

CHAPTER-VIII

INSPECTION OF ACCOUNTS AND DOCUMENTS AND SEARCH OF PREMISES AND ESTABLISHMENT OF CHECK-POSTS

- 40. Production, inspection and seizure of accounts, documents and goods and search of premises.—** (1) In issuing an order under sub-section (4) of section 55 or in requiring the production by any dealer of his accounts and documents strict regard shall be had to the necessity of not disturbing the accounting procedure of the dealer or the work of his staff any more than is absolutely necessary for the purpose of applying adequate check or ascertaining the required information as the case may be.
- (2) Unless the authority acting under sub-section (2) of section 74 in his discretion deems it necessary to make a surprise visit, he shall give reasonable notice in writing to the dealer of his intention to inspect the accounts, registers, documents or stock of goods of such dealer and in fixing the date, time and place for the purpose of as far as possible, be paid to the convenience of the dealer.
- (3) (i) Where any authority appointed under section 3 conducts a search under sub-section (4) of section 74, he shall, as far as may be follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
- (ii) The application for obtaining authorisation for conducting search at a residential accommodation shall be in Form-58 and such authorisation shall be in Form-59.
- (4) When any accounts, registers or documents of a dealer seized by any authority appointed under section 3 have to be returned to the dealer, such return may be made after taking such extracts therefrom, as may be necessary. The authority making the return shall affix its signature or official seal or both on such accounts, registers or documents and the dealer shall give a receipt in acknowledgement, which shall mention the numbers and particulars of the places where the accounts, registers or documents returned to him.
- (5) For sale in open auction, as referred to in clause (f) of sub-section (5) of section 74, the following procedure shall apply:-
- (a) The authority seizing or detaining the goods shall cause to be published in the notice board of his office a notice under his signature specifying the details of goods seized and intended for sale and also specifying the place where and the date on, and the hour at which the seized or detained goods will be sold in open auction and shall display copies of such list and notice in more than one public place in or around the place in which the goods were seized or detained.
- (b) No sale shall take place before the expiry of a period of fifteen days from the date on which the notice is affixed unless the goods are subject to speedy and natural decay.
- (c) Intending bidders shall deposit as earnest money a sum equal to 5% of the estimated value of the goods.

- (d) At the appointed time, the goods shall be put up in one or more lots, as the authority conducting the auction sale may consider necessary and shall be knocked down in favour of highest bidder, subject to confirmation of the sale by the zonal Deputy Commissioner when the value of the goods exceeds one lakh rupees.
- (e) The earnest money deposited by the unsuccessful bidders shall be refunded to them within seven days from the date of auction.
- (f) The auction purchaser shall pay the sale value of the goods including sales tax applicable, in cash immediately after the sale and he shall not be permitted to carry away the goods unless the amounts are paid in full. The proceeds shall be remitted into Designated Bank.
- (g) The officer receiving the value of the goods in cash shall issue a receipt to the person making such payment.
- (h) Where the purchaser fails to pay the purchase money the earnest money deposited by the defaulting bidder shall be forfeited to the Government and the goods shall be resold in the auction. The procedure prescribed for the first auction shall be followed for conducting the subsequent auction.
- (i) If any order directing detention is set aside on appeal or revision, the goods so detained, if they have not been sold in auction, shall be released and if they have been sold, the proceeds thereof shall be paid to the owner of the goods, deducting the expenses incurred from the time a detention of the goods to the time they were sold in auction.
- (j) Where the amount fetched in auction is more than the amount of the tax, penalty due from the owner of the goods, the surplus after realizing the tax and penalty imposed, the expenses for the conduct of the sale and the expenses and other incidental charges referred to in clause (g) of sub-section (5) of section 74, shall be refunded to person concerned on an application.

41. Check Post.— (1) When a check post is set-up on thoroughfare of road, barriers may be erected across the thorough fare of road in the form of contrivance to enable traffic being intercepted, detained and searched.

(2) Any officer appointed under the provisions of the Act and for time being on duty at the check post shall be deemed to be the Officer-in-charge of such check post and all the provisions of the Act and rules shall apply accordingly.

