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LAW DEPARTMENT

NOTIFICATION

The 9<sup>th</sup> September 2005

No.1360/Legis-The following Act of the Orissa Legislative Assembly having been assented to by the Governor on the 9<sup>th</sup> September, 2005 is hereby published for general information.

ORISSA ACT 10 OF 2005

## THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2005

AN ACT FURTHER TO AMEND THE ORISSA ENTRY TAX ACT, 1999.

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

Short title  
and  
commence-  
ment.

- 1.(1) This Act may be called the Orissa Entry Tax(Amendment) Act, 2005.  
(2) It shall be deemed to have been called into force on the 19<sup>th</sup> day of May, 2005.

Amendment  
of section 2.

2. In the Orissa Entry Tax Act, 1999 (hereinafter referred to as the principal Act), in section 2, –

(i) for clause (a), the following clause shall be substituted, namely :-

‘(a) “assessing authority” means any officer appointed or deemed to have been appointed under VAT Act and authorised by the Commissioner to make assessment under that Act;’;

Orissa Act  
11 of 1999.

(ii) for clause (b), the following clause shall be substituted, namely :-

‘(b) “Commissioner” means Commissioner of Sales Tax appointed or deemed to have been appointed under VAT Act;’;

(iii) in clause (c), for the words, brackets figure and comma, “clause (c) of section 2 of the Sales Tax Act,”, the words, brackets, figures and comma “sub-section (12) of section 2 of VAT Act” shall be substituted;

(iv) in clause (j), after the words and comma “sales tax,”, the words and commas “Value Added Tax or, as the case may be, turnover tax” shall be inserted;

(v) after clause (j), the following clause shall be inserted, namely:-

‘(jj) “registering authority” means any officer authorised by the Commissioner to function as registering authority under VAT Act;’;

(vi) clause (l) shall be omitted;

(vii) for clause (o), the following clause shall be substituted, namely:-

‘(o) “Tribunal” means the Orissa Sales Tax Tribunal constituted under VAT Act;’;

(viii) after clause (o), the following clauses shall be inserted, namely:-

‘(oo) “Tax period” means such period for which return is required to be furnished by or under this Act;’;

‘(ooo) “VAT Act” means the Orissa Value Added Tax Act, 2004;’;  
and

Orissa Act 4  
of 2005.

(ix) in clause (q), for the words “Sales Tax Act”, the words “VAT Act” shall be substituted.

Amendment  
of section 5.

**3.** In the principal Act, for section 5, the following section shall be substituted, namely:-

“5.(1) Every dealer in scheduled goods who is, -

(a) registered under VAT Act; or

(b) liable to be registered under VAT Act, but not registered  
under the said Act,

shall get himself registered under this Act, in such manner and within such period as may be prescribed.

(2) Where a dealer, -

(a) registered under VAT Act is granted registration under this Act, the certificate of registration issued under VAT Act shall be the certificate of registration for the purposes of this Act and the Identification Number assigned to the dealer under VAT Act shall be the Identification Number of the dealer for the purposes of this Act; or

(b) not registered under VAT Act is granted registration under this Act, the registering authority shall issue to such dealer, a certificate of registration under this Act in such manner and in such form as may be prescribed and the certificate of registration so issued shall be assigned with an Identification Number and shall be effective from the date of filing of application for registration:

Provided that where any such dealer has more than one place of business inside the State, he shall declare one of such places as the principal place of business in the application and the registering authority shall issue to the dealer one certificate of registration in respect of such principal place of business:

Provided further that where the dealer does not declare his principal place of business in the application for registration, the registering authority, shall issue one certificate of registration in respect of any such place of business, as he deems appropriate.

(3) The registration granted under this Act to a dealer, who has been granted a certificate of registration under VAT Act, shall remain in force so long as his certificate of registration is valid under that Act.

(4) The certificate of registration granted under this Act to a dealer not registered under VAT Act, shall remain valid until it is cancelled under this Act.

(5) where certificate of registration of a dealer under VAT Act is amended, the certificate of registration of such dealer granted under clause (a) of sub-section (1) shall be deemed to have been amended under this Act and Rules.

