

THE ASSAM EXCISE ACT, 2000

(ASSAM ACT NO. XIV OF 2000)

No. LGL.172/93/pt./46.- The following Act of the Assam Legislative Assembly which received the assent of the Governor on 20th September, 2000 is hereby published for general information.

AN ACT to consolidate and amend Excise law in force in Assam.

WHEREAS it is expedient to consolidate and amend the law in force in Assam, relating to import, export, possession of intoxicating liquor and of intoxicating drugs.

It is hereby enacted in the Fifty-first year of the Republic of India as follows:-

CHAPTER - I PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Assam Excise Act, 2000.

(2) It extends to the whole of Assam.

(3) It shall come into force on such date² as the State Government may, by notification, appoint in this behalf.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,-

- (a) "beer" includes ale, stout, port, and all other fermented liquor usually made from malt;
- (b) "to bottle" means to transfer liquor from a cask or other vessels to a bottle or other receptacle, whether any process of rectification be employed or not and includes re-bottling;
- (c) "club" means a society of persons associated together for social intercourse, for the promotion of politics, sports, arts, science, literature or for any purpose except the acquisition of gain, or whether the same be registered under the Indian Companies Act, 1956 (*Central Act I of 1956*), the Assam Co-operative Societies Act, 1949 (*Assam Act I of 1950*), the Societies Registration Act, 1860 (*Central Act II of 1860*) or otherwise incorporated or not;
- (d) "Collector" includes the District Collector, and in any provision of this Act includes also any officer whom the State Government may, by notification, declare or appoint to be a Collector for the purposes of that provision;
- (e) "denaturant" means any substance prescribed by rule made in this behalf under clause (m) of Section 84 for admixture with spirit in

order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine or any other way whatsoever;

- (f) "to denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rules made in this behalf under clause (m) of Section 84; and denatured spirit means spirit so mixed;
- (g) "District Collector" means the Chief Officer-in-Charge of the revenue administration of a district;
- (h) "excisable articles" means and includes,-
 - (i) spirit, fermented liquor or any alcoholic liquor for human consumption or denatured spirit or denatured spirituous preparation, or
 - (ii) any intoxicating drug, or
 - (iii) stills or other appliances for distillation, or
 - (iv) fermented wash or other material for distillation, or
 - (v) any other article which the State Government may, from time to time declare to be an excisable article for the purposes of this Act;
- (i) "excise duty" and "countervailing duty" mean any such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 of list II in the Seventh Schedule to the Constitution;
- (j) "excise commissioner" means the officer appointed by the State Government, under Section 6, sub-section (2), clause (a);
- (k) "excise officer" means a Collector or any officer or other person appointed or invested with powers under Section 6;
- (l) "excise revenue" means revenue derived or derivable from any duty, fee, tax, penalty, payment (other than a fine imposed by a court of law) or confiscation imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs;
- (m) "export" means to take out of the territory to which this Act applies, otherwise than across a custom frontier as defined by the Central Government;
- (n) "import" (except in the phrase import into India) means to bring into the territories to which this Act applies otherwise than across custom frontier as defined by the Central Government;
- (o) "intoxicating" means any liquor or intoxicating drug;
- (p) "intoxicating drug" means-
 - (i) the leaves, small stalks or flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa* L) including all forms known as bhang; sidhi or ganja;

- (ii) charas, that is, the resin obtained from the Indian hemp plant which has not been submitted to any manipulations other than those necessary for packing and transport;
 - (iii) any mixture with or without natural materials, or any of the above forms of intoxicating drugs, or any drink prepared therefrom, and
 - (iv) any other intoxicating or narcotic substance which the State Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or manufactured drug, as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (*Central Act 61 of 1985*);
- (q) "liquor" means intoxicating liquor and includes all liquid consisting of or containing alcohol; also tari and pachwai in any form; and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act;
 - (r) "manufacture" includes any process whether natural or artificial, by which any intoxicant is produced or prepared, also redistillation and every process for the rectification, flavouring, blending or colouring of liquor;
 - (rr) "molasses" means heavy, dark-coloured residual syrup drained away in the final stage of the manufacture of sugar by vacuum pans or in open pans in sugar factories either from sugarcane or by refining gur;
 - (s) "State Government" means the Government of Assam;
 - (t) "pachwai" means any fermented rice, millet, or other grain, whether mixed with any liquid or not and any liquid obtained therefrom, whether diluted or undiluted but does not include beer;
 - (u) "place" includes a house, building, shop, tent, vessel and raft and vehicle;
 - (v) expressions referring to 'sale' include any transfer otherwise than by way of gift;
 - (w) "spirit" means any liquor containing alcohol, obtained by distillation whether it is denatured or not;
 - (x) "tari" means juice, whether fermented or unfermented, drawn from any kind of palm tree;
 - (y) "transport" means to move from one place to another within the territories to which this Act applies;
 - (z) "public place" means any place intended for use by or accessible to the public and includes any conveyance running or parked on public roads or parking area.

3. Power to define country liquor and foreign liquor respectively.–

The State Government may, by notification, declare what, for the

purposes of this Act, shall be deemed to be Country liquor and Foreign liquor respectively.

4. Wholesale or Retail Sale.— The State Government may, by notification, declare with respect either to the whole of the territories to which this Act applies or to any local area comprised therein and as regards purchasers generally or any specified class of purchasers generally or any specified occasion, what quantity of any intoxicant shall for the purpose of this Act, be the limit of sale by retail and of sale by wholesale, respectively.

5. Saving of certain enactments.— Nothing contained in this Act shall affect the provisions of the Cantonment Act, 1924, the Sea Customs Act, 1878 (*Central Act 8 of 1878*), or the Indian Tariff Act, 1894 (*Central Act 8 of 1894*), or any rule or order made under the said Acts.

CHAPTER - II ESTABLISHMENT AND CONTROL

6. Appointment of officers and conferment withdrawal and delegation of power.— (1) Within a district, the administration of the Excise Department and the Collector of Excise Revenue shall be under the charge of the District Collector.

(2) The State Government may, by notification applicable to the whole of the territories to which this Act applies, or to any District or local area comprised therein-

- (a) appoint an officer who shall, subject to the control of the State Government, have the control of the administration of the Excise Department and of the collection of excise revenue;
- (b) appoint any person other than the District Collector who shall, subject to the control of the District Collector, exercise all or any of the powers or perform all or any of the duties of a Collector under this Act, or any other law for the time being in force relating to the excise revenue;
- (c) appoint officers of the excise department of such classes and of such designations, powers and duties under this Act, as the State Government may think fit;
- (d) withdraw from any officer or person all or any of his powers or duties under this Act;
- (e) authorise-
 - (i) the State Government to delegate to the Excise Commissioner and also in such cases and such matters as the State Government may specify, to the Commissioner of a Division;
 - (ii) the Excise Commissioner, and in such cases and in such matters as the State Government may specify, a Commissioner of

Division, subject to the control of the State Government to delegate to Collectors; and

- (iii) Collector, subject to the control of the Excise Commissioner and the State Government, to delegate to subordinate officers, subject to such conditions and restrictions as may be prescribed by any rules made under Section 84, sub-section (2), clause (a) any powers conferred upon, or delegated to, or exercised in respect of the excise revenue by the State Government, the Excise Commissioner, Commissioners of Divisions and Collectors, respectively, by or under the provisions of this Act or of any other law for the time being in force relating to excise.

