

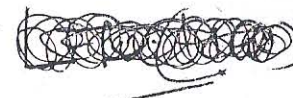
NABHI'S

Compendium of

**DELHI
TAX ON LUXURIES
ACT, 1996**

&

**DELHI
TAX ON LUXURIES
RULES, 1996
WITH NOTES**



A NABHI PUBLICATION

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WITH NOTES

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District Excise Officer
Office of Commissioner (EXCISE)
Govt. of NCT of Delhi, New Delhi



JAN BOOK AGENCY
C-9, Connaught Place,
New Delhi-110 001.
Ph. : 3320806, 3321663
Fax : 011-3731117

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Preface

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PREFACE

The Government of the National Capital Territory of Delhi has recently enacted Delhi Tax on Luxuries Act, 1996. The Act has come into force with effect from 1st November, 1996. It provides for the levy and collection of a tax on luxuries and for matters connected therewith in the National Capital Territory of Delhi. Section 3 of the Act, which is a charging section, imposes the liability to pay luxury tax on every hotelier. The tax is levied @ 10% w.e.f. 1.11.1996 vide Notification No. F.10 (105)/95 - FIN (G) dt 31.10.1996. Besides elaborate rules for implementation of the various provisions of the Delhi Tax on Luxuries Act, 1996 have been notified by the Government. Incorporating these Nabhi is pleased to present first edition of the book entitled NABHI'S COMPENDIUM OF DELHI TAX ON LUXURIES ACT, 1996 AND DELHI TAX ON LUXURIES RULES, 1996 WITH NOTES.

The speciality of the book is that full text of the Delhi Tax on Luxuries Act, 1996 has been given alongwith Notes supported by about forty decided legal cases. Complete text of Delhi Tax on Luxuries Rules, 1996 alongwith Forms has also been included. An Index to legal cases cited in the book is also given to enhance the practical utility of the book.

The publishers and author are thankful to S/Shri V.V. Jain, Narender Kumar Jain and Dr. Karunesh Singhal for their valuable suggestions in bringing out this publication. Though every care has been taken to incorporate authentic information, yet some errors might have crept in inadvertently. Kindly bring such errors to the notice of publisher notwithstanding that publisher is not responsible for any error or omission. Suggestions for improvement are however, welcome which may kindly be sent in writing only. Any clarification/circular can be supplied only if deemed fit by the Board of Editors subject to payment of Rs. 500 by Bank draft, payable at New Delhi.

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Delhi Tax on Luxuries Act, 1996¹

(Delhi Act No. 10 of 1996)

An Act to provide for the levy and collection of a tax on luxuries and for matters connected therewith in the National Capital Territory of Delhi

Be it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Forty Seventh year of the Republic of India as follows

Short title, extent and commencement

1. (1) This Act may be called the Delhi Tax on Luxuries Act, 1996.
- (2) It extends to the whole of the National Capital Territory of Delhi.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint in this behalf and different dates may be appointed for different provisions of this Act.

NOTES

Date of Enforcement

Sub section (3) authorises the Government to appoint the date of commencement of the Act, by a notification in the Official Gazette. The Act has come into force w.e.f. 1st November, 1996 in the National Capital Territory of Delhi, vide Notification No. F. 10(105)/95-Fin. (G), dated 30.10.1996.

Section 7(1)(a) and (b) and Section 7(3) of the Act relating to the Government's power to appoint the Commissioner of Luxury Tax and other officers to assist him in the discharge of his functions under the Act and their respective jurisdiction, came into force w.e.f. 31.10.1996 vide Notification No. F-10(105)/95-Fin. (G)-2, dated 31.10.1996. Consequently, under the said powers, the Government appointed the authorities under the Act vide Notification No.-F-10(105)/95-Fin. (G)-3 dated 31.10.1996.

Interpretation of Statutes

Regarding interpretation of statutes the Supreme Court has observed that there is one principle of interpretation more well settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, unreasonable, unworkable or totally irrecoverable with the rest of the statute. No tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden upon him¹. The subject cannot be taxed unless he comes within the letter of the law; the argument that he falls within the spirit of the law cannot help the department.²

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject.³

1. CIT vs. Vadilal Lahu Bhai (1972) 86 ITR 2 (CSC)

2. CIT vs. Provident Investment Co. Ltd. (1957) 32 ITR 190 (SC).

3. Polestar & Co. Ltd. vs. Addl. CIT, New Delhi (1978-79), XVIII DRTC SH 1 (SC).

Those sections which impose the charge or levy should be strictly construed, but those which deal merely with the machinery of assessment and collection should not be subjected to a rigorous construction but should be construed in a way that makes the machinery workable.¹

Definitions

2. In this Act, unless the context requires otherwise :

- (a) "appointed day" means the day appointed by the Government under sub-section (3) of section 1;
- (b) "business" includes the activity of providing residential accommodation and any other service in connection with, or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary consideration;

NOTES

Business

The definition of 'business' is an inclusive one. The word 'includes' makes the definition susceptible to other constructions as become imperative for the purpose of adding to the natural significance of the word 'business'. Business essentially implies a series of transactions conducted continuously or contemplated to have been continued with an objective.² As against it, a solitary transaction would generally, not constitute business.

The expression 'business' is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit.³

Activity of Providing Residential Accommodation and any Other Service

The term 'business' has been defined to include the activity of providing residential accommodation along with any other service. Mere providing a residential accommodation would not be covered by this definition, further, the accommodation must be residential or capable of being used for residence. Any other service may include service of varied nature including service of a watchman, attendant, sweeper, provision of various amenities in the accommodation such as furniture, fixtures, decoratives, geysers and other electrical appliances of normal domestic use, soap, towel, wardrobes, service of foods and drinks, etc. However, such, other service must be connected with, or incidental or ancillary to, the activity of providing residential accommodation.

Connected with or Incidental or Ancillary to

The words 'in connection with' indicate that a service to be covered by the definition, should be intrinsically connected with the business. It should have a proximate and direct connection with the business.

According to chambers Twentieth Century Dictionary 'ancillary' means "subserving; auxiliary" and 'incidental' means "naturally attached; accompanying; concomitant; occasional, casual." A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either.⁴ A work is ancillary or incidental to a business when it is not necessary thereto or a primary part thereof.⁵

1. CIT vs. National Taj Traders (1980) 121 ITR 655 (SC).
2. State of A.P. vs. H. Abdul Bakshi Bros. (1964) 15 STC 644 (SC), Union of India vs. CTO (1982) 51 STC 310 (Cal.)
3. Ambica Mills Ltd. vs. State of Gujarat (1964) 15 STC 367 (Guj.)
4. Royal Talkies Hyderabad vs. Employees' State Insurance Corpn. (1979) 1 SCR 80 (SC). Also see, State of Tamil Nadu vs. Binny Ltd. (1982) 49 STC 17 (SC).
5. See State of Orissa vs. Orissa Road Transport Co. Ltd. (1983) 53 STC 329 (Ori.)

- (c) "club" includes both an incorporated and unincorporated association of persons, by whatever name called;
- (d) "Commissioner" means the person appointed to be the Commissioner of Luxury Tax for the purposes of this Act and includes an Additional Commissioner, if any, appointed under section 7;
- (e) "Concessional rate" in relation to a luxury provided in a hotel, means a rate lower than the normal rate fixed for such luxury by the hotelier or lower than that fixed by any Government, authority, or under law for the time being in force;
- (f) "Government" means the Government of National Capital Territory of Delhi;
- (g) "hotel" includes a residential accommodation, a lodging house, an inn, a club, a resort, a farm house, a public house or a building or part of a building, where a residential accommodation is provided by way of business;
- (h) "hotelier", means the owner of the hotel and includes the person who for the time being is in charge of the management of the hotel;
- (i) "luxury provided in a hotel" means accommodation and other services provided in a hotel, the rate or charges for which including the charges for air-conditioning, telephone, radio, music, extra beds and the like, is five hundred rupees per room per day or more; but does not include the supply of food, drinks or other services which is separately charged for;
- (j) "person" includes any company, club or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a State Government and the Central Government;
- (k) "place of business" includes an office, or any other place which is used by a person for the purpose of his business or where he keeps his books of accounts;
- (l) "prescribed" means prescribed under this Act or the rules framed under this Act;
- (m) "receipt" means the amount of monetary consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel;
- (n) "registered hotelier" means a hotelier registered under section 8 of this Act;
- (o) "rules" means rules made under this Act;
- (p) "tax" means the tax levied on luxuries provided in a hotel payable under this Act and includes any penalty, interest, fine, composition money, sum forfeited or any other charge levied under this Act;
- (q) "tariff" means the charges levied or leviable by a hotelier for a room provided in a hotel;
- (r) "turnover of receipts" means the aggregate of the amounts of valuable consideration received or receivable by a hotelier or by his agent in respect of the luxuries provided in a hotel during a given period;
- (s) "year" means the financial year.

NOTES

Year

'Year' means the financial year, and 'financial year' means the year commencing on the first day of April.¹

1. Section 3(21) of the General Clauses Act, 1897

Incidence and levy of tax

3. (1) Subject to the provisions of this Act and the rules made thereunder there shall be levied a tax on the turnover of receipts of a hotelier.
- (2) There shall be levied a tax on the turnover of receipts of a hotelier at a rate not exceeding fifteen per cent to be notified by the Government from time to time and different rates may be notified for different classes of hotels as charges of luxury provided in a hotel:
- Provided that, where the charges are levied otherwise than on daily basis or per room then the charges for determining the tax liability under this section shall be computed proportionately for a day and per room based on the total period of occupation of the accommodation for which the charges are made according to the rules or practice of the hotel.
- (3) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.
- (4) Where luxury provided in a hotel to any person (not being an employee of the hotel) is not charged at all, or is charged at a concessional rate, nevertheless there shall be levied and collected the tax on such luxury, at the rate specified in sub-section (2), as if full charges for such luxury were paid to the hotelier.
- (5) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier is liable to pay sales tax under the Delhi Sales Tax Act, 1975 (No. 43 of 1975).
- (6) For the purposes of this Act, tax collected separately by the hotelier shall not be considered to be part of the receipt or the turnover of receipts of the hotelier.

NOTES

Charging Section

Section 3 is the charging section, it imposes the liability to pay Luxury Tax on every hotelier. The charging section is the very soul of a taxing statute. Unless charge is created by a specific provision of the statute the tax payer cannot be taxed on an ambiguous provision.¹

The components which enter into the concept of tax are; the first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy; the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.²

The liability is imposed by the charging section and the provisions as to assessment are only machinery provisions by which the liability is sought to be quantified.³ The moment the taxable event occurs, the liability to pay tax arises. So the liability for payment of tax is independent of the assessment.⁴

1. Champaklal Sohanlal vs. J.H. Shah (1968) 22 STC 507, 513 (Guj)

2. Govind Saran Ganga Saran vs. CST (1985) 60 STC 14 (SC).

3. Tata Iron & Steel Co. Ltd. vs. State of Bihar (1956) 7 STC 158 (Pat.), affirmed in (1958) 9 STC 267 (SC).

4. Kedamath Jute Mfg. Co. Ltd. vs. CIT (1971) 28 STC 672 (SC).

Rate of Tax

As per section 3(2) luxury tax shall be levied on the turnover of receipts of a hotelier at the notified rate not exceeding 15 per cent. The Government may notify different rate(s) from time to time and for different classes of hotels.

The Government has notified that luxury tax shall be levied @ 10% w.e.f. 1.11.1996. vide Notification No. F. 10(105)/95-Fin. (G)-1 dated 31.10.1996.

Liability of hotelier

4. (1) Subject to the provisions of this Act and the rules made thereunder there shall be paid by every hotelier who is liable to pay tax under this Act, the tax or taxes pay tax leviable in accordance with the provisions of this Act
- (2) If a person other than the owner (including part-owner) is for the time being in charge of the business, then such person and the owner (including part-owner) shall jointly and severally be liable to pay the tax.

Liability of firms as hoteliers

5. Where a business is owned, managed or run by a firm, then the firm and each of the partners of the firm shall be jointly and severally liable for payment of tax:

Provided that, where any partner retires from the firm, he shall be liable to pay the tax, if any, remaining unpaid at the time of his retirement, and any tax due upto the date of his retirement, even if assessment of tax is made at a later date.

Special provision regarding liability to pay tax including any penalty or interest in certain cases

6. (1) Where a hotelier, liable to pay tax under this Act, dies, then:
- (a) if the business carried on by the hotelier is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax due from such hotelier under this Act in the like manner and to the same extent as the deceased hotelier; or
- (b) if the business carried on by the hotelier is discontinued, whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the same extent as the deceased hotelier would have been liable to pay if he had not died, the tax due from such hotelier under this Act, whether such tax has been assessed before his death but has remained unpaid or is assessed after his death.

Explanation: For the purpose of this sub-section, the expression "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 [V of 1908].

- (2) Where a hotelier liable to pay tax under this Act is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of members then each member or group of members shall be jointly and severally liable to pay the tax due from the hotelier under this Act upto the time of partition whether such tax has been assessed before partition but has remained unpaid or is assessed after partition.
- (3) Where a hotelier, liable to pay tax under this Act is a firm and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under section 5, the tax due from the firm under this Act upto the time of dissolution, whether such tax has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.
- (4) Where a hotelier, liable to pay tax under this Act, transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership

thereof, in consequence of which he is succeeded in the business or part thereof by any other person, then the hotelier and the person succeeding shall jointly and severally be liable to pay the tax due from the hotelier under this Act upto the time of such transfer, disposal or change, whether such tax has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

- (5) Where a hotelier, liable to pay tax under this Act
- is the guardian of a ward on whose behalf the business is carried on, or
 - is the trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated the wardor, as the case may be, the beneficiary shall be liable to pay the tax due from the hotelier upto the time of termination of the guardianship or trust, whether such tax has been assessed before the termination of the guardianship or trust, but has remained unpaid or is assessed thereafter.
- (6) Where a hotelier, liable to pay tax under this Act, is succeeded in the business by any person in the manner described in clause (a) of sub-section (1) or in sub-section (4), then such person, unless he already holds a certificate of registration, shall, within thirty days thereof, apply for registration.

Authorities under the Act

7. (1) (a) For carrying out the purposes of this Act, the Government shall by notification appoint an officer to be the Commissioner of Luxury Tax.
- (b) To assist the Commissioner in the discharge of his functions under this Act the Government may appoint one or more officers to be Additional Commissioners of Luxury Tax, and such number of Deputy Commissioners of Luxury Tax, Assistant Commissioners of Luxury Tax and Luxury Tax Officers and such other officers with such designations as the Government may think necessary.
- (2) The Government may, by notification in Official Gazette, specify the powers and functions which an officer appointed under clause (b) of sub-section (1) may exercise and discharge.
- (3) The Commissioner shall have jurisdiction over whole of the National Capital Territory of Delhi and the other officers appointed under clause (b) of sub-section (1) shall have jurisdiction either over the whole of the National Capital Territory of Delhi or such areas or hotels as the Commissioner may specify by notification in official Gazette.
- (4) The superintendence and control for the proper execution of the provisions of this Act and the rules made thereunder relating to the levy and the collection of tax shall vest in the Commissioner.

NOTES

Section 7 empowers the Government to appoint the Commissioner of Luxury Tax and such number of Additional Commissioners of Luxury Tax, Deputy Commissioners of Luxury Tax, Assistant Commissioners of Luxury Tax, Luxury Tax Officers and other officers (viz. the Assistant Luxury Tax Officers as provided in rule 4), as may be necessary.

The Government vide Notification No. F. 10 (105)/95-F in. (G)-3, dated 31.10.1996, has appointed the Excise Commissioner as the Commissioner of Luxury Tax. the

Entertainment Officer as the Assistant Commissioner of Luxury Tax and the Additional Entertainment Tax Officer as the Luxury Tax Officer.