(6) If a dealer who has been granted registration under clause (b) of sub-section (1) –

(i) sells or otherwise disposes of business or any part of his business or effects or comes to know of, any other change in the ownership of the business; or

(ii) changes his place of business or opens a new place of business; or

(iii) changes the name, style, constitution or nature of his business or effects any change in the class of goods in which he carries on business,

he shall within the prescribed time inform the registering authority accordingly.

(7) If the registering authority, either on application from the dealer or otherwise after conducting or causing to be conducted such enquiry as he deems necessary, is satisfied that amendment of the certificate of registration is required, he shall amend the certificate of registration with effect from the date to be specified in that order:

Provided that the registering authority may, after giving the dealer a reasonable opportunity of being heard, reject an application for amendment for the reasons to be recorded in writing.

(8) Notwithstanding anything contained in sub-section (6), where any change alters the basic status of a dealer, such as, conversion of proprietorship concern to partnership firm or vice versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa, a fresh certificate of registration shall be required to be obtained by the dealer.

(9) Where, –

- (i) any business in respect of which a certificate of registration has been granted to a dealer under this Act is discontinued; or
- (ii) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or
- (iii) an incorporated body is closed down or otherwise ceases to exist; or
- (iv) the owner of a proprietorship business dies leaving no successor; or
- (v) in case of firm or association of persons, if it is dissolved; or
- (vi) a dealer is no longer liable to be registered under this Act; or
- (vii) there is any other sufficient reasons so to do,

the registering authority shall, after conducting or causing to be conducted such enquiry as he deems necessary, cancel the registration of the dealer who has been registered under clause (b) of sub-section (1) with effect from the prescribed date.

(10) Every dealer whose certificate of registration is cancelled shall surrender the certificate of registration within seven days from the date of receipt, by him, of the order of cancellation.

(11) In the event of death of a dealer being the proprietor of the business, the legal heir shall, within one month from the date of death of such proprietor, inform, in writing, the registering authority the date of death of such proprietor and produce evidence as may be required and the registering authority shall cancel the certificate of registration immediately.”.

Amendment  
of section 7.

4. In the principal Act, for section 7 including its marginal heading, the following section shall be substituted, namely:-

“Return and  
Return  
defaults.

7. (1) Every registered dealer and every dealer who is liable to get himself registered under this Act shall furnish every month to the Commissioner, a return in such form, by such date as may be prescribed and shall furnish along with such return satisfactory proof of payment of tax payable by him under this Act:

Provided that a dealer who files quarterly return under VAT Act may furnish return under this Act every quarter paying the full amount of such tax as payable for the preceding quarter.

Explanation. – A return not accompanied by proof of full payment of the tax due in respect of a tax period shall not be deemed to be a return for the purpose of this section.

(2) (a) If any dealer, having furnished a return under sub-section (1), discovers any omission or error in the return so furnished, he may file a revised return before the date on which the return for the next tax period becomes due.

(b) Revised returns may also be furnished by the registered dealer under this Act if revised returns are furnished under VAT Act and the rules made thereunder:

Provided that revised return may not be filed under this Act if the revised return furnished under VAT Act does not relate to the transaction of scheduled goods.

(3) Every return under this section shall be signed and verified by

—

(a) the individual himself, in case of an individual, and where the individual is absent, any person duly authorised by him in this behalf;

(b) the Karta, in the case of a undivided Hindu Family;

(c) the principal officer, in the case of a Company or local authority;

(d) any partner thereof not being a minor in the case of a firm;

(e) any person competent to act in that behalf, in the case of any other association;

(f) an officer duly authorised by that Government, in case of a Government.

Explanation. – For the purpose of clause (c) of sub-section (3), the expression “principal officer” shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961.

43 of 1961.

(4) Any return signed by a person who is not authorised under sub-section (3) shall not be treated as a return for the purposes of this Act:

Provided that any amount deposited on the basis of such return shall not be refunded except where it is established under the provisions of this Act to be otherwise payable.

(5) Where a dealer required to file return under this section fails without sufficient cause to pay the amount of tax due as per the return for any tax period or fails to furnish return, such dealer shall be liable to pay interest in respect of-

(i) the tax, which he fails to pay according to the return ; or

(ii) the tax payable for the period for which he has failed to furnish return,

at the rate of two per centum per month from the date the return for the period was due to the date of its payment or the date of order of assessment, whichever is earlier.

