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LAW DEPARTMENT

NOTIFICATION

The 7th May 2008

No. 5495-Legis.—The following Act of the Orissa Legislative Assembly having been assented to by the Governor on the 5th May 2008 is hereby published for general information.

THE ORISSA VALUE ADDED TAX (AMENDMENT) ACT, 2007

( ORISSA ACT 3 OF 2008 )

AN ACT FURTHER TO AMEND THE ORISSA VALUE ADDED  
TAX ACT, 2004.

BE it enacted by the Legislature of the State of Orissa in the Fifty-ninth Year of the Republic of India as follows:—

Short title  
and  
commencement.

1. (1) This Act may be called the Orissa Value Added Tax (Amendment) Act, 2008.

(2) It shall come into force on such date as the Government may, by notification, appoint.

Amendment of  
section 2.

2. In the Orissa Value Added Tax Act, 2004 (hereinafter referred to as the principal Act), in section 2,—

Orissa Act  
4 of 2005.

(a) in clause (8), for the comma and words “, but does not include”, the words and comma “ and shall include the components and spare parts thereof, but shall not include” shall be substituted ;

(b) in clause (9), the words “without having a fixed place of business” appearing after the words “in the State” and before the words “for cash” shall be omitted ;

- (c) in clause (26), the comma and words ", but does not include tax collected on the sale of goods made to a commission agent purchasing such goods on behalf of such dealer" appearing at the end shall be omitted;
- (d) in clause (29), the comma and words ", and includes tax payable by a commission agent in respect of sale of taxable goods on behalf of such dealer" appearing at the end shall be omitted;

(e) for clause (43), the following clause shall be substituted, namely:—

'(43) "reverse tax" means that portion of input tax on the value of goods purchased for which credit has been availed by a dealer to which he is not entitled under sub-section (9) of section 20;'

(f) for clause (46) including the Explanations thereto, the following clause shall be substituted, namely :—

'(46) "Sale price" means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof and the expression "purchase price" shall be construed accordingly;

*Explanations.—*

- (a) Where any sum charged for freight, delivery, distribution, installation or insurance at the time of delivery or before delivery of such goods it shall be included in the sale price.
- (b) In case of sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.
- (c) In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the hire charges received or receivable for such transfer shall be the sale price.
- (d) Any amount of duties, charges, taxes levied or leviable under any Act (other than tax levied or leviable under this Act) in respect of such goods shall be included in the sale price.
- (e) Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental or ancillary to, the sale of goods shall be deemed to be included in the sale price." ;
- (g) in clause (52), for the words and figure "other details required under section 62", the words "such other particulars as may be prescribed" shall be substituted;
- (h) in clause (55), the words and commas "of sales or purchases, as the case may be," shall be omitted; and
- (i) in clause (60), for the words "turnover sales" the words "turnover of sales" shall be substituted.

- Amendment of section 3. **3.** In the principal Act, in section 3, in sub-section (2), before the words "a Joint Commissioner" and after the words and comma "an Additional Commissioner," the words and comma "a Special Additional Commissioner," shall be inserted.
- Amendment of section 4. **4.** In the principal Act, in section 4, in sub-section (1), in clause (b), before the words, figure and bracket "Class – I (Upgraded Supertime)" and after the words and comma "Orissa Finance Service," the words "not below the rank of" shall be inserted.
- Amendment of section 9. **5.** In the principal Act, in section 9, in clause (b), for the words "rupees ten lakhs", the words "rupees twenty lakhs" shall be substituted.
- Amendment of section 10. **6.** In the principal Act, in section 10, in sub-section (1), in clause (i), the words and commas "of sales or purchases, as the case may be," shall be omitted.
- Amendment of section 11. **7.** In the principal Act, in section 11, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—  
 "(b-1) the turnover of sales of goods as specified in Schedule C which has suffered tax under this Act in the State;"
- Amendment of section 12. **8.** In the principal Act, in section 12,—  
 (a) for the words "any goods" appearing in opening portion, the words "any taxable goods within the State" shall be substituted; and  
 (b) in clause (a), the words "sold or" appearing in the opening portion shall be omitted.
- Amendment of section 14. **9.** In the principal Act, in section 14, in sub-section (1), after the second proviso, the following Explanation shall be inserted, namely:—  
 "Explanation.— Where a dealer is engaged in execution of works contract, the tax payable by him under this Act shall be levied on his taxable turnover in respect of goods utilized in such execution of works contract, at the rate applicable to such goods as specified in Schedule B and Schedule C."
- Amendment of section 16. **10.** In the principal Act, in section 16, after the proviso, the following provisos shall be inserted, namely:—  
 "Provided further that no turnover tax shall be payable on turnover of sales of declared goods purchased from a registered dealer on which tax has been paid:  
 Provided also that no turnover tax shall be payable on turnover of sales of goods purchased within the State on which tax on MRP has been paid."
- Insertion of new section 17-A. **11.** In the principal Act, after section 17, the following section shall be inserted, namely:—  
 17-A. (1) Notwithstanding anything contained in this Act, the Government may, if it is necessary so to do in the public interest, subject to such conditions and exceptions as it may impose, by notification, exempt any specified class of sales or specified sales or purchases from payment of whole or any part of the tax payable under the provisions of this Act.  
 (2) Every notification issued under sub-section (1) shall, as soon as it is published, be laid before the Legislative Assembly for a period of fourteen days which may be comprised in one or more sessions."
- "Power of Government to exempt tax in public interest.

