

Subject to the provisions of this Act and the rules made thereunder, the provisions of sections 3, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 63 and 64 of the VAT Act, 2005 (12 of 2005) and the rules, orders and notifications issued or applicable thereunder, shall *mutatis mutandis* apply to the dealer in respect of tax levied and payable under this Act as if these sections were *mutatis mutandis* incorporated in this Act and the rules, orders and notifications applicable under these sections were *mutatis mutandis* issued under the relevant sections as so incorporated in this Act.

13. Assessment, collection etc. of entry tax.

Subject to the provisions of this Act and the rules made thereunder, the authorities for the time being empowered under the VAT Act, 2005, to assess, re-assess, collect and enforce payment of tax, including any interest or penalty payable under this Act, shall assess, reassess, collect and enforce payment of tax, including an interest or penalty levied and payable under this Act.

14. Finality of orders.

Save as otherwise expressly provided in this Act, every order made by an assessing authority, appellate authority or a revising authority under this Act, shall be final and shall not be called in question in any original suit, application or execution or proceedings and no injunction shall be granted by any court or other authority, in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act or in respect of any recovery to be made as an arrear of Land Revenue.

15. Power to make rules.

(1) The State Government may, by notification in the Official Gazette, make rules consistent with the Act, for securing the levy and collection of tax and generally for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, after they are made, before the Legislative Assembly, while it is in session, for a total period of fifteen days which may be comprised in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the Assembly agrees in making any modifications in the rules or the Assembly decides that the rule should not be made, such rules shall have effect only in such modified form or be of no effect, as the case may be. However, that any such modification or annulment shall be without prejudice to the validity of anything done earlier under that rule.

16. Repeal of Act No. 16 of 2005.

The Himachal Pradesh Local Area Development Tax Act, 2005 is hereby repealed.

SCHEDULE- I

(See sections 2 and 3)

| Sl. No. | Goods | Conditions of exemption |
|----------------|---|--------------------------------|
| 1 | 2 | 3 |
| 1 | Agricultural implements manually operated or animal driven. | - |
| 2 | Agriculture or horticulture produce, including herbs or saplings of trees sold by person or a member of his family, grown by himself or grown on any land in which he has an interest whether as owner or usufructuary mortgagee, tenant or otherwise. | - |
| 3 | Aids and implements used by handicapped persons. | - |
| 4 | Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and feed supplements and mineral mixture concentrates, intended for use as feed supplements including grass, hay and straw, Husk of Pulses, wheat bran, Additives & Deoiled cakes. | - |
| 5 | Articles made of bamboo-wood used for agricultural purposes. | - |
| 6 | Baan. | - |
| 7 | Bangles of all types (except those made of precious metals). | - |
| 8 | Books, periodicals and journals including maps, charts & Globe. | - |
| 9 | Bread. | - |
| 10 | Charcoal. | - |
| 11 | Charkha, Ambar Charkha; handlooms, Himachali handloom articles, Himachali handloom shawls including 'Loi' & Pattu', caps and handspun yarn, and Gandhi Topi. | - |
| 12 | Chemical fertilizers and chemical fertilizer mixtures; Bio fertilizers & micronutrients, plant regulators and plant growth nutrients. | - |
| 13 | Coarse grains other than paddy, rice and wheat. | - |
| 14 | Condoms and contraceptives. | - |
| 15 | Cotton yarn in hank and silk yarn in hank. | - |
| 16 | Curd, lassi, butter milk and separated milk. | - |

| | | |
|----|--|----------------------------|
| 17 | Earthen wares (unglazed). | - |
| 18 | Electric Energy. | - |
| 19 | Fire wood. | When Sold for domestic use |
| 20 | Fishnet, fish fabrics and fish seeds. | - |
| 21 | Foodgrains supplied free of cost by the Government of India, Targeted P.D.S.(B.P.L.), Antodya Anna Yojna & Annapurna Yojna. | - |
| 22 | Fresh fruits. | - |
| 23 | Fresh milk and pasteurised milk. | - |
| 24 | Fresh plants, sapling and fresh flowers. | - |
| 25 | Fresh vegetables. | - |
| 26 | Garlic, ginger, green chillies, onions, potatoes, sweet potatoes, tapioca and their seeds. | - |
| 27 | Goods sold to the serving military personnel and ex-servicemen by the Canteen Store Department direct. | - |
| 28 | Goods taken under customs bond for re-export after manufacturing or otherwise. | - |
| 29 | Graphite pencils, writing chalk, Writing Slate & Slate Pencils, crayons, sketch, pens, drawing colour eraser, sharpener, footrules, geometry boxes, ink tablets, exercise and drawing books of the type used in schools and takhties used by students. | - |
| 30 | Gur & Jaggery. | - |
| 31 | Hawan Samagri. | - |
| 32 | Human blood and blood plasma. | - |
| 33 | Indigenous handmade musical instruments. | - |
| 34 | Kerosene oil sold through Public Distribution System. | - |
| 35 | Khadi Garments & madeups. | - |
| 36 | Kirpan. | - |
| 37 | Kumkum, bindi, alta and sindur. | - |

| | | |
|----|---|---------------------------------------|
| 38 | Leaf plates and leaf-cups (when not compressed). | - |
| 39 | Meat, fish, prawn and other aquatic products when not cured or frozen; eggs and live stock and animal hair. | Except when sold in sealed containers |
| 40 | Misri, Patasha, Fullian, Makhana and Chirbara. | - |
| 41 | National flag. | - |
| 42 | Non-Judicial stamp paper sold by Government Treasuries; postal items like envelope, postcard etc. sold by Government; rupee note when sold to the Reserve Bank of India and cheques, loose or in book form. | - |
| 43 | Organic manure. | - |
| 44 | Papad. | - |
| 45 | Rakhi. | - |
| 46 | Raw wool. | - |
| 47 | Salt. | - |
| 48 | Seeds of all kinds except oil seeds | - |
| 49 | Semen including frozen semen. | - |
| 50 | Silk worm laying cocoon and raw silk. | - |
| 51 | Tender green coconut. | - |
| 52 | Water other than- (i) aerated, mineral, distilled, medicinal, ionic, battery, demineralised water, and (ii) water sold in sealed container. | - |

SCHEDULE- II

(See sections 2 and 3)

| Sl. No. | Goods | Rate of tax |
|----------------|---|--------------------|
| 1 | 2 | 3 |
| 1 | Diesel, furnace oil and lubricants. | 7% |
| 2 | Explosives. | 5% |
| 3 | Iron and Steel. | 4% |
| 4 | Cement. | 5% |
| 5 | Goods used in works contracts, including hydropower and thermal power projects generation, transmission and distributions projects, telecommunications and all other turnkey projects being executed by private as well as Govt. Deptt./Corporations/Board etc. in the State. | 5% |
| 6 | Pan Masala and gutka containing tobacco. | 4% |
| 7 | Cigars, Cheroots, Cigarettes including un-manufactured tobacco and tobacco, tobacco refuse and other manufactured tobacco products, including bidies and gudaka. | 4% |