

**The Nagaland (sale of Petroleum and Petroleum products including Motor spirit and Lubricants) Taxation (Sixth Amendment) Act 2013
(Act No. 9 of 2013).**

Received the assent of the Governor of Nagaland on 9.8.2013 and published in the Nagaland Gazette Extra-Ordinary dated 30th August 2013.

An
-Act-

Further to amend the Nagaland (Sale of Petroleum and Petroleum Products including Motor Spirit And Lubricants) Taxation Act, 1967.

Be it enacted by the Legislature of the State of Nagaland in the Sixty- third year of the Republic of India as follows:-

1. Short title and commencement.-

- (1) This Act may be called the Nagaland (Sale of Petroleum and Petroleum Products including Motor Spirit and Lubricants) Taxation (Sixth Amendment) Act, 2013.
- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2:- In the Nagaland (Sale of Petroleum and Petroleum Products Including Motor Spirit and Lubricants) Taxation Act, 1967 (9 of 1967) (hereinafter referred to as the principle Act), in Section 2,-

- (1) In clause (9), the proviso shall be deleted.
- (2) After clause (9), the following new clause shall be inserted, namely:-
(9A) "Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;
- (3) For clause (10), the following shall be substituted, namely:-
(10) "taxable goods" means such goods as are specified in Schedule-II to the Act;
- (4) After clause (10), the following new clauses shall be inserted, namely:-

- (i) (10A) “taxable turnover” means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from the aggregate of sales in such manner as may be prescribed.
- (ii) (10B) “tax” means the tax payable under this Act;

3. **Amendment of Section 3.**- In the principle Act, or section 3 and marginal headings, the following shall be substituted, namely:-

Incidence And Levy of tax

3. **Incidence of tax on sale,**-(1) Subject to the other provisions of this Act, with effect from such date as the State Government may, by notification in the official Gazette, appoint,-

- (1) Every dealer-
 - (i) Who imports into Nagaland, or
 - (ii) Manufacture or produces goods specified in Schedule-II shall be liable to pay tax on his turnover of sales with effect from the day on which he effects his first sales of such goods.
- (2) A dealer registered under the Central Sales Tax Act, 1956 (74 of 1956), who is not liable to pay tax under sub-section (1), shall nevertheless be liable to pay tax on his sale of any goods in respect of which he has furnished a declaration under sub-section (4) of section 8 of the said Act, or on the sale of any goods in the manufacture of which such goods have been used and every such dealer who is liable to pay tax shall be deemed to be a registered dealer.
- (3) Nothing contained in sub-section (1) and (2), shall be deemed to impose, or authorize the imposition of a tax on any sale or purchase of goods when such sale or purchase takes place,-
 - (i) In the course of inter-State trade or commerce; or
 - (ii) Outside the State of Nagaland; or
 - (iii) In the course of import of the goods into or export of the goods out of the territory of India.

Explanation- For the purpose of this Act and for determining whether or not a particular sale or purchase takes place in the manner indicated in clause (i), clause (ii) and clause (iii), the provisions of sections 3,4 and 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) respectively, shall apply.”

4. **Insertion of new section 3A and 3B.**- In the principle Act, after section 3 so substituted, the following shall be inserted as new section and marginal heading, namely:-

3A(1) The tax leviable under section 3 shall be levied at the first point of sale within the State, at the rate or rates specified in the Schedule-II

Charge of tax and rates

- (2) Notwithstanding anything contained in sub-section (i) of section 3 when an Oil Company, as may be specified in the rules, sells any petroleum product other than Crude Oil specified in the Schedule-II to another Oil Company for the purpose of re-sale by the latter, such inter-se-sale between the oil companies shall not be deemed to be the first point of sale in the State for the purpose of levy of tax under this Act subject to such conditions as may be prescribed. The purchasing oil company shall pay tax on the sale of such goods under this Act or the Central Sales Tax Act, 1956 (Central Act 74 of 1956), as the case may be.

If, in any case, after purchase of such goods for resale within the State, the purchasing Oil Company despatches any portion of the goods to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, then notwithstanding anything contained in this Act, for that portion of goods the purchasing Oil Company shall be liable to pay tax on such portion of goods at the rate as may be applicable under the schedule II on the gross turnover of purchases of such goods.

- (3) The State Government may by notification in the Official Gazette add to or omit any entry or entries in Schedule-II or modify or vary the rate or rates of tax specified therein and thereupon the said entry or entries in the rate or rates shall be deemed to have been amended accordingly:

Provided that the Government shall not fix the rate of tax, in any case, exceeding thirty paise in a rupee.

3B. Incidence of surcharge on tax,-

- (1) Every dealer liable to pay tax under section 3 shall pay a surcharge at the rate of five per centum of the total amount to tax payable by him under section 3A (1) or at the rate as may be notified by the government from time to time.

