

Bill Formulated to Amend and Unify the Laws Related to the Excise Duty

Preamble: For the economic development of a nation it is necessary to make the process of revenue collection effective and to increase revenue mobilisation. For this purpose, because it was necessary to make the laws related to the imposition and recovery of the excise duty on goods produced in or imported into the Kingdom of Nepal and the services provided, more timely by amending and unifying them,

The parliament passed this Act during the first year of the reign of **His Majesty King Gyanendra Bir Bikram Shah Dev.**

1. Short Title and Commencement:

- (1) The name of this Act is "Excise Act, 2058".
- (2) This Act will commence immediately.

2. Definition: If by subject or context no other meaning is implied then in this Act:-

- (a) "Excisable goods and services" refers to the goods and services on which excise duty is applicable as per this Act and the prevailing law.
- (b) "Goods" implies both movable and immovable assets.
- (c) "Service" implies any other items that cannot be categorised as goods.
- (d) "Enterprise" refers to any firm, company, or organisation that has been established under the prevailing law for the purpose of production, import, storage, or sales and distribution of excisable goods or for providing excisable services.
- (e) "License" refers to the license granted in accordance to Clause 9.
- (f) "Excise Duty Officer" refers to the officer designated by His Majesty's Government for the purpose of this Act.
- (g) "Production" refers to the manufacturing, construction, or preparation work of excisable goods.
- (h) "Producer" refers to individuals, firms, companies, or organisations that have obtained the license to produce excisable goods; the term also refers to individuals, firms, companies, or organisations that provide excisable services.

- (i) "Person" refers to an individual, academy, organisation, association, partnership concerns, cooperatives, joint ventures, managers of religious trusts (*guthi*) or funds, proprietor or the main representative or agent. This term also refers to institutions or their branches and sub-branches that undertake, with or without profit motive, the production or import of excisable goods and sell or distribute them in wholesale or retail or those institutions that provide excisable services; it even refers to places in which such transactions are carried out.
- (j) "Factory Price" implies the amount inclusive of the expenses incurred in the production or production and sale and distribution of excisable goods and the profit of an academy without adding the excise duty or other taxes.
- (k) "Price" implies:-
 - (1) The factory price in the context of goods produced,
 - (2) The price as per the invoice in the context of services provided,
 - (3) The price fixed as per Section (b) of Sub-clause (1) of Clause 7 in the context of imported goods.
- (l) "Import" implies the act of bringing excisable goods from a foreign country into the Kingdom of Nepal as per prevailing laws.
- (m) "Invoice" refers to the bills, receipt, or memo slips that are given according to this Act by stating the price.
- (n) "Department" refers to the Department designated for the implementation of this Act by His Majesty's Government.
- (o) "The Director General" refers to the Director General of the Department.
- (p) "Specified" or "As Specified" refers to that which is specified or is as specified in the rules of this Act.

3 **Imposition of Excise Duty:** If on an annual basis or for a particular year, provision has been made in any act to levy excise duty on certain goods or services, that excise duty will be recovered as per this Act or rules made under this Act.

4 **Recovering Excise Duty:**

- (1) When recovering excise duty applicable as per this Act, it will be done under the following circumstances: -

- (a) In the case of goods, at the time when the goods produced by an enterprise are being given or being delivered for sale,
 - (b) In the case of services, at the time when an invoice is being issued to the consumer,
 - (c) In the case of goods that are to be imported, at the time when such goods enter the Kingdom of Nepal for the purpose of customs.
- (2) Notwithstanding what is written in Sub-clause (1), if in certain goods the excise duty has to be levied at the stage of production then the process will be as has been specified.

5 Appointment or designation of Excise Duty Officers: For the purpose of this Act, His Majesty's Government can appoint the required number of Excise Duty Officers and if deemed necessary the Government can also designate any other government officials as those performing work related to excise duty.

6 Jurisdiction area of Excise Duty Officers: The jurisdiction area of the Excise Duty Officers will be as prescribed by His Majesty's Government.

7 Price determination of excisable goods and services:

(1) If the excise duty of any goods is levied on its price then the excise duty is levied based on the following price on the production and import side,:-

(a) On production:

- (1) The price taken at the time and place when a producer sells excisable goods to a wholesaler, or
- (2) The price fixed by the Department based on the cost of production.

(b) On imports:

In relation to goods to be imported, the amount estimated at the time of levying customs duty.

But if the goods to be imported are also produced in the Kingdom of Nepal and if the Department has established a price of that good for the purpose of Section (a), then the excise duty is levied on the basis of which ever is higher between the price established by the Department and the price based on Section (b).

(2) In the case of services, the excise duty is assessed on the basis of the invoice and is recovered accordingly.

- (3) For the purpose of excise duty recovery, the Department can carry out a reassessment or an additional assessment if deemed necessary.

