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PART-IV

GOVERNMENT OF MEGHALAYA

LAW (B) DEPARTMENT

NOTIFICATION

The 7th August, 2020.

No.LL(B).21/2020/01. - The Meghalaya Settlement of Arrears (under the State Taxation Acts) Ordinance, 2020 (Ordinance No. 3 of 2020) is hereby published for general information.

MEGHALAYA ORDINANCE NO. 3 OF 2020

Promulgated by the Governor on the 7th August, 2020

Published in the Gazette of Meghalaya Extra-Ordinary issue dated 7th August, 2020

THE MEGHALAYA SETTLEMENT OF ARREARS (UNDER THE STATE TAXATION ACTS) ORDINANCE, 2020.

AN

ORDINANCE

to provide for securing the interest of Revenue Collection by the Government of Meghalaya and to reduce the arrears arising out of the enactments administered by the Commercial Taxes Department.

Whereas the laws which existed before the introduction of the Meghalaya Goods and Services Tax (MGST) Act, 2017 and now stand subsumed under the Meghalaya Goods and Services Tax (MGST) Act, and the Central Goods and Services Tax Act, 2017 or are kept out of the said Acts and to mobilize tax resources that have become due for years but have remained unrecoverable due to burden of such dues, this Ordinance, provides for applicants an opportunity of remission on dues on account of tax interest, surcharge and penalty, on condition of payment of Seventy per centum of total outstanding dues within a stipulated time period and for other matters connected therewith or incidental thereto.

And whereas the Legislature of the State of Meghalaya is not in Session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Ordinance:

Now, therefore, in exercise of the power conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Meghalaya is pleased to promulgate in the Seventy-first Year of the Republic of India, the following Ordinance, namely.-

Short title, extent and commencement

1. (1) This Ordinance may be called "The Meghalaya Settlement of Arrears (under State Taxation Acts) Ordinance, 2020".
- (2) It extends to the whole of the State of Meghalaya.
- (3) It shall come into force from such date as the State Government may by notification, appoint.

Definitions

2. (1) In this Ordinance, unless the context otherwise requires.-
 - a) **"Annexure"** means the Annexure appended to this Ordinance:
 - b) **"Appellate Authority"** means the authorities competent to hear appeals against orders passed under the provisions as existed before the subsumation of the enactments under the Meghalaya Goods and Services Tax Act or as existing under the enactments kept out of the Meghalaya Goods and Services Tax Act and includes the Assistant Commissioner of Taxes (Appeals) or any officer not below the rank of Assistant Commissioner of Taxes, the Commissioner of Taxes, the Appellate Tribunal and all authorities specified in sub-section (4) of Section 6 of this Ordinance.
 - c) **"Applicant"** means a tax defaulter or a tax non-payer or short payer who is liable to pay arrears of Tax interest, surcharge and penalty, levied or imposed under the Relevant Act and who desires to avail the benefit of settlement, by complying with the conditions, under this Ordinance.
 - d) **"Arrears"** means the composite amount of tax, interest, surcharge, penalty as the case may be, —
 - (i) payable by an assessee as per any statutory order under the relevant State Taxation Act as on the cut-off date which is 31st March 2020; or
 - (ii) admitted in the return or, as the case may be, the revised return filed under the relevant State Taxation Act and which has not been paid either wholly or partly: or
 - (iii) determined and recommended to be payable by the auditor, in the audit report under the relevant State Taxation Act; or
 - (iv) in respect of which a notice has been issued, in relation to any proceeding under the Relevant State Taxation Act; or
 - (v) determined to be payable by the assessee where no notice in relation to any proceeding under the Relevant State Taxation Act is issued, and such arrears of tax, interest, surcharge, penalty, pertains to specific tax period for which the return has been filed;