(2) Validation of levy and collection of surcharge,-

Notwithstanding anything contained in this Act, any surcharge levied and collected or purported to have been levied and collected a surcharge by notification by the State Government under the 2nd proviso to sub-section (4) of section 3 or the rules framed thereunder shall be deemed to have been levied and collected under the provisions of the principle Act as amended by this Act and be deemed to be validly levied and collected and accordingly-

- (a) All acts, proceedings or things done or taken by the State Government or by any officer of the State Government or any other authority in connection with the levy and collection of such surcharge shall be deemed to be and to have always been done or taken in accordance with law; and
- (b) No suit or other proceeding shall be maintained or continued in any court against the State Government or any person or authority whatsoever for the refund of the surcharge so levied and collected.

5. **Deletion of Section 4.**- In the Principle Act, section 4 shall be deleted.

6. **Insertion of new section 9A.**- In the Principle Act, after section 9, the following shall be inserted as new section, namely:-

9A. **Security to be furnished in certain cases.**- The Commissioner may, at the time of grant to certificate to a dealer, for good and sufficient reasons to be recorded in writing, require the dealer to furnish in the prescribed manner such security or such additional security as may be specified by him for securing proper and timely payment of tax or any other sum payable by him under this Act.

7. **Insertion of new sub-section (5) in section 10.**- in the principle Act, in section 10,

(i) after sub-section (4), the following new sub-section shall be inserted, namely:-

(5) Every return under this section shall be signed and verified-

(a) In case of an individual, by the individual himself or by a person duly authorized by him in this behalf;

(b) In the case of Hindu Undivided Family, by the Karta;

(c) In the case of company or local authority, by the principle officer or the Chief Executive Officer thereof;

(d) In the case of firm, by any partner thereof not being a minor;

(e) In the case of any other association, by the person competent to act on behalf of the association.

(ii) after Section 10 so amended, the following shall be inserted as new section, with marginal heading, namely:-

Return Defaults,-

10A. (1) If a dealer required to file return under sub-section (1) or sub-section (2) of Section 10-

(a) Fails without sufficient cause to pay the amount of tax due as per the return for any tax period: or

- (b) Furnishes a revised return under sub-section (3) of Section 10 showing a higher amount of tax to be due than was shown by him in the original return; or
- (c) fails to furnish return: Such dealer shall be liable to pay interest in respect of
 - (i) The tax payable by him according to the return; or
 - (ii) The difference of the amount of tax according to the revised return; or
 - (iii) The tax payable for the period for which he has failed to furnish return; at the rate of 2% per month from the date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.
- (2) Month shall mean thirty days and the interest payable in respect of period of less than one month shall be computed proportionately.
- (3) If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest along with return or revised return in accordance with the provisions of sub-section (1), the Commissioner may, after giving the dealer reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him a penalty, at the rate of 3% per month on the tax and interest so payable from the date it had become due to the date of its payment or to the date of order of assessment, whichever is earlier.
- (4) If a registered dealer or any other dealer required to furnish return under sub-section (2) of Section 10; without any sufficient cause,-
 - (a) Fails to comply with the requirements of the notice issued under sub-section (2) of Section 10; or
 - (b) Fails to furnish any return by the prescribed date as required under sub-section (2) of Section 10; or
 - (c) Being required to furnish revised return, fails to furnish the revised return by the date prescribed under sub-section (3) of Section 10; or
 - (d) having paid the tax payable according to a return in time, fails to furnish along with the return proof of payment made in accordance with sub-section (4) of Section 10;
The Commissioner may, after giving the dealer reasonable opportunity of being heard, direct him to pay, in addition to any tax, interest and penalty under sub-section (3) payable or paid by him, a penalty of a sum of rupees one thousand per day of default subject to a maximum of rupees on lakh.
- (5) Any penalty imposed under this Section shall be without prejudice to any prosecution for any offense under this Act.

(6) For the purposes of this Act, any return signed by a person who is not authorized under sub-section (5) of Section 10 shall be treated as if no return has been filed.”

8. ***Deletion of sub-section (3) of Section 17,-*** In the principle Act, in section 17, sub-section (3) shall be deleted.
9. ***Insertion of new Section 17A,-*** In the principle Act, after Section 17, the following shall be inserted as new section, namely:-

Collection of tax only by Registered Dealers

17A. (1) No person other than a registered dealer shall collect any amount by way of tax except in accordance with the provisions of this Act and the rules made thereunder and beyond the rate specified.