7. Appeal.— (1) Order passed under this Act or the rules framed thereunder by the Excise Commissioner, a District Collector, a Collector other than a District Collector or an authority mentioned in Sections 14 and 17 of this Act, shall be appealable before Assam Board of Revenue.

(2) In hearing appeals, the Assam Board of Revenue may call for the proceedings held by any of officers or authorities mentioned in sub-section (1) and pass such order or orders thereon as it may think fit.

CHAPTER - III

IMPORT, EXPORT AND TRANSPORT

8. Restriction on import.— (1) No intoxicant shall be imported unless,-

- (a) the State Government has given permission either general or special, for its import;
- (b) such conditions, if any, as the State Government may impose, have been satisfied; and
- (c) the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof.

9. Restriction on import and transport.— No intoxicant shall be exported or transported unless the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof.

10. Prohibition of import, export and transport.— The State Government may, by notification,-

- (a) prohibit the import or export of any intoxicant into or from the territories to which this Act applies or any part thereof; or
- (b) prohibit the transport of any intoxicant.

11. Prohibition of publication of and entry of newspaper, periodical, journals etc.— The State Government may, by notification,-

- (1) prohibit into the areas to which this Act applies the publication or display of advertisement of liquor or intoxicating preparations in the

newspapers, periodicals, journals, hoardings, banners etc. printed and published in and from that area.

- (2) prohibit into the areas to which this Act applies the entry of newspapers, journals etc. if any contain advertisement of liquor or intoxicating preparations.

12. Passes for import, export and transport.— No intoxicant, exceeding such quantity as the State Government may prescribe by notification either generally for the whole of the territories to which this Act applies or for any local area comprised therein, shall be imported, exported or transported except under a pass issued under the provisions of the next following section.

13. Grant of passes.— Passes for the import, export or transport of intoxicant may be granted by the Collector or by any officer specially authorised by the Excise Commissioner in this behalf;

Such passes may be either general for definite and specified kinds of intoxicants or special for specified occasions and particulars consignments only.

CHAPTER - IV

MANUFACTURE, POSSESSION AND SALE

14. Manufacture and preparation for manufacture permitted only under licence.— (1) Except under the authority and in accordance with the terms and conditions of a licence granted in that behalf by the authority prescribed in the rules framed under this Act-

- (a) no intoxicant shall be manufactured;
- (b) no hemp plant (*Cannabis sativa* L) shall be cultivated or collected;
- (c) no liquor shall be bottled for sale;
- (d) no distillery or brewery shall be constructed or worked; and
- (e) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari :

Provided that nothing in clause (c) shall apply to tari which may lawfully be sold under clauses (b) to (e) of sub-section (3) of Section 17.

(2) Unless and until the State Government shall, by notification issued under sub-section (3), direct otherwise nothing in clause (a) of sub-section (3) shall apply to-

- (i) tari intended to be used solely for the manufacture of gur or molasses;
- (ii) tari intended to be used solely for the preparation of food for domestic consumption, and not as an intoxicant or for the preparation of any intoxicating article or any articles for sale; and
- (iii) tari upto a limit of four kilograms for the domestic consumption of the person in possession of the tree from which it is drawn.

(3) Notwithstanding anything contained in sub-section (2), the State Government may, by notification, prohibit the manufacture of tari by any person or class of persons either throughout the territories to which this Act applies, or in any local area comprised therein, either absolutely or subject to such conditions as it may prescribe.

15. Establishment or licensing of distilleries, breweries and warehouses.— The Excise Commissioner, with the sanction of the State Government, may-

- (a) establish a distillery, in which spirit may be manufactured under a licence granted under sub-section (1) of Section 14, on such conditions as the State Government thinks fit to impose;
- (b) discontinue any distillery so established;
- (c) licence, on such conditions as the State Government thinks fit to impose, the construction and working of a distillery or brewery;
- (d) establish or licence a warehouse wherein any intoxicant may be deposited and kept without payment of duty; and
- (e) discontinue any warehouse so established.

16. Limit of possessions with exceptions and prohibitions, in special cases.— (1) No person shall have in his possession any quantity of any intoxicant in excess of such quantity as the State Government, may, under Section 4 declare to be the limit of sale by retail, except under the authority and in accordance with the terms and conditions of-

- (i) a licence for the manufacture, sale or supply of such article, or
- (ii) in the case of intoxicating drugs, a licence for the cultivation or collection of the plants from which such drugs were produced, or
- (iii) a permit granted by the Collector in that behalf.

(2) Nothing in sub-section (1) shall apply to-

- (a) any foreign liquor other than denatured spirit in the possession of any common carrier or warehouseman, as such, or
- (b) any foreign liquor lawfully procured by, and in the possession of any person for his own bonafide private consumption and not for sale, or
- (c) tari intended to be used solely for the manufacture of gur or molasses, or
- (d) tari intended to be used solely for the domestic consumption, and not as an intoxicant or for the preparation of any intoxicating article or of any article for sale.

(3) Notwithstanding anything contained in sub-section (1) the State Government may by notification, prohibit the possession by any person or class of persons, either throughout the whole of the territories to which the Act applies, or any local area, place or class of place comprised therein, of any intoxicant either absolutely or subject to the conditions as it may prescribe.

17. Prohibition of sale without licence and exceptions to such prohibitions.— (1) No intoxicant shall be sold except under the authority and in accordance with the terms and conditions of a licence granted by the authority prescribed in the rules framed under this Act in this behalf :

Provided that-

- (1) on such conditions as may be determined by the State Government, a licence for sale granted under the Excise law in force in another province may be deemed to be a licence granted under this Act;
- (2) a person licenced to cultivate or collect plant from which an intoxicating drug is produced, may sell without a licence those portions of the plant from which the intoxicating drug is manufactured or produced to any person licenced under this Act, to deal in the same, or to any officer to whom the Excise Commissioner may prescribe;
- (3) nothing in this section applies to-
 - (a) the sale of foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representative in interest upon his quitting a station or after his decease;
 - (b) the sale of tari lawfully possessed by a person in possession of the tree from which it was drawn to a person licenced under this Act to manufacture or sale tari;
 - (c) the sale of tari lawfully possessed and intended to be used solely for the manufacture of gur or molasses;
 - (d) the sale of tari lawfully possessed and intended to be used solely for the preparation of food for domestic consumption, and not as an intoxicant or for the preparation of any intoxicating article for sale, and
 - (e) the sale of tari lawfully possessed and intended to be used in the manufacture of bread to a person holding a permit to use tari for the purpose of making bread;
- (4) any club which has transactions with its members in respect of foreign liquor, shall be deemed to conducting retail sales and shall be required to take out a licence under this Act on payment of such fees and subject to such restrictions and on such conditions as the State Government may prescribe.