Registration

8. (1) No hotelier liable to pay the tax under this Act shall conduct or cause to be conducted business, unless he possesses a valid certificate of registration as provided by this Act :
- Provided that, it shall be lawful for the hotelier to conduct or cause to conduct business, if the hotelier has applied for registration as provided by this Act.
- (2) Every hotelier required to possess a certificate of registration shall apply in the prescribed form to the Commissioner within thirty days from the date on which the hotelier first becomes liable to pay the tax.
- (3) If the Commissioner, after such inquiry as he deems fit, is satisfied that an application for registration is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form.
- (4) The Commissioner may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time the certificate of registration.
- (5) Where a registered hotelier discontinues, transfers or otherwise disposes of his activity of providing accommodation by way of business or where he ceases to be liable to pay the tax and he applies in the prescribed form to the Commissioner, on receipt of such application, the Commissioner shall, after making such inquiry as may be necessary, cancel the certificate of registration with effect from such date as he may fix in accordance with the rules.
- (6) Where the Commissioner is satisfied that any registered hotelier has discontinued, transferred or otherwise disposed of his business and has failed to apply under sub-section (5) for cancellation of certificate of registration, the Commissioner may, after giving the hotelier a reasonable opportunity of being heard, cancel the certificate of registration with effect from such date as he may fix to be the date from which the said activity has been discontinued, transferred or otherwise disposed of :
- Provided that, the cancellation of certificate of registration whether on an application of the hotelier or otherwise shall not affect the liability of the hotelier to pay the tax due for any period upto the date of cancellation whether such tax is assessed before or after the date of cancellation.

NOTES

Sub-section (1) provides that no hotelier who is liable to pay tax under section 3 shall carry on the business, unless he has been registered and possesses a certificate of registration. The application for registration shall be made in Form 4 within 30 days from the date the hotelier first becomes liable to pay the tax. (Rule 5).

Provisions relating to registration of dealers and for cancellation of registration on failure to pay tax, are reasonable restrictions within the meaning of Article 19(6) of the Constitution, and they are, therefore, valid and constitutional.

The registration certificate shall be granted in Form 5. (Rule 6).

1. M.A. Rahman vs. State of A.P. (1961) 12 STC 392 (SC).

Non-transferability of registration certificate

- ✓ 9. Save as otherwise provided in section 11, a certificate of registration shall be personal to the hotelier to whom it is granted and shall not be transferable.

Information to be furnished regarding tariff, changes in business, etc.

- ✓ 10. (1) If a hotelier liable to pay tax under this Act :
- sells or otherwise disposes of his business or any part thereof, or effects or makes any other change to his knowledge in the ownership of the business, or
 - discontinues his business, or changes the place thereof or opens a new place of business, or
 - changes the name or nature of his business, or
 - enters into a partnership or other association in regard to his business, he shall within the prescribed time, inform the Commissioner or prescribed authority accordingly.
- (2) Where any such hotelier dies, his executor, administrator or other legal representative or where any such hotelier is a firm and there is a change in the constitution of the firm or the firm is dissolved, every person who was a partner thereof, shall, in like manner, inform the Commissioner or the said authority of such death, change in the constitution or, as the case may be, dissolution.
- ll (3) Every hotelier liable to pay tax under this Act shall, within thirty days from the coming into force of this Act, communicate in the prescribed form to the Commissioner the rates of tariff :
- Sub - ll Provided that if the rates of tariff charged are revised, the revised rates shall be communicated by the hotelier to the commissioner within fifteen days of such revision.

Certificate of registration to continue in certain circumstance

11. Where a registered hotelier :

- effects change in the name of his business, or
 - is a firm; and there is a change in the constitution of the firm without dissolution thereof, or
 - is a trustee of a trust, and there is change in the trustees thereof, or
 - is a guardian of a ward, and there is change in the guardian,
- then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the hotelier, or the firm with the changed constitution, or the new trustees, or new guardian, to apply for a fresh certificate of registration and on information being furnished in the manner required by section 10, the certificate of registration shall be amended.

Returns

- ✓ 12. (1) Every registered hotelier shall furnish returns for such period, by such dates, and to such authority, as may be prescribed :

Provided that, the Commissioner may, subject to such terms and conditions as may be prescribed, exempt any such hotelier from furnishing such returns or permit any such hotelier :

- to furnish them for such different period; or
 - to furnish a consolidated return relating to all or any of the places of business of the hotelier in the National Capital Territory of Delhi for such period, or for such different periods, to such authority, as he may direct.
- (2) If any hotelier, having furnished return under sub-section (1), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return and if the revised return shows a higher amount of tax due, then the amount shown in the original return, it shall be accompanied by the receipts showing payment of the additional tax due.
- ll (3) Every registered hotelier required to furnish return in accordance with sub-section (1) shall pay in such manner as may be prescribed the full amount of tax due from him under this Act according to such return.
- ll (4) Every return under this section shall be verified in the prescribed manner by the registered hotelier or any other person duly authorised by him in this behalf.

NOTES

Every registered hotelier is required to file a quarterly return in Form 8 along with treasury receipt in Form 8A, by the end of the month immediately succeeding the relevant quarter, with the Luxury Tax Officer (Rule 12). Filing of return and payment of tax does not amount to assessment within the meaning of that word as used in the Act. A registered dealer is bound to furnish his return irrespective of the fact whether he has carried any business during the year (or quarter) or not.²

Form 8
+ 8A Rec
along with
returns &
Treasury
receipt.

Assessment Tax

- ✓ 13. (1) The amount of tax due from a hotelier liable to pay tax shall be assessed separately for each year during which he is so liable :
- Provided that, the Commissioner may, subject to such conditions as may be prescribed, assess the tax due from any hotelier during a part of a year.
- If the Commissioner is satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete he shall assess the amount of tax due from the hotelier on the basis of such returns.
 - If the Commissioner is not satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete, and he thinks it necessary to require the presence of the hotelier or the production of further evidence, he shall serve on such hotelier a notice of not less than fifteen days or a shorter period in case assessment is getting time barred requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such hotelier relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the evidence which may be produced, assess the amount of tax due from the hotelier.

1. State of Bombay vs. Jagmohan Dass (1966) 60 ITR 206 (SC).

2. Arkay Industries vs. CST (1986) 16 STL 1 (Delhi-Trib.).

- (4) If a registered hotelier fails to comply with the terms of any notice issued under sub-section (3), the Commissioner shall assess, to the best of his judgement, the amount of tax due from him.
- (5) Where all the returns are filed by a registered hotelier for any year ending on or after the appointed day by the prescribed dates, or on or before the date prescribed for filing the last return of that year, no order of assessment under sub-section (3) or (4) in respect of that year shall be made after the expiry of three years from the end of the said year, and if for any reason such order is not made within the period aforesaid, then the returns so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such hotelier :

Provided that, where a fresh assessment is to be made in view of any order made in appeal under this Act or by the High Court or by the Supreme Court or any other competent authority such assessment shall be made within twelve months from the date of receipt of such order :

Provided further that, in computing any period of limitation laid down in this sub-section the time during which the assessment remained stayed under the order of the High Court or of the Supreme Court or any other competent authority shall stand excluded :

- (6) If a registered hotelier does not furnish return in respect of any period by the prescribed date, the Commissioner shall, at any time within three years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of the tax (if any) due from him.
- (7) If the Commissioner has reason to believe that a hotelier is liable to pay tax in respect of any period, but has failed to apply for registration or failed to apply for registration within time as required by section 8, the Commissioner shall, at any time, within four years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of tax (if any) due from the hotelier in respect of that period, and any period or periods subsequent thereto.
- (8) Notwithstanding anything contained in the foregoing provisions of this section, where the Commissioner is not satisfied about the correctness or the completeness of the accounts of a hotelier, or where no method of accounting has been regularly employed by a hotelier, the Commissioner may, after giving the hotelier a reasonable opportunity of being heard, assess to the best of his judgement, the amount of tax (if any) due from him.
- (9) Any assessment made under this section shall be without prejudice to any penalty, or prosecution of an offence, under this Act.

NOTES

Assessment

'Assessment' as defined by the Supreme Court is a comprehensive word and denotes the entirety of proceedings which are taken with regard to it¹. Making an assessment does not merely mean the passing of an order of assessment but it covers the whole field from initiation of assessment proceedings right upto the determination of tax payable by the assessee for a particular period.²

1. STO vs. Sundersanam Iyengar & Sons (1970) 25 STC 252 (SC).
2. M.P. Industries Ltd. vs. State of Maharashtra (1968) 22 STC 403 (SC).

Assessment is the process of quantification of tax due from a hotelier in respect of a year during which he is liable to pay tax. Tax is assessed separately for each year. Where, however, a hotelier fails to furnish a return relating to any period of a year by the prescribed date, the assessing authority may, if he thinks fit, assess the tax separately for that period or any other period of such year.

The process of assessment of registered hoteliers can be summarised as follows :

- (i) A hotelier files the returns under section 12.
- (ii) If the assessing authority is satisfied that the returns so filed are correct and complete, the return version is accepted and the hotelier is said to have been assessed on that basis u/s 13(2).
- (iii) Where the returns filed by the hotelier are not believed to be correct and complete, the assessing authority issues a notice in Form 12 to the hotelier for producing of evidence and record supporting the return. The assessment is completed after examination of the evidence and record. [Section 13(3)]
- (iv) Where the notice served on the hotelier is not complied with and he neither appears nor produces evidence, the assessing authority is empowered to assess the hotelier to the best of his judgement after giving the hotelier a reasonable opportunity of being heard. [Section 13(4)].
- (v) Where the hotelier has failed to furnish returns in respect of any period by the prescribed date, the assessing authority is empowered to assess the hotelier to the best of his judgement after giving him a reasonable opportunity of being heard. [Section 13(5)]

Notice

A notice is a communication to a party asking him either to show cause or to do something before an order is passed. Notice itself is not an order.¹ Notice is not only to be issued by the Assessing Authority but also it has to be served. Service of a valid notice is absolutely essential for passing a valid assessment order.²

Reasonable Opportunity of Being Heard

The words 'opportunity of being heard' are of very wide amplitude but in the context of assessment proceedings which are quasi-judicial proceedings, the court has to see whether the assessee has been given a fair hearing.³ The Supreme Court has interpreted the words 'reasonable opportunity' envisaged to a person, to include (a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what are the charges levied against him and the allegations on which such charges are based, (b) an opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or any other witness in support of his defence.⁴

The Supreme Court has laid down that there are two elements of 'reasonable opportunity': first is that an opportunity to be heard must be given and the second is that this opportunity must be reasonable. Both these matters are justifiable and it is for the court to decide whether an opportunity is reasonable. There can be no invariable standard for reasonableness in such matters except court's conscience must be satisfied that the person against whom an action is proposed has had a fair chance of convincing the

1. Suraj Mohan Chakraborty vs. State of West Bengal (1977) 39 STC 462 (AII).
2. State of A. P. vs. Pachipulusu Venkatasubha Rao & Co. (1970) 26 STC 27 (A.P.)
3. State of Kerala vs. K.T. Shaduli Yusuf (1977) 39 STC 478 (SC).
4. Khem Chand vs. Union of India AIR 1958 SC 300.

authority who proposes to take action against him, that the grounds on which action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the particular facts and circumstances of each case.¹

Applicability of the provisions of this Act to persons liable to pay tax under section 6

14. Where in respect of any tax due from a hotelier under this Act, any other person is liable for payment thereof under section 6, then such other person shall be deemed to be a hotelier for the purpose of this Act, and all the relevant provisions of this Act shall in respect of such liability apply to such person also, as if he were the hotelier.

✓ Reassessment of turnover escaping assessment, under-assessed

15. (1) If a hotelier has been assessed under section 13 for any year or part thereof and where for any reason the whole or any part of the turnover of receipts in respect of that year or part thereof has escaped assessment, or has been under-assessed or assessed at a lower rate, or any deduction has been wrongly made, then the Commissioner may, at any time within three years of the end of that year, etc. after giving the hotelier a reasonable opportunity of being heard, proceed to assess or reassess, to the best of his judgement, the amount of tax due from such hotelier :

Provided that, the amount of tax shall be assessed at the rates at which it would have been assessed had there been no under-assessment or escapement :

Provided further that, where in respect of such turnover of receipts an order has already been passed in appeal or revision under this Act, the Commissioner shall make a report to the appropriate appellate or revising authority under this Act, which shall thereupon after giving the hotelier concerned a reasonable opportunity of being heard, pass such orders it deems fit.

- (2) Nothing in sub-section (1) shall apply to any proceeding (including any notice issued) under section 38 or 41.
- (3) Nothing in section 38 or 41 shall affect any proceeding under this section.

✓ Imposition of penalty and levy of interest

16. (1) If, while assessing or reassessing the amount of tax due from a hotelier under any provisions of this Act or while passing any order in any appeal, revision, review or rectification proceedings, it appears to the Commissioner that such hotelier has :

- (a) failed to apply for registration as required by section 8 or has carried on business, without being registered, in contravention of section 8 :
- (b) failed to disclose any transaction or receipt or has failed to furnish return by the prescribed date or has failed to show in the return the appropriate liability to pay tax or has failed to disclose fully and truly all material facts necessary for the proper and correct quantification of the tax liability, then the Commissioner may, after giving the hotelier an opportunity of being heard, by order in writing impose upon the hotelier by way of penalty, in addition to any tax assessed or reassessed or found due in the appeal or revision or rectification proceedings, as the case may be :

- ✓ (i) in the case covered by clause (a), a sum not exceeding the amount of the tax payable by the hotelier for the period during which he carried on business, without being registered, in contravention of section 8 :
- ✓ (ii) in the case covered by clause (b), a sum not exceeding the amount of tax found payable under the said clause.

(2) If a hotelier :

- (a) does not pay the tax within the time he is required by or under the provisions of this Act to pay it, or
- (b) is found liable to pay tax under the provisions of clause (b) of sub-section (1);

then, without prejudice to the provisions of sub-section (1), he shall be liable to pay simple interest at the rate of two per cent of the amount of such tax for each month after the last day by which he should have paid such tax :

Provided that, the Commissioner or any appellate authority may, for reasons to be recorded in writing, remit the whole or any part of the interest payable in respect of any period.

✓ Imposition of penalty for contravening certain provisions

17. (1) If any person :

- (a) (i) not being a hotelier liable to pay tax under this Act, collects any sum by way of tax, or
- (ii) being a registered hotelier, collects any amount by way of tax in excess of the tax payable by him, or
- (iii) otherwise collects tax in contravention of the provisions of section 27, or

(b) being a hotelier liable to pay tax under this Act, or being a hotelier who was required so to do by the Commissioner by a notice, served on him, fails in contravention of sub-section (1) of section 29 to keep a true account of his turnover of receipts or fails when directed so to do under that section to keep any accounts or record in accordance with the direction,

he shall be liable to pay, in addition to any tax for which he may be liable, a penalty of an amount as follows :

- (A) where there has been contravention referred to in sub-clause (i) or (iii) of clause (a), a penalty of an amount not exceeding twenty thousand rupees or double the sum collected by way of tax, whichever is less.
- (B) where there has been a contravention referred to in sub-clause (ii) of clause (a) or in clause (b), a penalty of an amount not exceeding twenty thousand rupees,

and in addition any sum collected by the person by way of tax in contravention of section 27 shall be forfeited to the Government.

- ✓ (2) If the Commissioner, in the course of any proceeding under this Act or otherwise, has reason to believe that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under sub-section (1), he shall serve on such person a notice in the prescribed manner requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in sub-section (1) should not be imposed on him.

- (3) The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit.
- Sub. 11 (4) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.
- (5) When any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.

Payment of Tax

18. (1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.
- (2) A registered hotelier furnishing return as required by sub-section (1) of section 12, shall first pay in the prescribed manner, the whole of the amount of tax due from him according to such return alongwith the amount of any penalty or interest payable by him under section 16.
- (3) A registered hotelier furnishing a revised return in accordance with sub-section (2) of section 12, and revised return shows that a larger amount of tax than already paid is payable, shall first pay the additional tax due as may be prescribed.
- (4) (a) The amount of tax :
 (i) due where returns have been furnished without full payment thereof, or
 (ii) assessed or reassessed for any period under section 13 or section 15 less any sum already paid by the hotelier in respect of such a period, or
 (b) the amount of interest or penalty (if any) levied under section 16 or 17, and
 (c) the sum (if any) forfeited to the Government under section 17, and
 (d) the amount of the fine (if any) imposed under sub-section (3) of section 34, shall be paid by the hotelier or the person liable therefor by such date as may be specified by the Commissioner for this purpose, being a date not earlier than thirty days from the date of service of the notice,
 (e) the Commissioner may, in respect of any particular hotelier or person, and for reasons to be recorded in writing, allow the hotelier or the person liable therefor to pay the tax, by instalments. However, on such payment on instalments simple interest shall be leviable at the rate of two per cent of the amount due per month.
- (5) Any tax which remains unpaid after the date specified in the notice for payment, and any instalment not duly paid, shall be recoverable as an arrear of land revenue.
- (6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any sum collected by a person by way of tax in contravention of section 27, is forfeited to the Government under section 17 and 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. A refund of such sum or any part thereof can be claimed from Government by the person from whom it was realised by way of tax, provided that an application for such claim is made by him in writing in the prescribed form to the Commissioner, within one year from the date of the order of forfeiture. On receipt of any such application, the Commissioner shall hold such inquiry as he deems fit, and if the

Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid to Government or recovered, he shall refund the sum or any part thereof, which is found due to the person concerned within such period as may be specified failing which simple interest shall be paid on delayed payment at the rate of one per cent per month.