Explanation: The following officers shall be deemed to be on duty at a check post for the purpose of this rule:

- (i) The Commissioner;
- (ii) Any other Officer appointed to assist the Commissioner and exercising jurisdiction over the area where the check post is located;
- (iii) Any officer appointed in any capacity to assist the Commissioner and posted in such capacity to the check post shall at any time when he is physically present at the check post be deemed for the purpose of these rules to be the Officer-in-Charge of the

check post.

Where at any time more than one officer is present, the senior most among them shall be deemed to be the Officer-in-Charge of the check post.

- (3) The Commissioner may, by general or specific order in writing not inconsistent with the provisions of the Act and rules, direct the Officer-in-charge of the Check Post, subject to such conditions as may deem fit to impose, to do or refrain from doing something which the latter has the authority to do whereupon such Officer-in-charge shall carry out the order.
- (4) No person shall transport goods across or beyond a check post or barrier except after filing before the officer-in-charge of the check post, the documents referred to in sub-section (3) of section 75.
- (5) The officer in charge of the check post or any authority appointed to assist the Commissioner posted at the check post shall enter the relevant information in the computer and generate serially numbered computerized print outs of gate pass and other documents, as the case may be:

Provided that the Commissioner may direct that the relevant information shall have to be furnished in the electronic format and in such cases it shall be incumbent upon the person carrying the goods or person in-charge of the goods vehicle to furnish such information in the electronic format.

- (6) The Authority referred to in sub-rule (5), shall charge such sum as may be fixed by the Government from time to time as service charges for issuing the computer print outs of any document from the owner or person in-charge of the goods vehicle.
- (7) In case, where computer counter is not functional, for one reason or another, and in case when there is extraordinary rush of work at the computer counter of the check post, the relevant information or particulars shall be filled in manually.
- (8) Inspection and search of goods vehicles.—
 - (i) Where in the opinion of the Officer-in-Charge of the check post a search of a goods vehicle is necessary, such search shall, as practicable, be conducted with due regard to the convenience of the person transporting the goods and without causing avoidable dislocation of the movement of the goods and the person transporting the goods shall take all necessary steps to facilitate physical inspection of the goods carried in the vehicle or the boat.
 - (ii) The Officer-in-Charge of the check post or barrier may for satisfying himself that the provision of sub-rule (4) of this rule are not being contravened, require the person for the time being in charge of such goods vehicle to stop and such person shall forthwith comply with such requirement and keep the goods vehicle stationary for so long as is required by such officer.
 - (iii) Such officer may, thereupon enter and search such goods vehicle and inspect all goods and documents concerning the goods or the vehicle. In carrying out such search or inspection, the officer may take the assistance of any other officer appointed under sub-

section (1) of section 3 of the Act, or any other staff on duty at such check post or barrier or of the local civil administration. The person for the time being in charge of goods vehicle shall forthwith furnish such particulars of the goods and goods vehicle as may be required and shall render all possible assistance to the said officer in making the search or inspection.

(9) Documents to be carried by owner or the person in-charge of a goods vehicle to be produced at the check-post under section 75.—

(i) in case of movement of tax free goods from Assam to places outside the State and to Assam from places outside the State, Bill of Sale in Form-60, Invoice, Consignment Note and Manifesto of the transporter;

(ii) (a) in case of import of taxable goods into Assam for re-sale, Delivery Note in Form-61, Invoice, Consignment Note and Manifesto of the transporter;

(b) in case of import of taxable goods into Assam for use in the setting up of industrial unit or for use as raw material in the manufacture of goods or for personal use or consumption, Road Permit in Form-62, Invoice, Consignment Note and Manifesto of the transporter

(iii) in case of despatch of taxable goods outside the State from a place within Assam, a valid tax clearance certificate in Form-63, Invoice, Consignment Note and Manifesto of the transporter;

(iv) in case of movement of goods taxable in Assam, through Assam, from any place outside the State to any other place outside the State;

(a) At the entry check post: Invoice, Consignment Note, Manifesto of the transporter and the statutory documents of the importing State, if the goods are taxable in that State, transit pass of other relevant States and an application for transit pass;

(b) At the exit check post: Invoice, Consignment Note, Manifesto of the transporter, statutory documents of the importing State, if the goods are taxable in that State and transit pass in Form-64 issued by the entry check post:

Provided that if such goods are required to be unloaded temporarily at any place within the State for the purpose of transshipment or for any other purpose, the driver or the person-in-charge of the goods vehicle shall-