Amendment of  
section 18.

**12.** In the principal Act, in section 18, after clause (d), the following Explanation shall be inserted, namely:—

*Explanation.*— For the purpose of this section, the sale of goods to a dealer referred to in clause (c) or an EOU referred to in clause (d) shall mean and always be deemed to have meant the sale of such goods intended to be used as capital goods referred to in clause (8) of section 2 or used for manufacturing of goods by such dealer or EOU.”.

Amendment of  
section 20.

**13.** In the principal Act, in section 20,—

(a) in sub-section (3),—

(i) in clause (b), for the words “or processing of goods”, the words “of goods within the State” shall be substituted,

(ii) in clause (d), for the words “as containers”, the words “as containers or materials” shall be substituted, and

(iii) in the proviso,—

(a) in item (b), for the words “this sub-section” the word and bracket “clause (e)” shall be substituted; and

(b) after item (c), the following item shall be inserted, namely:—

“(d) the input tax credit on purchase when sold in course of inter-state trade or commerce shall be allowed only to the extent of the Central Sales Tax payable under the Central Sales Tax Act, 1956.” ;

74 of  
1956.

(b) in sub-section (8),—

(i) in clause (g), for the semi colon “;” appearing at the end, the colon “:” shall be substituted and the following proviso shall be inserted, namely:—

“Provided that input tax credit on the stock of goods,—

(i) held on the date of registration as admissible under sub-section (11); and

(ii) held by a registered dealer on the date, he is liable to pay tax under section 11 in lieu of tax payable under section 16;

shall be allowed without tax invoice subject to production of evidence that such goods have been purchased from a registered dealer inside the State on payment of tax under this Act, supported by a retail invoice, to the satisfaction of the assessing authority;”;

(ii) for clause (k), the following clause shall be substituted, namely:—

“(k) in respect of input or capital goods other than those covered under Schedules A, C and D used in manufacture of goods where the finished products are exempted from tax either in whole or in part under this Act or under the Central Sales Tax Act, 1956;” ;

74 of  
1956.

(c) after sub-section (8), the following sub-section shall be inserted, namely:—

"(8-a) Where sale price of any taxable goods, for any reason, is less than the purchase price of the said goods, the input tax credit on purchase of such goods shall be allowed only to the extent of the output tax payable on the sale of such goods and in such case if the input tax credit has been availed in excess of the output tax paid or payable, it shall be reversed in the manner prescribed." ;

(d) in sub-section (9),—

(i) in clause (c), the word "or" shall be added at the end;

(ii) after clause (c), the following clauses shall be inserted, namely:—

"(d) are subsequently transferred to any place outside the State otherwise than by way of sale on which input tax credit has already been availed at the full rate, or

(e) remain unutilized or unsold on the date on which the exercise of option for composition of tax under this Act, is allowed, or

(f) remain unutilized or unsold on the date on which the liability of the dealer to pay tax under section 11 is changed to section 16, or

(g) are utilized in manufacture of goods exempted from tax, on which input tax credit has been availed in a tax period prior to its utilization, by a dealer manufacturing both taxable goods and goods exempted from tax, or

(h) are exempted from levy of tax subsequently, or

(i) are returned to the selling dealer and necessary adjustment is made by revising the tax invoice or retail invoice, or by issue of credit or debit notes in respect of such goods," ;  
and

(iii) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that in case of clause (d), the input tax credit so reversed shall be limited to four per centum of the value of the goods in respect of which input tax credit has been allowed."