18. Exclusive privilege of manufacture and supply.— The State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege of manufacturing or of supplying to licenced vendors any country liquor or intoxicating drugs within any specified local area.

No guarantee of any exclusive privilege under this section shall exercise the same until he has received a licence sanctioned by the State Government and issued by the Commissioner of Excise, Assam.

19. Manufacture and sale in or near Cantonment.— Within the limit of any Military Cantonment and within such distance from such limits as the Central Government in any case may prescribe on licence for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

CHAPTER - V

DUTIES AND FEES

20. Duty of excise articles.— An excise duty or a counter-vailing duty, as the case may be, at such rate or rates, as the State Government may direct, may be imposed, either generally or for any specified local area, on any excisable article-

- (a) imported; or
- (b) exported; or
- (c) transported; or
- (d) manufactured, cultivated or collected under any licence granted under Section 14; or
- (e) manufactured in any brewery or distillery licensed or established under Section 15 :

Provided that duty shall not be so imposed on any article which has been imported into India and was liable on such importation to the payment of duty under the Indian Tariff Act, 1894 or the Sea Customs Act, 1878.

Explanation.- Duty may be imposed under this section at different rates according to the places to which an excisable article is to be removed for consumption, or according to the varying strength and quality of such article.

21. Method of levy of duty.— Subject to such rules regulating the time, place and manner as the State Government may prescribe, any duty imposed under Section 20 shall be levied as follows:-

- (a) in the case of excisable articles imported,-
 - (i) either in the territories to which this Act applies or in the State or territory from which the article is imported, or
 - (ii) upon issued for sale from a warehouse established or licenced under clause (d) of Section 15;
- (b) in the case of excisable articles exported in the territory to which the Act applies or in the State or territory to which the article is exported;
- (c) in the case of excisable articles transported,-
 - (i) in the district from which the excisable article is transported, or

- (ii) upon issue for sale from a warehouse established under clause (d) of Section 15;
- (d) in the case of intoxicating drugs,-
 - (i) at a rate assessed on the area covered by a licence granted under the provisions of clause (b) of sub-section (1) of Section 14 or on the quantity or outturn of the crop cultivated or collected under such licence, or
 - (ii) at a rate charged upon the quantity produced or manufactured under a licence granted under the provisions of clause (d) of sub-section (1) of Section 14 or issued from a warehouse established or licenced under clause (a) of sub-section (1) of Section 15 or issued from a warehouse established or licenced under clause (d) of sub-section (1) of Section 15;
- (e) in the case of spirit or beer manufactured in a distillery or brewery established or licenced under Section 15,-
 - (i) at a rate charged upon the quantity produced or issued from the distillery or brewery, as the case may be, or issued from a warehouse licenced or established under clause (d) of Section 15, or
 - (ii) at a rate charged in accordance with such scale or equivalents calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe :

Provided that where payment is made upon issue of excisable article or sale from a warehouse, established or licenced under Section 15, clause (d) it shall be at the rate of duty in force in respect of such article on the date of issue from the warehouse.

22. Payment for grant of exclusive privilege.— Instead of or in addition to any duty leviable under this chapter the State Government may accept payment of a sum in consideration of the grant of any exclusive privilege under Section 18.

23. Saving for duties being levied at commencement of Constitution.— (1) Until provisions to the contrary is made by the parliament, the State Government may continue to levy any duty to which this section applies which it is lawfully levying immediately before the commencement of the Constitution, under this chapter as then in force.

- (2) The duties to which this section applies are,-
 - (a) any duty on intoxicants or medicinal or toilet preparations containing alcohol which are not excisable articles within the meaning of this Act;

(b) any duty on an excisable article produced outside India and imported to the territories to which this Act applies whether across a customs frontier as defined by the Central Government or not.

(3) Nothing in this section shall authorise the levy by the State Government of any duty which, as between goods manufactured or produced discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the State discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

CHAPTER - VI LICENSES, PERMITS, PASSES

24. Existing licenses etc.— Every licence, permits or pass granted under any Section of the Assam Excise Act, 1910 shall be deemed to have been granted under the corresponding section of this Act, and shall unless previously cancelled, suspended or surrendered under this Chapter remain in force for the period for which it was granted.

25. Form and conditions of licenses etc.— Every licence, permit or pass granted under this act-

- (a) shall be granted-
 - (i) on payment of such fees, if any,
 - (ii) for such period, and
 - (iii) subject to such restrictions and such conditions, and
- (b) shall be in such form and shall contain such particulars, as the State Government, subject to any rules made under clause (g) sub-section (2) of Section 84, may direct either generally or in any particular instance in this behalf :

Provided that no fee shall be charged for any permit granted under Section 16 for the possession of any intoxicant for bonafide consumption or use.

26. Rules for settlement of shops.— (1) The Excise Commissioner, Collector or any Officer or Authority, in issuing any licence or in making any settlement of shops under this Act, or rules framed thereunder, shall be guided by such directions as may be issued by the State Government from time to time either generally or in particular.

(2) The State Government may, at any time, if in their opinion it is so necessary, cancel any notice calling for tenders for settlement of shops in accordance with the rules framed under this Act or any tender received in pursuance of any such notice or withdraw any shop from settlement for such period without assigning any reason therefor and such power of cancellation or withdrawal shall be deemed to have always been vested in the State Government.

(3) Notwithstanding anything in this Act, the State Government may issue direction to the Excise Commissioner, Collector or any officer or authority to

cancel any notice in accordance with rules framed under this Act calling for tenders for settlement of shops or any tender received in pursuance of any such notice or to withdraw any shop from settlement at any time without assigning any reason therefor and the Excise Commissioner, Collector or any officer or authority, as the case may be, shall comply with such directions and such power of issuing direction to the Excise Commissioner, Collector or any officer or authority shall be deemed to have always been vested in the State Government.

(4) If any notice inviting tenders received in pursuance of any such notice is cancelled under this section the value of Court fee Stamps affixed to any such tender or any money deposited along with any such tender required by or under this Act shall be refunded to the person fixing the stamp or depositing the money.

27. Counterpart agreement and security.— Every person taking out a licence under this Act may be required to execute a counterpart agreement in conformity with the tenure of this licence, and to give such security by way of deposit or otherwise, for the performance of this agreement as the authority granting the licence may require.

28. Technical defects, irregularities and omissions.— (1) No licence granted under this Act shall be deemed to be invalid by reason of any technical defect, irregularity or omission in the licence, or any proceedings taken prior to the grant thereof.

(2) The decision of the State Government as to what is a technical defect, irregularity or omission shall be final.