(a) give a declaration to this effect before the officer-in-charge of the entry check-post or barrier or the officer of the concerned office empowered by the Commissioner in this regard, mentioning the exact place of such temporary unloading while applying for the transit pass;

- (b) before unloading , even temporarily, any goods for which transit pass has been issued, at any place within the State, the driver or the person-in-charge of the vehicle, or the transporter of the goods shall inform the officer empowered by the Commissioner in this regard, under whose jurisdiction the place of such unloading falls, of such unloading and subsequent loading of the same goods in the same goods vehicle or in a different goods vehicle;
- (c) the loading and un-loading shall be done in presence of such officer;
- (d) on being satisfied the officer shall make endorsement in the transit pass with his seal and signature and issue a lieu transit pass stating therein the goods vehicle number etc.

Amendment: In the principal Rules 41- in sub-rule (9), in clause (iv), in sub-clause (b), the punctuation mark “;” appearing at the end has been substituted by the punctuation mark “:” and the thereafter the proviso has been inserted *vide* notification no FTX.55/2005/Pt-VI/41 Dtd. 3rd November, 2009 published in the Assam Gazette Extraordinary No.351 Dtd. 3rd November, 2009.

- (v) in case of intra-State movement of taxable goods, a valid tax clearance certificate in Form-63, Invoice, Consignment Note and Manifesto of the transporter;
- (vi) in every case mentioned in sub-clauses (i) to (v) above where goods are carried by a motor vehicle, in addition to the documents mentioned therein, the registration certificate of the vehicle issued under the Motor Vehicles Act and the weighment slip of the goods carried by the vehicle:

Provided that the Government may direct that the person in charge of every goods vehicle shall get his vehicle weighed at the Weigh Bridge authorised by the Government in such a notification and the person in charge of the goods vehicle shall also pay the weighment charges fixed by the Government, from time to time:

Provided further that the Government may, by a notification, direct that any goods vehicle crossing the Checkpost of Assam shall submit a weighment slip of goods being carried in the goods vehicle from any Weigh Bridge situated within the State.

Amendment: The Second proviso has been inserted *vide* Notification No. FTX.29/2003/12 Dtd. 8th August, 2005 published by Assam Gazette Extraordinary No. 276 , Dtd. 9th August, 2005.

- (vii) The trip sheet as mentioned in clause (b) of sub-section (3) of section 75 shall contain all the particulars as given in specimen Form-65.
- (10) (a) The Bill of Sale (Form-60) as referred to in clause (i) of sub-rule (9), in respect of tax free goods shall be submitted by the owner or

the person in-charge of the goods vehicle to the officer-in-charge of the check post in duplicate whereupon the officer-in-charge shall countersign with his office seal on both the copies so submitted and return one copy to the person in-charge of the goods vehicle to deliver it to the consignee and such officer shall send the retained copy of the Bill of Sale to the concerned Prescribed Authority under whose jurisdiction the business of the dealer is located;

- (b) in case of Delivery Note (Form-61) as referred to in clause (ii) of sub-rule (6), the "Original" and the "Duplicate" foils shall be produced before the officer-in-charge of the check post. The officer-in-charge shall sign and seal both the foils of the Delivery Note as a mark of having verified the particulars furnished therein, retain the "Original" foil and return the "Duplicate" foil to the person producing it. He shall send the "Original" foil retained by him to the Prescribed Authority having jurisdiction over the concerned dealer;
 - (c) The transit pass referred to in section 76 and in clause (iv) of sub-rule (9) shall be in Form-64. No such transit pass shall, however, be required for transportation of the tax free goods.
- (11) Import of goods for resale.— (a) A registered dealer who intends to bring or import any taxable goods from outside the State for sale, shall apply to the appropriate Prescribed Authority for issue of Delivery Note (Form-61). The dealer shall also furnish a utilization statement of Delivery Notes previously issued. If the Prescribed Authority is satisfied that the application of the dealer is genuine and reasonable, he may issue him such number of forms as he may deem proper.
- (b) Such Delivery Note in Form-61 shall be got printed by the Government in triplicate, that is the counter foil, the original foil and the duplicate foil and shall be issued to the applicant dealer by the appropriate Prescribed Authority against payment of the prescribed fee.

