

## ORISSA ORDINANCE No. 11 OF 1983

## THE ORISSA SALES TAX (AMENDMENT) ORDINANCE, 1983

[Promulgated by the Governor of Orissa on the 11th August 1983 published in an extraordinary issue of the *Orissa Gazette*, dated the 12th August 1983.]

AN

## ORDINANCE

## TO AMEND THE ORISSA SALES TAX ACT, 1947

WHEREAS the Legislature of the State of Orissa is not in session ;

AND WHEREAS, the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Orissa Sales Tax Act, 1947 in the manner hereinafter appearing ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Thirty-fourth Year of Republic of India:—

Short title  
and comm-  
encement.

1. (1) This Ordinance may be called the Orissa Sales Tax (Amendment) Ordinance, 1983.

(2) It shall come into force atonce.

Amendment  
of section 2.

2. In section 2 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the Principal Act), after clause (hh) the following new clause shall be inserted, namely :— Orissa Act  
14 of 1947.

“(hhh) “Tribunal” means the Orissa Sales Tax Tribunal constituted under sub-section (2) of section 3”.

A mendment  
of section 3.

3. In section 3 of the Principal Act, for sub-section (2) and the proviso thereunder the following sub-sections shall be substituted, namely :—

“(2) The State Government shall constitute a Tribunal to be the Orissa Sales Tax Tribunal consisting of three members to exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.

(2-a) Two members of the Tribunal shall be appointed from among the members of the Orissa Superior Judicial Service (Senior Branch) (hereinafter called the Judicial members of the Tribunal) and the other member shall be appointed from among the members of the Orissa Finance Service, Class-I in the super time scale (hereinafter called the Accounts member of the Tribunal).

(2-b) The Senior Judicial Member of the Tribunal shall be the Chairman of the Tribunal who shall allot cases to the benches and exercise supervision in respect of their disposal.

(2-c) The Chairman shall look to the overall administration of the Tribunal subject to the regulations to be made by the Tribunal with the previous sanction of the State Government consistent with the provisions of this Act and the rules made thereunder.

(2-d) Any vacancy in the membership of the Tribunal shall be filled up by the State Government.

(2-e) (a) The functions of the Tribunal may be exercised—

- (i) by a bench consisting of all the members of the Tribunal when the total disputed amount of tax and penalty involved in a case exceeds rupees fifty thousand ;
- (ii) by a bench consisting of a Judicial member and Accounts member as may be constituted by the Chairman, when the total disputed amount of tax and penalty involved in a case exceeds rupees five thousand but does not exceed rupees fifty thousand;
- (iii) by a bench consisting of single member as constituted by the Chairman when the total disputed amount of tax and penalty involved in a case does not exceed rupees five thousand ;
- (b) where an appeal or application is heard by all the members of the Tribunal, and the members are divided in opinion on any point or points, such point or points, shall be decided in accordance with the opinion of the majority ;
- (c) where an appeal or application is heard by a bench consisting of two members, and the members are divided in opinion on any point or points, such point or points shall be referred to the Tribunal consisting of all the members."

Amendment  
of section 5.

4. In section 5 of the Principal Act,—

- (a) in sub-section (1) in the fifth proviso after the words "as being intended for use", the words "within the State of Orissa" and after the words "for any other purpose", the words "or outside the State of Orissa" shall be inserted;
- (b) (i) in sub-section (2), in clause (A), in sub clause (a), in item (ii), the existing explanation shall be renumbered as Explanation "I";
- (ii) after Explanation I, as so renumbered, the following new Explanation shall be inserted, namely :—

"Explanation II—In respect of goods where tax is levied at the first point of sale, a dealer who sells such goods at a subsequent point shall not be allowed to claim deduction of the sale price of such goods from his gross turnover unless he furnishes a declaration to that effect in the prescribed manner, in the prescribed form obtainable from the prescribed authority to the prescribed authority within the prescribed time or such further time as the authority may permit".

Amendment  
of section 6.

5. In section 6 of the Principal Act after the word "sale", the words "of purchase" shall be inserted.

Amendment  
of section 8.

6. In section 8 of the Principal Act,—

- (a) for the word "prescribe", the word "notify" shall be substituted;
- (b) in the explanation for the word "prescribed", the word "notified" shall be substituted.

Amendment  
of Section  
9-B.

7. In section 9-B of the principal Act, for sub-sections (3) and (4) the following sub-sections shall be substituted, namely:—

“(3) (a) where any person—

(i) not being a registered dealer realises any amount by way of tax, or

(ii) being a registered dealer realises any amount by way of tax in excess of the amount payable by him as tax under this Act,

the Commissioner may, notwithstanding anything contained in this Act, direct that such person shall pay in the prescribed manner, by way of penalty, a sum not exceeding thrice the amount so realised by such person.