Rounding of the tax, etc.

19. The amount of tax, or any other sum payable under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored. Provided that, nothing in this section shall apply for the purpose of collection by the hotelier of any amount by way of tax under this Act.

Special powers of authorities for recovery of tax as arrear of land revenue

20. (1) For the purpose of effecting recovery of the amount of tax, due and recoverable from any hotelier or other person by or under the provisions of this Act, as arrears of land revenue :
- (i) the Deputy Commissioner appointed under section 7 shall have and exercise all the powers and perform all the duties of the Collector under the Delhi Law Reforms Act, 1954;
- (ii) the Assistant Commissioner appointed under section 7 shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Assistant or Deputy Collector, under the said Act.
- (2) Every notice issued or order passed in exercise of the powers conferred by sub-section (1) shall, for the purpose of sections 35, 36, 37, 38 and 41 be deemed to be a notice issued or an order passed under this Act.

Special mode of recovery and certain recovery proceedings.

21. (1) Notwithstanding anything contained in any law for the time being in force, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the hotelier at his last address known to the Commissioner, require :
- (a) any person from whom any amount of money is due, or may become due to a hotelier on whom notice has been served under sub-section (4) of section 18, or
- (b) any person who holds or may subsequently hold money for or on account of such hotelier,
- to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the hotelier in respect of the arrears of tax, or the whole of the money when it is equal to or less than that amount.

Explanation - For the purpose of this section, the amount of money due to a hotelier from, or money held for or on account of a hotelier by any person, shall be calculated after deducting therefrom such claims (if any) lawfully subsisting, as may have fallen due for payment by such person.

- (2) The Commissioner may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of such notice.
- (3) (a) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the hotelier, and the receipt of the Commissioner shall constitute a good and sufficient discharge of the liability of such person, to the extent of the amount referred to in the receipt.
- (b) Any person discharging any liability to the hotelier after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged, or to the extent of the liability of the hotelier for tax, whichever is less.
- (c) Where a person to whom a notice under this section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the hotelier, or that he does not hold any money for or on account of the hotelier, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Commissioner.
- (d) Any amount of money which a person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as an arrear of land revenue.
- (4) Where any notice of demand in respect of any tax (hereinafter in this section referred to as "Government dues") is served upon a hotelier or the person liable therefor under sub-section (4) of section 18, and any appeal or other proceeding is filed or taken in respect of such Government dues then -
- (a) where such Government dues are enhanced in such appeal or proceedings, the Commissioner shall serve upon the hotelier or person, as the case may be, another notice only in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues are covered by the notice or notice of demand served upon him before the disposal of such appeal or proceedings may, without the service of any fresh notice, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Government dues are reduced in such appeal or proceedings -
- (i) it shall not be necessary for the Commissioner to serve upon the hotelier or person a fresh notice;
- (ii) the Commissioner shall give intimation of the fact of such reduction to him;
- (iii) any recovery proceedings initiated on the basis of the notice or notices of demand served upon him before the disposal of such appeal, or proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;
- (c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the hotelier or person after the disposal of such appeal, or proceedings or that such Government dues have been enhanced or reduced in such appeal, or proceedings :

- Provided that, where any Government dues are reduced in such appeal or proceedings and the hotelier or person is entitled to any refund thereof, such refund shall be made in accordance with the provisions of section 23.
- (5) For the removal of doubts, it is hereby declared that no fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in appeal, revision or other proceedings under this Act.

Exemption.

22. (1) Subject to such conditions as it may impose, the Government may, if it is necessary to do so in public interest, by notification in the Official Gazette, exempt any specified class of luxuries provided in a hotel or class of hotels for a specific period to be notified from payment of the whole or any part of the tax payable under the provisions of this Act and such exemption shall take effect from the date of publication of the notification in the Official Gazette or such other date as may be mentioned therein.
- (2) Where a hotelier or person has availed of such exemption and any of the conditions subject to which such exemption was granted are not complied with, for any reason whatsoever, then such hotelier or person shall be liable to pay luxury tax on the luxury provided in a hotel, in accordance with the other provisions of this Act.
- (3) If the Commissioner has reasons to believe that any person is liable to pay tax under sub-section (2), the Commissioner shall, after giving him a reasonable opportunity of being heard, assess the amount of tax so due.

Refund of Excess Payments

23. (1) The Commissioner shall refund to a person the amount of tax (if any) paid by such person in excess of the amount due from him. The refund may be either by cheque or at the option of the person, by deduction of such excess from the amount of tax due in respect of any other period :
- Provided that the Commissioner shall first apply such excess towards the recovery of any amount due in respect of which a notice under sub-section (4) of section 18 has been issued, and shall then refund the balance (if any).
- (2) Where any refund is due to any hotelier according to the return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due and payable as per the returns furnished under section 12 for any period :
- Provided that the amount of tax due from, and payable by, the hotelier on the date of such adjustment shall first be deducted from such refund before making adjustment.

Interest on delayed refunds.

24. (1) Where an amount required to be refunded by the Commissioner to any person by virtue of an order issued under this Act is not so refunded to him within ninety days of the date of the order, the Government shall pay such person simple interest at a rate of twelve per cent per annum on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund.

Explanation - If the delay in granting the refund within the period of ninety days aforesaid is attributable to the hotelier, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

- (2) Where any question arises as to the period to be excluded for the purpose of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner, whose decision shall be final.

Power to withhold refund in certain cases.

25. (1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.
- (2) Where a refund is withheld under sub-section (1), the Government shall pay interest in accordance with the provisions of section 24 on the amount of refund ultimately determined to be due to the person as a result of the appeal or further proceeding, for the period from the date immediately following the expiry of ninety days from the date of the order referred to in sub-section (1) to the date of refund.

Remission of tax.

26. The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, remit the whole or any part of the tax payable, in respect of any period, by any hotelier :

Provided that, if the amount to be remitted exceeds two thousand rupees, the remission of the excess shall not be made without the previous sanction of the Government.

Prohibition against collection of tax in certain cases.

27. (1) No person shall collect any sum by way of tax in respect of his business to the extent that he is not liable to pay it under the Act.
- (2) No person, who is not a registered hotelier and liable to pay tax in respect of luxury provided in any hotel, shall collect any sum by way of tax from any other person and no registered hotelier shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act :

Provided that, this sub-section shall not apply where a person is required to collect such amount of the tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

Bill or cash memorandum to be issued to customer.

28. A registered hotelier shall issue to the customer or customers a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated, and preserve it for a period of not less than five years from the date of the transaction.

Accounts

29. (1) Every hotelier liable to pay tax under this Act, and every hotelier who is required so to do by the Commissioner by notice served on him in the prescribed manner, shall keep a true account of the luxury provided by him in the hotel. Form 2 & 3 as in Rule 3 read with Section 17
- (2) If the Commissioner considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine whether or not a hotelier is liable to tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the statement furnished, the Commissioner may require such hotelier by notice in writing to keep such accounts in such form or manner as in his opinion is necessary for the purpose of proper assessment and as he may, subject to anything that may be prescribed in that behalf, in writing direct.
- (3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any hotelier, or by notification in the Official Gazette, direct any class of hoteliers to maintain accounts and records showing such particulars regarding their business in such form, and in such manner, as may be specified by him.
- (4) Every registered hotelier shall ordinarily keep all his accounts, registers and documents relating to his business at the place or places of business specified in his certificate of registration or, with the previous approval of the Commissioner, at such other place as may be approved by the Commissioner.

Production and inspection of accounts and documents and search of premises

30. (1) The Commissioner may, subject to such conditions as may be prescribed, require any hotelier to produce before him any accounts or documents, or to furnish any information, relating to his business, or any other information as may be necessary for the purpose of this Act.
- (2) All accounts, registers and documents relating to the business of any hotelier and cash kept in any place of business of any hotelier, shall at all reasonable time be open to inspection by the Commissioner, and the Commissioner or any person authorised by him may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of cash found as appear to him necessary for the purpose of this Act.
- (3) If the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the hotelier as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for a prosecution. seizure of records
- (4) For the purposes of sub-section (2) or sub-section (3), the Commissioner may enter and search any place of business of any hotelier, or any other place where the Commissioner has reason to believe that the hotelier keeps or is for the time being keeping any account, registers or documents of his business.
- (5) Where any books of accounts, other documents or money are found in the possession or control of any person in the course of search, it shall be presumed, unless the contrary is proved, that such books of account, other documents or money belong to such person.

Hotelier to declare the name of owner

31. Every hotelier, who is liable to pay tax, and who is a Hindu undivided family, or an association or club or society or firm or company, or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed send to the business authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who is the owner or who are the owners of the hotel. Such declaration may be revised from time to time.

Power to collect statistics.

32. (1) If the Government considers that for the purposes of the better administration of this Act, it is necessary so to do, it may, by notification in the Official Gazette, direct that statistics be collected relating to any matter dealt with by or under this Act.
- (2) Upon such direction being made, the Government or any person or persons authorised by it in this behalf may, by notification in the Official Gazette, and by notice in any newspaper or in such other manner as in its or his opinion is best calculated to bring the notice to the attention of hoteliers, call upon all hoteliers or any class of hoteliers to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

Determination of certain disputes

33. (1) If any question arises, otherwise than in proceeding before a Court, or before the Commissioner has commenced assessment or reassessment of a hotelier under section 13 or 15, about the interpretation or the scope of any provisions of this Act, the Commissioner shall make a question order determining such question.

Explanation: For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment or reassessment of a hotelier, when the hotelier is served with a notice under section 13 or 15, as the case may be.

- (2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, as respects the period prior to the determination.
- (3) If any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this section, but such question may be raised in appeal against or by way of revision of such order.

NOTES**Scope of the Power**

The Commissioner acts in a quasi judicial manner under these provisions¹. He decides certain points mentioned in sub-section (1) in a regular manner and after giving the party concerned a hearing. He is not merely giving the opinion. He has to record evidence and on the basis of such evidence he should determine the question.²

Powers of Commissioner

34. (1) In discharging his functions by or under this Act, the Commissioner shall have all the powers of a Civil Court for the purpose of:
- proof of facts by affidavit;
 - summoning and enforcing the attendance of any person, and examining him on oath or affirmation;

1. Nimar Cotton Press vs. STO (1954) 5 STC 428 (Nagpur).
2. Arun Electrics vs. CST (1966) 17 STC 576 (SC).

- (c) compelling the production of documents; and
(d) issuing commissions for the examination of witnesses.

(2) In the case of any affidavit to be made for the purposes of the Act, any officer appointed by the Commissioner may administer the oath to the deponent.

(3) Without prejudice to the provisions of any other law for the time being in force, where a person, to whom a summon is issued by the Commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and time, intentionally omits to attend or produce the documents at the place and time, the Commissioner may impose on him such fine not exceeding one thousand rupees as he thinks fit; and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax:

Provided that before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

(4) If any documents are produced by a person on whom a summon was issued by the Commissioner, and the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him and the documents produced are necessary for establishing the case against such hotelier, the Commissioner may, for reasons to be recorded in writing, impound the documents and shall grant a receipt for the same and shall retain the same for so long as may be necessary in connection with the proceedings under this Act, or for a prosecution.

Bar to certain proceedings

35. Save as is provided elsewhere in this Act, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any officer or person subordinate to him shall be called in question in any court, and save as is provided by section 36 no appeal shall lie against any such assessment or order.

Appeals

36. (1) An appeal from every original order, not being an order mentioned in section 37, passed under this Act or the rules made thereunder shall lie:

- if the order is made by a Luxury Tax Officer, or any other officer subordinate to him, to the Assistant Commissioner;
- if the order is made by an Assistant Commissioner, to the Deputy Commissioner;
- if the order is made by a Deputy Commissioner, to the Additional Commissioner or Commissioner;
- if the order is made by Additional Commissioner or Commissioner to an authority to be notified by Government.

(2) In the case of an order passed in appeal by an Assistant Commissioner or by a Deputy Commissioner, a second appeal shall lie to the Commissioner.

(3) Every order passed in appeal under this section, subject to the provisions of sections 38 and 41, be final.

(4) Subject to the provisions of section 40, no appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order appealed against.

(5) No appeal against an order of assessment with or without interest or penalty or against an order levying an interest or penalty or both or against an order deducting

the forfeiture of any tax collected by a hotelier shall ordinarily be entertained by an appellate authority, unless such appeal is accompanied by a satisfactory proof of the payment of tax with or without interest or penalty or both or, as the case may be, of the payment of the interest or penalty or both and the amount forfeited in respect of which the appeal has been preferred :

Provided that the appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order :

- (a) without payment of the tax with interest or penalty, (if any) or as the case may be, of the interest or penalty, or both and the sum forfeited, on the appellant furnishing in the prescribed manner security for such amount as it may direct, or
- (b) on proof of payment of such smaller sum, with or without security for such amount of tax, interest or penalty or sum forfeited which remains unpaid, as it may direct :

Provided further that no appeal shall be entertained by the appellate authority unless it is satisfied that such amount of tax as the appellant may admit to be due from him has been paid.

- (6) Subject to such rules of procedure as may be prescribed, every appellate authority (both in the first appeal and the second appeal) shall have the following power :
 - (a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment; or it may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with direction given by it and after making such further inquiry as may be necessary; and the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;
 - (b) in an appeal against an order levying interest or penalty, the appellate authority may confirm or cancel such order or vary it so as either to enhance or to reduce the interest or penalty;
 - (c) in any other case, the appellate authority may pass such orders in the appeal as it deems just and proper :

Provided that the appellate authority shall not enhance an assessment of interest or penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

NOTES

Right of Appeal

The right of appeal is created by statute¹. If it is not provided assessee cannot complain². The right to file an appeal is neither inherent nor constitutional. It has to be provided by legislature. While providing the right the legislature may even impose restrictions³. The appellate forum which is superior to the order passing authority, has powers to affirm, reverse, modify, revise or review the order of inferior authority⁴.

Entertainment of Appeal

Mere filing of the appeal does not mean that it has been entertained. It is entertained when taken up for hearing and not when filed⁵. The dictionary meaning of the word 'entertained' is "admitted to consideration", which would be correct⁶.

1. Anant Mills vs. State of Gujarat AIR 1975 SC 1234.
2. Kokati vs. CTO (1963) 14 STC 84 (Mys.)
3. Santoshi Tel Utpadak Kendra vs. Dy. Commissioner (1979) 43 STC 307 (Bom.)
4. Chiranjilal & Bros. vs. State of Delhi (1966) 18 STC 240 (Del.)
5. CST vs. Krishna Oil Mills 1981 ATJ 194; State of Tamil Nadu vs. E.P. Nawab Marakkadai (1996) 100 STC 1 (Mad.)
6. Laxmi Ratan Engg. Works vs. A.C. (Judl.) (1968) 21 STC 154 (SC).

As per sub-section (5), an appeal shall not be entertained, if no satisfactory proof of payment of tax, interest and/or penalty, is attached alongwith. The appellate authority may, however, entertain an appeal on furnishing of security or on payment of a part of tax with or without security for the balance amount. But no appeal can be entertained unless the appellant has paid the amount of tax admitted to be due from him.

The requirement of deposit of the amount of tax is a condition precedent for admitting the appeal and not for filing the appeal.¹ Where the appeal was filed within the prescribed period but the proof of payment of admitted tax was furnished after the expiry thereof, the appeal could not be dismissed in limine and should be heard and decided on merits in accordance with law.² The restrictions imposed for entertainment of appeal are within legislative competence.³

Non Appealable Orders.

37. No appeal shall lie against -

- (1) a notice issued under this Act calling upon a hotelier for assessment or asking a hotelier to show cause as to why he should not be prosecuted for an offence under this Act, or notices issued under any of the provisions of section 20 of this Act, or
- (2) an order pertaining to the seizure or retention of account books, registers and other documents; or
- (3) an order sanctioning a prosecution under this Act, or
- (4) an order transferring any proceeding under section 47.