In case the Delivery Note is out of print or in short supply or otherwise not available, the Commissioner may make alternative arrangements by authorizing the Deputy Commissioner of a particular zone to issue authenticated and specially numbered forms, for a specified period or can dispense with the requirement of such forms for the specified time, as he deems proper in view of the circumstances of the case.

- (c) The Dealer shall retain the counterfoil of the Delivery Note and he shall send in advance the portions marked as 'Original' and 'Duplicate' of such Delivery Note to the consignor. Such Delivery Note, in duplicate, filled in by the consignor shall accompany the goods and shall be tendered by the person-in-charge of the goods vehicle to the officer-in-charge of the check post through which the goods vehicle first enters into the State.
- (d) The officer-in-charge of the check post shall retain the original

portion of the declaration form and return the duplicate portion after signature and marking seal in token of having verified it, to the person producing it and such officer shall send the retained original portion of the declaration form to the appropriate Prescribed Authority.

- (e) Every Delivery Note in Form-61 so obtained by the dealer shall be kept by him in safe custody, and the dealer shall be personally responsible for the loss, destruction or theft of any such Form or the loss of revenue to the Government resulting directly or indirectly from such loss, destruction or theft.
 - (f) Every dealer shall maintain a true and complete account of every such Form obtained by him in a register and where any Form is lost, destroyed or stolen, the dealer shall report the fact to the Police and jurisdictional Prescribed Authority immediately, shall make appropriate entries in the remarks column of the said register and take such other steps to issue public notice of the loss, destruction or theft, as Prescribed Authority may direct.
 - (g) Any unused Delivery Note in Form-61 remaining in stock with a dealer shall be surrendered to the jurisdictional Prescribed Authority within thirty days of the discontinuance of the business by the dealer or cancellation of his certificate of registration.
 - (h) No dealer who has obtained such Form shall, either directly or through any other person, transfer the same to another person.
 - (i) A Delivery Note in respect of which a report of loss or damage has been received by the jurisdictional Prescribed Authority shall stand invalid. The Prescribed Authority shall inform the details of such forms to the Commissioner and to the Officer in charge of the Check posts.

On receipt of report of the loss, theft or damage, the said authority shall call upon the dealer to furnish a reasonable security by way of an indemnity bond in respect of each lost form separately or in respect of all the lost forms collectively to safeguard against their misuse.
 - (j) The Commissioner shall from time to time publish in the Official Gazette, the particulars of the Delivery Notes in respect of which a report has been received about loss, theft or damage.
- (12) Import of goods for personal consumption or for use in manufacture.— (i) Where any person intends to bring, import or otherwise receive into the State from any place outside the State, any goods other than the goods exempt under the First Schedule, in excess of the quantity or measure as specified in this rule, for his own use and not for resale or for transfer of any other manner and the consignment of such goods is transported into the State by road, railways, air or waterways, such person shall make an application for Road Permit to the Prescribed Authority in whose jurisdiction the applicant carries on business or, if he does not carry on any business, within whose jurisdiction the applicant resides;

- (ii) Where any person, whether registered under the Act or not, having a manufacturing or industrial unit or intending to set up such a unit, intends to bring, import or otherwise receive into the State from any place outside the State, any goods other than the goods exempt under the First Schedule, in excess of the quantity or measure as provided in rule 42 for use in setting up of the industrial unit or for use as raw materials in manufacture of goods in the industrial unit (before getting registered under the Act) and not for resale or for transfer in any other manner and the consignment of such goods is transported into the State by road, railways, air or waterways, such person shall make an application for Road Permit to the Prescribed Authority in whose jurisdiction the industrial unit or its office is located;
- (iii) The application for a Road Permit shall be in Form-62 and shall be submitted to the Prescribed Authority in triplicate. Separate application shall be made for each Road Permit;
- (iv) The application form shall be issued on payment of a prescribed fee;
- (v) If the Prescribed Authority, after due enquiry as may be necessary, is satisfied about the bonafide requirement of such person, he shall on such application prepare a Road Permit in triplicate in Form-62. Two copies of such Road Permit shall be made over to the applicant and the third copy shall be retained in the office;
- (vi) The person transporting the goods shall produce the "Original" and the Duplicate" foils of the Road Permit (Form-62) before the Officer-in-charge of the check post and the said officer shall after proper verification, allow the movement of the goods conforming to the description and quantity mentioned in the Road Permit. The Officer-in-charge shall sign and seal both the foils of the Road Permit as a mark of having verified the particulars furnished therein, retain the "Original" foil and return the "Duplicate" foil to the person producing it. He shall send the "Original" foil retained by him to the Prescribed Authority who had issued the Road Permit;
- (vii) If the Prescribed Authority is of the opinion that the consignment of goods mentioned in the application referred to in sub-clause (iii), involves any tax liability under any provisions of the Act and considers it necessary to obtain security for safeguarding the payment of tax on such transaction, he shall, before issuing the Road Permit, direct the applicant to make payment of an amount equivalent to the amount of tax that may become payable on such transactions;
- (viii) Where the Prescribed Authority is of the opinion that a person, who has applied for Road Permit should furnish security with a view to ensure that there is mis-utilisation of the Road Permit, direct the applicant to furnish security in the Form of a call deposit or bank guarantee for an amount not exceeding the amount of tax under the Act calculated on the value of the

