

THE ODISHA VALUE ADDED TAX (AMENDMENT) ACT, 2015

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LAW DEPARTMENT

NOTIFICATION

The 24th September, 2015

No.9848-I-Legis 5/2015-L.—The following Act of the Odisha Legislative Assembly having been assented to by the Governor on the 21st September, 2015 is hereby published for general information.

ODISHA ACT 7 OF 2015

THE ODISHA VALUE ADDED TAX (AMENDMENT) ACT, 2015.

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

BE it enacted by the Legislature of the State of Odisha in the Sixty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Odisha Value Added Tax (Amendment) Act, 2015.

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

Amendment of section 9.

2. In the Odisha Value Added Tax Act, 2004 (hereinafter referred to as the principal Act), in section 9, in clause (b), for the words "rupees forty lakhs", the words "rupees fifty lakhs" shall be substituted.

Odisha Act 4 of 2005.

Amendment of section 10.

3. In the principal Act, in section 10, —

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

"(4) For the purposes of this Act, taxable limit shall be in relation to any dealer who—

(a) purchases or receives any Nil goods from outside the State for sale within the State on his own behalf or on behalf of his principal:

(b) executes any work contract: Rs. 50,000/-

(c) manufactures or produces any goods for sale: Rs. 10,00,000/-

(d) carries on any business other than those referred to in clauses (a), (b), and (c): Rs.10,00,000/-"

(ii) after sub-section (4), the following new sub-section shall be inserted, namely:—

"(4-a)(a) Where a dealer, who transfers property in goods (whether as goods or in some other form) involved in the execution of works contract (hereinafter referred to as the contractor) enters into further contract for assigning such works contract, either wholly or in part thereof to other dealer (hereinafter referred to as sub-contractor), directly or otherwise,

and the sub-contractor executes such works contract then each or either of them shall be jointly and severally liable to pay tax, and notwithstanding anything contained in this Act, the contractor and the sub-contractor shall pay tax proportionately in the prescribed manner in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of such works contract.

(b) If the contractor proves, in the prescribed manner, to the satisfaction of the Commissioner that the tax has been paid by the sub-contractor on the turnover of the goods involved in the course of execution of the works contract, the contractor shall not be liable to pay tax on such turnover.

(c) If the sub-contractor proves, in the prescribed manner, to the satisfaction of the Commissioner that the contractor has opted for composition under sub-section (3) of section 11 in

respect of the works contract being executed by the sub-contractor, then the sub-contractor shall not be liable to pay tax on such turnover.”

Amendment of
section 11.

4. In the principal Act, in section 11, for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) Notwithstanding anything contained in this Act, the Government may, by notification, provide for a scheme of composition, for dealers executing works contract including dealers undertaking the construction of flats, dwellings or buildings or premises and transferring them in pursuance of an agreement along with the land or interest underlying the land, subject to such conditions and restrictions as may be specified in the said notification, including the provision for option of dealer for such scheme.”

Amendment of
section 16.

5. In the principal Act, in section 16, for the words “rupees forty lakhs”, the words “rupees fifty lakhs” shall be substituted.

Amendment of
section 20.

6. In the principal Act, in section 20, after sub-section (3), the following sub-section shall be inserted, namely: —

“(3-a) Notwithstanding anything contained in this Act, no amount of input tax credit shall be allowed to a registered dealer on any purchase of goods in excess of the amount of such tax actually paid under this Act.”

Amendment
of section 25.

7. In the principal Act, in section 25, for sub-section (2), the following sub-section shall be substituted, namely: —

“(2) If the registering authority, on verification of application for registration, is satisfied that the requirements of the provisions of this Act and the rules have been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form, which shall specify the class or classes of goods dealt in or manufactured by him and such registration certificate shall be assigned a number in the manner as may be prescribed:

Provided that the registration certificate issued in respect of dealers liable to pay turnover tax under section 16 shall be in such different form and bear such number in such manner, as may be prescribed."

Amendment
of section 27.