Revision and Review

38. (1) Subject to any rules which may be made in this behalf, the Government or any other authority specified in this behalf by it by a general or special order and within such time as may be prescribed in such general or special order may, of its own motion, call for and examine the record of any order passed (including an order passed in appeal) under this Act or the rules made thereunder by any officer or person subordinate to it and pass such order thereon as it thinks just and proper :

Provided that, no notice shall be served on the assessee under this sub-section after the expiry of three years from the date of the communication of the order sought to be revised, and no order in revision shall be made by it hereunder after expiry of five years from such date.

- (2) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.
- (3) No proceeding for revision shall be commenced until after -
 - (i) the expiry of the period of limitation for an appeal or second appeal, as the case may be, or
 - (ii) the disposal of the appeal, where such appeal or the second appeal has been preferred.
- (4) An application for revision shall be dealt with in the same manner as if it were an appeal under this Act.
- (5) The Government may, at any time, either on its own motion or otherwise, review any order passed under this Act, when new material which could not be made available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought, to its notice.

1. Banarsidas Fatch Chand Nela vs. CST (1995) 97 STC 426 (MP).
2. Lalta Prasad Khirani Lal vs. Asstt. CST (1972) 29 STC 201 (SC); Orient Packers vs. Sales Tax Appellate Tribunal (1995-96) XXXV DSTC J-1 (SC).
3. Anant Mills vs. State of Gujarat AIR 1975 SC 1234.

- (6) Before any order is passed under sub-section (5) which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard.

Court fee on appeal and certain other applications.

39. An appeal preferred under section 36 and any other application when presented to any authority under this Act for a prescribed purpose shall bear a court fees stamp of such value as provided in the Court Fees Act, 1870.

Application of sections 4, 5 and 12 of the Limitation Act.

40. In computing the period laid down under section 36 the provisions of sections 4, 5 and 12 of the Limitation Act, 1963, (36 of 1963) shall, so far as may be apply.

Rectification of mistakes.

41. (1) The Commissioner may at any time within two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order.

Provided that, no such rectification shall be made if it has the effect of enhancing the tax unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

- (2) The provisions of sub-section (1) shall apply to the rectification of a mistake by an appellate authority under section 36 as they apply to the rectification of mistake by the Commissioner.
- (3) Where any such rectification has the effect of reducing the amount of the tax, the Commissioner shall, in the prescribed manner, refund any amount due to such person.
- (4) Where any such rectification has the effect of enhancing the amount of the tax, the Commissioner shall recover the amount due from such person in the manner provided for in section 18.

NOTES

Mistake Apparent from the Record

What is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case.¹ An error could not be termed to be apparent if it required an examination or argument to establish it and was not self evident.² A glaring mistake of law can also be rectified.³

In a Judgement, the Guwahati High Court has very succinctly pointed out that "mistake apparent from the record" means a mistake which is obvious, patent and self-evident from the records of the case. It does not cover a mistake that may be discovered by any complicated process of investigation, argument or proof.⁴ Similarly, a mistake on which conceivably there can be two options, cannot also be rectified by virtue of this section.⁵

The "record" contemplated by this section does not mean only the order which is sought to be rectified. It comprises all proceedings on which the order in question is based and the whole evidence and the law applicable to ascertain whether there is an error.⁷

1. H.V. Kamath vs. Syed Ahmad Ishaque (1955) SCR 1104.
2. Master Construction Co. Ltd. vs. State of Orissa (1966) 17 STC 360 (SC).
3. M. K. Venkatchalam vs. Bombay Dyeing (1958) 34 ITR 143 (SC).
4. Sri. Pankaj Kumar Das Gupta vs. State of Tripura (1990) 79 STC 409 (Guwahati)
5. ITO vs. Ashok Textiles Ltd. (1961) 41 ITR 732 (SC); T. S. Balram ITO vs. Volkart Brothers (1971) 82 ITR 50 (SC).
6. Sri. Pankaj Kumar Das Gupta vs. State of Tripura, Supra.
7. Maharaja Nath Pvt. Ltd. vs. ITO (1959) 36 ITR 350 (SC).

Offences and penalties.

42. (1) Whoever, knowingly furnishes a false return shall, on conviction be punished -
- (i) in case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds ten thousand rupees with rigorous imprisonment for a term which may extend to three years and with fine;
 - (ii) in any other case, with rigorous imprisonment for a term, which may extend to one year and with fine.
- (2) Whoever, knowingly keeps false account of the receipts in contravention of section 29, shall, on conviction, be punished with rigorous imprisonment for a term which may extend to one year and with fine.
- (3) Whoever -
- (i) willfully attempts, in any manner whatsoever, to evade any tax leviable under this Act, or
 - (ii) willfully attempts, in any manner whatsoever, to evade any payment of any tax under this Act, shall on conviction, be punished:
 - (a) in case where the amount involved exceeds fifty thousand rupees during the period of a year, with rigorous imprisonment for a term which may extend to three years and with fine;
 - (b) in any other case, with rigorous imprisonment for a term which may extend to one year and with fine.
- (4) Whoever aids or abets any person in commission of any act specified in sub-sections (1) to (3) shall, on conviction be punished with rigorous imprisonment which may extend to one year and with fine.
- (5) Whoever -
- (a) carries on business without being registered in willful contravention of section 8, or
 - (b) fails, without sufficient cause, to furnish any information required by section 10, or
 - (c) fails, without sufficient cause, to furnish any return as required by section 12 by the date and in the manner prescribed, or
 - (d) contravenes without reasonable cause, any of the provisions of section 27, or
 - (e) fails, without sufficient cause, to issue a bill or cash memorandum as required under section 28, or
 - (f) fails, without sufficient cause, when directed under section 29 to keep any accounts or record, in accordance with such direction, or
 - (g) fails, without sufficient cause, to comply with any requirements made of him under section 30, or
 - (h) voluntarily obstructs any officer making inspection or search or seizure under section 30, shall, on conviction be punished with imprisonment for a term which may extend to one year and with fine.⁶
- (6) Whoever commits any of the Acts specified in sub-sections (1) to (5) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with a daily fine of not less than rupees two hundred during the period of the continuance of the offence, in addition to the punishment provided under this section.
- (7) Notwithstanding anything contained in sub-sections (1) to (6), no person shall be proceeded against under these sub-sections for the Acts referred to therein, if the total amount of tax evaded or attempted to be evaded is less than two hundred rupees during the period of a year.

in case of duplicate false return is obtained

- (8) Whoever, when required to furnish any information or return under section 32 –
- willfully refuses or without lawful excuse neglects to furnish such information or return, or
 - willfully furnishes or causes to be furnished any information or return which he knows to be false,
- shall on conviction be punished with fine which may extend to five hundred rupees and in case of a continuing offence to a further fine which may extend to fifty rupees for each day after the first offence during which the offence continues.
- (9) Whoever, when engaged in connection with the collection of statistics under section 32, willfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under that section or for the purposes (XLV of 1860) of the prosecution of an offence under this Act or under the Indian Penal Code, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.
- (10) Save as provided in sub-section (2) of section 43 any servant of the Government discloses any of the particulars referred to in sub-section (1) of that section, he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both.
- (11) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed by the Commissioner under any provisions of this Act.

Disclosure of Information by any public servant

43. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceeding under this Act (other than a proceeding before a Criminal Court), or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall save as provided in sub-section (2), be treated as confidential.
- (2) Nothing contained in this section shall apply to the disclosure –
- of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, (XLV of 1860) or this Act, or any other law for the time being in force; or
 - of any such particulars to the Government or to any person acting in the execution of this Act, for the purposes of carrying out the object of this Act; or
 - of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice for the recovery of any demand; or
 - of any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or
 - of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or
 - of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Government to any person or persons appointed by Commissioner under the Public Servants (Inquiries) Act, 1850. (XXXVII of 1850) or to any officer otherwise appointed to hold such inquiry

- or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or
- of such facts to an officer of the Central Government or a State Government or Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
 - of any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his powers under the Indian Stamps Act, 1899 (II of 1899) to impound an insufficiently stamped document; or
 - of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with proceedings under this Act against a legal practitioner, tax practitioner or chartered accountant, to the authority empowered to take disciplinary action against members practising the profession of a legal practitioner, tax practitioner or chartered accountant, as the case may be; or
 - of any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorised under section 32 as may be necessary for enabling the Director or such person or persons to work out the incidence of tax on any particular class of receipts or on receipts generally.
- ✓ (3) No information of any individual return and no part of any individual return with respect to any matter given for the purposes of section 32 shall without the previous consent in writing of the owner for the time being or his authorised agent be published in such manner as to enable any particulars to be identified referring to a particular hotelier and no such information shall be used for the purpose of any proceeding under the provisions of this Act.
- (4) Except for the purposes of prosecution under this Act, or under the Indian Penal Code (XLV of 1860), no person who is not engaged in the collection of statistics under section 32 or in the administration of this Act shall be permitted to see or have access to any information or any individual return referred to in that section.
- (5) Notwithstanding anything contained in this Act, if the Government is of opinion that it is necessary or expedient in the public interest to publish or disclose the names of any hoteliers or other persons and any other particulars relating to any proceedings under this Act in respect of such hoteliers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.
- (6) No publication or disclosure under this section shall be made in relation to any tax on interest levied or penalty imposed or any conviction for any offence connected with any proceedings under this Act, until the time for presenting an appeal to the appropriate appellate authority has expired without an appeal having been presented or the appeal, if presented, has been disposed of.
- Explanation.* – In the case of a firm, company or other association of persons, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Government, the circumstances of the case justify it.

Bar from giving information in no 9 Hotelier

Offences by companies.

44. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as

well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section -

- (a) "company" means a body corporate, and includes a firm or other association of individuals; and
 (b) "director" in relation to a firm means a partner in the firm.

Investigation of offences.

45. (1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.
 (2) Every officer so authorised shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) upon an officer in charge of a police station for the investigation of a cognizable offence.
 (3) Notwithstanding anything contained in any other law all offences under this Act shall be non-cognizable and bailable.
 (4) No court shall take cognizance of any case under this Act without the sanction of the Government.

Compounding of offence.

46. (1) The Commissioner may, either before or after the institution of proceedings for any offence punishable under section 42 or under any rules made under this Act, accept from any person charged with such offence by way of composition of the offence based on an application from the hotelier with prior approval of Government a sum not exceeding two thousand rupees or where the offence charged is under sub-sections (1), (2), (3), (4) or clauses (a), (b), (c), (d), (g) or (h) of sub-section (5) of section 42, a sum not exceeding double the amount of tax which would have been payable on the receipt or turnover of receipts to which the said offence relates, whichever is greater.
 (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence.

Power to transfer proceedings.

47. The Commissioner may, after recording reason by order in writing transfer any proceedings or class of proceedings under any provision of this Act, from himself to any other officer and he may likewise transfer any such proceedings from any officer to any other officer or to himself.

Explanation - In this section, the word 'proceedings' in relation to any hotelier whose name is specified in any order issued thereunder, means all proceedings under

Cognizable offence/case means an offence/case in which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant

this Act in respect of any year which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such hotelier.

Appearance before any authority in proceedings.

48. (1) Any person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may attend, -
 (a) by a person authorised by him in writing in this behalf, being a relative or a person regularly employed by him; or
 (b) by a legal practitioner or chartered accountant or cost accountant, who is not disqualified by or under sub-section (2); or
 (c) by a luxury tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2).

If such relative, person employed, legal practitioner, chartered accountant, cost accountant or luxury tax practitioner is authorised by such person in the prescribed form, such authorisation may include the authority to act on behalf of such person in such proceedings.

- (2) The Commissioner may, by order in writing and for reasons to be recorded therein, disqualify for such period as is stated in the order from attending before any such authority any legal practitioner, chartered accountant, cost accountant or luxury tax practitioner -
 (i) who has been removed or dismissed from Government service; or
 (ii) who being a legal practitioner or chartered accountant or cost accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or
 (iii) who being a luxury tax practitioner is found guilty of such misconduct by the Commissioner.
 (3) No order of disqualification shall be made in respect of any particular person unless he has been given a reasonable opportunity of being heard.
 (4) Any person against whom any order of disqualification is made under this section may, within one month of the date of communication of such order, appeal to the Lieutenant Governor to have the order cancelled.
 (5) The order of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred, until the appeal is decided.
 (6) The Lieutenant Governor may at any time *suo motu* or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

Persons appointed under section 7 to be public servant

49. The Commissioner and all officers and persons appointed under section 7 shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code [XLV of 1860].

Indemnity.

50. No suit, prosecution or other legal proceeding shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Power to make rules.

31. (1) The Government may make rules by notification in the Official Gazette for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for –
- (i) sub-ordination of officers and persons appointed under section 7 amongst themselves;
 - (ii) the periods within which, the manner in which and the authority to which application for registration shall be made under section 8;
 - (iii) the procedure for, and other matters incidental to, the registration of hoteliers and the granting of certificates of registration and the form of such certificates under section 8 and the manner in which application for cancellation of registration shall be made and the date from which cancellation of registration shall take effect;
 - (iv) the authority to which, and the time within which, information shall be furnished under section 10;
 - (v) the period for which and the dates by which and the authority to which, the return shall be furnished under section 12 and the terms and conditions for purposes of the proviso to sub section (1) of the said section 12;
 - (vi) procedure to be followed for assessment under section 13;
 - (vii) the intervals at which, and the manner in which, the tax shall be paid under section 18 and the conditions subject to which interest may be remitted under section 16;
 - (viii) the manner in which a notice under sub-section (3) of section 13 may be served, and the details to be mentioned in the notice published under sub-section (6) of section 13;
 - (ix) the circumstances in which, and the conditions subject to which, tax may be remitted under section 26;
 - (x) the other particulars under section 28;
 - (xi) the accounts and forms thereof required by the Commissioner to be kept under section 29 and the conditions or restrictions subject to which the accounts and records shall be maintained under section 29;
 - (xii) the conditions subject to which the production of accounts or documents or the furnishing of information may be required under section 30;
 - (xiii) the period within which, the authority to which and the manner in which a declaration shall be sent under section 31;
 - (xiv) the form in which, the authority to which, and the intervals in which, information or returns shall be furnished under section 32; and the particulars to be specified in such information and returns;
 - (xv) the procedure for, and other matters (including fees) incidental to appeals and revision under sections 36 and 38;

- (xvi) the forms of authorization for the purpose of clauses (a), (b) and (c) of sub-section (1) and the conditions and the qualifications for the purposes of clause (c) of sub section (1) of section 48;
 - (xvii) the manner in which, and the time within which the applications shall be made, information furnished and notices served, under this Act;
 - (xviii) the fees payable (in court fees stamps) in respect of an application –
 - (a) for a certified copy of an order of assessment or of any order passed or document produced or filed in any proceedings under this Act;
 - (b) for determination of any question under section 33.
 - (xix) the fees payable and mode of payment for making and supplying a duplicate or certified copy of any order or document under this Act or the rules made thereunder, the extra fees payable if the copy is required urgently, and the deposit to be made to cover the cost of such fees;
 - (xx) any other matter which is required to be or may be prescribed.
- (3) Any rules made under this Act may provide that a contravention thereof shall be punishable with fine which may extend to twenty thousand rupees, and in the case of a continuing contravention, with an additional fine which may extend to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention.
- (4) Every rule made under this section shall be laid as soon as may be after it is made before the Legislative Assembly of National Capital Territory of Delhi, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or session immediately following, the Assembly agrees in making any modification in the rule or agrees that the rule should not be made and notify such decision in the Official Gazette, the rules shall from the date of publication of such notification 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 or omitted to be done under that rule.

Removal of Difficulties.

52. If any difficulty arises in giving effect to the provision of this Act, the Government may, by the order published in the Official Gazette, make such provision or give such direction as appears to it to be necessary for removing the difficulty:
- Provided that no such order be made by the Government after the expiry of a period of one year from the appointed day.

DELHI TAX ON LUXURIES RULES, 1996*

No. F. 10 (40)/96-Fin. (G) :- In exercise of the powers conferred by Section 51 of the Delhi Tax on Luxuries Act, 1996 (Delhi Act No. 10 of 1996) and all other powers enabling him in that behalf, the Lt. Governor of the National Capital Territory of Delhi hereby makes the following rules, namely :-

1. Short title and commencement

- (1) These rules may be called the Delhi Tax on Luxuries Rules, 1996.
- (2) They shall come into force with immediate effect.

