

The Excise Duty Act, 2058 (2002)

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Act No. 17 of the year 2058(2002)

An Act made to amend and codify the laws relating to excise duty

Preamble:

Whereas, it is expedient to make timely and amend and codify the laws made in respect of imposing and collecting the excise duty on the products manufactured in or imported into, or the services delivered in, the Kingdom of Nepal in order to mobilize revenue by making effective the process of collecting revenue required for economic development of the country;

Now, therefore, be it enacted by Parliament in the first year of reign of His Majesty the King Gyanendra Bir Bikram Shah Dev.

1. Short title and commencement: This Act may be cited as the "Excise Duty Act, 2058 (2002)."

(3) It shall commence at once.

2. Definitions: Unless the subject or the context otherwise requires, in this Act,-

- (a) "product or service subject to excise duty" means any product or service which is subject to the excise duty pursuant to this Act or other law in force.
- (b) "product" means both kinds of movable and immovable property.
- (c) "service" means anything whatsoever except a product.
- (d) "enterprise" means a firm, company or organization established pursuant to the law in force with object to manufacture, import, store or sell and distribute a product subject to excise duty or deliver service subject to excise duty.
- (e) "license" means the license issued pursuant to Section 9.
- (f) "Excise Duty Officer" means the officer designated by His Majesty's Government for purposes of this Act.
- (g) "production" means the act of manufacturing, making or preparing a product subject to excise duty.
- (h) "manufacturer" means a person, firm, company or organization licensed to manufacture a product subject to excise duty and

includes a person, firm, company or organization who delivers service subject to excise duty.

- (i) "person" means any person, enterprise, association, partnership firm, cooperative, joint venture, director of a trust or fund, proprietor and chief representative or agent, and this term also includes any entity who manufactures or imports and sells and distributes in any manner any product or service subject to excise duty, or branch or sub-branch of such an entity or similar place of transaction.
- (j) "factory price" means the price fixed by adding only the expenditure incurred in manufacturing, or manufacturing and selling and distributing, a product subject to excise duty and the profit of the enterprise, excluding the excise duty or any other tax chargeable on such product.
- (k) "price" means,-
 - (1) factory price, in the case of a product to be manufactured,
 - (2) price as per the invoice, in the case of service,
 - (3) price fixed as per clause (b) of sub-section(1) of Section 7, in the case of a product to be imported.
- (l) "import" means the act of importing a product subject to excise duty into the Kingdom of Nepal pursuant to the law in force.
- (m) "invoice" means a bill, receipt or voucher indicating price issued pursuant to this Act.
- (n) "Department" means the Department specified by His Majesty's Government for purposes of this Act.
- (o) "Director General" means the Director General of the Department.
- (p) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act.

3. To levy and collect excise duty: In cases where any Act makes provision on levying excise duty for every year or for any one year in any product or service, such excise duty shall be collected pursuant to this Act and the Rules framed under this Act.

4. Collection of excise duty: (1) In collecting the excise duty chargeable pursuant to this Act, it shall be collected as follows:-

- (a) In the case of a product, at the time when the product of an enterprise is exported for sale,

- (b) In the case of service, at the time when the invoice is issued to the consumer,
- (c) In the case of a product to be imported, at the time when such product is imported into the Kingdom of Nepal for purposes of customs.
- (2) Notwithstanding anything contained in sub-section (1), in cases where the excise duty has to be charged on a product at the time of its production, the procedures therefor shall be as prescribed.

5. Power to appoint or designate Excise Duty Officer: His Majesty's Government may, for purposes of this Act, appoint Excise Duty Officer in the required number, and in cases where His Majesty's Government thinks it necessary, it may designate any other officer of His Majesty's Government to act as the Excise Duty Officer.

6. Jurisdiction of Excise Duty Officer: Jurisdiction of the Excise Duty Officer shall be as specified by His Majesty's Government.

7. Fixation of price of product or service subject to excise duty: (1) In cases where the excise duty is to be levied on any product according to value (ad valorem), the excise duty shall be levied taking the following price as the basis.-

(a) Manufacture:

- (1) the price which a manufacturer receives at the time and place of selling a product subject to excise duty to a whole seller or purchaser, or
- (2) the price specified by the Department on the basis of production/manufacturing cost.

(b) Importation:

In respect of a product to be imported, the price fixed for purposes of collecting customs tariff on such a product.

Provided, however, that in cases where the product to be imported can be manufactured in the Kingdom of Nepal, too, and the Department has fixed the price of that product for purposes of clause (a), excise duty shall be collected on the basis of the price whichever is higher out of that price and the price referred to in this clause.

(2) Excise duty on service shall be collected by fixing the price as per the invoice.

(3) For purposes of collecting excise duty, the Department may, as per necessity, re-fix the price or fix additional price.