Amendment of  
section 21.

**14.** In the principal Act, in section 21, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 20 for any tax period exceeds the tax liability for that period, the excess input tax credit shall be set off against the tax payable under the provisions of the Central Sales Tax Act, 1956 for that period at the first instance and if any balance input tax credit is still available, the same shall be carried forward for being set off against the tax payable for subsequent tax period or periods by that dealer."

Amendment of  
section 22.

**15. In the principal Act, in section 22, the following proviso shall be inserted, namely:—**

"Provided that no such adjustment shall be allowed in respect of such tax where any credit note has been issued as a consequence of cash discount or sale incentive by any registered dealer to another registered dealer after tax invoice is issued."

Amendment of  
section 25.

**16. In the principal Act in section 25, in sub-section (5), for the proviso thereto, the following proviso shall be substituted, namely:—**

"Provided that where any dealer has more than one place of business inside the State and such place or places of business come under the jurisdiction of different registering authorities, the dealer shall intimate to the registering authority within fifteen days from the date of commencement of the Orissa Value Added Tax (Amendment) Act, 2008 failing which the Commissioner may, on his own information or on receipt of information from any registering authority, decide the principal place of business of such dealer and, by order, direct the registering authority of that principal place of business to issue certificate of registration to the dealer in the prescribed manner."

Amendment of  
section 26.

**17. In the principal Act, in section 26,—**

(a) for sub-section (1) including the provisos thereto, the following sub-section shall be substituted, namely:—

"(1) Any dealer or person,—

- (a) who intends to establish a business for the purpose of manufacturing of goods of value exceeding rupees one lakh during a period of twelve consecutive months for sale, or
- (b) who intends to carry on business in respect of goods of value exceeding rupees three lakhs during a period of twelve consecutive months.

may, notwithstanding that he is not liable to pay tax under section 10, apply in the prescribed form and manner to the registering authority for registration :

Provided that for the purposes of this sub-section, the dealer or person, as the case may be, shall have to furnish such evidence as may be required by the registering authority in support of his intention to establish a business for manufacturing of goods for sale or, as the case may be, in support of his business.":

(b) in sub-section (2), for the words, brackets, figures and comma, "sub-sections (2), (3) and (4)", the words, brackets, and figures "sub-sections (2) and (3)" shall be substituted; and

(c) for sub-section (4), the following sub-sections shall be substituted, namely:—

"(4) (a) The certificate of registration granted to a dealer or person referred to in clause (a) of sub-section (1) shall be in force for such period as may be specified therein :

Provided that for good and sufficient reasons to the satisfaction of the registering authority, the period for which the registration is in force can be extended, but in no case such extension shall be allowed beyond a period of one year at a time.

(b) The certificate of registration granted to a dealer or person referred to in clause (b) of sub-section (1) shall be in force for a period of not less than three complete years, unless cancelled earlier.

(5) The certificate of registration granted under this section shall be effective from the date of issue of such certificate."

Amendment of section 31.

**18.** In the principal Act, in section 31, in sub-section (1), after clause (f), the following clause shall be inserted, namely:—

"(g) any change alters the basic status of a dealer as referred to in sub-section (6) of section 32,"

Amendment of section 32.

**19.** In the principal Act, in section 32, in sub-section (6), for the words "a fresh certificate of registration shall be required to be obtained by the dealer", the words "a new certificate of registration shall be issued on application being filed in this behalf in the manner prescribed" shall be substituted.

Amendment of section 33.

**20.** In the principal Act, in section 33,—

(a) in sub-section (2), for the words "the turnover of sales or the turnover of purchases", the words "the gross turnover" shall be substituted;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) If any dealer, having furnished returns under sub-section (1) or sub-section (2),—

(a) discovers any omission or error in any return so furnished, or

(b) where there is requirement for adjustment of the sale price or tax or both, as the case may be, in relation to sale of any goods, makes such adjustment by way of issue of credit note or debit note, as the case may be,

he may file a revised return within three months following the tax period to which the original return relates."; and

(c) in sub-section (6), for the words, bracket and figure "or sub-section (2)"; the comma, words, brackets and figures ", sub-section (2) or sub-section (3)" shall be substituted.

Amendment of section 34.