- e) **"Assessing Officer"** means the Government official designated to complete assessment of periodical tax Returns filed by a registered dealer under respective State Taxation Acts.
- f) **"Assessment"** means statutory proceedings under State Taxation Acts to determine the tax liability of a registered dealer.
- g) **"Commissioner"** means the Commissioner of Taxes, Meghalaya.
- h) **"Dealer"** means a person who carries on business, as defined under clause (xvi) of Section 2 of the Meghalaya Value Added Tax Act, 2003, Sub-section (3) of Section 2 of the Meghalaya Sales Tax Act, Sub-section (2) of Section 2 of the Meghalaya (Finance) Sales Tax Act, sub-section (3) of Section 2 of the Meghalaya Purchase Tax Act, sub-section (4) of Section 2 of the Meghalaya (Sales of Petroleum and Petroleum products etc.) Taxation Act and clause (b) of Section 2 of the Central Sales Tax Act 1956.
- i) **"Government"** means the Government of Meghalaya.
- j) **"Hotelier"** means a person as defined under clause (d) of Section 2 of The Meghalaya Tax on Luxuries (Hotels and Lodging Houses) Act, 1991.
- k) **"Notice of Demand"** means a statutory notice issued to a registered dealer after assessment requiring him to pay the outstanding dues.
- l) **"Person"** includes an individual, joint family, firm, company, association of persons, body of individuals whether incorporated or not, Central Government or State Government or local authority.
- m) **"Registered dealer"** means a dealer or a hotelier registered under the respective State Taxation Act.
- n) **"Scheme"** means the Settlement of Arrears (Under State Taxation Acts) as provided under Section 3 to Section 13 of this Ordinance.
- o) **"State"** means the State of Meghalaya.
- p) **"State Taxation Acts"** include The Meghalaya Sales Tax Act (Assam Act XVII of 1947 as adapted and amended by Meghalaya), The Meghalaya (Finance) Sales Tax Act (Assam Act XI of 1956 as adapted and amended by Meghalaya), The Meghalaya Tax on Luxuries (Hotels and Lodging Houses) Act, 1991. The Meghalaya (Sale of Petroleum and Petroleum Products etc.) Taxation Act (Assam Act IX of 1956 as adapted and amended by Meghalaya), the Meghalaya Purchase Tax Act (Assam Act XIX of 1967 as adapted and amended by Meghalaya) the Meghalaya Value Added Tax Act. 2003 and the Central Sales Tax Act, 1956 as administered, collected and appropriated by the Government.
- q) **"Tax Defaulter"** means a registered dealer who has been assessed to tax and has been issued Notice(s) of Demand on or before 31st March, 2020, but has failed to pay the outstanding dues of tax, interest, surcharge or penalty.
- r) **"Tax Non-payer and/or Short payer"** means a registered dealer who has furnished the return for all tax periods upto 31st March, 2020 but has made

- no payment or has failed to make full payment of the tax admitted therein and notice(s) of demand has not yet been served.
- (2) Words and expressions used in this Act but not defined herein shall have the same meaning as respectively assigned to them under the relevant Acts.
- Adjustment of any payment made under relevant acts and settlement of arrears of tax, interest, surcharge, penalty, if any**
3. (1) Notwithstanding anything contained in the relevant State Taxation Act or under this Ordinance,-
- a) any payment made in respect of the statutory order either in the appeal or otherwise, on or before the date of commencement of the instant Ordinance, shall first be adjusted towards the amount of tax and thereafter towards the interest and the balance amount remaining unadjusted, shall then be adjusted towards the penalty, sequentially;
- b) after adjustment of amount as specified in clause (a), the amount remaining outstanding, if any, as on the date of commencement of the instant Ordinance, shall only be considered for the settlement and the requisite amount payable towards the settlement of aforesaid outstanding amount and the waiver, thereof, shall be as determined in accordance with the provisions of the instant Ordinance.
- (2) The provisions of foregoing clauses shall be applicable *mutatis mutandis* to the balance outstanding dues as per the return furnished for the particular tax period or, as the case may be, as per the recommendations made in respect of tax, interest, surcharge or penalty by the auditor in the audit report.
- Eligibility**
4. (1) An applicant is eligible for remission on tax, interest, surcharge and penalty, on condition that he makes payment of not less than Seventy per centum of total dues, as per applicability set forth, within the date specified by the Commissioner in the notice as may be prescribed.
- (2) Subject to the other provisions of this Ordinance, an applicant shall be eligible to make an application for settlement of arrears of tax, interest, surcharge and penalty in respect of the specified period, whether such arrears are disputed in appeal under the relevant State Taxation Act or not.
- Provided that no applicant shall be eligible for the Scheme if he has been convicted of an offence under Chapters XI, XVII and XVIII of the Indian Penal Code; or economic and financial offences prohibited by laws of the Government of India.
- Extent of applicability and duration**
5. (1) An applicant eligible under the Scheme with dues of tax, interest, surcharge and penalty shall be granted remission on tax, interest, surcharge and penalty up to an amount, not exceeding Thirty per centum of the total dues.
- (2) The duration of the Scheme shall be for a period of 6 (six) months from the date of publication of the Ordinance in the Official Gazette.
- Procedure for application**
6. (1) An eligible applicant who opts for the Scheme would have to file an application in prescribed Form. The application shall be signed in the case of an individual, by the individual himself or a person duly authorized by the individual or a person competent to act on his behalf. In case of person other