8. In the principal Act, in section 27, for sub-section (1), the following sub-section shall be substituted, namely: —

"(1) The registering authority may, for proper realization of tax payable under this Act and for enforcement of lawful conduct of any dealer from time to time, demand from a registered dealer, a reasonable security, or additional security, as the case may be, to be paid in the prescribed manner and if the security so demanded is not paid within such time as may be specified in the order demanding such security, he may, notwithstanding anything contained in this Act, cancel the certificate of registration granted to him:

Provided that no such cancellation shall be made unless the dealer has been given a reasonable opportunity of being heard."

Omission of
section 30.

9. In the principal Act, section 30 shall be omitted.

Amendment of
section 31.

10. In the principal Act, in section 31, —

(a) in sub-section (1), —

(i) for clause (d), the following clause shall be substituted, namely: —

"(d) the owner of a proprietorship business dies; or"; and

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

"(h) there is good and sufficient reasons,"; and

(b) in sub-section(2), after clause(b), the following clauses shall be inserted, namely:—

“(c) in case of clause (g) of sub-section (1), from the date on which the basic status of a dealer is changed,

(d) in case of clause (h) of sub-section (1), from the date of order of cancellation,”;

(c) for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) A registered dealer, whose certificate of registration becomes liable for cancellation under clauses (a), (b), (c), (e), (f) and (g) of sub-section (1), shall apply for cancellation of the registration to the registering authority in such manner and within such time as may be prescribed.

(3-a) A registered dealer, whose certificate of registration becomes liable for cancellation under clause (h) of sub-section (1), the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of being heard to the dealer, cancel the certificate of registration held by him.” ;and

(d) sub-section (5) shall be omitted.

Amendment of
section 32.

11. In the principal Act, in section 32,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If any dealer registered under this Act—

(a) sells or disposes of his business or any part thereof or discontinues his business, or changes the name, style, or nature of business, or makes any addition or deletion in the class of goods dealt in or manufactured, or changes his place of business (other than principal place of business) or warehouse, or opens a new place of business; or

(b) effects any other change in the constitution or principal place of business,

(c) changes the ownership of the business, or its basic status,

he or any person, duly authorised by him shall, within the prescribed time, inform the registering authority accordingly”.

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

“(2) If under circumstances mentioned in sub-section (1) a registered dealer makes an application for amendment of the certificate of registration, —

(a) in cases of clause (a), such amendment shall be done electronically on the basis of the application,

(b) in cases of change in constitution or principal place of business, the registering authority may amend the certificate of registration of the dealer or reject the application for such amendment as the case may be; and

(c) in cases of change in the ownership of the business or its basic status, the registering authority may, issue fresh certificate of registration or reject the application for such amendment as the case may be:

Provided that before an application for amendment of certificate of registration is rejected, the dealer shall be given an opportunity of being heard.” ; and

(iii) for sub-section (7), the following sub-section shall be substituted, namely: —

“(7) Where a dealer fails, without any reasonable cause, to inform the registering authority the changes as provided under sub-section (1), within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default subject to a maximum limit of rupees ten thousand.”

Amendment of
section 33.

12. In the principal Act, in section 33, —

(i) in the proviso to sub-section(5), the words, " or as a result of such audit", shall be omitted; and

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

"(9)Notwithstanding anything contained in sub-sections (7) and (8), returns filed electronically shall not require any signature by the dealer or his authorized person."

Amendment of
section 39.

13. In the principal Act, in section 39, for sub-section (2), the following sub-section shall be substituted, namely: —

"(2)If a registered dealer furnishes the return in respect of any tax period, it shall be deemed to be self-assessed."

Amendment of
section 41.

14. In the principal Act, in section 41, —

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

"(4)After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit, shall determine the tax liability of the said dealer and serve a notice along with the Audit Visit Report in the prescribed form to the dealer to pay net tax due so determined."

(ii) after sub-section(4), the following sub-sections shall be inserted, namely: —

"(5)If the dealer admits to the observations made in the Audit Visit Report referred to in sub-section (4) in writing, and pays in full the amount of net tax due under sub-section (4) and twenty five per centum of the tax so determined as penalty within thirty days of the date of service of the notice, there shall be no assessment as a result of that audit.