29. Ascertainment of local public opinion.— Before the licences are granted in any year of the retail sale of any intoxicant, the Collector shall take measures, in accordance with rule to be made by the State Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licencing and location of shops.

30. Cancellation or suspension of licences, etc. in certain cases.— (1) Subject to such restrictions as the State Government may prescribe the authority who granted the licence, permit or pass under this Act may cancel or suspend the same-

- (a) if any duty fee payable by the holder thereof be not duly paid, or
- (b) if an excisable article is sold at excess price, or
- (c) in the event of any breach by the holder thereof or by his servants, or by any one acting on his behalf, with his express or implied permission, of any of the terms or conditions of such licence, permit or pass, or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable or non-bailable offence or of any offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 (*Central Act 61 of 1985*) or under the Trade and Merchandise Marks Act, 1958 (*Central Act 43 of 1958*) or under Section 482 to 489 of the Indian Penal Code;

(e) at will, if the conditions of the licence, permit or pass provided for such cancellation or suspension.

(2) The holder of a licence, permit or pass shall not be entitled to any compensations, for the cancellation or suspension of his licence, permit or pass under this section or to the refund of any fee paid or deposit made in respect thereof.

31. Cancellation of licences in other cases.— (1) Whenever the authority stated in Section 30 considers that a licence should be cancelled otherwise than under the provisions of that Section, he shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days and may cancel the licence either,-

(a) on the expiration of fifteen day's notice in writing of his intention to do so, or

(b) forthwith without notice.

(2) If any licence be cancelled under clause (b) of sub-section (1) the aforesaid authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum by way of compensation as the State Government may direct.

(3) When a licence is cancelled under this section any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount, if any, due to Government.

32. Surrender of licence.— Any holder of licence granted under the Act to sell an intoxicant may surrender his licence on the expiration of one month notice in writing given by him to the Collector of his intention to surrender the same on payment of the fee payable for the licence for the whole period for which it would have been current but for such surrender :

Provided that, if the State Government is satisfied that there is sufficient reason for surrendering a licence, it may remit to the holder thereof the sum payable on surrender and any fee paid in advance or any portion of such sum or fee :

Provided also that nothing in this section shall apply in the case of a licence held by the grantee of an exclusive privilege under Section 18.

Explanation:- In this section and in Section 35, the words 'holder of licence' include a person whose bid, tender or application for licence has been accepted by the Excise Officer empowered to grant such licence, although such person may not in fact have received the licence.

33. No right to renewal.— No person to whom a licence has been granted under this Act shall have claim to the renewal of such licence, or save as provided in Section 31, any claim to compensation on the determination thereof.

CHAPTER - VII
GENERAL PROVISIONS

34. Measures, weights and instruments.— Every person who manufactures or sells any intoxicant under a licence granted under this Act-

- (a) shall supply himself with such measures, weights and instruments as the State Government may prescribe, and shall keep the same in good condition, and
- (b) on the requisition of any Excise Officer duly empowered in this behalf, shall at any time measure, weight or test any intoxicant in his possession as such officer may require.

35. Departmental management and resale.— If any person to whom an exclusive privilege has been granted under Section 18 or any holder of a licence granted under this Act makes default in payment of any sum payable in respect of such privilege or licence or in complying with any other conditions thereof, the Collector may take such privilege or the grant expressed in such licence under management or may resell such privilege or grant at risk and loss of the defaulter.

36. Recovery of dues.— (1) All excise revenue, payable to the Government under this Act, shall be recovered from the person liable to pay the same or his legal representatives/successors or from his surety or his agent as if they were the arrears of land revenue or in the manner provided for the recovery of public demands by any law for the time being in force.

- (2) In the event of default in payment of excise revenue or otherwise, by any person licensed under this Act, his manufactory, warehouse, shop or premises and all fittings, apparatus, stocks of liquor or material for the manufacture of the same held therein shall be liable to be attached towards any claim for excise revenue or in respect of any loss incurred by the Government through such default and be sold to satisfy such claim which shall be the first charge upon the proceeds of such sale.

CHAPTER - VIII
PREVENTION, DETECTION AND INVESTIGATION OF OFFENCES

37. Inspection of places of manufacture and sale.— The Excise Commissioner or a Collector or an Excise Officer of the rank of Additional Commissioner, Joint Commissioner, Deputy Commissioner, Superintendent, Deputy Superintendent and Inspector may enter and inspect at any time by day or night any place in which any licensed manufacturer carries on the manufacture of or store any intoxicant and any place in which any intoxicant kept for sale by licensed person and may examine accounts and registers, and may examine, test, measure or weight any measures, weights, testing instruments, materials, stills, utensils, implements, apparatus or intoxicant found in such place.

38. Arrest, seizure and search without warrant.— Subject to such restrictions the State Government may prescribe, any of the following persons, namely:-

- (1) any officer employed in Excise, Police, not below such rank as the State Government may prescribe;
- (2) within such areas as the State Government may by notification, direct such officers;
- (3) any other persons duly empowered, and
- (4) in any public place, any Excise or Police Officer may,-
 - (a) arrest without warrant any person found committing an offence punishable under Section 53 or Section 54;
 - (b) seize, detain and carry away any excisable or other article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise revenue or any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or under the Assam Opium Prohibition Act, 1947 (*Assam Act 23 of 1947*), Assam Ganja and Bhang Prohibition Act, 1959 (*Assam Act 21 of 1959*) and Narcotic Drugs and Psychotropic Substances Act, 1985 (*Central Act 61 of 1985*), and
 - (c) detain and search any person upon whom and any vessel, raft, vehicle, animal, package, receptacle cause to suspect any such article to be.

39. Issue of warrants.— A Collector or Magistrate having reason to believe that an offence punishable under Section 53, 54, 55, 56, 57 or 61 has been or is likely to be committed may,-

- (a) issue warrant for the search of any place in which he has reason to believe that any intoxicant, still, utensil, implement, apparatus or materials in respect of which such offence has been or is likely to be committed, are kept or concealed; and
- (b) issue warrant for the arrest of any person whom he has reason to believe to have been or to be likely to be engaged in the commission of any such offence.

40. Search and arrest in presence of Collector and Magistrate.— (1) A Collector or Magistrate may at any time search or direct a search to be made in his presence of any place for the search of which he is competent to issue warrant under Section 39.

(2) A Collector or a Magistrate at any time arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under Section 39.

41. Search, seizure and arrest following upon entry without warrant, in emergent cases.— Any Excise or Police Officer, not below such rank as the

State Government may, by notification, prescribe, having reason to believe and having recorded the grounds of his belief that an offence under Section 53, 54, 55, 56, 57 or 61 has been, is being or is likely to be, committed in any place and that a search cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence, may at any time by day or night,-

- (a) enter into and search such place;
- (b) seize and carry away anything found therein which he has reason to believe to be liable to confiscation under this Act or any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or under the Assam Opium Prohibition Act, 1947 (*Assam Act 23 of 1947*), Assam Ganja and Bhang Prohibition Act, 1959 (*Assam Act 21 of 1959*) and the Narcotic Drugs & Psychotropic Substances Act, 1985 (*Central Act 61 of 1985*) and detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to have committed any such offence as aforesaid.