- (2) Any amount collected by any person in contravention of the provisions of sub-section (1) or any amount collected by any person by way of tax or in any other manner not payable under the provisions of this Act shall be liable to forfeiture to the Government.
- (3) Where the Commissioner has reason to believe any person has willfully contravened the provisions sub-section (1), he may by an order in writing, impose upon such person a penalty of such amount not less than the amount of tax so collected and not exceeding twice the amount of tax so collected by him in contravention of sub-section (1)
- (4) The sum forfeited under sub-section (2) and the amount of penalty imposed under sub-section (3) shall be paid by the person or dealer making the unauthorized collection into the Government account by such date as may be specified in a notice for this purpose, being a date not later than thirty days from the date of service of notice.
- (5) Any sum forfeited or penalty imposed under this Section which remains unpaid after the date specified in the notice for payment, shall be recoverable as an arrear of land revenue.
- (6) Notwithstanding anything contained in this Act or any other law for the time being in force, where any sum collected by a person in contravention of sub-section (2) and is paid by him or is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected.
- (7) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty if any has been imposed under this Section.

10. **Amendment of Section 23,-** In the principle Act, in section 23,-
- (1) In sub-section (3) the word “excess” between the words “shall pay the” and the words” amount of tax” in the last but third line of the sentence be substituted by the following, namely:-
 - (2) For sub-section (5) the following shall be substituted, namely:- “(5) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due, pay, by way of penalty, a sum equal to 3% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.
11. **Insertion of new Section 43A.** In the principle Act, after Section 43, the following shall be inserted as new Section, namely:-

Appearance Before any Authority in Proceedings

43A. **Applicability of the provisions of Nagaland Value Added Act, 2005,-** Subject to the provisions of this Act and the rules made thereunder section 90 of the Nagaland Value Added Tax Act, 2005 (Act 4 of 2005) and the rules made thereunder, orders, notifications issued thereunder shall *mutatis mutandis* apply to any person who is entitled or required to appear before any authority including Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required to appear personally for examination on oath or affirmation as if the said section is *mutatis mutandis* incorporated in this Act and the rules framed, orders and notifications issued under the said section were *mutatis mutandis* issued under this section.

12. **Insertion of new Section 44A and 44B,-** In the Principle Act, after Section 44, the following shall be inserted as new sections, namely:-

Check post

44A. (1) no person shall transport taxable goods under this Act across or beyond a check post or barrier except after filing before the officer in-charge of check post, documents as referred to the provisions in sub-section (2) of this section.

Applicability Of the rovision of The Nagaland Value Added Tax Act, 2005

- (2) Subject to the provisions of this Act and rules made thereunder, section 66 and 67 of the Nagaland Value Added Tax Act, 2005 (Nagaland Act 4 of 2005) and the rules made thereunder, orders and notifications issued thereunder shall *mutatis mutandis* apply to transporting of goods taxable under this Act, as if the said sections were *mutatis mutandis* incorporated in this Act and the rules farmed, orders and notifications issued under those sections were *mutatis mutandis* issued under the relevant sections so incorporated in this Act.

44.B Automation,- (1) The Government shall endeavour to introduce and establish an automated data processing system for complementing the purposes of this Act and for matters incidental and allied thereto.

- (2) In order to make the said system effective, the Government may from time to time make Regulations for regulating the interaction.

Between the dealers and the authorities appointed or constituted under this Act.

- (3) The provisions contained in the Information Technology Act, 2000 (*Central Act 21 of 2000*), the rules made thereunder and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signature and digital signature certificates, shall, in so far as they may apply to the procedures under this Act, apply.
- (4) Except as may be provided otherwise in this Act, the software for automated data processing system, the operating system, the operating instructions and the criteria for any selection shall be treated as confidential.

13. *Amendment of Schedule,-* In the principle Act,

- (1) the existing Schedule shall be numbered as Schedule-I
(2) then after added the following new Schedule, namely:-

SCHEDULE-II
Goods taxable at the point of first sale in the State
[See section 3A (1)]

Sl. No	Description	Rate of Tax. (Paise in the Rupee)
1.	Crude Oil	4.75
2.	Petroleum Coke	4.75
3.	Diesel	12
4.	Petrol and other motor spirit	20
5.	Aviation turbine fuel (ATF) sold to Turbo-Prop Aircraft as specified In clause (ii d) of section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956	4.75
6.	Aviation Turbine Fuel (ATF) not Falling under items no. 5 above	20
7.	Natural Gas	4.75
8.	Liquefied Petroleum Gas Domestic	4.75
9.	Liquefied Petroleum Gas Commercial	12
10.	Lubricants, lubricating oil, engine oil, break oil and grease	12
11.	Kerosene Oil when sold through public Distribution system (PDS)	5
12.	Kerosene Oil when Sold otherwise	15
13.	Other Petroleum products not specifically mentioned anywhere in the schedule	12