- goods;
- (ix) The Road Permit obtained under sub-clause (v), shall not be transferred under any circumstances;
 - (x) No Road Permit shall be issued to a person unless he has furnished satisfactory account of the utilisation of the Road Permits previously issued to him;
 - (xi) The Prescribed Authority shall maintain a register for such Road Permits issued under sub-clause (v);
- (13)(a) If the amount of tax or security directed to be paid is paid, the Officer-in-charge of the check post or barrier shall issue a receipt in the name of the person directed to pay the tax or security specifying also the name and status of the person actually making such payments and on whose behalf payments are made.
- (b) On receipt of the payment of the amount, the said officer shall allow the goods vehicle to pass.
 - (c) The said officer shall intimate the details of such collection to the concerned Prescribed Authority within three days of such collection.

42. Restrictions and conditions in respect of Import of goods into the State by Road, Rail, River, Air or Post or any other place under section 77(1).— (1) No person shall take delivery or transport from any Railway Station, Steamer Station, Post Office, Air Port, carrier delivery point or any other place whether of similar nature or otherwise in Assam any consignment of taxable goods despatched from outside Assam:

Provided that this restriction shall not apply to any consignment which does not exceed the following quantities subject to the condition that value of such quantities does not exceed Rs.20,000/- –

- (i) in the case of goods sold by quintal and kilogram 5 kilograms in weight
- (ii) in the case of goods sold by liters 5 liters in weight.
- (iii) in the case goods sold by metre length. 5 metres in
- (iv) in the case of goods sold by pieces 1 in number
- (v) in the case of goods sold by gross 1 gross in number
- (vi) in the case of goods sold by dozen 1 dozen in number
- (vii) in the case of goods sold by pair 1 pair
- (viii) in the case of precious stones, namely; diamonds, emeralds, rubies, real pearls, and sapphires, synthetic or artificial precious stones, pearls artificial or cultured 1 gram in weight

Amendment: In rule 42, in the heading the word “Road” and in sub-rule (1), in the provisions the words “the following quantities subject to the condition that value of such quantities does not exceed Rs.20,000/-“ has been inserted vide Notification No. no FTX.29/2003/Pt/9 Dtd. 6th

September, 2008 published in the Assam Gazette Extraordinary No.267 Dtd. 6th September, 2008.

43. Procedure for importing goods through Road, Rail, River, Air or Post under section 77(2).— (1) If the taxable goods are brought into the State from a place outside the State by any means such as through road transport or railways or airways or any other mode, as specified in sub-section (2) of 77, the dealer shall, before taking the delivery of or transporting from any aforesaid place of delivery, produce before the Prescribed Authority, the relevant railway receipt, bill of lading, air note or such other document required for the purpose of obtaining the delivery of such consignment from such transporter. The dealer shall make over to the Prescribed Authority, in duplicate, a "Delivery Permit" in Form-66.

Amendment: In sub-rule (1) the words "other than through transport" has been omitted and the words "road transport or" has been inserted vide Notification No. FTX.29/2003/Pt/7 Dtd. 2nd February, 2008 published by Assam Gazette Extra ordinary No. 21, Dtd. 4th February, 2008.