42. Power to investigate.— (1) A Collector may without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local areas within the limits of such Collector's jurisdiction would have power to inquire into or try under the provisions of CHAPTER-XIII of Code of the Criminal Procedure, 1973 (*Central Act 2 of 1974*), relating to the place of inquiry or trial.

(2) Any other Excise Officer when specially empowered in this behalf by the State Government in this respect of all or any specified class of offences punishable under this Act, may, without the order of the Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions.

43. Powers of investigating officers.— (1) Any Collector or other Officer empowered under the provisions of sub-section (2) of Section 42 having recorded in writing his reason for suspecting the commission of an offence which he is empowered to investigate may exercise the power conferred upon a Police Officer making an investigation or upon an Officer-in-Charge of a Police Station by Sections 160-171 of the Code of Criminal Procedure Code, 1973 (*Act 2 of 1974*), and as regards offences punishable under Section 53, 54, 55, 56, 57 and 61 of this Act, the powers conferred upon such Police Officers, in respect of cognizable offences under Section 55 and under Section 57 of the said Code.

(2) Subject to such restrictions as the State Government may prescribe, a Collector or with the previous permission of a Collector but not otherwise, any other officer specially empowered under Section 42, may without reference to Magistrate and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence which he has investigated.

(3) For the purposes of the provisions of Section 166 of the Code of Criminal Procedure, 1973 which an officer specially empowered under subsection (2) of Section 42 is appointed shall be deemed to be a Police Station, and such officer the Officer-in-Charge of such station.

(4) As soon as investigation under Section 42 has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the Investigating Officer, when does not proceed under subsection (2) or under Section 76 shall submit a report, which for the purposes of Section 190 of the Code of Criminal Procedure, 1973, shall be deemed to be a police report, in such form as the State Government may prescribe to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police report.

44. Production of persons arrested or article seized.— Article seized and, unless security for their appearance before the Collector be taken, persons arrested under the warrant of a Collector shall be produced before such Collector.

(2) Article seized under the provisions of Sections 38 and 41 and persons arrested under the said provisions by persons or officers not empowered to accept bail shall be produced or forwarded to-

- (a) the Collector or other officer empowered under Section 42 to investigate the case, or
- (b) an excise officer empowered under Section 49 to accept bail, or
- (c) the officer-in-charge of the nearest police station whoever is nearest.

(3) When a person arrested is produced before an Excise Officer empowered under Section 49 to accept bail, before an officer-in-charge of a police station, such officer shall forward such person to or take security for his appearance before Collector or other officer empowered under Section 42 to investigate the case.

(4) When articles seized cannot be conveniently conveyed before the officer specified in sub-sections (1) and (2) the persons making the seizure shall keep of them in some place of safety and forthwith report the seizure to such officer.

45. Police custody of articles seized.— (1) All Officer-in-Charge of a Police Station shall take charge of and keep in safe custody, pending the order of a Collector or other Officer empowered under Section 42 to investigate the case, all articles seized under this Act which may accompany such articles to the Police Station or may be deputed for the purpose of an official superior to affix his seal to such articles and to take samples of and from them.

(2) All samples so taken shall also be sealed with the seal of the officer-in-charge of the Police Station.

46. Report of arrests, seizure and searches.— When any Excise Officer below the rank of a Collector or Officer-in-charge of a Police Station makes or receives the information of any arrest, seizure or search under this act he shall within twenty-four hours thereafter, make a full report of the particulars of the

arrests, seizure or search of the information received to the Collector, and to the other officer, if any, empowered under sub-section (2) Section 42 within the local limits of whose jurisdiction the arrest, seizure or search was made.

47. Procedure in executing warrants and in making arrests and search.— (1) Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure Code, 1973 relating to arrests, searches, warrants of arrest and search warrant shall apply, so far as may be, to like warrants issued and to arrests and searches made under the provisions of this Act.

(2) For the purposes of the aforesaid provisions a Collector shall be deemed to be a Court.

(3) Warrants issued by a Collector shall ordinarily be directed to one or more Excise Officers.

(4) Officers to whom a Collector's warrants is directed or endorsed, and officers other than Collectors making arrests, searches and seizures under Section 38 or Section 41 shall, for the purpose of the aforesaid provisions of the Code of Criminal Procedure, 1973 deemed to be Police Officers.

48. Maximum period of detention.— No person arrested under the provisions of this Act shall be detained in custody for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the place where the Collector or other officers empowered under Section 42 to investigate, as the case may be, and then to the Court of Magistrate having jurisdiction to inquire into or try the case.

49. Bail.— (1) Subject to sub-section (2) of this Section, the provisions of the Code of Criminal Procedure, 1973 (*Central Act 2 of 1974*) shall apply to bail in respect of the offences under this Act.

(2) Except for the offences punishable under sub-section (1) of Section 53, Section 54 and Section 55, which shall be non-bailable, all other offences under this Act shall be bailable within the meaning of the said Code.

(3) All Excise Officers and Police Officers, not below such rank as the State Government may prescribe, shall be empowered to accept bail in respect of bailable offences.

50. Information and aid to Excise officers.— Subject to such conditions, if any, as the State Government may, by notification prescribe, every officer employed in the Police, Customs Departments, every officer employed by Civil Defence Department, every village gaonbura and within such areas as the State Government may, by notification, direct such officers of the Land Revenue Department, as may be specified in such notification, shall be bound-

- (a) to give immediate information to an Excise Officer of all branches or any of the provisions of this Act which may come to his knowledge, and
- (b) to aid an Excise Officer reasonably demanding his aid in the due carrying out of any of the provisions of this Act.

51. Obligation on landholders and other to give information certain cases.— In such areas as the State Government may, by notification, direct, and subject to such conditions, direct, and subject to such conditions and exceptions, if any, as it may, by notification prescribe, whenever any intoxicant is manufactured, or any hemp plant is cultivated or collected on any land, or any place or village, in contravention of the provisions of this Act, all owners and occupiers of such land or place, and their agents and all members of the Panchayats village headman, mauzadars, mandals, patwaris, and village recorders in such village, as the case may be, shall, in the absence of reasonable excuse, be bound to give information of the fact to a Collector, to a Magistrate or to any officer of the Excise or Police Department as soon as such fact may come to their knowledge.

52. The closing of retail shops for the preservation of public peace.— (1) The District or Sub-Divisional Magistrate may, by notice in writing to the licensee, require that any shop in which any intoxicant is sold by retail shall be closed at such times or for such periods as such Magistrate may deem necessary for the preservation of the public peace.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, any Magistrate or any Police Officer above the rank of constable who is present may order the person in charge thereof to keep it closed for such period as the Magistrate or Police Officer may think necessary :

Provided that no shop shall be kept closed under this sub-section for a longer period than 48 hours without the order of a Magistrate.