8. The need to take license:

- (1) Without taking the license as per this Act, nobody should undertake the production, import, sales or storage of excisable goods or provide excisable services.
- (2) Individuals, firms, companies, or organisations wanting to take the license as per Sub-clause (1) should submit an application requesting for license to the Excise Duty Officer in the prescribed format along with the fees.

9. Provision related to the license:

- (1) As per Sub-clause 8, when an application for a license is submitted to the Excise Duty Officer then after investigation, if considered appropriate, the Department or the Excise Duty Officer designated by the Department should issue the license in the prescribed format.
- (2) The term of the license issued on the basis of Sub-clause (1) and its renewal process and renewal fees will be as specified.

10. Cancellation of License: The license issued on the basis of Sub-clause (1) of Clause 9 can be cancelled by the Department under the following conditions:-

- (a) If the terms and conditions that have been specified in the permit have been found to be violated.
- (b) If it is observed to be detrimental to public welfare.

11. Investigation to be carried if substantial basis found: If there is substantial reason to suspect that an academy is delivering or importing excisable goods by evading excise duty, then the Excise Duty Officer or the official authorised by him/her can intervene any person or vehicle and demand the proof of excise duty payment. If the proof cannot be furnished then it will be considered that the payment of excise duty has been evaded.

12. The possibility to investigate, seize or arrest:

- (1) If any individual, firm, company, or organisation is found to be engaged in the production, import, sale or collection of excisable goods or has been providing excisable services without taking a license or if information regarding the evasion of excise duty as per Sub-clause 11 is obtained by

the Excise Duty Officer or the official authorised by him/her, then the Officer or the authorised official can investigate the premises, house, land, vehicles, or places associated with that academy.

- (2) While carrying out investigations as per Sub-clause (1) if found to be operating against this Act in under taking the production, import, sale or storage of excisable goods or in providing excisable services, then the Officer or the official involved in the investigation can notify the individual and arrest him/her and seize the goods found in the premises by making a statement of facts.
- (3) If activities against this Act are taking place in any enterprise, house, land, vehicle or place and if it is foreseen that there is the possibility of the accused escaping or the proof of violation being wiped out if immediate action is not taken, then the Officer or the authorised official can prepare a summary sheet and can carry out the following action either himself/herself or through officials under his/her authority:-
 - (a) Enter such an enterprise, house, land, vehicle or place,
 - (b) If there are obstacles or hurdles in entering such a place then allowing the inhabitants of that place an appropriate opportunity to leave and then enter by breaking windows or doors,
 - (c) Take hold of excisable goods that are related to the offence and other material and documents that can give evidence to or support the offence,
 - (d) Suspend the registration,
 - (e) Arrest the person who is suspected to have committed the offence.
- (4) According to this Clause, when entering or investigating an enterprise, house, land, vehicle or place, as far as possible, one member of the relevant Metropolis, Municipality, Village Development Committee or a local resident should be made a witness.
- (5) As per this Act, after arresting somebody or investigating an individual, academy, house, land, vehicle or place or taking into hold excisable goods or other goods, the Excise Duty Officer involved in this should give a report to the Director General of the Department within 24 hours from the time the activity has been accomplished through the swiftest means. If the investigations have been carried out by the official authorised by the Excise Duty Officer then that person should give a report to the Excise Duty Officer or send a report to the Department within 24 hours after accomplishing the task.

- (6) As per this Act, when investigating an offence the Excise Duty Officer has equal jurisdiction as that of the Police according to the prevailing law.
- (7) In the process of carrying out investigations, or arresting or seizing of goods, if the Excise Duty Officer requests for assistance from the local administration and the police then they should provide immediate assistance.

13. Information regarding the offence:

- (1) If anybody discovers that transactions against this Act have been taking place, is going to take place or has taken place then it will be the duty of that person to notify the Excise Duty Office or, if such an office is not located close by, then the police or any other Government office regarding such transactions. The person can give either a written notification or verbal information. Offices receiving such information have to immediately send the information to the concerned Excise Duty Office.
- (2) If the person providing the information wishes to keep his/her name confidential, they can disclose an indicative identity.
- (3) The person providing information will not be compelled to disclose the source(s) of his/her information.

14. Rewards:

- (1) If any government official or any other person providing information or clues regarding transactions that are taking place, will take place or have taken place that violate this Act, then from the amount recovered from the excisable goods seized from the accused the following amounts will be given to the person as a reward after the final court decision.
 - (a) To those providing clues 20 % of the amount,
 - (b) To those producing material evidence along with the person 40% of the amount,
 - (c) To those producing only goods 25 % of the amount.

But if there is more than one person providing information or clues then the amount as per above will be distributed on a pro rata basis.

- (2) If any government official or the police find evidence and present the accused along with the recovered goods then those persons will be rewarded with 25 % of the amount.

But if only the goods have been seized and produced then 25 % of the price of the goods will be given as reward. When making such rewards, the upper limit at one time has been fixed at Rs. fifteen thousand and this amount will not be exceeded even in cases when the actual calculation exceeds this amount.