2. Definition

In these rules, unless the context otherwise requires -

- (a) "Act" means the Delhi Tax on Luxuries Act, 1996;
- (b) "Accounting year" means the financial year;
- (c) "Agent" means a person authorised in writing under clause (a) of sub-section (1) of section 48 of the Act to appear on behalf of a hotelier or other person before any authority under the Act;
- (d) "Chief place of business" means in relation to a hotelier in any area within the jurisdiction of Luxury Tax Officer, the place of business mentioned as his chief place of business in the certificate of registration granted under section 8 of the Act;
- (e) "Form" means a form appended to these rules;
- (f) "Guest" means the person in whose name the accommodation in a hotel is booked;
- (g) "Government" or "the Government" when referred to as a hotelier shall mean any State Government, Government/Administration of a Union Territory or the Central Government, as the case may be;
- (h) "Month" means a calendar month;
- (i) "Quarter" in relation to the year as defined in clause (s) of section 2, means the period of three months ending on the 30th June, 30th September, 31st December or 31st March;
- (j) "Registering authority" means as respect a hotelier, the Luxury Tax Officer having jurisdiction over the local area in which chief place of business or places of business of the hotelier are situated;
- (k) "Section" means the section of the Act;
- (l) Word and expression used but not defined in these rules shall have the same meaning respectively assigned to them in the Act.

* No. F. 10(40)/96 Fin. (G) dated 15.11.96.

3. Maintenance of accounts

- (1) Every hotelier shall maintain -
 - (a) information of residential accommodation and tariff therefor in respect of his hotel, in Form 1;
 - (b) daily account of occupancy of residential accommodation in his hotel and collection of tax therefor, in Form 2; and
 - (c) monthly abstract of collection and remittance of tax in Form 3.
- (2) The hotelier shall maintain a separate bound register for each of the Forms and shall get each of the pages of such registers serially numbered, sealed and certified by the Commissioner or any officer duly authorised by him in this behalf.

4. Subordination of Officers

The subordination of officers and persons appointed under section 7 amongst themselves shall be as follows, that is to say:

- (a) A Deputy Commissioner of Luxury Tax shall be subordinate to the Commissioner of Luxury Tax;
- (b) An Assistant Commissioner of Luxury Tax shall be subordinate to a Deputy Commissioner of Luxury Tax, and to the Commissioner;
- (c) A Luxury Tax Officer shall be subordinate to an Assistant Commissioner, a Deputy Commissioner and the Commissioner of Luxury Tax.
- (d) An Assistant Luxury Tax Officer shall be subordinate to the Luxury Tax Officer, Assistant Commissioner, Deputy Commissioner, Commissioner of Luxury Tax.

5. Application for Registration and Furnishing Information

- (1) Every application for the registration under section 8 shall be made in Form 4 by a hotelier.
 - (a) Within a period of thirty days from the appointed day if he was liable to pay the tax under the provisions of the Delhi Tax on Luxuries Act, 1996 before the appointed day; and
 - (b) in any other case, within a period of thirty days from the date on which such hotelier first becomes liable to pay the tax.
- (2) A hotelier who has places of business within the jurisdiction of different registering authorities shall make an application for registration to such authority in whose jurisdiction his chief place of business is located.
- (3) Every application for registration shall be made, signed and verified in the case of business carried on by.
 - (a) an individual, by the proprietor or by a person having due authority to act on behalf of such proprietor;
 - (b) a firm, by any partner thereof;
 - (c) a Hindu undivided family, by the Karta or an adult member thereof;
 - (d) a body corporate (including a company, a co-operative society, or corporation or local authority), by a director, manager, secretary or the principal officer thereof, or any person duly authorised to act on his behalf;
 - (e) an association of individuals to which clauses (b), (c), or (d) does not apply, by the principal officer thereof, or person managing the business;
 - (f) the Government, by a person duly authorised to act on his behalf.

- (4) In the case of a firm, every partner thereof shall furnish the declaration as provided in Form 4. Such declaration if not furnished at the time of making an application for registration, shall be furnished not later than one month from the date of making such application for registration.
- (5) The person signing and verifying an application for registration shall specify the capacity in which he does so, and shall wherever possible give particulars of the authority vested in him for signing and verifying the application.
- (6) Every person signing and verifying an application for registration in the capacity specified in clause (a), (b), or (c) of sub-rule (3) shall also furnish with the application, a copy of his recent photograph in passport size.
- (7) The person so furnishing the photograph shall, when called upon to do so, attend before the registering authority and sign before him on the copy of the photograph furnished by him.
- (8) In the case of a business carried on by an individual, a firm, a Hindu undivided family or other unincorporated association of individuals, the name and permanent residential address of such individual, each of the partners of the firm, members of the family, or as the case may be, members of the managing committee of the association, and of persons having any interest in the business, shall be stated in the application for registration.

6. Grant of certificate of registration

- (1) Certificate of registration shall be issued in Form 5.
- (2) Where a hotelier applying for registration is a firm, Hindu undivided family, body corporate or association of individuals or Government, the certificate of registration shall be issued in the name of such firm, family, body corporate, association or Government, as the case may be.
- (3) Where a certificate of registration is issued to a hotelier on an application made therefor, then, -
- (a) (i) If it was made within the period specified in clause (a) of sub rule (1) of rule 5, it shall take effect from the appointed day;
- (ii) If it was made within the period specified in clause (b) of sub-rule (1) of rule 5, it shall take effect from the date on which the hotelier becomes liable for registration under the Act;
- (iii) if it was made within the time specified in sub-section (6) of section 6, it shall take effect from the date on which the hotelier becomes liable to pay tax under the said sub-section;
- (b) if such application was made after the expiry of the aforesaid periods, it shall take effect from the date on which the application was made.
- (4) Where the hotelier has two or more places of business within the National Capital Territory of Delhi, the registering authority in whose jurisdiction the chief place of business lies, shall issue to the hotelier one copy of the certificate of registration for each additional place of business specified in the application for registration.
- (5) The information under sub-sections (1) and (2) of section 10 shall be furnished in writing within thirty days from the date of occurrence of any of the events specified in the said sub sections (1) and (2) to the registering authority.

7. Exhibition of certificate of registration

Every registered hotelier shall display conspicuously at each place of business the certificate of registration or a copy thereof.

8. Cancellation of Certification of registration

- (1) An application for cancellation of registration under sub-section (5) of section 8 shall be made to the registering authority in Form 6.
- (2) If the registering authority is satisfied that the application is in order, it shall by order in writing, cancel the registration with effect from a date fixed in accordance with sub-rule (3), and shall by a notice placed on the notice board of its office, publish the name, address and registration number of the hotelier and the date from which the cancellation shall take effect. A copy of such order shall be served on the hotelier.
- (3) Where registration is to be cancelled on the ground referred to in sub-section (6) of section 8, the date on which the business has been discontinued or has been transferred or otherwise disposed of, shall be the date of effect of cancellation of registration:

Provided that the Commissioner or any other officer authorised by the Commissioner but not below the rank of the Luxury Tax Officer shall, after giving the hotelier a reasonable opportunity of being heard, pass an order in writing cancelling the certificate of registration with effect from such date as the Commissioner or such officer may fix to be a date on which the business has been discontinued or transferred or disposed of, as the case may be.

- (4) If the registration of a hotelier is cancelled under sub-section (5) or sub-section (6) of section 8, the hotelier shall surrender the certificate of registration and the copies thereof, if any, granted to him by the registering authority, within fifteen days from the date of receipt by him of the order cancelling the registration.

9. Declaration of name of owner under Section 31

A declaration under section 31 shall be made in Form 7 and shall be sent to the registering authority.

- (a) Where such declaration is to be made for the first time, it shall be made within the period specified in rule 5, or in sub-section (6) of section 6, as the case may be;
- (b) Where any such declaration is to be revised, the revised declaration shall be made to the registering authority within thirty days from the date on which the change of ownership of the hotel has taken place.

10. Additional copies of certificate of registration, etc.

- (1) When a registered hotelier opens a new place of business in addition to the place or places which were in existence at the time of his registration or at the time of issue to him of a certificate of registration, as the case may be, the registering authority shall issue free of charge an additional copy of the certificate of registration on the receipt of application from the registered hotelier.
- (2) A fee of rupees fifty shall be payable on a application for duplicate copy of a certificate of registration. Such fee shall be paid in court-fee stamps.

11. **Production of Certificate of Registration, etc.**
- (1) The registering authority may, by notice in writing, require a registered hotelier to produce before it, his certificate of registration for the purpose of carrying out any amendment therein under the Act.
 - (2) Every such hotelier shall, within seven days from the date of service on him of a notice as aforesaid, produce the certificate of registration, to the registering authority.

12. **Submission of returns**

- For returns Form 8 & Tax in Form 8A*
- (1) The returns required to be furnished under section 12 by a registered hotelier shall be in Form 8. Every registered hotelier, who is required to furnish such return shall, subject to provisions of this rule and rule 13, furnish it duly signed by him or by a person authorised by him in Form 26, to the Luxury Tax Officer in whose jurisdiction his place of business or chief place of business is located. Every return shall be accompanied by a treasury receipt in Form 8A.
 - (2) While furnishing any return in Form 8, the registered hotelier may show the amounts of turnover of receipts, or of tax, interest or penalty after rounding them off to the nearest rupee. For this purpose, where any such amount contains a part of a rupee consisting of paise, then if such part is less than fifty paise, it shall be ignored.
 - (3) A registered hotelier, shall furnish quarterly returns for each of the quarters of current year and each such return shall be furnished on or before the last day of the month immediately succeeding.
 - (4) Every hotelier and every person, who becomes liable to pay tax under sub-section (2) of section 22, and who is not otherwise required to furnish returns under any other provisions of these rules shall furnish before the expiry of the month following the quarter during which he becomes so liable, a return in Form 8 in respect of the said quarter to the Luxury Tax Officer and shall pay tax due in the manner specified in rules 15 and 16.
- For returns*

13. **Special Provisions for Returns in Certain Cases**

- (1) Where a hotelier has become liable to be registered under sub-section (2) of section 8 or sub-section (6) of section 6, the first return to be furnished by him shall be from the date of event which makes him liable for registration to the end of the quarter in which he is granted the certificate of registration:
Provided that if registration is granted in the next financial year, the first return shall be for the period ending with 31st March and the subsequent return shall be from the 1st April to the end of the quarter in which the registration was granted.
- (2) Where the business carried on by a registered hotelier is discontinued, then the last return shall be for the period beginning with the quarter and ending with the date of discontinuance of the business.
- (3) The returns to be furnished for different periods under provisions of this rule shall -
 - (i) Where the period of the return ends with the end of the month, be furnished on or before the last day of the month immediately succeeding the quarter.

- (ii) where the period for which the return is furnished does not end with end of any quarter, be furnished within thirty days from the end of the period of the return.

14. **Consolidated returns**

A registered hotelier shall make an application in Form 9 for permission under clause (b) of sub-section (1) of section 12 to submit a consolidated return.

15. **Time for Payment**

- (1) Every registered hotelier shall, on or before the date prescribed for submission of return, pay into the Government treasury the tax due and payable according to such return and penalty and interest if any, payable by him under section 16.
- (2) Any sum determined by way of compounding of any offence in accordance with the section 46 shall within the time stated in the order determining such compounding be paid into the Government treasury.

16. **Method of Payment**

- (1) Every payment of tax or penalty or interest and balance of tax payable according to return and penalty and interest payable under section 16 shall be accompanied by a challan in Form 8A.
- (2) Every payment of tax or penalty or interest not referred to in sub-rule (1) and every payment of amount forfeited, or fine imposed under section 17, shall be accompanied by challan in Form 10.
- (3) The form accompanying the payments aforesaid shall be duly filled in, signed and verified by the payer and the amount paid shall be stated both in words and in figures in the space provided for that purpose in the respective Form.
- (4) Payment shall be made into Government treasury, in the form of Demand Draft or Pay order. Portion of the concerned Form marked "For the Payer" shall be returned by the Government treasury to the hotelier duly receipted and the portion of the Form marked "to be sent to the Luxury Tax Department" shall be forwarded by the Government treasury to the Luxury Tax Officer.
- (5) Subject to the provisions of sections 20 and 21, no payment as aforesaid shall be made to any officer or authority appointed by or under the Act.

17. **Reduction of Receipt for Levy of Tax**

A registered hotelier may, in respect of any receipt on which tax is payable by him, either -

- (i) exclude the amount, if any, collected by him separately by way of tax from the receipt on which tax is leviable; or
- (ii) where the tax is not separately collected deduct from the receipt as per tariff charged, a sum, calculated in accordance with the formula in the Table given under.

TABLE

The formula shall be as follows:-

Receipt as per tariff charged multiplied by $R/100+R$,
'R' means rate of tax.

18. Notice for Payment of Tax not paid according to return

When a hotelier has furnished a return under sub-section (1) of section 12 or a revised return under sub-section (2) thereof, but has not first paid into a Government treasury the whole of the amount of tax or penalty or interest due or the extra amount due according to such a return or, as the case may be, the revised returns required under sub-section (2) or sub-section (3) of section 18, the concerned Luxury Tax Officer may, by notice in Form 11 served on him, require him, to pay the amount due from him according to the return or, as the case may be, the revised return but remaining unpaid, by a date specified in the notice.

19. Assessment of Tax

The notice required by sub-section (3) of section 13 shall be in Form 12.

20. Notice under sub-section (6) and (7) of Section 13

The Commissioner shall, before proceeding to assess the hotelier to tax under sub-sections (6) and (7) of section 13, call upon the hotelier by a notice in Form 12 to show cause as to why he should not be so assessed. The date for compliance with the notice may not be earlier than fifteen days from the date of service thereof.

21. Notice under Section 15 and date for Compliance therewith

A notice under section 15 shall be in Form 13 and the date fixed for compliance with the notice may not be earlier than fifteen days from the date of service thereof.

22. Notice under sub-section (2) of Section 17

The notice under sub-section (2) of section 17 shall be in Form 14 and the date fixed for compliance therewith may not be earlier than fifteen days from the date of service thereof.

23. Notice under sub-section (5) of Section 17

Where an order of forfeiture is made under sub-section (5) of section 17, the Commissioner shall by a notice placed on the notice board of his office publish the following details for the information of the persons concerned, namely:-

- (i) The name, address and the Registration Certificate number of the hotelier in whose case the order is passed;
- (ii) Number and date of the order;
- (iii) The amount forfeited;
- (iv) The period for which the order is passed, and
- (v) Reasons for forfeiture.

24. Form of Order of Assessment

- (1) The order of assessment under sections 13 and 15 shall be in Form 15.
- (2) An assessee or a person to whom section 14 applies and who is required to pay tax with or without penalty under section 17 in respect of any period may be incorporated in the order of assessment made under this rule relating to that period.

25. Supply of Copy of Order of Assessment

- (1) A certified copy of an order of assessment shall be furnished to the assessee free of charge alongwith the notice issued in accordance with sub-section (4) of Section 18.
- (2) An assessee or a person to whom section 14 applies and who requires an additional copy or copies of such order shall be supplied with the same on his making an application in this behalf bearing a court fee stamp of rupees five only and on payment of the copying charges prescribed under rule 45.

26. Assessment case Record

- (1) All papers relevant to the making of an assessment in respect of a hotelier shall be kept together and shall form an assessment case record.
- (2) Assessment case record shall be preserved for ten years next following the period to which the assessment relates or for three years next following the completion of last proceeding under the Act relating to the said period whichever is later.

27. Order Sanctioning Refund

When the Commissioner is satisfied that a refund is due, he shall record an order showing the amount of refund due and shall communicate the same to the hotelier.

28. Refund according to Revised Return

Where a hotelier has furnished a revised return under sub-section (2) of section 12 and the amount of tax paid with the original return already furnished exceeds the amount payable according to the revised return, the hotelier may apply for a provisional refund of the excess and the Commissioner may sanction such refund by an order in writing:

Provided that in making such order the Commissioner may withhold one-fourth part of the excess or a sum of rupees one thousand, whichever is greater :

Provided further that the refund so sanctioned shall be without prejudice to any order of assessment or re-assessment which may be passed subsequently under section 13 or 15.

29. Refund Payment Order

When an order for refund has been made under rule 27 or 28, the Commissioner shall, if the applicant desires payment issue to him a refund payment order in Form 16.