(6) If any dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with return under sub-section (1) or revised return under sub-section (2), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two per centum per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

(7) If any dealer, without any sufficient cause, fails to furnish the proof of payment as required under sub-section (1), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (5) or (6) payable or paid by him, a penalty of a sum of rupees fifty per each day of default subject to a maximum of rupees five thousand.

(8) The penalties under this section may be imposed by the Commissioner notwithstanding the fact that assessment proceedings have not been initiated against the dealer under section 9 C or section 10.

(9) Any penalty imposed under this section shall be without prejudice to any prosecution for any offence under this Act.

(10) Each and every return in relation to any tax period furnished by a dealer under this section, shall be subject to scrutiny by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of deductions, if any, under this Act and full payment of tax and interest payable by the dealer for such period.

(11) If any mistake is detected as a result of scrutiny made under sub-section (10), the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax alongwith the interest as per the provisions of this Act, by the date specified in the said notice.

Amendment  
of section 8.

5. In the principal Act, for section 8, the following section shall be substituted, namely:-

“ 8. (1) The registering authority may, for proper realisation of tax payable under this Act and for enforcement of lawful conduct of a dealer, who has applied for registration under this Act, demand from him a reasonable security, 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, refuse to grant him such registration:

Provided that no security under this Act shall be demanded from a dealer who has applied for registration, if such dealer is already registered under VAT Act and the rules .

(2) In case there is reasonable apprehension or likelihood of evasion of tax the registering authority may, at any time, for reasons to be recorded in writing, demand adequate security or additional security, as the case may be, in the prescribed manner.

(3) The security or additional security as referred to in sub-sections (1) and (2) shall not exceed the tax estimated to be paid by the dealer for one year.

(4) The registering authority may, after giving the dealer a reasonable opportunity of being heard, by order, adjust or forfeit, as the case may be, the whole or any portion of the security furnished by a dealer-

(a) for realizing any amount of tax, penalty or interest payable by the dealer ; or

(b) if the dealer has misused any form or has failed to keep them in proper custody.

(5) The registering authority may, on application by a dealer who has furnished security as required under sub-section (1), refund in the prescribed manner the entire amount of security or part thereof if such security is not required for the purposes for which it was furnished.”.

Amendment  
of section 9.

6. In the principal Act, for section 9 including its marginal heading, the following section shall be substituted, namely:-

“ Self  
assessment.

9. (1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or periods during which the dealer is so liable.

(2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return.

Insertion of  
new  
sections.

7. In the principal Act, after section 9, the following sections shall be inserted, namely : -

“Provisional  
assessment.

9 A.(1) If no return under sub-section (1) of section 7 is furnished within the prescribed time, the assessing authority may proceed to assess the dealer provisionally for that period, notwithstanding anything contained in section 9 C.

(2) The provisional assessment under sub-section (1) shall be made on the basis of past returns or past records, and, where no such returns or records are available, on the basis of information received by the assessing authority and in every such case the assessing authority shall direct the dealer to deposit the amount of tax so assessed in such manner and by such dates as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of the tax due, interest and penalty, payable, if any, on or before the date specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the assessing authority from making assessment under section 9C and any tax, interest or penalty paid against the provisional assessment under this section shall be adjusted against tax, interest or penalty payable on such assessment.

Identification  
of tax payer.

9 B. (1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.

(2) After identification of individual dealers or class of dealers for tax audit under sub-section(1), the Commissioner shall direct that tax audit in respect of such individual dealers or class of dealers be conducted and for the purpose of conduct of such tax audit under this section, the provisions contained in section 41 of VAT Act shall mutatis mutandis apply:

Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

(3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.

Audit  
assessment.

9 C. (1) Where the tax audit conducted under section 9 B results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions, evasion of tax or contravention of any provisions of this Act affecting the tax liability of the dealer, the assessing authority notwithstanding the fact that the dealer may have been assessed under section 9 or 9 A, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.

(2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(3) Where the dealer to whom a notice is issued under sub-section (1) produces the books of account and other 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 other enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(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 (1), the assessing authority may proceed to complete the assessment to the best of his judgment basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

(5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section(3) or (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.

(6) 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 receipt of the Audit Visit Report:

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

(7) No order of assessment shall be made under sub-section (3) or (4) after expiry of one year from the date of receipt of the Audit Visit Report.

Assessment of dealer who being liable to pay tax fails to register.