than an individual, the declaration shall be signed by a person duly authorized or a person competent to act on behalf of entities other than an individual.

- (2) The application shall be made to the Assessing Officer in such form and in such manner, as may be specified in the order by the Commissioner.
- 3) Subject to the other provisions of this Scheme, where an applicant desires to settle the arrears of outstanding dues as per return furnished for the particular tax period under the relevant State Taxation Act, he shall submit a separate application for each of such return or revised return under each relevant State Taxation Act.
- (4) Where any appellate authority including Tribunal, or the Court has remanded the case back to any authority under the relevant State Taxation Act, for giving effect to the directions given therein and such order has not been passed on or before the date of commencement of the instant Ordinance, then such case(s) shall not be eligible for settlement under this Scheme.

Provided that, the applicant may be eligible to settle the amount of tax, interest, surcharge and penalty as per the directions given by the said authority or the Court and in case, no such specific directions are given then such tax, interest, surcharge and penalty shall be determined by the applicant.

Withdrawal of appeal

7. (1) (a) Notwithstanding anything contained in any provisions of the relevant State Taxation Act, the appeal pending before the appellate authority or the Tribunal or the Court, shall be withdrawn un-conditionally by the applicant on the date on which such appeal withdrawal application is submitted to the aforesaid authorities or the Court.
- (b) the submission of acknowledgement of such application to the Commissioner, along with the application for settlement shall be treated as sufficient proof towards withdrawal of the said appeal.
- (2) In case, the applicant desires to withdraw the appeal, in respect of certain issues and desires to continue the same for certain other issues, then the applicant, shall specifically state details thereof in withdrawal application filed before the said authorities or the Court, and the provisions of subsection (1) shall apply *mutatis mutandis* so far as they relate to the withdrawal and submission of proof to the Commissioner.
- (3) The provisions of Section 3 shall be applicable in the cases where the applicant withdraws appeal as mentioned in subsection (2).

Verification by Assessing Officer

8. (1) The Commissioner shall cause each application to be verified by the respective Assessing Officer for correctness of the declaration and payment, to be recorded in the registered dealer's file for respective State Taxation Act(s).
- (2) The Assessing Officer shall verify and confirm that the application is accompanied with documents mentioned in the application form. The Assessing Officer shall verify the correctness of the particulars furnished in the application and documents submitted with the application with reference

to the records available with the assessing authority or, as the case may be, any other authority with whom such records are available.

- (3) On verification of the application, in case it is noticed that, the said application is incorrect or incomplete or the amount declared to have been paid is deficient, the Assessing Officer shall issue defect notice, within thirty working days from the date of receipt of the application and inform the applicant about the defects in the application along with the details of the amount to be paid. Provided that, the defect notice in respect of an application shall be issued only once.
- (4) The applicant shall, within fifteen days of the issue of the defect notice, correct the defects and make the payment of amount short paid, if any, and submit proof of such payment to the assessing officer.
- (5) In case the applicant fails to correct the defects so communicated including the additional payment, if any, the Assessing Officer may, for reasons to be recorded in writing and after giving the applicant the opportunity of being heard, pass an order within thirty working days of the date fixed under sub-section (4).
- (6) Where the application is received from a Tax non-payer or short payer, the Assessing Officer in addition to the verification as laid down at sub-section (1), (2) and (3), shall pass the order of assessment under the relevant Taxation Act and issue the notice of demand to the applicant under the provisions of the relevant State Taxation Act within thirty working days from the date of receipt of the application.
- (7) Where, the application is found by the Assessing Officer to be complete in all respects [including application where deficiencies have been cured or notice of demand has been raised under sub-section (6)] in accordance with the provisions of this Scheme and the rules made there under, he shall within fifteen working days, forward the application along with the case records to the Commissioner.
- (8) Where the application for settlement of arrears of tax, interest, surcharge and penalty is not in accordance with the provisions of this Scheme, the Assessing Officer may, by order, for reasons to be recorded in writing, within thirty working days from the date of receipt of the application, reject the application, after giving the opportunity of being heard to the applicant.
- (9) Where the application has been rejected under sub-section (5) and (8) the applicant may within fifteen working days of the date of issue of the order, file an appeal to the Commissioner in the format as may be prescribed.
- (10) The speaking order on the appeal is to be passed by the Commissioner within 30 (thirty) working days from the date of receipt of the appeal.