30. Refund Adjustment Order

If the applicant desires payment by adjustment against an amount payable by him, the Commissioner shall make out a Refund Adjustment Order in Form 17 authorising the applicant to adjust the sum to be refunded against any amount payable by him in respect of the period for which a return is to be furnished under rule 12 and during which the refund is sanctioned or any subsequent period, or payable under any notice under sub-section (4) of section 18.

31. Cancellation of Refund Adjustment Order

When the Refund Adjustment Order is furnished with the return submitted under rule 12, the Commissioner shall cancel his own copy as well as the refundee's copy of the Refund Adjustment Order.

32. Order Sanctioning Interest on Delayed Refunds

Where upon an application by any person for payment of interest on any delayed refund or otherwise the Commissioner is satisfied that such interest is due and payable to the applicant or any person under section 24, the Commissioner shall record an order specifying therein the amount of refund the payment of which was delayed, the period of delay for which interest is payable and the amount of interest payable by the Government therefor, and shall communicate the same to the applicant or person concerned.

33. Interest Payment Order

When an order for payment of interest on any delayed refund has been made under rule 32, the Commissioner shall issue to the applicant or person concerned an interest payment order in Form 18.

34. Refund under sub-section (6) of Section 18

An application for refund under sub-section (6) of section 18 shall be made in Form 19.

35. Particulars to be specified in Bill or Cash Memorandum

Every hotelier who is required by section 28 to issue a bill or cash memorandum shall specify, in the bill or cash memorandum issued by him, the full name and style of his business, the address of his place of business and the number of his certificate of registration and particulars of the receipts.

36. Preservation of Books of Accounts, Registers etc.

Every registered hotelier and every hotelier on whom a notice has been served under sub-section (1) of section 29, shall preserve all books of accounts, registers, and other documents including bills, cash memoranda, invoices, vouchers, and other documents relating to the receipts for a period of not less than five years from the expiry of the year to which they relate.

37. Notice for Production of Documents, etc.

When the Commissioner requires any hotelier to produce any accounts or documents or to furnish any information under section 30, he shall issue a notice in Form 20.

38. Retention of Books of Accounts, Registers and Documents Seized

If the Commissioner or any officer delegated with the powers of the Commissioner under section 30 seizes any books of accounts, registers or documents of any hotelier under section 30, he shall not retain them for more than six months without recording his reasons in writing for so doing.

39. Submission of Appeals

- (1) Every first or second appeal shall;
- be in writing,
 - specify the name and address of the appellant,
 - specify the date of the order against which it is made,

- contain a clear statement of facts,
- state precisely and in brief the relief prayed for, and
- be signed and verified by the appellant or by an agent duly authorised by him in writing in that behalf, in the following form, namely :-

"I agent appointed by the appellant named in the above memorandum of appeal do hereby declare that what is stated herein is true to the best of my knowledge and belief."

- The memorandum of appeal shall be accompanied by either the order in original against which it is made or duly authenticated copy thereof, unless the omission to produce such order or copy is explained at the time of the presentation of the appeal to the satisfaction of the appellate authority.
- An appeal against an order of assessment or a second appeal against an order passed in an appeal, shall as far as possible be in accordance with Form 21.
- The memorandum of appeal shall either be presented by the appellant or his agent to the appellate authority.

40. Summary Rejection

- If the memorandum of appeal omits to state any of the particulars required under rule 39 or is not accompanied with the order against which it is made or a duly authenticated copy thereof, the appeal may be summarily rejected:

Provided that no appeal shall be summarily rejected under this sub-rule unless the appellant is given a reasonable opportunity to amend the memorandum of appeal.

- The appeal may also be summarily rejected on ground other than those specified in sub-rule (1), which the appellate authority may consider sufficient and which shall be reduced to writing by the appellate authority;

Provided that before an order summarily rejecting an appeal under this sub-rule is passed, the appellant concerned shall be given a reasonable opportunity of being heard.

- If within thirty days from the date on which any appeal is summarily rejected under sub-rule (1) or sub-rule (2), the appellant makes an application to the appellate authority for setting aside the order of summary rejection and satisfies it that the notice under the provision of sub-rule (1) to amend the memorandum of appeal or of a hearing under the provision of sub-rule (2) was not duly served on him, or that he was prevented by sufficient cause from amending the memorandum of appeal or from appearing when the appeal was called on for hearing, the said authority shall make an order setting aside the summary rejection and restore the appeal.

41. Hearing

- If the appellate authority does not summarily reject the appeal, it shall fix a date and time for hearing. The date so fixed may not be earlier than fifteen days from the date on which intimation thereof is given to the appellant or to his agent;

Provided that a date earlier than aforesaid may be fixed for hearing if the appellant or his agent requests thereto in writing.

- (2) If on the date and at the time fixed for hearing or on any other date or at any other time to which the hearing may be adjourned, the appellant or his agent does not appear before the said authority either in person or through an agent, the said authority may dismiss the appeal or may decide it ex-parte as it may think fit.

Provided that if within thirty days from the date on which the appeal was dismissed or decided ex-parte under this sub-rule the appellant makes an application to the appellate authority for setting aside the order and satisfies it that the notification of the date of hearing was not duly served on him or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the said authority shall make an order setting aside the dismissal or ex-parte decision upon such terms as it thinks fit, and shall appoint a day for proceeding with the appeal.

43. Notice to Persons likely to be affected adversely

Where an appellate authority passes an order in appeal which is likely to affect any person other than the appellant adversely, it shall serve on such person a notice in Form 22 and shall give him a reasonable opportunity of being heard.

44. Supply of Copy of Order

A copy of the order passed in appeal shall be supplied free of cost to the appellant or the person adversely affected thereby, and another copy shall be sent to the office whose order forms the subject of the appeal proceedings.

45. Notice for Rectification of Mistake under Section 41

The notice required to be given under Section 41 shall be in Form 23.

46. Fees

(1) The following fees shall be paid:-

- | | |
|---|--|
| (a) On a memorandum of appeal against an order of assessment with or without penalty or interest or of penalty or of interest or of forfeiture. | |
| (i) If made against the order of Luxury Tax Officer or any other officer subordinate to him; | Rs. 50.00 |
| (ii) If made against the original order of an Assistant Commissioner or of a higher authority | Rs. 100.00 |
| (b) On a second appeal to the Commissioner | 5% of the amount in dispute calculated to the nearest rupee subject to a minimum of Rs. 500 and a maximum of Rs. 5000. |
| (c) On a memorandum of appeal against an order other than an order specified in clause (a) | Rs. 100.00 |

- | | |
|---|------------|
| (d) On an application for determination under section 33 | Rs. 100.00 |
| (e) For obtaining a certified copy of a document under rule 51. | |
| (i) for the first 200 words or less | Rs. 15.00 |
| (ii) For every additional 100 words or fraction thereof | Rs. 10.00 |
| (2) A uniform extra copying fee of Rs. 10 per copy shall be charged on an application for an additional copy. | |

Explanation : For the purpose of this rule, the expression "the amount in dispute" shall mean the sum representing the difference between the amount of tax or of penalty or interest if any or sum forfeited or demanded and the amount admitted by the hotelier to be payable.

- (3) All fee payable under this rule shall be paid in court fee stamps, save for copying fees which shall be payable in cash.

46. Luxury Tax Practitioners and their Qualifications

(1) A luxury tax practitioner shall be eligible for having his name entered in the list of Luxury Tax Practitioners maintained under section 48, if :-

- he has passed an accountancy examination, recognised by the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924) for the purpose of clause (v) of sub-section (2) of section 288 of the Income Tax Act, 1961 (43 of 1961); or
- he has acquired such educational qualifications as are prescribed by the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924), for the purpose of clause (vi) of sub-section (2) of section 288 of the Income Tax Act, 1961 (43 of 1961) under rule 51 of the Income Tax Rules, 1962, and
- he was formerly an employee of the Sales Tax Department/Luxury Tax Department of the Government and he is, in the opinion of the Commissioner, a fit and proper person to attend before any luxury tax authority as luxury tax practitioner:

Provided that during a period of two years from the appointed day a luxury tax practitioner who possesses the qualification specified in clause (a) or in clause (b) shall, subject to clause (c), be qualified to practice.

(2) A luxury tax practitioner shall also be eligible for having his name entered in the said list, if -

- he has retired from the Sales Tax Department/Luxury Tax Department of the Government and has held, during his service in that department, an office not lower in rank than that of the Sales Tax Officer/Luxury Tax Officer for not less than two years; and
- he is, in the opinion of the Commissioner, a fit and proper person to attend before any luxury tax authority as a luxury tax practitioner;

Provided that during a period of two years from the date of his retirement from Sales Tax Department, such luxury tax practitioner shall not be qualified to practise before any luxury tax authority.

- (3) The commissioner shall maintain a list in Form 24 of all luxury tax practitioners who possess the qualifications laid down in sub-rule (1) or sub-rule (2) or who are entitled to attend in a proceeding before an authority appointed under section 7 and shall from time to time, bring the list upto date and a luxury tax practitioner who is eligible as laid down in sub-rule (1) or sub-rule (2) to appear in a proceeding under the Act before an authority appointed under section 7 shall, on application made in writing to the Commissioner in Form 25, be entitled to have his name entered in the list aforesaid.

47. Form of Authority under Section 48

The authority to attend before any luxury tax authority in connection with any proceeding under the Act shall be in Form 26.

48. Authority of Agent to Continue

An authority given to an agent shall continue to be valid for the purpose of appearance in proceedings in an appeal or revision in respect of an order passed in the proceedings in respect of which such authority was given.

Provided that a separate authority shall be furnished for appearance in proceedings relating to each period for which a separate order of assessment is required to be made or has been made under section 13 or section 15.

49. Service of Orders and Notices

- (1) The orders and notices under the Act or under these rules shall be served by one of the following methods, namely :

- (a) delivery by hand of a copy of the order or notice to the addressee or to a person declared by him in Form 7 or to his agent duly authorised in this behalf by him or to a person regularly employed by him in connection with the business in respect of which he is registered as a hotelier or to any adult male member of his family residing with the hotelier;
- (b) by registered/speed post:

Provided that if upon an attempt having been made to serve any such notice by either of the abovesaid methods, the luxury tax authority concerned has reasonable grounds to believe that the addressee is evading the service of notice or that, for any other reason which in the opinion of such authority is sufficient, the notice cannot be served by any of the above mentioned methods, the said authority after recording the reasons therefor shall cause the notice to be served by affixing a copy thereof:-

- (i) if the addressee is a hotelier, on some conspicuous part of the hotelier's office or the building in which the hotelier's office is located or upon some conspicuous part of the place of the hotelier's business last intimated to the said authority by the hotelier or of the place where the hotelier is known to have last carried on business; or
- (ii) if the addressee is not a hotelier, on some conspicuous part of his residence or office or the building in which his residence or office is located;

and such service or publication shall be deemed to be as effectual as if notice has been served on the addressee personally:

Provided further that where the officer at whose instance this notice is to be served is, on enquiry, satisfied that the said office, building, place or residence is known not to exist or is not traceable such officer may, by order in writing, dispense with the requirement of service, of the notice by affixation and if felt necessary cause the notice to be published in a local newspaper.

- (2) When the officer serving an order or notice delivers or tenders copy of the order or notice to the hotelier or addressee personally or to any of the persons referred to in clause (a) of sub-rule (1), he shall require the signature to be endorsed on the original order or notice by the person to whom the copy is so delivered or tendered as an acknowledgement of service. When the notice is served by affixing a copy thereof in accordance with the provisions of paragraphs (i) and (ii) to the proviso to clause (b) of sub-rule (1), the officer serving it shall return the original to the luxury tax authority which issued the notice with a report endorsed thereon or annexed thereto, stating that he so affixed the copy, the circumstances under which he did so and the name and address of the persons, if any, by whom the addressees' office or residence or the building in which his office or residence is located or his place of business was identified and in whose presence the copy was affixed. The said officer shall also obtain the signature or thumb impression of the person identifying addressee's residence or office or building or place of business, to his report.
- (3) When service is made by post, the service shall be deemed to be effected by properly addressing or preparing the order or notice and posting it by registered/speed post, and unless the contrary is proved, the service shall be deemed to have been effected at the time at which the order or notice would be delivered in the ordinary course of post.

50. Copies of Documents and Orders

- (1) Any person who is a party to any proceedings under the Act or rules may apply to the appropriate authority having jurisdiction in respect of such proceedings or having the custody of the records pertaining thereto, for a certified copy of a document produced or filed in such proceedings or of an order passed by such authority.
- (2) An application made under sub-rule (1) shall be accompanied by a fee of one rupee in Court-fee stamp and a deposit of an amount to cover the cost of preparing certified copies according to the scale of copying fee specified in rule 45. The amount calculated according to the said scale of fee shall be retained by the authority as copying fee and the amount, if any, which the amount deposited exceeds the amount of copying fee, so retained shall be refunded to the applicant at the time of delivering the copy:

Provided that the applicant shall, if the amount deposited by him is not found to be sufficient to cover the amount of copying fee, pay the deficit before making delivery of the copy.

Period of stay or each part	Total amount of charges for accommodation for residence	Charges paid by guest in foreign currency or Indian	No. of guests who occupied the room or accommodation in hotel	a. No. and date of bill	Amount of Luxury tax collected	Remarks
				b. No. and date of cash memo		
8	10	11	12	13	14	15

Signature
Name
Designation

Date :

I, the abovenamed Shri residing at do hereby solemnly affirm and say that the contents of the above return are true according to the best of my information and belief.

Place :

Date :

Signature of Hotelier

FORM 3
[Sec rule 3(1) (c)]

Monthly Abstract of Collection and Remittance of Luxury Tax

Name of the Hotel

Month	Total No. of guests	Total charges recovered for accommodation for residence	Total Luxury tax Collected	Luxury tax paid to Government			
				Amount	Challan No. Date	Balance	Remarks
1.	2.	3.	4.	5(a)	5(b)	5(c)	6

Signature
Name
Designation

Date :

I, the above named Shri residing at do hereby solemnly affirm and say that the contents of the above return are true according to the best of my information and belief.

Place :

Date :

Signature of Hotelier

FORM 4
[Sec rule 5(1) and (4)]

Serial No.

Application for Registration under section 8 of the Delhi Tax on Luxuries Act, 1996

To

The Registering Authority

.....
.....
.....

* I, the (state here capacity of business known as

* I, the (state here capacity - such as Partner, Manager, Managing Trustee, Director, Secretary, Principal Officer) of (state here the name of the firm, company, local authority, corporation, society, club, association of individuals, (Hindu undivided family or trust) carrying on the business known as

* I, the officer-in-charge of the business known as carried on by the Government of the State of / the Central Government.

Whereof the *only/*chief place of business within the jurisdiction of the Luxury Tax Officer, is situated at the following address, hereby apply for registering me/the said firm, company, local authority, corporation, society, club, association of individuals, Hindu undivided family, trust or Government under section 8 of the Delhi Tax on Luxuries Act, 1996.

2. * The name and permanent residential address of the proprietor/*the names and permanent residential addresses of all the partners of the business or of all the members of the managing committee of the society, club or other association or of all persons having any interest in the business (including the members of a Hindu undivided family business), their age and father's name are as follows (not to be filled in, if the applicant is a body corporate incorporated under any law or a department of Government) :-

Surname	Name	Father's Name	Age	Permanent residential address
---------	------	---------------	-----	-------------------------------

(If more than 5 names, the above particulars should be entered in separate sheet which should be affixed to this form duly signed and dated by the applicant).

3. *I, *was/*was not liable to pay

*The said were/*were not tax under the Delhi Tax on Luxuries Act, 1996.

4. *I, *was/*was not

* Strike out whichever phrase/clause is not applicable.

*The said were/were not formerly registered under the Delhi Tax on Luxuries Act, 1996. The details of certificate of the said registration are as follows :-

Registration Certificate No.
Date of Issue.
Effect of the Registration

I am/*am not
The said @ * are/are not registered under the Delhi Sales Tax Act, 1975. The details of certificate of the said registration are as follows :

Registration Certificate No.
Date of Issue.
Effect of the Registration

Date of commencement of the business

The application for registration is made on account of -

*(a) having commenced the business since and the liability to pay tax in respect thereof under the Delhi Tax on Luxuries Act, 1996 having commenced with effect from

*(b) Shifting of place of business from to with effect from

*(c) Change in the constitution of the business from to with effect from

*(d) Part/entire transfer of business known as M/s with effect from

8. The accounts of the said business are kept as per *the financial year/*the accounting year starting on and ending on

9. The accounts of the said business are kept in the language.

10. * I have additional.