(6) If the dealer does not comply with sub-section (5), the officer authorised to conduct such audit shall, submit the "Audit

Visit Report", to the assessing authority along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes."

Amendment of
section 42.

15. In the principal Act, in section 42, —

(i) in sub-section(1), for the words and comma "under section 39 or section 40," the words and comma "under section 39 or section 40 or section 43," shall be substituted;

(ii) in sub-section(5), the word "twice" shall be omitted;

(iii) after the proviso to sub-section(6), the following proviso shall be inserted, namely: —

"Provided further that if the Commissioner feels it necessary to do so for good and sufficient reasons, he may allow such further time not exceeding another six months beyond the time allowed under the first proviso for completion of the assessment proceeding."

(iv) sub-section(7) shall be omitted.

Insertion
of a new
section 42-A.

16. In the principal Act, after section 42, the following new section shall be inserted, namely:—

Assessment in
certain cases in
lieu of Audit.

"42-A.(1) Notwithstanding anything contained in sections 41 and 42, the Commissioner may, by notification, select dealers, on the basis of large tax payment or large turnover, from time to time, or who has been granted provisional refund under section 58, for assessment in lieu of tax audit and audit assessment.

(2) After notification of the dealers for assessment under sub-section (1), the assessing authority may serve on such dealer a notice in the prescribed manner, requiring him to appear in person or through his authorized representative on a

date and place specified therein and produce or cause to be produced such books of account, documents relying on which the assessing authority, may proceed to assess the said dealer.

(3) Where a notice is issued to a dealer under sub-section (2), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(4) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (2), the assessing authority may proceed to complete the assessment to the best of his judgment basing on the materials available, and after causing such enquiry as he deems necessary.

(5) Where the dealer to whom a notice is issued under sub-section (2), produces the books of account and documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(6) Without prejudice to any penalty or interest that may have been levied under any provisions of this Act, penalty not exceeding twenty five per centum of the tax so arrived under sub-section (4) or sub-section (5) may be imposed in respect of any assessment completed under the said sub-sections.

(7) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of service of the notice on the dealer:

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.

17. In the principal Act, in section 43,—

(i) for sub-section(1), the following sub-section shall be substituted, namely: —

“(1)Where, the assessing authority, on the basis of any information in his possession which indicates that the whole or any part of the turnover of the dealer in respect of any tax period or tax periods has —

(a) escaped assessment ; or

(b) been under-assessed ; or

(c) been assessed at a rate lower than the rate at which it is assessable;

or that the dealer has been allowed —

(i) wrongly any deduction from his turnover , or

(ii) input tax credit, to which he is not eligible,

the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceed to assess to the best of his judgment the amount of tax due from the dealer.”;

(ii) in sub-section(2), the word “twice” shall be omitted; and

(iii) after sub-section (3); the following new sub-section shall be inserted, namely : —

(4)“Notwithstanding anything contained to the contrary in this Act, an assessment under this section shall be completed within a period of six months from the date of service of notice issued under sub-section (1):

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such

further time not exceeding six months for completion of the assessment proceeding.

Provided further that if the commissioner feels it necessary to do so for good and sufficient reasons, he may allow such further time not exceeding another six months beyond the time allowed under the first proviso for completion of the assessment proceeding."

Amendment of
section 50.

18. In the principal Act, in section 50, in clause (b) of sub-section (4), after the figure "42" wherever it occurs, the figure "42-A" shall be inserted.

Amendment of
section 54.

19. In the principal Act, in section 54, —

(i) in sub-section(1), the following proviso shall be inserted, namely: —

"Provided that where a dealer executing works contract, entering into further contract with sub-contractor to execute such work, shall not deduct any further amount towards tax in respect of the said work and tax deducted at source by the deducting authority shall be transferred proportionately to the sub-contractor by the principal contractor in such manner as may be prescribed."