9 D. (1) If the assessing authority, on the basis of information in his possession, is satisfied that any dealer, who has been liable to get himself registered under this Act, has failed to get himself registered, the assessing authority shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of the period during which he was liable to get himself registered and all subsequent periods and, in making such assessment, shall give the dealer reasonable opportunity of being heard, and the assessing authority may, if he is satisfied that the default is without reasonable cause, direct the dealer to pay, in addition to the amount of tax so assessed, a penalty equal to the amount of tax so assessed.

(2) No assessment under sub-section (1) shall be made after expiry of five years from the end of the tax period or the tax periods to which the assessment relates.”.

Amendment of section 10.

**8.** In the principal Act, for section 10 including its marginal heading, the following section shall be substituted, namely:-

“Reassessment in certain cases.

10. (1) Where for any reason all or any of the scheduled goods brought by a dealer has escaped assessment of tax, or where value of all or any of the scheduled goods has been under-assessed, or any deduction has been allowed wrongly, the assessing authority, on the basis of information in his possession, may, within a period of five years from the end of the year to which the tax period relates, serve a notice on the dealer in such form and in such manner as may be prescribed and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly.

(2) If the assessing authority is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay in addition to the tax assessed under sub-section (1), by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.

(3) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgment or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything

contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the judgment or order.”.

Insertion of new section 10 A. 9. In the principal Act, after section 10, the following section shall be inserted, namely :-

“Exclusion of period for assessment. 10 A. In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.”.

Amendment of section 11. 10. In the principal Act, in section 11, in sub-section (4), –  
 (i) after the words and comma “tax assessed,” , the words and commas “or any interest levied, or any penalty imposed,” shall be inserted; and  
 (ii) for the words “in the Schedule to the Sales Tax Act”, the words “in the Schedule E of VAT Act” shall be substituted.

Amendment of section 12. 11. In the principal Act, in section 12, in sub-section (1), –  
 (i) for the words “ from whom any tax assessed ”, the words and commas “on whom any tax assessed, or any interest levied, or any penalty imposed,”: and  
 (ii) for the words “arrear of tax”, the words “arrear of tax or interest” shall be substituted.

Amendment of section 14. 12. In the principal Act, in section 14, for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely :-

“(2) When a firm liable to pay tax, interest or penalty is dissolved, the assessment of the tax, levy of interest and imposition of penalty shall be made as if no dissolution of the firm had taken place, and every person who was at the time of dissolution a partner of the firm and the legal representative of any such partner, who is deceased, shall be jointly and severally liable to pay the tax assessed or interest levied or penalty imposed.

(3) When an undivided Hindu family liable to pay the tax, interest or penalty is partitioned, the assessment of the tax, levy of interest and the imposition of penalty shall be made as if no partition of the family had taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax assessed or interest levied or penalty imposed.

(4) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that in respect of any tax assessed, or interest levied, or penalty imposed as payable by any such dealer or any tax, interest or penalty which would have been payable by him under this Act, if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.”.

Amendment  
of section 15.

**13.** In the principal Act, for section 15, the following section shall be substituted, namely :-

“15. (1) Persons appointed under any prescribed designation including a Special Commissioner of Sales Tax, an Additional Commissioner of Sales Tax, a Joint Commissioner of Sales Tax, a Deputy Commissioner of Sales Tax, an Assistant Commissioner of Sales Tax, a Sales Tax Officer and an Assistant Sales Tax Officer to assist the Commissioner under VAT Act shall, for the purpose of this Act, exercise such powers and discharge such functions as may be required, by or under this Act within such local area as assigned by the Commissioner under that Act.

(2) Without prejudice to any other functions that the Commissioner may perform under the provisions of this Act, he shall exercise the following powers and discharge the following functions:-

- (a) to superintend and control all persons employed in the executive administration of tax;
- (b) subject to the provisions of this Act and Rules, to make rules of procedure and conduct of administration for the guidance of persons subordinate to him;
- (c) to call for any record from any subordinate officer and also to call for any paper or document in connection with any assessment under this Act;
- (d) to inspect the records and to superintend the work of officers subordinate to him and their offices.”.

Insertion of  
new section  
15 A.

**14.** In the principal Act, after section 15, the following new section shall be inserted, namely:-

“Delegation of the  
Commissioner’s  
powers and  
functions.