8. License to be obtained: (1) No one shall manufacture, import, sell or store a product subject to excise duty or deliver service subject to excise duty to any other person, without obtaining the license pursuant to this Act.
- (2) A person, firm, company or organization that intends to obtain the license referred to in sub-section (1) has to make an application to the Excise Duty Officer for the license, in such format and accompanied by such fee as prescribed.
9. Provision relating to license: (1) In cases where an application is made to the Excise Duty Officer for the license pursuant to Section 8, the Department or the Excise Duty Officer designated by the Department shall issue the license in the prescribed format if it appears proper upon making necessary examination on such an application.
- (2) The term of the license issued pursuant to sub-section (1) and method of its renewal and renewal fee shall be as prescribed.
10. Power to cancel license: The Department may cancel the license issued pursuant to sub-section (1) of Section 9 in the following circumstances:-
- (a) In cases where the terms and conditions specified in the license are found violated,
- (b) In cases where it appears to be contrary to public interest.
11. To search on adequate ground: In cases where there is a reasonable ground to suspect that any one is exporting the product subject to excise duty from an enterprise or importing it from abroad by evading excise duty, the Excise Duty Officer or the employee designated by him may hold up any person or motor vehicle whatsoever and require for submission of an evidence of payment of excise duty. Failure to submit the evidence of payment of excise duty shall be considered evasion of excise duty.
12. Power to search, seize or arrest: (1) In cases where any person, firm, company or organization carries on business by importing, selling or storing a product or goods subject to excise duty or by delivering service subject to excise duty without obtaining license, or the Excise Duty Officer or the employee designated by him gets information that excise duty is evaded pursuant to Section 11, such Officer or employee may search any enterprise, house, land, motor vehicle or place where such act is being carried out.

(2) While carrying out a search pursuant to sub-section (1), if a business is found being carried on by manufacturing, selling, importing, storing or transporting a product subject to excise duty or delivering service subject to excise duty in contravention of this Act, the Officer or employee conducting the search may, by giving a slip, arrest a person engaged in such act and seize the goods recovered there, by executing a memorandum (*Muchulka*).

(3) In cases where any offense under this Act is being committed in any enterprise, house, land, motor vehicle or place, and the Excise Duty Officer sees a possibility that the offender may escape or the proof and evidence of the offense may disappear if no action is taken immediately, the Excise Duty Officer or employee designated by him may, by executing a memorandum thereof, personally carry out or cause any of his subordinate employee to carry out the following acts at any time:

- (a) to enter into such enterprise, house, land, motor vehicle or place,
- (b) if there is any obstruction and objection in so entering into, to give a reasonable opportunity for any person staying in that place to leave the place, and enter into there by breaking out the window or door,
- (c) to seize the product subject to excise duty related with the offense, and such other goods and documents as may be ancillary to prove the offense,
- (d) to suspend the license, and
- (e) to arrest the suspect of the offense.

(4) In entering into any enterprise, house, land, motor vehicle or place or carrying out a search pursuant to this Section, such entry or search shall be conducted in witness of one member of the concerned Municipal Corporation, Sub-municipal Corporation, Municipality or Village Development Committee or one local person of that place.

(5) If any one has been arrested or any enterprise, house, land, motor vehicle or place has been searched out or the products subject to excise duty or other goods have been seized under this Act, the Excise Duty Officer who has so arrested, searched out or seized has to send, through faster means, a report thereof to the Director General of the Department within twenty four hours of such arrest, search or seizure of goods. In cases where any other employee subordinate to the Excise Duty

Officer has carried out such act, such employee has to send a report thereof to the Excise Duty Officer or the Department within twenty-four hours of carrying out such act.

(6) The Excise Duty Officer shall have the same powers in respect of investigation of the offense under this Act as the police is entitled to exercise pursuant to the law in force.

(7) In cases where the Excise Duty Officer requests the local administration or the police for assistance in search, arrest or seizure, the local administration or the police has to render such assistance immediately.

13. Duty to give information of offense: (1) In cases where any person comes to know that any one is about to commit or is committing or has already committed any act contrary to this Act, it shall be the duty of such a person to give information thereof to the Excise Duty Office or to the police office or any other governmental office where the Excise Duty Office is not situated nearby. The informer may give such information verbally or in writing. The office that receives such information has to forward such information to the concerned Excise Duty Office.

(2) In cases where the informer intends to keep his name secret, he may give his identity in code language.

(3) In giving information, the informer shall not be compelled to disclose the source of his information.

14. Reward: (1) A government employee or any other person who gives information or clue about any act which is about to be or being or has been committed contrary to this Act shall, after final settlement of the case, be awarded by the concerned Excise Duty Office a reward in a sum to be set as follows of the proceeds recovered from the claimed amount of the product subject to excise duty seized from the accused:-

- (a) twenty per cent of the amount in controversy to the informer,
- (b) forty per cent of the amount in controversy to one who arrests and hands over the person, along with the proof,
- (c) twenty-five per cent of the amount in controversy to one who seizes and hands over a product only.

Provided, however, that in cases where the informer be more than one person, the reward shall be divided between them pro rata.

(2) In cases where any employee or police arrests a person, along with the goods seized, upon having a clue, twenty-five percent of the amount in controversy shall be given to such an employee or police.

Provided, however, that in cases where only a product is seized, twenty-five percent of the value of the product shall be given as reward. In cases where the reward to be so given exceeds fifteen thousand rupees per person at a time, it shall be given not in excess of that figure.

