

Chapter VII

GENERAL PROVISIONS

Sections

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38. Measures, weights and testing instruments – Every person who manufactures or sells any [intoxicant]¹ under a license granted under this Act shall be bound—

- (a) to supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe and to keep the same in good condition ; and
- (b) when such measures, weights and instruments have been prescribed, on the requisition of any excise officer duly empowered in that behalf, at any time to measure, weigh or test any [intoxicant]¹ in his possession in such manner as the said excise officer may require.

²**[38-A. Interest on arrears of excise revenue-**(1) Where any excise revenue has not been paid within three months from the date on which it becomes payable, interest at such rate not exceeding twenty-four per cent per annum, as may be prescribed shall be payable from the date such excise revenue becomes payable till the date of actual payment :

Provided that until a higher rate is prescribed, the rate of interest will be eighteen per cent per annum.

Provided further that in respect of an excise revenue which becomes payable before the commencement of the Uttar Pradesh Excise Amendment (Act, 1995) interest at the said rate shall be payable from the date of such commencement of the excise or revenue is not paid within 3 months of the said date.

Explanation – Nothing in this sub-section shall be construed to affect the payment of interest under an agreement the terms of an auction or, a decree of the court, passed before the date of commencement of the Uttar Pradesh Excise (Amendment) Act, 1985 or which may be passed after the date of such commencement, in suits or proceedings filed before the said date.

(2) Provisions of section 39 shall mutatis mutandis apply to realization of such interest as they apply to realization of excise revenue.]

39. Recovery of excise revenue- All excise revenue including all amounts due to [the Government]¹ by any person on account of any contract relating to the excise revenue, may be recovered from the person on primarily liable to pay the same, or from his surety (if any), as arrears of land revenue or in the manner provided for the recovery of public demands by any law for the time being in force. In case of default made by a holder of a license the Collector may take the grant, for which the licence has been given, under management at the risk of the defaulter, or may declare the grant forfeited and re-sell it at the risk and loss of the defaulter. When a grant is under management under this section, the collector may recover as excise revenue any moneys due to the defaulter by any lessee or assignee:

Provided that no license for an exclusive privilege granted under section 24 shall be forfeited or re-sold without the sanction of the authority granted in the licence.

40. Power of State Government to make rule- (1) The [State Government]² may make rules for the purpose of carrying out the provisions of this Act or other law for the time being in force ration to excise revenue :

³[Provided that the Uttar Pradesh Licensing under the Surcharge Fee System Rules, 1968 made by the Excise Commissioner, Uttar Pradesh, with the previous sanction of the State Government, as amended by the Excise Commissioner, Uttar Pradesh, from time to time, before the commencement of this Act, shall, until altered or repealed by the State Government by rules made under this section be deemed to he and always to have been as valid and effective as if the said rules were duly made by the State Government under this section 2];

(2) In particular and without prejudice to the generality of the foregoing provision, the [State Government]² may make rules-

(a) regulating the delegation of any powers by [***]⁴ the Excise Commissioner or Collector under section 10 (2) (h);

(b) prescribing the powers and duties of officers of the Excise Department;

¹[(c) prescribing the manner in which appeals or revisions shall be presented and the procedure for dealing with such appeals and revisions];

(d) regulating the import, export transport or possession of any [intoxicant]²;

(e) regulating the periods and localities for which, and the persons to whom, licenses for the vend by wholesale or by retail of any [intoxicant]² may granted;

(f) prescribing the procedure to be followed and the matters to be ascertained before any license for such vend in granted for any locality;

(g) for the prohibition of the sale of any [intoxicant]² to any person or class of persons;

(h) for the grant of expenses to witnesses and compensation for loss of time to persons released under section 49 on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences punishable under this Act but acquitted;

(i) regulating the power of excise officers to summon witnesses from a distance under the provisions of section 49;

(j) for declaring the excise officers to whom, and the manner in which, information or aid should be given under section 56;

(k) for the prohibition of the employment by the license-holder of any person or class of persons to assist in his business in any capacity whatsoever;

(l) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises and the meeting or remaining of persons of bad character in such premises.

³[(m) for the grant of rewards to officials, officers or informers by the Collector out of and up to fifty per cent of composition fee and by the Magistrate trying the case, out of an up to fifty per cent of fine recovered under the Act];

(3) [* * *]⁴

41. Power of Excise Commissioner to make rules – ³[The Excise Commissioner subject to the previous sanction of the State Government may make rules];

(a) regulating the manufacture, supply, storage or sale of any [intoxican]¹ including –

(i) the erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fittings implements and apparatus to be maintained therein;

(ii) the cultivation of the hemp plant (*cannabis sativa*);

(iii) the collection of portions of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured and the manufacture of any intoxicating drug therefrom;

(b) regulating the deposit of any [intoxicant]¹ in a warehouse and the removal of any [intoxicant]¹ from any such warehouse or from any distillery or brewery;

²[(c) prescribing the scale of fees or manner of fixing the fees payable for any license, permit or pass including any consideration for the grant of any exclusive or other privilege granted under Section 24 or Section 24-A or for storing of any intoxicant];

²[Provided that nothing contained in this clause shall be construed to prevent the State Government from levying, by notification made from time to time, any fee including vend fee as part of consideration for granting of any such privilege.]

Explanation – (1) Fee may be prescribed under this sub-clause at different rates for different classes of licenses, permits, passes or storage, and for different areas.

⁴[(2) The manner of fixing such fee or consideration includes any one or more of the following manners, namely-

(i) auction,

(ii) invitation of tenders,

(iii) assessment on the basis of sales made or quota lifted under the license, permit or Pass.]

(d) regulating the time, place and manner of payment of any duty or fee;

(e) prescribing the restrictions under and the conditions on which any license, permit or pass may be granted, including provision for the following matters –

(i) the prohibition of the admixture with any [intoxicant]¹ of any substance deemed to be noxious or objectionable;

(ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;

(iii) the fixing of the strength, price or quantity in excess of or below which any [intoxicant]¹ shall not be sold or supplied, and of the quantity in excess of which denatured spirit shall not be possessed, and the prescription of a standard of quality for any [intoxicant]¹;

(iv) the prohibition of sale except for cash;

(v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions;

(vi) the specification of the nature of the premises in which any [intoxicant]¹ may be sold and the notices to be exposed at such premises;

(vii) the form of the accounts to be maintained and the returns to be submitted by license-holders;
and

- (viii) the regulation of the transfer of licenses;
- (f) (i) declaring the process by which spirit manufactured in [* * *]² India shall be denatured;
- (ii) for causing such spirit to be denatured through the agency or under the supervision of its own officers;
- (iii) for ascertaining whether such spirit has been denatured;
- (iv) providing for the destruction or other disposal of any [intoxicant]¹ deemed to be unfit for use;
- (v) regulating the disposal of confiscated articles.