15 A. Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act or Rules to any persons appointed under any prescribed designation under VAT Act to assist the Commissioner and any order passed by any such person in exercise of the powers so delegated shall be deemed to be an order passed by that person.”.

Amendment  
of section 16.

**15.** In the principal Act, for section 16, the following section shall be substituted, namely :-

“16.(1) Any dealer or person aggrieved by an order passed under the provisions of this Act may prefer an appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority).

(2) Notwithstanding anything contained in sub-section (1), no appeal shall lie against—

- (a) a notice issued under this Act calling upon a dealer for assessment or any person to show cause as to why he shall not be prosecuted for an offence under this Act; or

(b) an order pertaining to the seizure or retention of any books of accounts, registers and other documents of a dealer; or

(c) an order sanctioning prosecution of a dealer under this Act; or

(d) an interim order passed in the course of any proceeding under this Act.

(3) The appeal under sub-section (1) shall be preferred within thirty days from the date on which the order is served on the dealer or person:

Provided that an appeal preferred after thirty days may be admitted, if the appellate authority is satisfied that the appellant had sufficient cause for not preferring appeal within the said period.

(4) No appeal against an order of assessment shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute.

(5) Subject to the provisions contained in sub-section (4) , the appellate authority may, on application in that behalf filed by the dealer or person within the period as provided in sub-section (3) , stay the realisation of the balance of tax, interest or penalty, as the case may be, under dispute either in part, or in full till disposal of the appeal.

(6) The appeal shall be preferred in the prescribed form and shall be verified in the prescribed manner.

(7) In disposing of an appeal, the appellate authority may after giving the appellant a reasonable opportunity of being heard and after conducting such enquiry as he may deem necessary,-

(a) in the case of an order of assessment of tax or levy of interest or imposition of penalty, -

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

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

(iii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed ; or

(b) in the case of any other order, confirm, annul or modify such order.

(8) Every order passed under this section shall, subject to the provisions of sections 17 to 19, be final.”.

Amendment  
of section 17.

**16.** In the principal Act, for section 17, the following section shall be substituted, namely :-

“17.(1) Any dealer or, person or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of section 16 may, within sixty days from the date of receipt of such order prefer an appeal in the prescribed manner to the Tribunal :

Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The dealer or, person or, the Government, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1) may, notwithstanding that such dealer or, person or, the Government may not have appealed against such order or any part thereof, within sixty days of the service of the notice, file a memorandum of cross objections, and such memorandum shall be disposed of by the Tribunal, as if it were an appeal presented within the time under sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred.

(4) The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal.

(5) For the purpose of sub-section (4), the Tribunal shall have the same powers and shall be subject to the same conditions as provided in sub-section (7) of section 16, and any order passed under sub-section (4) shall be final.

(6) Subject to the provisions of VAT Act, the Tribunal shall dispose of the appeal in the prescribed manner.

(7) where a dealer or person has preferred an appeal under sub-section (1), the Commissioner may, stay realisation, either in part or in full, the amount of tax or interest or penalty, as the case may be, remaining outstanding or recovery as a result of disposal of appeal under sub-section (7) of section 16, on application in that behalf filed by the dealer within the period as provided in sub-section (1).”.

Amendment  
of section  
18.

**17.** In the principal Act, for section 18 including its marginal heading, the following section shall be substituted, namely :-

“Revisional  
powers of  
Commissioner.

18. (1) Subject to rules and for reasons to be recorded in writing the Commissioner may, on his own motion at anytime within five years, from the date of passing of an order by any authority subordinate to him, call for records of proceeding in which such

order was passed if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of revenue, he may, after making or causing to be made such enquiry as he deems necessary, revise any such order:

Provided that any dealer or person likely to be affected by any order passed under this sub-section shall be given a reasonable opportunity of being heard before such order is made.

(2) The Commissioner shall not revise, under sub-section (1), any order, if –

(i) period for filing of appeal against the order as provided under section 16 or 17 has not expired; or

(ii) the order has been made a subject matter of appeal under section 16 or 17; or

(iii) more than five years have expired after the order, sought to be revised, was passed.

Explanation. – In computing the period of limitation for the purposes of this sub-section, any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

(3) Subject to the rules and for reasons to be recorded in writing the Commissioner may, upon application filed within the prescribed time, revise any order passed by any authority subordinate to him.