- (2) The Prescribed Authority shall on being satisfied about the correctness of the statements made and particulars contained in the declaration in Form-66 countersign the railway receipt, bill of lading or such other documents, as the case may be, and shall affix his official seal thereon. The Prescribed Authority shall also endorsed both copies of the declaration with his seal and signature with date. One copy of the declaration shall thereupon be returned to the dealer and the other copy retained by the Officer concerned.
- (3) Such transporter shall not deliver the consignment of such goods taxable under the Act, unless the relevant consignment note, railway receipt, air note or bill of lading bears an endorsement from the concerned Prescribed Authority as mentioned above to the effect that the delivery of the goods has been allowed.
- (4) In case of despatch of any taxable goods to a person outside the State by any mode other than through road transport such as through Rail, Air, Sea, Post or Courier, the dealer shall obtain a valid tax clearance certificate and furnish the details according to invoice/delivery challan, railway receipt, bill of lading or any document of this nature to the appropriate Prescribed Authority that the goods have been dispatched for a destination outside the State other than by road. The Prescribed Authority shall I keep such details in the assessment file of the dealer.

44. Manner of issue of clearance certificate to a dealer or person.— (1) Where a dealer or person requires a clearance certificate, such dealer shall, make an application in Form-63 in duplicate containing therein a declaration regarding position of submission of returns, payment of due taxes, payment demanded taxes, interest and penalty under the Act, position of any litigation cases lying before the Appellate Authority, Appellate Tribunal as the case may be and having the same duly verified and signed to the Prescribed Authority, with a prayer to issue a clearance certificate to him for the purpose (s).

- (2) If the Prescribed Authority is satisfied that the application is in order and the declaration made by a dealer or person in his application is correct, such authority shall, within seven days from the date of receipt of such application, issue to such dealer or person a clearance certificate in Form-63 send the clearance certificate to such dealer or person ordinarily by post or through courier service.
- (3) A clearance certificate issued under sub-rule (2) shall be valid for the period specified in such clearance certificate over the signature and seal of the Prescribed Authority.
- (4) A copy of the clearance certificates so issued shall be retained by the Prescribed Authority for his record.
- (5) Where the Prescribed Authority does not issue a clearance certificate to a dealer or person under sub-rule (2), such authority shall, after giving the dealer an opportunity of being heard, reject his application within seven days from the date of receipt of such application for reasons recorded there-for and intimate him in writing accordingly.

45. Procedure for acquisition of goods.—

- (1) The Prescribed Authority or the officer in-charge of a check post before purchasing goods under section 78 of the Act shall ascertain whether there is understatement of value of goods. For this purpose, he shall first find out thirty five per cent of the prevailing market price or maximum retail price (MRP), as the case may be, and deduct the amount so arrived at from the prevailing market price or maximum retail price. If the residual amount so arrived at is more than the total or aggregate of the purchase price as per invoice and the transportation charge, then it shall be a case of under-valuation of goods.
- (2) The Prescribed Authority or the officer in-charge of a check post shall serve a notice in Form-67 on the person concerned giving him an opportunity of showing cause against his intention of purchasing the goods. After hearing the person concerned and after examining the written submission, if any, made by him, if the Prescribed Authority or the officer in-charge of the check post is satisfied that there has been an under-valuation of the goods, he shall pass a speaking order for purchasing the goods.
- (3) The Prescribed Authority or the officer in-charge of the check post shall take the goods in his possession and arrange for their proper storage. He shall also arrange for payment of the purchase price to the person being dispossessed of such goods. The payment shall be made by way of Bank Draft drawn in favour of the consignee in case of goods imported into the State and in favour of the consignor in case of goods exported outside the State.
- (4) The Prescribed Authority or the officer in-charge of the check post shall dispose of the goods so purchased in public auction as per procedure prescribed in sub-rule (5) of rule 40, immediately after such purchase.
- (5) In case the highest bid in the public auction is less than the price at which the goods were purchased, the goods shall be put to auction

again following the same procedure. If in the second auction also the highest bid, falls short of the purchase price, the Prescribed Authority or the officer in-charge of the check post shall refer the matter to the Commissioner with full particulars of both the auctions and also of the goods.

- (6) In case the goods are subject to speedy and natural decay, the Prescribed Authority or the officer in-charge of the check post shall sell such goods in public auction without delay.