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

"(1-a) Where the Commissioner is satisfied on his own information that the deducting authority requires enrolment, he may enroll the deducting authority in such form as may be prescribed and assign him with an Identity code." ;

(iii) in sub-section(3), after the words "such form or challan", the words "or e-payment" shall be inserted; and

(iv) in clause(a) of sub-section(5), the following new proviso shall be inserted, namely:-

"Provided further that where a dealer executing works contract, enters into further contract with sub-contractor to execute such work, the sub-contractor shall not require such certificate of no deduction in respect of the said works contract."

Amendment of
section 57.

20. In the principal Act, in section 57, after sub-section(2), the following new sub-section shall be inserted, namely:—

"(2-a) Subject to other provisions of this Act, the Commissioner shall, in such manner and within such time, as may be prescribed, refund to a dealer, any amount of tax, deducted at source in respect of such dealer, in excess of the amount due from him under this Act."

Amendment of
section 58.

21. In the principal Act, in section 58, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1)(a) "Where a registered dealer has in any return or revised return filed under this Act shown any amount to be refundable on account of sales referred to in clauses (b), (c) and (d) of section 18, and has undertaken not to adjust such amount against the amount due as per any return in accordance with section 33, he may make an application to the assessing authority for refund of that amount in such manner and form as may be prescribed.

(b) The registered dealer may, apply in such manner and in such form as may be prescribed, for grant of refund relating to a quarter after six months of filing the return or revised return for such quarter.

(c) The assessing authority may, on receipt of the application call for such additional information from the dealer, as he may think necessary, to establish the correctness of the said claim.

(d) The assessing authority shall, subject to the procedure prescribed, grant the dealer a provisional refund of ninety per centum of the amount arising for refund on the basis of the verification, for the return period for which such refund has been claimed by the dealer within a period of ninety days from the date of application for such refund:

Provided that if there is any delay in completing verification under this clause due to non-co-operation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation and such period shall not be reckoned for grant of interest, if any, admissible under Section 59:

Provided further that if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after giving the dealer an opportunity of being heard.

(e) All cases for refund, for which provisional refunds have already been granted under clause (d), shall be assessed under sub-section (1) of Section 42-A within a period of twelve months from the end of the year containing tax periods relating to the returns for which refund has been granted.

(f) Where, on assessment under clause (e), the amount of refund claimed is found to be inadmissible or more than what is granted as provisional refund, then, the claim of refund of excess amount shall be disallowed and if, in consequence thereof, any amount is found due from the dealer, he shall be liable to pay interest at the rate of two per centum per month on that amount from the date of grant of provisional refund till the date of issue of assessment order.

(g) No refund under this section shall be claimed unless it is made within twelve months from the end of the year containing the period to which the return relates.”

Amendment of
section 59.

22. In the principal Act, in section 59, in clause (a) of sub-section (1), after the figure “42”, the figure “42-A” shall be inserted.

Amendment of
section 65.

23. In the principal Act, in section 65, —

(i) sub-section (1-a) shall be omitted; and

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

“(2) Where a dealer liable to get his account 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, 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 subject to a maximum limit of rupees ten thousand.”

Amendment of
section 77.

24. In the principal Act, in section 77,—

(i) in sub-section (1), after the figure “42”, the figure “42-A” shall be inserted;

(ii) for sub-section (7), the following sub-section shall be substituted, namely:-

“(7) In disposing of an appeal, the appellate authority may, within a period of three years from the date of admission of such appeal or as the case may be, in pending cases within a period of three years from the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary—

(a) confirm, reduce or annul the assessment of tax, or the imposition of interest or levy of penalty, if any; or

(b) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal; or

(c) set-aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.”; and

(iii) after sub-section (7), the following new sub-section shall be inserted, namely: —

“ (7-a) Notwithstanding anything contained in this Section, the assessing authority may, after giving the dealer a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary, complete fresh assessment of the cases referred to in clause (c) of sub-section (7) within a period of two years from the date of the order under the said clause, or as the case may be, in case of pending such cases, within a period of two years from the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015.

By Order of the Governor

B.P. ROURAY

Principal Secretary to Government