**21.** In the principal Act, in section 34,—

(a) in sub-section (1),—

(i) the words, figures, comma and brackets "sub-section (1), (2) or (3) of" shall be omitted,

- (ii) in clauses (a) and (c), after the word "return", the commas and the words "revised return or final return, as the case may be," shall be inserted,
- (iii) in sub-clauses (i) and (iii), after the word "return", the commas and the words "revised return or final return, as the case may be," shall be inserted,
- (b) in sub-section (2), for the words "return or revised return", the words and commas "return, revised return or final return, as the case may be," shall be substituted, and
- (c) in sub-section (3),—
  - (i) in the opening portion, for the words, bracket and figures "sub-section (2) of section 33", the words, brackets, figures and comma "sub-sections (1), (2) or (3) of section 33" shall be substituted, and
  - (ii) in clause (a), for the words, brackets and figures "sub-section (2) or (3) of section 33", the words, brackets, comma and figures "sub-sections (1), (2) or (3) of section 33" shall be substituted.

Amendment of section 43.

**22.** In the principal Act, in section 43, in sub-section (1), for the word and figure "or 42" appearing after the figure "40", the comma, word and figures ", 42 or 44" shall be substituted.

Amendment of section 62.

**23.** In the principal Act, in section 62, after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Where a purchasing dealer is found to have arranged a fake or forged tax invoice or retail invoice, he shall be liable to pay penalty equal to twice the amount of tax charged in such invoice."

Amendment of section 65.

**24.** In the principal Act, in section 65,—

- (a) in sub-section (1),—
  - (i) before the words "shall be furnished" and after the words "a true copy of such report", the words and commas "accompanied by a statement showing the closing stock in trade held at the end of the year, in the prescribed manner," shall be inserted; and
  - (ii) the following provisos shall be inserted before the explanation, namely:—

"Provided that the audit report under this sub-section relating to the first year of the commencement of this Act, may be furnished within three months from the date appointed under sub-section (2) of section 1 of the Orissa Value Added Tax (Amendment) Act, 2008 :

Provided further that the Government may, by notification and subject to such conditions and restrictions as may be specified in that notification, exempt any class of dealers from the liability to get their accounts audited under the sub-section."

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1-a) A dealer, who is liable to pay tax under section 11, but not liable to get his accounts audited under sub-section (1), shall furnish a statement of closing stock in trade held at the end of the year in the prescribed manner to the Commissioner within a period of three months from the date of expiry of that year.” ; and

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where a dealer—

(a) liable to get his accounts audited under sub-section (1), fails to furnish a true copy of the audit report accompanied with a statement showing the closing stock in trade held at the end of the year, in the prescribed manner, or

(b) liable to furnish a statement as required under sub-section (1-a), fails to furnish the same in the prescribed manner within the stipulated period,

the Commissioner shall, after giving such dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred per each day of default.”.

Amendment of section 79.

25. In the principal Act, in section 79, in sub-section (3), for the words, bracket and figure “sub-section (1)”, the words, bracket and figure “sub-section (2)” shall be substituted.

Amendment of section 99.

26. In the principal Act, in section 99, for the words “no dealer shall”, the words and commas “a dealer or a person, as the case may be, shall not” shall be substituted.

Insertion of new section 101-A.

27. In the principal Act, after section 101, the following section shall be inserted, namely:—

Agreement to defeat the intention and application of the Act to be void.

101-A. (1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may by order, declare the arrangement to be *null* and *void* as regards the application and purposes of this Act and he may, by the said order, provide for increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section,—

(a) “arrangement” includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect ;

(b) "tax advantage" includes,—

- (i) any reduction in the liability of any dealer to pay tax,
- (ii) any increase in the entitlement of any dealer to claim input tax credit or refund, and
- (iii) any reduction in the sale price or purchase price receivable or payable by any dealer.

(3) Before passing any order under this section, the Commissioner shall afford a reasonable opportunity of being heard to any such person or dealer whose tax advantage is sought to be counteracted.

Amendment of  
section 106.

**28.** In the principal Act, in section 106, in sub-section (2), for clause (j), the following clause shall be substituted, namely:—

"(j) a registered dealer, who was eligible to the benefit of deferment of tax in terms of a notification issued under the repealed Act on the day immediately before the appointed day and who would have continued to be so eligible on the appointed day under the repealed Act had this Act not come into force, shall be allowed the benefit of such deferment, with same restrictions and conditions as specified in the said notification issued under the repealed Act, in respect of tax payable by him under this Act for the balance unexpired period."

By order of the Governor

B. K. NAYAK

Principal Secretary to Government