Provided that the Commissioner may, for reasons to be recorded in writing, reject an application for revision.

(4) The Commissioner shall not entertain any application for revision under sub-section (3), if the dealer or person filing the application, having a remedy by way of appeal under section 16 or section 17, did not avail of such remedy or did not file the application within the prescribed time.

(5) Any dealer or person or, as the case may be, the Government aggrieved by any order passed by the Commissioner under sub-section (1) may, within sixty days from the date of receipt of such order, prefer an appeal if –

(a) the order is passed by the Commissioner, to the High Court, and

(b) the order is passed by any authorities sub-ordinate to the Commissioner, to the Commissioner.

(6) All orders passed under sub-section (1) shall be subject to order passed in an appeal, if any, be final.”.

Amendment  
of section  
19.

“Revision by  
High Court in  
certain cases.

**18.** In the principal Act, for section 19 including its marginal heading, the following section shall be substituted, namely :-

19. (1) Within sixty days from the date on which an order under sub-section (4) of section 17 was served affecting liability of any dealer to pay tax, or interest, or penalty under this Act, such dealer by petition in writing accompanied by fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal:

Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner.

(3) If the High Court, in perusing the petition, considers that there is no sufficient grounds for interfering, it may dismiss the petition:

Provided that no petition shall be dismissed without giving the petitioner a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petition under sub-section (3), it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue.

(6) Notwithstanding that a petition has been moved under sub-section (1), the tax or any other dues under this Act shall be paid in accordance with the order against which the petition has been moved :

Provided that if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment and the assessing authority shall amend the assessment accordingly and, thereupon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with provisions of this Act, as the case may be.

(7) (a) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (4), on the basis of facts, which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred.”.

Amendment  
of section 21.

**19.** In the principal Act, in section 21, in sub-section (1), for the words “Sales Tax Act”, the words “VAT Act and the rules” shall be substituted.

Amendment  
of section 23.

**20.** In the principal Act, in section 23, –

(a) in sub-section (1), for the words “Sales Tax Act”, the words “VAT Act” shall be substituted;

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

“(2) At every check-post or barrier mentioned in sub-section (1) or at any other place when so required by the officer-in-charge of the check-post or barrier or an officer authorised by the Commissioner in this behalf, the driver or any other person in charge of-

(a) a goods vehicle, boat or any other carrier by which any goods are under transport; or

(b) a motor vehicle referred to in sub-section (3) of section 3 which is in transit; or

(c) any machinery or equipment including earthmover, excavator, bulldozer or road roller is in transit, shall stop the goods vehicle, boat or other carrier or the motor vehicle or the machinery or equipment including earth mover, excavator, bulldozer or road roller, as the case may be, and keep it stationary as long as may reasonably be necessary and allow the officer-in-charge of the check-post or barrier or, as the case may be, the officer authorised by the Commissioner in this behalf to examine the contents of the goods vehicle, boat or other carrier and inspect all records relating to the goods carried by it or, as the case may be, to inspect the records relating to the motor vehicle or machinery or equipment including earth mover, excavator, bulldozer or road roller, as the case may be, which are in the possession of such driver or other person in charge who shall, if so required, give his name and address and the name and address of the owner of the goods vehicle, boat or other carrier, or the motor vehicle or the machinery or equipment including earth mover, excavator, bulldozer or road roller, as the case may be.”; and

(c) for sub-section (3) excluding second and third provisos thereto, the following sub-section shall be substituted, namely:-

(3) The officer-in-charge of the check-post or barrier or the officer authorised by the Commissioner in this behalf may seize and confiscate the scheduled goods under transport or the motor vehicle or the machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be, in transit as referred to in sub-section (2) where such scheduled goods or motor vehicle or machinery or equipment including earth mover, excavator, bulldozer or road roller, are liable to tax under this Act but are not covered by a way bill (as prescribed for the purposes of VAT Act) signed by the person consigning such goods or motor vehicle or, machinery or equipment including earth mover, excavator, bulldozer or road roller, as the case may be, or where such officer has a reasonable apprehension of evasion of tax in respect of such goods or motor vehicle or machinery or equipment including earth mover, excavator, bulldozer or road roller:

Provided that before taking action for the confiscation of goods under this sub-section, the officer shall give the person affected an opportunity of being heard and make an enquiry, as he shall deem proper and for this purpose the provisions of VAT Act and the rules shall mutatis mutandis apply.”.