The said @ has place/place of business at the address enumerated below and have/has no other place of business in the National Capital Territory of Delhi.

Name and style of business at the additional place of business	Full address of the additional place of business	Registration Certificate (Luxury Tax) No. and its date of issue if applicable

11. A copy of my recent photograph is furnished with this application as required by sub-rule (6) of rule 5.

12. The above statements are true to the best of my knowledge and belief.

Place : Signature
Dated : Status and authority therefor

13. Declaration by partners of a firm :-

We, the withinsigned, hereby declare that we are carrying on the business in partnership known as at and other places in the National Capital Territory of Delhi and we state that the statements contained in this application for the registration of the said partnership firm and this declaration are true to the best of our knowledge and belief :-

S. No.	Full Name of each Partner including his name, father's name and surname	Permanent address	Extent of share in the partnership	Name and address of all business in which the partner has any share of interest	Signature

Place :
Dated :
* Strike out whichever is not applicable.

(For Office use only)

Date on which called
Place at which called
Officer before whom called

Signature of Receiving Officer

ACKNOWLEDGEMENT

Received an application in Form 4 from for registration under section 8 of the Delhi Tax on Luxuries Act, 1996.

S. No.
Date on which the applicant is called
Place at which the applicant is called
Officer before whom the applicant is called
Dated :

Signature of Receiving Officer

FORM 5
[See rule 6]

Certificate of Registration under section 8 of the Delhi Tax on Luxuries Act, 1996

No. District

*This is to certify that *Shri/*Messrs. the who/which is carrying on the business known as whereof the *only/*chief place of business in is situated at the following address has been registered as a hotelier under section 8 of the Delhi Tax on Luxuries Act, 1996, with effect from

This hotelier has additional place/places of business at the address/addresses specified below:-

.....
.....
.....

Seal of Registering Authority

Signature
Registering Authority

Place :
Dated :
(The registering authority will sign against the last entry at the time of issuing the Certificate and against any subsequent exclusion, addition or other amendment).

* Strike out whichever phrase/clause is not applicable.

FORM 6
[See rule 8(1)]

Application for Cancellation of Registration under Section 8(5) of the Delhi Tax on Luxuries Act, 1996

To
The Registering Authority,

I, who am/..... on behalf (here state the name of registered hotelier) who is carrying on the business known as having a certificate of registration bearing number under the Delhi Tax on Luxuries Act, 1996, whose only/Chief place of business in is situated at (full address) post office hereby apply for the cancellation of the said certificate of registration under rule 8 of the Delhi Tax on Luxuries Rules, 1996 on account of

(a) the said business having been discontinued with effect from

(b) the said business having been transferred in accordance with the section 6(4) with effect from

(c) the following change having been effected in the ownership of the said business, with effect from

(d) the said business having been disposed of wholly as under with effect from

(e) the additional place of business having been discontinued with effect from

(f) the place of business having been shifted to the following address, with effect from

(g) the following other reasons :-

My present address is as under :-

.....

.....

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Acknowledgement

Received an application in Form 6 signed by Shri dated for cancellation of certificate of registration.

No.

Date :

Serial No.

Receiving Officer

FORM 7
[See rules 9 and 49 (1) (a)]

Declaration/Revised Declaration under Section 31 of the Delhi Tax on Luxuries Act, 1996

I/We of carrying on the business known as at the National Capital Territory of Delhi at and liable to pay the tax under the Delhi Tax on Luxuries Act, 1996, do hereby declare *in supersession of my/our previous declaration dated that

*I/We/myself/ourselves am/are the owner/owners of the hotel in which the abovesaid business is being carried on by me/us.

*The hotel in which the abovesaid business is being carried on by us is owned by the following person/persons.

S. N.	Full name/names of the person/persons who owns/own the hotel	Constitution of the owner (i.e. individual firm, body Corporate etc.)	Full Address of the owner	Signature of the owner
-------	--	---	---------------------------	------------------------

1.

2.

3.

I/We do hereby declare that what is stated hereinabove is true to the best of my knowledge and belief.

Place : Signature

Dated : Status

* Strike out whichever phrase/clause is not applicable.

FORM 8

[See rules 12(1) and (4)]

Luxury Tax R. C. No.

Return of Tax Payable by a Hotelier under the Delhi Tax on Luxuries Act, 1996

(All figures should be rounded off to the nearest rupee)

Name and full address of the hotelier

Luxury Tax R. C. No.

Period from to PART I

Computation of Turnover of Receipt liable to Tax

- Total turnover of receipts of the hotelier during the period (This should be calculated on the basis of tariff rates, giving regard to section 3(4) of the Act)

- (A) Turnover of receipts, where the charges for luxury provided in the hotel are less than Rs. 500 per day per person, and hence tax is not payable thereon.....
- (B) Turnover of receipts, on which tax is not payable on account (other than (A) above) of.....
- (C) Net turnover of receipts liable to tax.....

PART II
Calculation of Tax Payable

3. Calculation of tax -

S. No.	Categories of receipts which are the constituents of turnover at Item No. 2	Tax Rate	Turnover of receipts	Deduction, under rule 18	Balance Turnover of receipts liable to tax	Tax payable
						@ specified in Col. (3)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Where the charges for luxury is Rs. 500 or more					
	Total		(Net turnover as per Item No. 2)			(Total tax payable)

PART III

Amount Payable/Refundable as per the Return

4. Total tax payable as per Part II
- Deduct :-
- A. Amount credited under Refund Adjustment Order No. dated Rs.
- B. Refund of Rs. due as per previous return for the period from to adjusted against tax payable in this return.
- C. Amount paid by -
Challan No. dated Rs.
Challan No. dated Rs.
- D. Total amount deducted on account of (A), (B) and (C) above. Rs.
5. Net amount payable
6. Net amount refundable, if any
7. Interest under Section 16(2)
8. Penalty under section
9. Amount payable/refundable as per this return

Amount paid with this Return (in figures)

In words

Amount paid in by Draft/P.O. No. dated of Bank.

The above statement is true to the best of my knowledge and belief.

Place :

Signature

Dated :

Status

* Strike out whichever phrase/clause is not applicable.

FORM 8A

(Sec rules 12 (1)(2) & 16(1))

CHALLAN A

(To be retained in the Treasury)

CHALLAN B

(To be retained in the Treasury)

Reserve Bank of India
State Bank of India

Reserve Bank of India
State Bank of India

at (Branch)

at (Branch)

for the period from to

for the period from to

Credited : CONSOLIDATED FUND OF INDIA (DELHI)

Credited : CONSOLIDATED FUND OF INDIA (DELHI)

HEAD

HEAD

Name & Address of Hotelier

Name & Address of Hotelier

Payment on Account of

Payment on Account of

Amount

Amount

(i) Tax according to return

(i) Tax according to return

(ii) Tax assessed

(ii) Tax assessed

(iii) Interest under section 16

(iii) Interest under section 16

(iv) Penalty under Section

(iv) Penalty under Section

(v) Composition

(v) Composition

(vi) Other dues

(vi) Other dues

Total

Total

In words (Rupees

In words (Rupees

Signature of
Assessing Authority

Signature of
Assessing Authority

Date :

Date :

FOR USE IN TREASURY

FOR USE IN TREASURY

Received payment of Rs. (Rupees

Received payment of Rs. (Rupees

Date of Entry

Date of Entry

Seal

Seal

CHALLAN A
(To be retained in the Treasury)

Reserve Bank of India
State Bank of India

at (Branch)
for the period from to
Credited : CONSOLIDATED FUND OF
INDIA (DELHI)

- HEAD**
- Name & Address of Hotelier
Payment on Account of
Amount
- (i) Tax according to return
 - (ii) Tax assessed
 - (iii) Interest under section 16
 - (iv) Penalty under Section
 - (v) Composition
 - (vi) Other dues

Total
In words (Rupees)
Signature of
Assessing of Authority
Date :

FOR USE IN TREASURY
Received payment of Rs. (Rupees
.....)
Date of Entry
Seal

CHALLAN B
(To be retained in the Treasury)

Reserve Bank of India
State Bank of India

at (Branch)
for the period from to
Credited : CONSOLIDATED FUND OF
INDIA (DELHI)

- HEAD**
- Name & Address of Hotelier
Payment on Account of
Amount
- (i) Tax according to return
 - (ii) Tax assessed
 - (iii) Interest under section 16
 - (iv) Penalty under Section
 - (v) Composition
 - (vi) Other dues

Total
In words (Rupees)
Signature of
Assessing of Authority
Date :

FOR USE IN TREASURY
Received payment of Rs. (Rupees
.....)
Date of Entry
Seal

FORM 9

(See rule 14)

Application for Grant of Permission to File Consolidated Returns

To
The Commissioner of Luxury Tax,
Govt. of NCT of Delhi.

I, who am/is a Registered hotelier I,
partner, director, manager, trustee, guardian, Officer-in-charge of which is a Registered
Hotelier carrying on the business known as whereof the head office/registered office
in the National Capital Territory of Delhi is situated at (full address) and holding
the Registration Certificate No. dated for the above place of business under
Delhi Tax on Luxuries Act, 1996 hereby apply for permission to furnish a consolidated return for
all/the following places of business to the Luxury Tax Officer with effect from

Details of places of business in respect of which permission to furnish a consolidated return is
applied for

Nature and style of business and its address	Registration Certificate No.	Date of Registration Certificate

I/the said have/has no other places of business. I/the said
have/has following additional places of business in respect of which separate returns as per Rule 12
will be furnished.

The Constitution of all the places of business stated above is the same.

The partners and the extent of the share of interest in the partnership of all the above places of
business are the same.

The above statements are true to the best of my knowledge and belief.

I undertake not to commence filing consolidated returns until I have received permission
thereof.

Place : Signature
Dated : Status

Acknowledgement

Received an application in Form 9 from signed by
for grant of permission to file consolidated return.

Date : Receiving Officer
Serial No.

ORIGINAL (For the Payee) FORM 10 [See rule 16(2)] (In respect of payment made otherwise than with the return)	DUPLICATE (To be sent to the Luxury Tax Department) FORM 10 [See rule 16(2)] (In respect of payment made otherwise than with the return)	TRIPPLICATE (For Treasury) FORM 10 [See rule 16(2)] (In respect of payment made otherwise than with the return)
THE DELHI TAX ON LUXU- RIES ACT, 1996. (See Rule 16 of the Delhi Tax on Luxuries Rules, 1996).	THE DELHI TAX ON LUXU- RIES ACT, 1996. (See Rule 16 of the Delhi Tax on Luxuries Rules, 1996).	THE DELHI TAX ON LUXU- RIES ACT, 1996. (See Rule 16 of the Delhi Tax on Luxuries Rules, 1996).
Other Taxes and duties on Commodities and Services Luxury tax(ii) Tax on ac- commodation in Hotels.	Other Taxes and duties on Commodities and Services Luxury tax(ii) Tax on ac- commodation in Hotels.	Other Taxes and duties on Commodities and Services Luxury tax(ii) Tax on ac- commodation in Hotels.
Challan of tax/interest/pen- alty/forfeited amount/composi- tion money/fine paid for the period from to	Challan of tax/interest/pen- alty/forfeited amount/composi- tion money/fine paid for the period from to	Challan of tax/interest/pen- alty/forfeited amount/composi- tion money/fine paid for the period from to
By whom Payment Amount in tendered on a/c figures (in of (tick Rupees) mark which ever applicable)	By whom Payment Amount in tendered on a/c figures (in of (tick Rupees) mark which ever applicable)	By whom Payment Amount in tendered on a/c figures (in of (tick Rupees) mark which ever applicable)
Name and full (a) Tax address of the (b) Intt. person on whose u/s 16(2) behalf money is paid (c) Penalty u/s 16(1)	Name and full (a) Tax address of the (b) Intt. person on whose u/s 16(2) behalf money is paid (c) Penalty u/s 16(1)	Name and full (a) Tax address of the (b) Intt. person on whose u/s 16(2) behalf money is paid (c) Penalty u/s 16(1)

Luxury tax R.C. (d) Penalty..... u/s 17 (e) Amount forfeited (f) Compo- sition money (g) Fine <hr/> Total Rs. _____ Rupees (in words) Place Signature of ... the Hotelier ... Dated or depositor _____ (For Treasury use only) Received Payment of Rs. (Rupees) (in figures) (in words) Date of entry Challan No. ... Treasurer Accountant _____ Treasury Officer Agent or Manager	Luxury tax R.C. (d) Penalty..... No. u/s 17 (e) Amount forfeited (f) Compo- sition money (g) Fine <hr/> Total Rs. _____ Rupees (in words) Place Signature of ... the Hotelier ... Dated or depositor _____ (For Treasury use only) Received Payment of Rs. (Rupees) (in figures) (in words) Date of entry Challan No. ... Treasurer Accountant _____ Treasury Officer Agent or Manager	Luxury tax R.C. (d) Penalty..... No. u/s 17 (e) Amount forfeited (f) Compo- sition money (g) Fine <hr/> Total Rs. _____ Rupees (in words) Place Signature of ... the Hotelier ... Dated or depositor _____ (For Treasury use only) Received Payment of Rs. (Rupees) (in figures) (in words) Date of entry Challan No. ... Treasurer Accountant _____ Treasury Officer Agent or Manager
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FORM 11
(See rule 18)

Notice for Payment of Tax due according to a Return under Section 12 of the Delhi Tax on Luxuries Act, 1996

To

 Registration Certificate No.

Gentlemen/Sir/Madam,

Whereas the return under section 12 of the Delhi Tax on Luxuries Act, 1996 for period from to has been furnished by you.

* but the amount of tax, namely Rs. (and the amount of interest of Rs. and penalty of Rs.) which is due according to the return has not been paid as required under rule 12 of the Delhi Tax on Luxuries Rules, 1996:

* but the copy of the challan accompanying the return shows payment of only Rs. as against the amount of tax of Rs. (and the amount of interest of Rs. and penalty of Rs.) which is due according to the return and required to be paid under rule 12 of the Delhi Tax on Luxuries Rules, 1996.

You are hereby directed to pay the sum of Rs. (in words Rupees) into the Government Treasury at on or before (date) and to produce the receipted copy of the Challan in proof of payment before me on a date not later than the day of failing which the said sum of Rs. will be recoverable from you as arrears of land revenue.

2. You are hereby informed that if you fail to pay the amount of tax aforesaid without any reasonable cause, you would be liable under sub-section (1) and (2) of section 16 of Delhi Tax on Luxuries Act, 1996 for payment of an additional sum by way of penalty, and also interest at the rate of two per cent of the amount of tax for each complete month during the time you continue to make the default in the payment of the tax.

Seal

Place :

Date :

Yours faithfully,

Signature

Luxury Tax Officer/Commissioner of
Luxury Tax

FORM 12
(See rules 19 and 20)

Notice under section 13 of the Delhi Tax on Luxuries Act, 1996

To,

 of
 Registration No.

Gentlemen/Sir/Madam,

* Whereas I desire to satisfy myself that the return furnished by you in respect of the period from 19 to 19 are correct and complete.

* Whereas being a registered hotelier, you have not furnished by the prescribed date returns in respect of the period from to

* Whereas being liable to pay tax under the Delhi Tax on Luxuries Act, 1996 in respect of the period from to you have failed to apply for registration under Section 8 of the said Act.

You are hereby directed to attend at at on ; and

* (1) to produce or cause to be produced any evidence on which you rely in support of the said returns and at the same time produce or cause to be produced the following documents and accounts,

* (2) to show cause as to why you should not be assessed under sub-section (6) of section 13 of the said Act;

* (3) to show cause as to why you should not be assessed under sub-section (7) of section 13 of the said Act, and why a penalty under clause (a) of sub-section (1) of section 16 of the said Act should not be imposed upon you.

You are also required to show cause as to why interest under sub-section (2) of section 16 of the said Act in respect of the period from to should not be imposed on you.

Seal

Place :

Date :

Yours faithfully,

Signature

Designation

FORM 13
(See rule 21)

Notice under Section 15 of the Delhi Tax on Luxuries Rules, 1996

To
of

Registration No.