(3) When any Magistrate or Police Officer make a requisition or direction under sub-section (1) or sub-section (2), he shall forthwith report the fact to the Collector having jurisdiction in the local area in which the shop is situated.

(4) The State Government may grant to the licensee of a shop kept closed under sub-sections (1) or (2) such compensation as it may think fit.

CHAPTER - IX

PENALTIES AND PROCEDURES

53. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.— (1) Whoever, in contravention of the provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act,-

- (a) manufactures, imports, exports, transports, removes, possesses or sells any intoxicant other than tari and pachwai; or
- (b) constructs or works, any distillery or brewery; or
- (c) bottles any liquor other than tari and pachwai for purposes of sale; or

- (d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than tari and pachwai; or
- (e) possesses any material or label of any brand of liquor either with or without the Government hologram or hologram of any other State or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;

shall be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees and the convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to one year, and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

(2) Whoever as aforesaid-

- (a) taps or draws tari from any producing tree, or
- (b) bottles any tari or pachwai for the purposes of sale, or
- (c) imports, exports, transports, manufactures, possesses or sells any tari or pachwai, shall be punished with imprisonment which may extend to six months or with fine not exceeding five thousand rupees or with both.

54. Unlawful possession in certain cases.— Whoever without lawful authority has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, exported, transported or manufactured, and knowing that the prescribed duty has not been paid thereon, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees and the convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to one year and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

55. Penalty for altering or attempting to alter any denatured spirit that may be used for human consumption.— If any person alters or attempts to alter any denatured spirit with the intention that such spirit may be used for human consumption whether as a beverage or internally as a medicine or in any other way whatsoever, by any method whatsoever, or has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made, he shall be punished with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to

one year, and such imprisonment shall be addition to any other imprisonment to which he may have been sentenced.

56. Adulteration etc.– Whoever being the holder of a licence, permit or pass granted under this Act or being in the employ of such holder wilfully contravenes any rule made under Section 84 (2)(e)(i), (ii) and (iii).

Shall be punished with imprisonment which may extend to two years, or with fine or with both;

And, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to one year, and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

57. Fraud by licensee or his employee.– Whoever being the holder of a licence, permit or pass granted under this Act or being in the employ of such holder,-

- (a) keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, or
- (b) marks or otherwise deals with any bottle, case, package or other receptacle containing country liquor, or marks the cork of any such bottle, with the intention of causing it to be believed that such bottle, case, package, other receptacle contains foreign liquor.

Shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

58. Breach of rule or condition of licence.– Whoever being the holder of a licence, permit or pass granted under this Act, or being in the employ of such holder and acting on his behalf,-

- (a) fails to produce such licence, permit or pass on the demand of any Excise Officer or of any other officer duly empowered to make such demand, or
- (b) in any case not otherwise provided for in this Act wilfully contravenes any rule made under Section 84 or wilfully does or omits to do anything in breach of any of the conditions of such licence, permit or pass shall be punished in case of (a) with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and in case (b) with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees and the convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to six months.

58A. Penalty for non-payment of duty or fee.– If any person or any licence holder under this Act fails to pay any duty, fee or any other levy due to the Government, which under this Act he is liable to pay and for which he has received due notice from the State Government or the Excise Commissioner or a Collector, shall be punished with imprisonment for a term which may extend to

three years and with fine which shall not be less than the amount due from him but which may extend to three hundred percent of the duty, fee or other levies due from him.

59. Liability of licenses for offence committed by his agent.— The holder of a licence, permit or pass granted under this Act shall be punishable, as well as the actual offender, for any offence punishable under Section 53, 54, 55, 56, 57 or 58 committed by any person in his employ and acting on his behalf as if he had himself committed such offence, unless he established that all due and reasonable precautions were exercised by him to prevent the commission of such offence :

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine.

60. Import, export, transport, manufacture, sale or possession by one person on account of another.— (1) When any intoxicant has been imported, exported, transported, manufactured or sold or is possessed by any person on account of another person, and such other person knows or has reason to believe that such import, export, transport, manufacture or sale was or that such possession is, on his account, the article shall for the purposes of this Act be deemed to have been imported, exported, transported, manufactured or sold by, or to be in the possession of such other person.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, manufactures, sells or has possession of an intoxicant on account of another person from liability to any punishment under this Act for the unlawful import, export, transport, manufacture, sale or possession of such article.

61. Consumption of intoxicants in druggists shop.— (1) If any chemist, druggist, apothecary or keeper of a dispensary or a laboratory allows any intoxicant which has not been bonafide medicated, to be consumed, on his business premises by any person not employed in his business, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees or with both.

61A. Prohibition of consumption of liquor or intoxicant in public place.— No person shall consume liquor or any intoxicant in a public place (as defined under Section 2 (z)).

61B. Penalty for consumption of liquor in public places.— Whoever, in contravention of this Act or the rules, notification or order made thereunder,-

- (a) consumes liquor in a public place;
- (b) consumes liquor in a public place and creates nuisance;
- (c) permits drunkenness or allows assembly of unsocial elements on the licensed premises of liquor establishments; shall be punishable:-
 - (i) in case of an offence falling under clause (a), with fine which may extend to five thousand rupees;

- (ii) in case of an offence falling under clause (b), with imprisonment for a term which may extend to three months and with fine which may extend to ten thousand rupees; and
- (iii) in case of an offence falling under clause (c), with imprisonment for a term which may extend to six months and with fine which may extend to fifty thousand rupees.

62. Vexatious search, seizures, detention or arrest or refused of duty or cowardice on part of Excise Officer.— Whoever, being an Excise Officer-

- (a) without reasonable grounds of suspicion, searches or caused to be searched any place, under colour of exercising any power conferred by this Act, or
- (b) vexatiously and unnecessarily seize any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or
- (d) without lawful excuse ceases or refuses to perform or withdraws himself from the duties of his office, unless expressly and in writing allowed to do so by the Collector, unless he shall have to his immediate superior two month's notice in writing of his intention to do so, or
- (e) is guilty of cowardice,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

63. Punishment for allowing premises to be used for the commission of an offence.— Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle or place, knowingly permits it to be used for the commission by any other person of an offence punishable under Section 53, 54, Section 55 shall be punished with imprisonment which may extend to two years or with fine, or with both.

64. Offences not specifically provided for.— Whoever, in any case not otherwise provided for under this Act, wilfully contravenes any of the provisions of this Act or of any rule, notification or order made or issued thereunder shall be punished with fine which may extend to two thousand rupees.

64A. Commission of offence by companies.— (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence, shall be deemed to be guilty of offence, and shall be liable to be proceeded against and punished accordingly :

Provided that where a company has different establishments or branches of different units in any establishment or branch, the Chief Executive Officer and the person in charge of such establishment, branch, unit nominated by the

company as responsible for the conduct of the business shall be liable for contravention in respect of such establishment, branch or unit.