**Grant of remission
and amnesty**

9. (1) If the Commissioner is satisfied that the application is complete and accurate in all respects in accordance with the provisions of this Scheme and the rules made there under, he shall issue the notice of demand directing the applicant to make payment to the Government Treasury, by Treasury challan, by the specified date being not less than thirty days and more than forty five

days from the date of issuance of the notice, the sum of not less than 70% of the total dues of tax, interest, surcharge and penalty.

(2) On full payment of the sum specified at sub-section (1), the Commissioner shall pass a speaking order and issue a Tax Clearance Certificate within thirty working days, in a manner and format as may be prescribed and provide the copy of the said order to the applicant and thereupon, notwithstanding anything contained in the relevant State Taxation Act, such applicant shall be discharged of his liability to the extent of the amount of waiver specified in the order of the settlement.

(3) The Commissioner may, on his own motion or on application, within six months from the date of issue of the order of settlement, rectify any error apparent from the record and pass a speaking order accordingly.

Provided that, no order adversely affecting the applicant shall be passed without giving him a reasonable opportunity of being heard.

Revocation of grant 10.

(1) If the Commissioner is satisfied that a tax defaulter has obtained the Grant of Remission and Amnesty by misrepresentation of facts or furnishing of false information, the Commissioner may revoke the Grant after giving the tax defaulter an opportunity of being heard.

Provided that no order under the provision of sub-section (1) shall be passed after the expiry of two years from the date of issuance of the Tax Clearance Certificate under this Scheme.

(2) If an order of settlement is revoked under sub-section (1), the assessment, revision, review or appeal, as the case may be, under the relevant State Taxation Act, covered by such order of settlement, shall stand revived or reinstated immediately upon such revocation, and such assessment, revision, review or appeal, as the case may be shall be decided in accordance with the provisions of the relevant State Taxation Act, as if no order of settlement of the arrears of tax, interest, surcharge, penalty has ever been made, and notwithstanding the period of limitation provided under the relevant Act, such assessment, revision, review or appeal, as the case may be shall be made by the respective authorities, within two years from the date of passing the order of such revocation:

Provided that, an appeal shall be reinstated on application made in this behalf to the appellate authority within sixty days from the date of issue of the order of revocation.

Bar on re-opening of settled cases 11.

An order of settlement issued under the provisions of this Scheme shall be conclusive as to the settlement of arrears covered under that order, and the matter covered by such order of settlement shall not be re-opened in any proceeding or review or revision or any other proceedings under the relevant Act.

Resolution of dues 12.

Final orders issued by the Commissioner in a manner and format as may be prescribed under this Scheme shall supersede the Notice(s) of Demand issued under respective State Taxation Acts by the Assessing Officer, and no further proceedings for recovery shall continue.