Gentlemen/Sir/Madam,

Whereas I have reason to believe that *your turnover of receipts in respect of the following, namely :-

..... has *escaped assessment/been under-assessed/ been assessed at a lower rate and *deductions of the following claims, namely :-

..... have been wrongly made from your turnover of receipts in respect of the period from

You are hereby directed to attend at (place) at (time)

..... (date) and to show cause as to why the amount of tax payable by you in respect of the said turnover of receipts for the said period should not be assessed/re-assessed and to produce or cause to be produced the following documents and accounts :-

..... and to furnish or cause to be furnished the following information :-

You may also produce or cause to be produced any other evidence for determining the correct amount of tax payable by you for the said period.

Yours faithfully,
Signature
Designation

Seal
Place
Date

* Strike out whichever phrase/clause is not applicable.

FORM 14
(See rule 22)

Notice for Forfeiture and for Imposing Penalty under Section 17 of the Delhi Tax on Luxuries Act, 1996

To

Luxury Tax Registration No.

Gentlemen/Sir/Madam,

Whereas, I have reason to believe that during the period from to * (a) * (i) you have collected by way of tax a sum of Rs. which you are not liable to pay,

or
* (ii) not being a Registered hotelier, you have collected a sum of Rs. by way of tax in contravention of section 27 of the said Act.

or
* (iii) being a Registered hotelier, you have collected by way of tax a sum of Rs. in excess of the amount of tax payable by you, in contravention of section 27 of the said Act.

or
* (b) * (i) being a hotelier liable to pay tax under the said Act, you have failed to keep a true account of your turnover of receipt,

or
* (ii) being a hotelier who was required to do so by notice served on you by the Commissioner, you have failed to keep a true account of your turnover of receipts,

or
* (iii) you have failed, even though directed so to do under section 29, to keep any accounts or records in accordance with such directions.

you are hereby directed to attend on (date) at (time) at (place) and to show cause why

* (1) a sum of Rs. or such other sum as may be finally determined as collected by you by way of tax in contravention of section 27 should not be forfeited, and/or

* (2) a penalty under sub-section (1) of section 17 of the said Act should not be imposed on you.

Yours faithfully,
Signature
Designation

Seal
Place
Dated

* Strike out whichever phrase/clause is not applicable

FORM 15
(See rule 24 (1))

Order of Assessment of Tax under section 13/15 of the Delhi Tax on Luxuries Act, 1996

Name and address of the Hotelier

Assessed u/s Notice in Form Served on

Luxury Tax R.C. No.

Period of Assessment from to
 Books of Accounts produced
 Accounting Method

	As in the Hotelier's return (in Rs.)	As determined u/s 13/15 (in Rs.)
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Part I - Turnover of receipts liable to tax -

1. Total turnover of receipts of the hotelier during the period

Deduct :-

- (A) Turnover of receipts, where the charges for luxury provided in the hotel are less than Rs. 300 per day per person and hence tax is not payable thereon.
- (B) Turnover of receipts on which tax is not payable on account (other than (A) above) of
- 2. Net turnover of receipts liable to tax.

Part II

1. Calculation of tax -

K. H. Categories of receipts which are the constituents of turnover at item No. 2	As in the Hotelier's			As determined u/s 13/15		
	Turnover of Receipt	Deduc- tion under rule 17	Balance turnover of rept. able	Tax- pay- able	Turnover of Receipt	Deduc- tion under rule 17

Where the charge for Luxury is -

Part III	Amount payable/refundable	As in the Hotelier's return (in Rs.)	As determined u/s 13/15 (in Rs.)
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4. Total tax payable as per Part-II

Deduct -

- (A) Amount credited under Refund Adjustment order No. dated Rs.
 - (B) Advance payment of tax, if any
 - (C) Amount paid with returns
 Details of payments made at (B) and (C) above :
 Challan No. Date
 amount Treasury
 - (D) Total amount deducted on account of (A) (B) and (C) above
5. Balance of tax due/refund if any.
 Add-
- (A) Interest u/s 16(2)
 - (B) Penalty u/s
 - (C) Amount forfeited being the sum collected in contravention of section 27.
 - (D) Total amount added on account of (A) (B) and (C)

6. Final amount due/refund, if any

Part-IV Assessment Order -

Seal

Place :

Dated :

Signature
 Designation

FORM 16
 (See rule 29)

Government of National Capital Territory of Delhi 1996

Refund Payment Order

Under the Delhi Tax on Luxuries Act, 1996.

Pay Rupees (Rs.) being refund for the period from to Valid for three months from the date of issue

Luxury Tax Officer/
 Commissioner of
 Luxury Tax.

FORM 16

(For Office use only)

Government of National Capital Territory of Delhi

R. P. O. No.

[Counterfoil of Refund Payment Order under the Delhi Tax on Luxuries Act, 1996. Rule 29 of Rules thereunder].

Refund Sanction Order No. Date

Refund payable to Payable at Bank
 Rupees (Rs.) Luxury Tax R.C. No.

Certified that
 (i) For the period from to a refund of Rs. is due to

(ii) The amount of tax concerning the refund has been duly credited to the Government Treasury,

(iii) No refund regarding the sum now in question has previously been granted and this order of refund has been entered in the file of assessment under my signature.

Date
 Luxury Tax Officer/
 Commissioner of Luxury Tax

FORM 17

(See rule 30)

Refund Adjustment Order

Book No.
 Voucher No.
 To

- 1. Certified with reference to the assessment records of (name) bearing Registration Certificate No. for the period from to that a refund of Rs. is due to (name)
- 2. Certified that the tax concerning for which this refund is allowed has been credited to the Treasury.
- 3. Certified that no refund order regarding the sum in question has previously been granted and this order to refund has been entered in the original file of assessment

4. This refund will be adjusted towards amount of tax due from the said refundee for the period from to or any subsequent period. The refundee shall attach this order to the return to be furnished by him for the period against which the adjustment is desired.

Seal
Place : Signature
Dated : Designation

FORM 18
(Sec rule 33)
Interest Payment Order

Book No. Book No.

Voucher No. Voucher No.

Interest on delayed refund Counterfaiil order for payment for interest delayed refund under the Delhi Tax on Luxuries Act, 1996. Interest on delayed refund Order of payment of interest on delayed refund under the Delhi Tax on Luxuries Act, 1996 (Payable at the Government Treasury within three months of the date of issue).

Interest on delayed refund payable to Registration Certificate No. Date of order directing the payment of interest on delayed refund. To The Treasury Officer (1) Certified that with reference to the Assessment/Appeal record of bearing Registration Certificate No. for the period from 1996 to is/was required to be refunded to

Amount of delayed refund on which interest is claimed or payable Rs. Amount of interest to be paid on delayed refund Rs. (2) Certified that the payment of the said refund was delayed by the Luxury Tax Department for a period of and that the dealer has claimed interest u/s 24 & is entitled for interest for the delay in granting the refund.

Signature Designation

Date Signature of the rept. of the Voucher
Place : Signature Designation
Dated : Signature Status

FORM 19
(Sec rule 34)
Application for refund under sub-section (6) of section 18, of the Delhi Tax on Luxuries Act, 1996.

To The Luxury Tax Officer,
.....

Sir,
I/We Messrs of (Address) do hereby apply for refund of Rs. (in figures) (in words) being the amount collected from me/us in contravention of section 27 of Delhi Tax on Luxuries Act, 1996, by Messrs (address) holders of R.C. No. dated under the Delhi Tax on Luxuries Act, 1996, whose place of business is situated in your jurisdiction. The details of the collections made in contravention of section 27 are as follows :-

Date of bill of the Hotelier	S. N. of the Bill/Invoice	Amount of the Bill	Tax actually leviable, if any	Amount collected in contravention of section 27

Total :

The said amount of Rs. has actually been deposited by the said Messrs in Government Treasury under Challan No. dated receipted copies of which have been submitted to you by the said Messrs as per provision of rule 16 of the Delhi Tax on Luxuries Rules, 1996.

I enclose herewith a certificate from the said Messrs. of in support of the above statements.

Signature
Place :
Dated : Status

Certificate

I/We having place of business at and holders of R. C. No. dated under the Delhi Tax on Luxuries Act, 1996, do hereby certify that I/We the said Messrs have actually collected amount of Rs. (in figures) (in words) from Messrs which amount has been forfeited by the under section 17 under his order dated as collection by way of tax in contravention of section 27 of the Delhi Tax on Luxuries Act, 1996. The details of such collection given in the above application of the said Shri/Smt./Messrs are correct to the best of my knowledge and belief. The collected amount of Rs. has actually been deposited in Government Treasury under challan No. dated or included in that challan or challans receipted copies of which have been duly filed in your office.

Signature
Date : Status
Place :

penalty of Rs. under section and of Rs.
 under section upon your petitioner, that the order of the
 forfeiting Rs. under section 17 or that the order of the imposing a fine
 of Rs. under section may be set aside.

The appellant named above does hereby declare that what is stated
 herein is true to the best of his knowledge and belief.

Place : Signature
 Date : (To be signed by the appellant or by an
 agent duly authorised in writing in this
 behalf by the appellant).

- Note : (1) If this is a second appeal against an order in appeal, the figures in column 2 of table
 below paragraph 1 should be the figures, if any, as arrived at by the first appellate
 authority.
 (2) The amount in dispute means the difference between the amount of tax or interest or
 penalty or amount forfeited or fine as demanded and the amount admitted by the
 taxpayer to be payable.
 (3) Strike out whichever is not required.

FORM 22
 (See rule 42)

Notice to a person when it is proposed to pass an order which effects
 him adversely under section 36 of the Delhi Tax on Luxuries Act, 1996

To
 of
 Registration No.
 Gentlemen/Sir/Madam,
 Whereas it is proposed to pass an order to the effect mentioned below, you are hereby
 informed that if you wish to prefer any objection against such order you should attend at the office
 of the undersigned at on the of 19
 Gist of the order proposed to be passed :-

Seal Signature
 Dated : Designation
 Place :

FORM 23
 (See rule 44)

Notice under the proviso to section 41 of the Delhi Tax on Luxuries Act, 1996

To
 of
 Registration Certificate No.

Gentlemen/Sir/Madam,
 Whereas it appears that in the Order No. dated passed
 by for the period from to in your case, there
 is the following mistake, namely -

And whereas it is proposed to rectify the mistake as stated below which will have the effect of
 enhancing the tax/reducing the amount of refund, you are hereby given.

Notice under the proviso to sub-section (1) of section 41 / sub-section (2) read with proviso to
 sub-section (1) of section 41 of the Delhi Tax on Luxuries Act, 1996, that if you wish to prefer any
 objection against the proposed rectification you should attend at the office of the undersigned at ...
 on the day of

Gist of the rectification proposed to be made :-

.....

Seal Yours faithfully,
 Place : Signature
 Dated : Designation

FORM 24
 [See rule 46 (3)]

List of Luxury Tax Practitioners qualified under section 48
 of the Delhi Tax on Luxuries Act, 1996.

Date of Enrolment	Roll No.	Name of the Luxury Tax Practitioner	Address of the Luxury Tax Practitioner	Qualification of the Luxury Tax Practitioner
(1)	(2)	(3)	(4)	(5)

Date of application for enrolment	Date of amendments, if any	Nature of amendments	Date of removal of name	Reason for removal
(6)	(7)	(8)	(9)	(10)

Date of direction of the Commissioner, if any, under sub-section (2) section 48	Date of order passed by Commissioner in appeal, if any	Result of Appeal	Date of re-entry of name	Remarks
(11)	(12)	(13)	(14)	(15)

FORM 25
 [See rule 46 (3)]
 Application for enrolment as a Luxury Tax Practitioner under section 48
 of the Delhi Tax on Luxuries Act, 1996

To
 The Commissioner of Luxury Tax,
 Govt. of National Capital Territory of Delhi.

Sir, I (a partner of the firm known as)
 of (address) hereby apply for enrolment of my name on the list of Luxury
 Tax Practitioners under rule 46 of the Delhi Tax on Luxuries Rules, 1996.

I declare that I am qualified to attend before any Luxury Tax Authority under section 48 of the
 Delhi Tax on Luxuries Act, 1996 and in accordance with rule 47 of the said rules, in that -

(a) I have passed the necessary accountancy examination, viz held at
 in the month of of the year which is an examination
 recognised by the Central Board of Revenue constituted under the Central Board of Revenue Act,
 1924 for the purposes of clause (v) of sub-section (2) of section 288 of the Income Tax Act, 1961,
 for which I attach herewith a true copy of for your record, alongwith original
 thereof for perusal and return.

(b) I have acquired the necessary educational qualification, viz in the examination
 held at in the month of of the year which is one
 of the qualifications prescribed by the Central Board of Revenue constituted under the Central
 Board of Revenue Act, 1924, for the purpose of clause (vi) of sub-section (2) of section 288 of the
 Income Tax Act, 1961 under rule 51 of the Income Tax Rules, 1962 for which I attach herewith a
 true copy of for your record, alongwith original thereof for perusal and return.

(c) I was/was never in Government employment (whether of any State Government or
 Central Government) previously, the details of which are given below :

S. N.	Name of the office Deptt./ and Govt. in which worked, with the address thereof	Period	Post held	Whether resigned, dismissed or service terminated	Reasons for resigna- tion, dismissal or ter- mination of services
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(d) I, being a retired officer from the Sales Tax/Luxury Tax Deptt. of the Government of
 National Capital Territory of Delhi, give the following further details :-

Date of retirement from the said Deptt.	The rank held at the time of retirement from the said Deptt.	Designation of posts of and above the rank of Sales Tax/Luxury Tax Officer in the said Deptt. and the periods for which held
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A true copy of the order accepting resignation/of termination/of dismissal is sent herewith for
 your record alongwith original thereof for perusal and return.

(e) I have not/have applied previously for enrolment as a Luxury Tax Practitioner. My
 previous application, made on the day of 19 .. has/has not been
 rejected.

The above statements are true to the best of my knowledge and belief.

Place :
 Date :

Signature

Acknowledgement

Received an application in Form 25 from for an enrolment
 under rule 46 of the Delhi Tax on Luxuries Rules, 1996.
 Dated : Receiving Officer

FORM 26
 [See rules 12 (1) and 47]

Authority under section 48 of the Delhi Tax on-Luxuries Act, 1996

I who am/is @ of who is a
 Registered hotelier holding a Registration Certificate No. dated hereby
 appoint Shri who is my relative a person regularly
 employed by me/the said

.....
 a legal practitioner

.....
 a Chartered Accountant

.....
 a Luxury Tax Practitioner

..... to attend on *my behalf/*behalf of the said. before
 (state the Luxury Tax Authority) in the proceedings (Describe
 the proceedings before the said Luxury Tax authority) and to produce accounts and documents and
 to receive on *my behalf/behalf of the said any notice or documents issued in
 connection with the said proceedings and to take all necessary steps in the said proceedings. I/The
 said Shri is also hereby authorised to act on my behalf/*behalf of the said
 in the said proceedings.

*I/*the said agree to ratify all acts done by
 me/the said Shri in pursuance of this authority.

Place :
 Date :

Signature
 Status @

Acceptance

I do hereby state that I am * a relative of/* a person regularly employed
 by

* a legal practitioner

* a Chartered Accountant

.....
 a Luxury Tax Practitioner duly qualified under section 48 of the Delhi Tax on Luxuries Act, 1996
 and that I accept the aforesaid appointment.

Place :
 Dated :

Signature

* Strike out whichever phrase/clause is not applicable

FORM 27
(See rule 51)

Intimation of acceptance of a sum by way of composition of an offence under section 46
of the Delhi Tax on Luxuries Act, 1996

Whereas (name) Shri on behalf of M/s.
Address
holding Registration Certificate No. dated is charged with an offence(s)
under clause(s) of section 42 of the Delhi Tax on Luxuries Act, 1996 for
and whereas the said Shri on behalf of Messrs
request(s) that the said offence(s) may be compounded under section 46(1) of the said Act:

Now, therefore, I, in exercise of the powers conferred/delegated on me by section 46(1) of the
said Act, accept from Shri/Messrs a sum of Rs. (rupees. only)
by way of composition of the said offence(s).

Provided -

(1) the said sum is paid into the Government Treasury/Sub-Treasury at not later
than and

(2) the said Shri/Messrs produces before the Luxury Tax Officer ..
..... the receipted challan in proof of such payment not later than
..... and reports of the fact to me by the

Seal

Place :

Dated :

Signature

Designation

Copy forwarded to the Officer-in-charge of the Government Treasury at

Copy forwarded to the Luxury Tax Officer for information and necessary action.