(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 that the commission of the offence is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section,-

"Company" means a body corporate registered under the Companies Act, 2013 (*Central Act No. 18 of 2013*) and includes a firm including a partnership firm, whether registered under Indian Partnership Act, 1932 (*Act No. IX of 1932*) or other association of individual registered under the Co-operative Societies Act, 1912 (*Act No. 2 of 1912*) and the Societies Registration Act, 1860 (*Act No. 21 of 1860*); and "director", in relation to firm, means a partner in the firm.

65. Attempts.— Whoever attempts to commit any offence punishable under this Act, shall be liable to the punishment provided for such offence.

66. Abetments.— Whoever abets an offence punishable under this Chapter shall whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in Section 116 of the Indian Penal Code be punished with the punishment provided for the offence.

67. Enhanced punishment after previous conviction.— If any person after having been previously convicted of an offence punishable under Sections 53, 54, 55 or 61 or under the similar provisions in any enactment repealed by this Act, subsequently commits and is convicted of an offence punishable under any of those section, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act :

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXI of the Code of Criminal Procedure, 1973 from being so tried.

68. Security for abstaining from commission from certain offences.— (1) Whenever any person is convicted of an offence punishable under Section 53, 54 or Section 61 and the Court convicting him is of the opinion that it is necessary to require such person to execute bond for abstaining from commission of offence punishable under these sections, the Court may, at the time of passing sentence on such persons, order him to execute a bond, for a sum proportionate to his means with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years as it thinks fit to fix.

(2) The bond shall be in the form contained in the Second Schedule and provisions of the Code of Criminal Procedure, 1973 shall, in so far as they are applicable apply to all matters connected with such bond or with the non-

execution thereof as if it were a bond to keep the peace ordered to be executed under Section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its power or revision.

69. Initiation of prosecution.— (1) No Magistrate shall take cognizance of an offence punishable—

- (a) under Section 53, 54, 55, 61 or 61-B except on his own knowledge or suspicion or on the complaint or report of an Excise officer;
- (b) under Section 56, 57, 58, 58-A or 64 except on the complaint or report of a Collector or other officer empowered under Section 42, sub-section (2) to investigate the case; or
- (c) under clause (d) and (e) of Section 62 except with the sanction of the District Collector.

(2) Except with the special sanction of the State Government, no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within six months after the commission of the offence.

70. Magistrate empowered to try case under this Act.— Offences under this Act shall be triable only by Magistrates exercising powers not less than those of a Magistrate of Second Class.

71. Presumptions.— (1) When in any prosecutions under this Act or in any proceedings taken under Section 75 the question arises whether an offence punishable under this Act has been committed in respect of—

- (a) any intoxicant or hemp plant (*Cannabis Sativa L*);
- (b) any still, utensil, implement or apparatus whatsoever for the manufacture of any intoxicant, other than tari; or
- (c) any materials such as are ordinarily used in the manufacture of any intoxicant; if the person found in possession thereof fails to account satisfactorily for such possession, it may be presumed until the contrary is proved, that his possession was in contravention of the provisions of this Act.

(2) When in any prosecution under Section 58 any licensed vendor is charged with permitting drunkenness or intoxication in his shop or in any public room of his business premises, and it is proved that any person was drunk or intoxicated in such shop or room, it shall lie upon such vendor to prove that he and the person employed by him took all reasonable steps for preventing drunkenness or intoxication in such shop or room.

72. Presumption as to offence under Section 55 in certain cases.— In prosecutions under Section 55 when the accused person is proved to have been in possession of any spirit which is, or contains or has been derived from, denatured spirit, and in respect of which any such alteration or attempt as is referred to in

Section 55 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person-

- (i) has himself made such alterations or attempt; or
- (ii) knows or has reason to believe that such alteration or attempt has been made.

73. Presumptions as to any spirit which contains any denaturant.— In any prosecution under this Act, it may be presumed unless and until the contrary is proved, that any spirit which contains any quantity of denaturant is or has been derived from denatured spirit.

74. Liability to confiscation.— Whenever an offence punishable under this Act has been committed, the following things shall be liable to confiscation, namely:-

- (a) the intoxicant, hemp plant (*Cannabis Sativa L*), still, utensil, implement, apparatus or material in respect of or any means of which such offence has been committed;
- (b) any intoxicant lawfully imported, transported, manufactured has in possession or sold alongwith any intoxicant liable to confiscation as aforesaid;
- (c) the receptacles, packages and coverings in which anything liable to confiscation under clause (a) or clause (b) is found and the other contents, if any, such receptacles and packages; and
- (d) the animals, carts, vessels, rafts or other conveyances used in carrying anything referred to in the foregoing clauses :

Provided that when it is proved that the receptacles or other articles specified in the clauses (c) and (d) are not the property of the offender, the said articles shall not be liable to confiscation if the owner thereof established that he had no reason to believe that such offence was being or was likely to be committed.

75. Procedure in regard to articles liable to confiscation.— (1) When in any case tried by a Magistrate, the Magistrate decided that anythings is liable to confiscation under Section 74 he shall order such thing to be confiscated at the disposal of the Collector.

(2) When in any other case in which anything has been seized under this Act an investigating officer proceeds under Section 43, sub-section (2) or the Collector, upon an investigation made, whether by a Collector or by other officer under Section 42 is of opinion that the thing seized is not liable to confiscation under Section 74 such investigating officer or the Collector, as the case may be, shall order the delivery of such thing to the person from whose possession it was taken.

(3) When upon an investigation made as aforesaid it appears to the Collector that an offence made under this Act has been committed and that anything seized under this Act is liable to be confiscated and it further appears that the offender is not known or cannot be found, the Collector shall inquire into

and determine the case, and, if he finds that the thing is liable to confiscation under Section 74 shall order such confiscation :

Provided that no such order shall be made until the expiration of two months from the date of seizing the thing intended to be confiscated or without hearing any person who may appear within the period and claim any right to such thing, and the evidence, if any, which he produces in support of his claim :

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of the opinion that its sale would be for the benefit of the owner, the Collector may at any time direct it to be sold, and the provisions of this sub-section and sub-section (2) shall, as nearly as may be practicable, apply to the net proceeds of such sale.

76. Power to compound offences.— (1) The offences under this Act, except under sub-section (1) of Section 53, Section 54 and Section 55 shall be compoundable.

(2) Any person or licence holder who is reasonably suspected of having committed an offence, except under Section 53 (1), 54 and 55 of this Act, may apply to the Excise Commissioner or a Collector for compounding of the offence, before he is convicted.

(3) On receipt of such application, the Excise Commissioner or Collector, having regard to the circumstances of the case, may in his discretion order for compounding of the offence on payment of a sum of money by way of compounding fee for the offence on such terms and conditions as he deems fit.