15 Penalties or punishment to those withholding information and assistance: If a person who is bound by duty to provide information or provide assistance knows about transactions that are taking place, will take place or have taken place that violate this Act but purposefully avoids doing so, the person can be imprisoned for three months or charged a fine of Rs. ten thousand or both depending on the nature of the offence.

16 Punishment:

(1) If anybody commits the offences listed below, punishment in the form of confiscating the amount along with a fine based on the amount or one year imprisonment or both can be given:-

(a) If the excise duty amount to be paid as per this Act is evaded, hidden, or cheated,

(b) If Clause 9 is violated,

(c) If a person prepares false accounts or forged documents and commits an offence against this Act.

(2) If the offences indicated in Sections (a), (b) and (c) are attempted or instigated the punishment will be applicable by half of that of the real offence.

(3) Utensils used directly or indirectly in the offence, and the tools, machinery, equipment including vehicles used in the production of the goods and services will also be confiscated.

But if the person has used rented vehicle without the permission of the vehicle owner in committing the offence then the vehicle will not be confiscated but the owner will be charged a fine of Rs 25,000 and depending on the nature of the offence the driver can be imprisoned for up to three months or charged a fine of Rs 15,000 or both.

(4) Notwithstanding what is written in Sub-clause 3, if a vehicle has been registered as rented vehicle but it is found to be used by the vehicle owner then the vehicle can be confiscated.

17 Freezing, auctioning, or selling of assets:

- (1) Based on this Act or the rules made under this Act, if the Excise Duty Officer finds valid reasons to believe that the offence committed requires confiscation of the assets of any person, then he/she can freeze the transfer of rights or ownership of such property.
- (2) If the confiscated asset is of such nature that it could perish, go bad, or get damaged and thus could decrease in value, then the Excise Duty Officer should immediately sell or auction the property and take into account the amount thus obtained. If the frozen property is later declared to be given back to the owner then the person will only be given back the amount that has been recovered from the auction or sale. The concerned person cannot claim to get back the asset itself.

18 Jurisdiction equivalent to that of the Court:

- (1) For the purpose of this Act, the Excise Duty Officer has equivalent jurisdiction to that of the court according to the prevailing law in relation to summoning and interrogating the concerned person, taking his/her statement, inspecting and collecting proof, asking for documents to be presented, to keep the concerned person under demand or to release him/her on bail.
- (2) When the Excise Duty Officer is taking action according to this Act, he/she has to adopt the procedure as stipulated in the “Brief Procedural Act, 2028”.

19 Appeal: According to this Act, an appeal can be filed at the Revenue Tribunal within 35 days after the decision by the Excise Duty Officer has been taken.

20 The authority cannot be delegated: As per Clauses 15 and 16, the authority granted to the Excise Duty Officer cannot be delegated.

21 Condition under which the action to confiscate is stalled: As per this Act and the rules made under them, if a decision has been taken by the Excise Duty Officer to confiscate the property of a person but an appeal has been filed against this decision, the official in-charge of the appeal can order the Excise Duty Officer to stall the action to confiscate the property until a decision has been reached regarding the appeal.

But under the situation of Sub-clause (2) of Clause 17, the provision under this Clause will not be applicable.

22 Pending amount to be recovered as per Government’s pending amount: As per this Act and the rules made under them, if any person has not paid the amount due to

His Majesty's Government and a certain amount is pending then the Excise Duty Officer has to recover the pending amount as Government pending amount.

23 Provision for review:

- (1) If within 35 days from the order issued to levy the excise duty, an application from the taxpayer is submitted stating that the tax liability has increased owing to the Excise Duty Officer not following the conditions laid out in this Act, or through any irregularities or carelessness, then after investigation, if considered valid, the Director General can cancel the former order and issue another order to recover the excise duty.
- (2) Once an application as per Sub-clause (1) has been registered, the Director General has to give a decision within 90 days from the date of registration.
- (3) If the decision taken by the Director General is found to be unsatisfactory, then the concerned person can file an appeal at the Revenue Tribunal within 35 days from the date the decision has been notified.

But if an appeal has been filed as per Clause 19, then an application for a review based on this Clause cannot be submitted.

24 Tax related provision will be based on this Act: Notwithstanding what is written in the prevailing law, apart from provisions made in the annual Financial Act to amend this Act in relation to levying, assessing, increasing, decreasing, exempting, or rebating tax, no other Acts can amend, introduce any tax systems or change any tax related systems that are laid out in this Act.

25. The right to formulate rules: To fulfill the objectives of this Act, His Majesty's Government can formulate necessary rules.

26 Cancellation and addition:

- (1) The Excise Act, 2015 has been repealed.
- (2) It is understood that the entire activities carried out and to be carried out under the Excise Act 2015 have been included in this Act.

Date of the Royal Seal: 2058/10/17/04
English Date : January 30, 2002