(b) where any person contravenes the provisions of clause (b) of sub-section (1), sub-section (2) and sub-section (2-a), the Commissioner may, notwithstanding anything contained in this Act, direct that such person shall pay in the prescribed manner, by way of penalty, a sum not less than rupees five and not exceeding the tax due whichever is higher in respect of the turnover of sale or purchase for which record has not been maintained:

Provided that no penalty shall be imposed under this sub-section without giving the person concerned a reasonable opportunity of being heard.

(4) Any penalty imposed under sub-section (3) shall be without prejudice to any punishment that may be imposed under the provisions of clause (b) of sub-section (1) of Section 25”.

Amendment  
of section 11

8. In Section 11 of the Principal Act,—

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

“Provided that every dealer required under sub-section (1) to submit monthly returns, shall submit a consolidated dealerwise list of sales to the registered dealers in duplicate alongwith the returns due for the concluding month of each quarter.”;

(b) in sub-section (3),—

(i) for the words “within a fortnight of the due date”, the words and comma “except that for the month of February, within a fortnight of the due date, and the return for the month of February on or before the due date” shall be substituted;

(ii) for the word “five”, the word “ten” shall be substituted.

(c) for the explanation the following explanation shall be substituted, namely:—

“Explanation A return unaccompanied by a receipt from the treasury showing full payment of the admitted tax or composition money or by a banker's cheque or Manager's cheque issued by a scheduled bank or a cheque marked or certified by such bank as good for payment or by a crossed bank draft, covering the admitted tax or composition money, as the case may be, and by a dealerwise list of sales to registered dealers in duplicate as required by sub-section (1-a), in respect of the period to which the return relates, shall not be deemed to be a return for the purpose of this section and in case such cheque or bank draft is dishonoured for payment, the return shall not be deemed to be a return for the purpose of this section”.

(d) in the existing proviso, after the words "good for payment", the words "or crossed bank draft" shall be inserted.

Amendment  
of section 12.

9. In section 12 of the Principal Act,—

(a) in sub-section (4-a), for the words "eighteen per cent", the words "twenty four per cent" shall be substituted.

(b) in sub-section (5), for the words "thirty-six months", the words "five years" shall be substituted.

(c) in sub-section (8), for the words "thirty-six months", the words "five years" shall be substituted.

Amendment  
of section  
13.

10. In section 13 of the Principal Act,—

(a) in sub-section (2), after the words "certified by such bank as good for payment", the words "or crossed bank draft" shall be inserted.

(b) in sub-section (6), for the words "six per cent" and "twelve per cent", the words "eighteen per cent" and "twenty-four per cent" shall respectively be substituted.

Amendment  
of section 14.

11. In section 14 of the Principal Act, after the existing proviso the following new proviso shall be added, namely:—

"Provided further that no claim to refund of any tax, penalty or interest paid under this Act shall be allowed in cases where there is an order for re-assessment, until the re-assessment is finalised".

Amendment  
of section  
14-A.

12. Section 14-A of the Principal Act shall be deleted.

Amendment  
of section  
14-C.

13. For section 14-C of the principal Act, the following section shall be substituted, namely:—

"14-C. Amounts refundable under section 14, if not refunded within ninety days from the date of receipt of the application in that behalf from the dealer, shall carry interest at the rate of eighteen per cent per annum for the first ninety days and thereafter at the rate of twenty-four per cent per annum, with effect from the date of expiry of the period specified above".

Amendment  
of section 15.

14. In section 15 of the Principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Every registered dealer or other dealer to whom a notice has been served to furnish returns under sub-section (1) of section 11, shall keep—

(a) a true account of the value of goods bought and sold by him, and

(b) the books of accounts relating to his business,

at the place or places of his business mentioned in the certificate of registration."

Omission of  
the words  
Additional  
Tribunal.

15. In the Principal Act, the words, "or Additional Tribunal, as the case may be", wherever they occur, shall be omitted.

Amendment  
of section 23.

16. In section 23 of the principal Act, in sub-section (4), in clause (a) below the proviso, the following explanation shall be inserted, namely:—

"Explanation—Any provision contained elsewhere in this Act which provides for determination of any specific matter shall not debar the Commissioner from determining such matter in exercise of the powers conferred upon him under this sub-section".

Amendment  
of section  
28-A.

17. In section 28-A of the Principal Act, in sub-section (4) for the word "Tribunal", the words "High Court" shall be substituted.

Amendment  
of section 29.

18. In section 29 of the principal Act, in sub-section (2), the clause (g) shall be deleted.

Amendment  
of Schedule.

19. In the Schedule,—

(a) In part I, in rule 6, in clause (a), for words "six per cent", the words "eighteen per cent" shall be substituted;

(b) In part V, in rule 79, for sub-rule (1) the following sub-rule shall be substituted, namely:—

"(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Commissioner, and after admitting an appeal, the Commissioner may dispose it of himself or, if he so decides, may make over to an Additional Commissioner for disposal".

C. M. POONACHA

Dated the 11th August 1983

GOVERNOR OF ORISSA