(4) On payment by the person of such sum of money, such person, if in custody, shall be set at liberty and no further proceeding shall be instituted and continued against such person in respect of the offence compounded, in any criminal court :

Provided that the sum of money fixed as compounding fee or compensation by the Excise Commissioner or Collector, under this section shall not be less than three times and not be more than five times the duty involved or value of intoxicant, apparatus, vehicle and other material, whichever is higher :

Provided further that where any intoxicant, apparatus, vehicle or other material is seized, the same shall not be released but shall be disposed of in such manner as may be prescribed.

(5) In case the license holder commits the same offence for the second time, his compounding fee will be not less than double of the amount paid for his same offence committed earlier.]¹

77. Contempt of Court.— Every proceeding under this Act, before a Collector shall be deemed to be a judicial proceeding within the meaning of Section 228 of the Indian Penal Code and the Collector engaged in such proceedings shall be deemed to be a Revenue Court within the meaning of Section 345 of the Code of Criminal Procedure, 1973.

CHAPTER - X
MISCELLANEOUS

78. Exception of medicated article.— The foregoing provisions of this Act shall not apply to import, manufacture, possession, supply or sale of any bonafide medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keeper of dispensaries, except in so far as the State Government may, by notification, so direct.

79. Power of State Government to exempt intoxicants from the provisions of this Act.— The State Government may, by notification, either wholly or partially and subject to such conditions as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of this Act, either throughout the territories to which this Act applies or any specified area comprised therein or for any specified period or occasion or as regards any specified class of persons.

80. Certain provisions of Municipal Act not to apply.— Nothing contained in the Assam Municipal Act, 1956 (*Assam Act XV of 1957*), shall apply to any brewery, distillery or warehouse established or licensed under this Act, or to the premises used for the manufacture or sale of any intoxicant by the holder of a licence granted under this Act for such manufacturer or sale.

81. Publication of rules and notification.— All rules made and notifications issued under this Act shall be published in the official *Gazette* and on such publication, shall have effect as if made under this Act.

82. Bar of certain suits.— No suit shall lie against the Government or against any Excise officer in respect of anything done, or in good faith purporting to be done, in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

83. Limitation of suits and proceedings.— No suit, prosecution or other proceeding against the Government or against any Excise Officer in respect of anything done or alleged to have been done in pursuance of this Act or of any other law for the time being in force relating to the Excise revenue, shall, except as provided in Section 69, sub-section (2) be entertained in any court unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

84. Power to make rules.— Power of the State Government to make rules, -

- (1) The State Government may make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to the excise revenue;
- (2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may make rules-
 - (a) regulating the delegation of any powers by the Government, the Excise Commissioner, Commissioners of Divisions and Collectors under clause (g), sub-section (2) of Section 6;

- (b) prescribing the powers, duties and subordination and control of officers of Excise Department;
- (c) regulating appeals and revisions and in particulars-
 - (i) declaring the cases in which and authorities to whom appeals shall lie under sub-section (1) of Section 7;
 - (ii) prescribing the time and manner for presenting appeals and the procedure for dealing with appeals under sub-section (1) of Section 7;
- (d) regulating the import, export, transport or possession of any intoxicant, excisable article and molasses;
- (e) regulating the manufacture, supply, storage or sale of any intoxicant; and in particular regulating-
 - (i) the erection, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of any such article; and the fittings, implements and apparatus to be maintained therein;
 - (ii) the cultivation of the hemp plant (*Canabis Sativa L*) the collection of the spontaneous growth of such plant, and the preparation of any intoxicating drugs from such growth;
 - (iii) the tapping of tari producing trees and the drawing of tari from such trees;
 - (iv) the bottling of liquor for sale;
- (f) regulating the deposit of intoxicant in warehouses and the removal of such articles from warehouses, distilleries or breweries;
- (g) regulating the period for which and the persons to whom the licences for the sale of any intoxicant may be granted and providing for the selection of sites at which shops may be opened;
- (h) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted in any local area;
- (i) prescribing in the case of any intoxicant the manner in which the duty on such article shall be levied;
- (j) prescribing the sale or fees or the manner of fixing the fees payable in respect of storing of any intoxicant;
- (k) prescribing the time, place and manner of payment of duty or fee;
- (l) prescribing the restrictions under and the conditions on which any licence, permit or pass may be granted; and in particulars providing for-

- (i) the prohibition of the admixture with any intoxicant of any foreign substance;
- (ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or a 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 shall not be supplied, sold or kept or exposed for sale, the fixing of the quantity in excess of which denatured spirit shall not be possessed, the fixing of a standard of quality and determining whether the price is excessive for any intoxicant;
- (iv) the regulation or prohibition of the employment of the license holder or any person or class of persons in or upon his business premises during business hours or to assist him in his business in any capacity whatsoever;
- (v) the specifications of the persons or classes of persons to whom any intoxicant may or may not be sold;
- (vi) the prohibition of sale except for cash;
- (vii) the prevention of drunkenness, intoxication, gambling or disorderly conduct in or near the business premises of the licence holder and of the meeting or remaining of persons of bad character in such premises;
- (viii) the fixing of the days and hours during which such premises may or may not be kept open, and the closure of such premises on special occasions;
- (ix) the specification of the nature of the premises in which any intoxicant may sold and the notice to be exposed at such premises;
- (x) the accounts to be maintained and the return to be submitted by licence holders; and
- (xi) regulating or prohibiting the transfer of licenses;
- (m) (i) declaring the process by which spirit manufactured in 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;
- (n) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use;
- (o) regulating the disposal of confiscated articles;
- (p) providing for the grant of expenses to witnesses;
- (q) regulating the power of Excise Officer to summon witnesses from a distance under the provisions of Section 43; and

- (r) providing for the grant of compensation to persons improperly arrested and subsequently released by an Excise Officer under Section 43 and persons charged before a Magistrate with offences under this Act and acquitted.

Explanation:- Fees may be prescribed under clause (j) at different rates for different classes of exclusive privileges, licences, permits, passes or storage and for different areas.

- (3) The State Government may make rules regulating the terms and conditions that may be required to be complied with and the factors to be taken into consideration, in issuing licenses, permits or passes under this Act or rules framed thereunder.
- (4) While framing rules under this Act, the State Government may provide, from time to time for reservation to be made in favour of persons belonging to the Scheduled Castes, Scheduled Tribes, other Backward Classes and educated unemployed youths with particular reference to their economic backward-ness for the purpose of this act, and may also provide for discouraging or preventing monopoly in matters relating to such licenses, passes and permits.
- (5) Any rule framed under this Act shall be given retrospective effect from such date as may be considered necessary by the State Government.

85. Repeal and Saving.— (1) The Assam Excise Act, 1910 (*Eastern Bengal and Assam Act I of 1910*) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act and the repeal of the said Act shall not affect any penalty or punishment incurred in respect of any offences committed under this Act or affect any investigation legal proceeding in respect of such penalty or punishment and any such investigation or legal proceeding may be instituted, continued or enforced any such penalty or punishment may be imposed as if the said Act had not been repealed.