Amendment  
of section 24.

**21.** In the principal Act, in section 24, –

(i) after the words, brackets, figures and comma “sub-section (3) of section 3”, the words and commas “or any machinery or equipment including earth movers, excavator, bulldozer or road roller” shall be inserted;

(ii) for the words, figures, and letters “section 16-AA of the Sales Tax Act”, the words and figures “section 74 of VAT Act” shall be substituted; and

(iii) for the words “Sales Tax Act” appearing in the proviso, the words “VAT Act” shall be substituted.

Amendment  
of section 25.

**22.** In the principal Act, in section 25, for sub-section (1), the following sub-section shall be substituted, namely :-

“(1) If any person, being the driver or the person in charge of a goods vehicle, boat or other carrier or of a motor vehicle referred to in sub-section (3) of section 3 or any machinery or equipment including earth mover, excavator, bulldozer or road roller contravenes the provisions of section 23 or section 24, the officer-in-charge of the check-post or barrier or the officer authorised by the Commissioner in this behalf referred to in sub-section (2) of section 23 may, after giving such person a reasonable opportunity of being heard, direct him to pay, by way of penalty a sum not exceeding twice the amount of tax payable in respect of the Scheduled goods under transport or of the motor vehicle or machinery or equipment referred to in sub-section (2) of section 23, in transit, as the case may be, and may, for the purpose of realisation of the penalty, seize such goods or such motor vehicle or such machinery or equipment, as the case may be.”.

Amendment  
of section 26.

- 23.** In section 26 of the principal Act, -
- (a) in sub-section (1) excluding the provisos thereto, -
    - (i) for the words “Sales Tax Act”, the words “VAT Act” shall be substituted;
    - (ii) for the words “buying dealer”, the words “ buying dealer or person” shall be substituted; and
  - (b) for sub-section (2), the following sub-section shall be substituted, namely :-
    - “(2) Every manufacturer collecting tax under sub-section (1) shall reflect in returns submitted under sub-section (1) of section 7 the particulars of tax so collected alongwith the proof of payment of tax.”.

Amendment  
of section 29.

- 24.** In the principal Act, in section 29, -
- (a) in sub-section (1), -
    - (i) in clause (c), for the words “penalty levied ”, the words “interest levied or penalty imposed” shall be substituted;
    - (ii) in clause (e), for the words and figure “section 9”, the word and figure “section 10” shall be substituted;
    - (iii) clause (f) shall be omitted; and
  - (b) in sub-section (2), clause (b) shall be omitted.

Amendment  
of section 34.

- 25.** In the principal Act, in section 34, –
- (a) the existing section shall be renumbered as sub-section (1) thereof; and
  - (b) after sub-section (1), as so renumbered, the following sub-section shall be inserted, namely:-
    - “(2) Where any registered dealer or person liable to get himself registered, for the purpose this Act, claims that any book, document or account kept or found in his business premises or any place including a godown, warehouse, vehicle or vessel over which he has ultimate control, does not relate to his business, the burden of so proving shall be on such dealer or the person, as the case may be.”.

Amendment  
of section 35.

- 26.** In the principal Act, for section 35, the following section shall be substituted, namely:-
- “35.(1) Subject to other provisions of this Act and Rules, the assessing authority shall refund to a dealer, or a person, as the case may be, within a period of sixty days of the date of receipt of such order giving rise to such refund, the amount of tax, including interest or penalty or both, if any, paid by such dealer in excess of the amount due from him, through refund adjustment voucher or through refund voucher:

Provided that the assessing authority shall first adjust such excess amount towards the recovery of any amount due in respect of which a demand notice under this Act and Rules has been issued, or any amount due for any period covered by a return but not paid and, thereafter, refund only the balance, if any.

(2) Where any refund is due to any dealer according to the return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable, as per the return filed under sub-section (1) of section 7 for any subsequent period:

Provided that the amount of tax, including interest or penalty or both, if any, due from, and payable by, the dealer on the date of such adjustment shall first be deducted from the amount of such refund before adjustment.

(3) No claim for refund of any tax, including interest or penalty or both, if any, paid for any tax period or periods under this Act shall be allowed in any case where there is an order for reassessment for such period until such reassessment is completed.