15. Punishment to the person who does not give information or render assistance: In cases where any person who has the duty to give information that any act is about to be, being or has been committed contrary to this Act, after knowing such matter, or to render assistance as and when sought by the Excise Duty Office, does not knowingly give such information or render such assistance as the case may be, such a person shall be punished with imprisonment for a term not exceeding three months or with a fine of up to ten thousand rupees or with both punishments, having regard to the nature of the offense.

16. Punishment: (1) In cases where any person commits the following offense, such a person shall be punished with imprisonment for a term not exceeding one year or with a fine in a sum equivalent to the amount in controversy or with both punishments for such offence, and the amount in controversy shall also be seized:-

- (a) to conceal, hide or evade the excise duty required to be paid under this Act, or
- (b) to violate Section 8, or
- (c) to commit any offense contrary to this Act by preparing a false account or forged document.

(2) In cases where any one attempts or abets to commit the offense referred to in clause (a), (b) or (c), he shall be punished with half of the punishment.

(3) The utensils used directly or indirectly with the offense, tools machines, equipment and motor vehicle used to manufacture or make a product or service shall also be seized.

Provided, however, that in cases where the person who commits such offense uses a motor vehicle on hire and uses it in such act without permission of the owner of the vehicle, such vehicle shall not be seized, but the owner of the vehicle shall be punished with a fine of twenty-five thousand rupees and the driver shall be punished with imprisonment for a

term not exceeding three months or with a fine of up to fifteen thousand rupees or with both punishments, having regard to the nature of the offense.

(4) Notwithstanding anything contained in sub-section (3), in cases where a motor vehicle is registered as on hire and used by its owner himself, such vehicle shall be seized.

17. To withhold and auction property: (1) In cases where the Excise Duty Officer has a reasonable ground for seizing the property belonging to any person pursuant to this Act or the rules framed hereunder, the Excise Duty Officer may so withhold such property that the title to or ownership over it is incapable of being transferred to any one else.

(2) In cases where it appears that the property so withheld can be perished, decayed or destroyed or its value can be diminished, the Excise Duty Officer has to immediately auction such product and credit the proceeds from the auction sale. In cases where the concerned person is subsequently held entitled to have the withheld property returned to him, only the proceeds from the auction sale shall be refunded to him. The concerned person shall not be entitled to claim for the return of the product itself. The authority hearing and settling the cases under sub-section (1) for the first instance shall have such powers as the District Court has under the law in force.

18. Powers of court of law to be vested: (1) For purposes of this Act, the Excise Duty Officer shall have the powers vested in a court under the law in force in the matters of summoning the presence of the concerned person, recording of statements, examining evidence, compelling production of documents, holding such person in detention or releasing on bail.

(2) In taking action under this Act, the Excise Duty Officer has to follow the procedures referred to in the Summary Procedures Act, 2028(1971).

19. Appeal: An appeal may be made to the Revenue Tribunal against any decision made by the Excise Duty Officer pursuant to this Act within thirty-five days.
20. Powers that cannot be delegated: The powers conferred on the Excise Duty Officer pursuant to Sections 15 and 16 shall not be delegated.
21. Circumstances where proceedings for seizure are suspended: In cases where the Excise Duty Officer has made a decision to seize the property

of any person pursuant to this Act or the rules framed hereunder and an appeal has been made against the decision, the appeal hearing authority may issue an order to the Excise Duty Officer to suspend the proceedings to seize the property pending the settlement of the appeal.

Provided, however, that the provision of this Section shall not apply in the cases referred to in sub-section (2) of Section 17.

22. Recovery of dues as governmental dues: If any person does not pay any amount due and payable to His Majesty's Government pursuant to this Act and the rules framed hereunder, the Excise Duty Officer shall recover such amount from such person as a governmental due.
23. Provision relating to review: (1) In cases where a taxpayer makes an application within thirty five days of receipt of order levying the excise duty, claiming that tax liability has increased because of failure of the Excise Duty Officer to observe the matters referred to in this Act or irregularity or recklessness committed by that Officer in collecting the excise duty, the Director General may, if he thinks it proper upon investigation, cancel such order and order to collect the excise duty again.
(2) The Director General has to hold necessary investigation on the application made pursuant to sub-section (1) within ninety days.
(3) In cases where the concerned person is not satisfied with the decision made by the Director General, such person may make an appeal to the Revenue Tribunal within thirty-five days of date of receipt of notice of the decision.
Provided, however, that in cases where an appeal is made pursuant to Section 19, no appeal can be made for review pursuant to this Section.
24. This Act to prevail on tax provision: Notwithstanding anything contained in the law in force, except in cases where the Financial Act to be enforced in every year amends this Act and provides for imposition, assessment, increase, decrease, exemption, or remission of tax, no other Act shall make any amendment to, or alter tax provisions referred to in this Act or make other tax related provisions.
25. Power to frame rules: His Majesty's Government may frame necessary rules in order to carry out the objectives of this Act.
26. Repeal and saving: (1) The Excise Duty Act, 2051(1959) is hereby repealed.

(2) All the acts and actions done or taken under the Excise Duty Act, 2051(1959) shall be deemed to have been done or taken under this Act.