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| No refund under this Scheme | 13. | Under no circumstances, the applicant shall be entitled to get the refund of the amount paid under this instant Scheme, provided that, in case of revocation of an order of the settlement in accordance with the provisions of the instant Scheme, the amount paid by the applicant under the instant Scheme shall be treated to have been paid under the relevant Act. |
| Powers of authorities | 14. | <p>(1) No appellate authority including Tribunal, shall proceed to decide any appeal under the relevant State Taxation Act, in respect of and to the extent of one or more issues or all the issues for which an application is made by the applicant under the provisions of this Ordinance.</p> <p>(2) Notwithstanding anything contained in the relevant State Taxation Act, the assessing authority, the appellate authority including the Tribunal, revision authority, reviewing authority, shall proceed to decide such assessment, appeal, revision or review in accordance with the relevant Act, -</p> <p>(a) to the extent of the issues for which no application for settlement is made by the applicant; or</p> <p>(b) in case an order of settlement referred in Section 9 is made, rejecting the application for settlement.</p> |
| Power to make rules | 15. | <p>(1) The State Government may by Notification, with prospective or retrospective effect not earlier than the date of coming into effect of this Ordinance, make rules for carrying out the purposes of this Ordinance.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Ordinance are required to be prescribed for by the rules.</p> |
| Power of Commissioner | 16. | <p>(1) The Commissioner may, from time to time, issue instructions and directions as he may deem fit to the designated authorities, for carrying out the purposes of this Ordinance.</p> <p>(2) The Commissioner may, by an order specify the forms for the purpose of this Ordinance and the manner in which the form shall be submitted.</p> |
| Interpretation | 17. | If any question arises relating to the interpretation of any of the provisions in this Ordinance, it shall be referred to the Government of Meghalaya in the Excise, Registration, Taxation and Stamps Department, whose decision thereon shall be final and binding and no challenge shall lie against any order passed under this Scheme before any court of law. |
| Power to remove difficulties | 18. | (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Ordinance, which appears to it to be necessary or expedient for the purpose of removing the difficulty: |

Provided that, no such order shall be made after the expiry of a period of 2 (two) years from the date of commencement of this Ordinance.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

**Bar to proceedings
in Civil Court**


19. No suit shall be brought in any Civil Court to set aside or modify any order passed under this Ordinance; and no prosecution, suit or other proceeding shall lie against the Commissioner or any of his subordinate officers for anything done in good faith or intended to be done under this Ordinance.

Dated Raj Bhavan,
Shillong, the 7th August, 2020.



TATHAGATA ROY,
GOVERNOR OF MEGHALAYA.

Dated Shillong,
The 7th August, 2020.



S. K. SANGMA,
Deputy Secretary to the Govt. of Meghalaya,
Law (B) Department.

Amendment of Section 140

11

In section 140 of the Principal Act, with effect from the 1st day of July, 2017 —

- (a) in sub-section (1), after the words "existing law", the words "within such time and" shall be inserted and shall be deemed to have been inserted and the words "not later than ninety days after the said day" shall be omitted and shall be deemed to have been omitted;
- (b) in sub-section (2), after the words "appointed day", the words "within such time and" shall be inserted and shall be deemed to have been inserted;
- (c) in sub-section (3), for the words "goods held in stock on the appointed day subject to", the words "goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to" shall be substituted and shall be deemed to have been substituted;
- (d) in sub-section (5), for the words "existing law", the words "existing law, within such time and in such manner as may be prescribed" shall be substituted and shall be deemed to have been substituted;
- (e) in sub-section (6), for the words "goods held in stock on the appointed day subject to", the words "goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to" shall be substituted and shall be deemed to have been substituted;

Insertion of new section 168 A in Act 10 of 2017

12

After Section 168 of the Principal Act, the following section shall be inserted, namely :-

Power of Government to extend time limit in special circumstances

168A (1) Notwithstanding anything contained in the Principal Act, the Government may, on the recommendation of the Council, by notification, extend the time limit specified in, or prescribed, or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

(2)The power to issue notification under sub-section (1) shall include to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation - For the purposes of this Section, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.


Amendment of Section 172	13	In section 172 of the Principal Act, in sub-section (1), in the proviso, for the words "three years", the words "five years" shall be substituted.
Amendment to Schedule II	14	In Schedule II to the Principal Act, in paragraph 4, the words "whether or not for a consideration," at both the places where they occur, shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.

Dated Raj Bhavan
Shillong, the 23rd April, 2020



TATHAGATA ROY,
GOVERNOR OF MEGHALAYA.

Dated Shillong,
The 24th April, 2020.



D. LYNGDOH,
Deputy Secretary to the Govt. of Meghalaya,
Law (B) Department.