(4) (a) Where any return filed under this Act shows any amount to be refundable to a dealer on account of sale in course of export out of the territory of India or, on account of claim of deductions or exemptions provided under this Act, the dealer may make an application in such form to the assessing authority for refund in such manner and in such form as may be prescribed.

Explanation. – For the purpose of this sub-section, the expression “export out of the territory of India” shall have the meaning assigned to it under the provisions of sub-section (1) of section 5 of the Central Sales Tax Act, 1956:

74 of 1956.

Provided that the burden of proving that any scheduled goods were sold in the course of export out of the territory of India shall be on the registered dealer.

(b) As soon as may be, on receipt of the application for such refund, the assessing authority shall direct a tax audit under section 9C for the tax period pertaining to such refund as covered under the return referred to in clause (a) which shall be completed within a period of one month from the date of issue of such direction, to establish the correctness of such claim:

Provided that if there is any delay in completing the audit under this sub-section due to non-cooperation 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 sub-section (5):

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.

(c) Where, on assessment based on tax audit under clause (b) the amount of refund claimed is found to be inadmissible or more than what is admissible 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 filing of the return giving rise to the refund till the date of assessment.

(5) A registered dealer entitled to refund in pursuance of any order under this Act including an order of assessment under section 9 A or section 9 C and section 10 or in pursuance of any order of a Court shall, in addition to the refund, be paid in the prescribed manner simple interest at the rate of eight per centum per annum for period commencing immediately after expiry of sixty days of receipt of the order till the date on which refund is granted:

Provided that interest as applicable under this sub-section shall be admissible after expiry of the period of ninety days from the date of receipt of the application for grant of refund under sub-section (4) till the date of sanction.

(6) (a) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Commissioner is of the opinion that, the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding.

(b) Where a refund is withheld under clause (a) the dealer shall be entitled to interest as provided under sub-section (5), if he becomes entitled to the refund as a result of the appeal or further proceeding or, as the case may be, any other proceeding under this Act.”.

Insertion of  
new section  
37A.

**27.** In the principal Act, after section 37, the following new section shall be inserted, namely:-

“Power to  
amend  
Schedule.

37 A.(1) The State Government may, by notification, alter, add to or cancel any item or entry in the Schedule.

(2) References made in this Act to the Schedule, or any entry or item thereof, shall be construed as references to the Schedule or, as the case may be, the Entry or item thereof as, for the time being, amended in exercise of the powers conferred by this section.”.

Insertion  
of new  
sections.

**28.** In the principal Act, after section 38, the following sections shall be inserted, namely:-

“Powers to  
summon and  
take evidence  
on oath, etc.

38 A. With regard to the powers to summon and take evidence on oath, the Commissioner and any person appointed to assist him under VAT Act and the Tribunal shall, for purposes of this Act have the same powers as are vested under section 92 of VAT Act.

Provisional  
attachment.

38 B. (1) The Commissioner, during the course of inquiry in any proceeding including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, if he is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may attach provisionally, by notice in writing, the stock in trade held by such person or dealer during such enquiry, inspection or search :

Provided that the Commissioner may, by order, revoke such notice if the dealer furnishes to the Commissioner, such security, for such period and within such time, as may be specified in the said order.

(2) Every such provisional attachment, shall cease to have effect after the expiry of one year from the date of service of the notice issued under sub- section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit to do so, however that the total period of such extension shall not in any case exceed one year.

(3) Where a notice under sub-section (1) is served upon any person or dealer provisionally attaching the stock in trade held by him, such person or dealer shall be personally liable, so long as the attachment notice is not revoked or has not ceased to have effect, to pay, to the Commissioner, the amount of money covered under such attachment.”.

Amendment  
of section 39.

**29.** In the principal Act, in section 39, for the words and figures “sections 3 and 6”, the words, figures and comma “sections 3, 6 and 37A” shall be substituted.

Repeal and  
savings.

**30.** (1) The Orissa Entry Tax (Amendment) Ordinance, 2005 is hereby repealed.

(2) Notwithstanding such repeal, anything done of any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done under the principal Act as amended by this Act.

Orissa  
Ordinance  
No.1 of  
2005.

**By Order of the Governor**

**D.K.SAHU**

**Principal Secretary to Government**