

THE ORISSA SALES TAX (AMENDMENT) ACT, 1975**TABLE OF CONTENTS****PREAMBLE****SECTIONS**

1. Short title and commencement
2. Amendment of section 2
3. Amendment of section 5
4. Amendment of section 9
5. Substitution of section 9-A
6. Amendment of section 9-B
7. Amendment of section 11
8. Amendment of section 12
9. Insertion of new section 12-C
10. Amendment of section 13
11. Amendment of section 13-A
12. Amendment of section 14
13. Substitution of section 15
14. Amendment of section 23
15. Substitution of section 25
16. Amendment of section 26
17. Insertion of Schedule

ORISSA ACT 3 OF 1976

***THE ORISSA SALES TAX (AMENDMENT) ACT, 1975**

[Received the assent of the President on the 11th February 1976, first published in an extraordinary issue of the Orissa Gazette, dated the 19th February 1976]

AN ACT TO AMEND THE ORISSA SALES TAX ACT, 1947

BE it enacted by the Legislature of the State of Orissa in the Twenty-sixth Year of the Republic of India, as follows:—

Short title
and
commence-
ment.

1. (1) This Act may be called the Orissa Sales Tax (Amendment) Act, 1975.

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

Amendment
of section 2.

2. In section 2 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the principal Act), in clause (h), the comma and the words, "other than the cost of freight or delivery or the cost of installation when such cost is separately charged" shall be omitted. Orissa Act 14 of 1947.

Amendment
of section 5.

3. In section 5 of the Principal Act,—

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

"Provided further that where a registered dealer purchases goods of the class or classes specified in his certificate of registration as being intended for use by him in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power at concessional rate of tax or free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose, he shall pay the difference in tax or the tax, as the case may be, payable had he not furnished the declaration.";

(b) In sub-section (2), in sub-clause (a) of clause (A),—

(i) in item (ii), for the existing proviso, the following provisos and the Explanation shall be substituted, namely:—

"Provided that for the purpose of ascertaining the deductions under this item the dealer selling the goods shall furnish to the prescribed authority in the prescribed manner a declaration in the prescribed form obtained from the prescribed authority within the prescribed time or within such further time as that authority may after sufficient cause permit:

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer free of tax after furnishing a declaration as being intended for resale in Orissa, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

Explanation—In case of a series of sales when the State Government, by notification, declares sales of any specified goods to be taxed at the point at which the first of such sales is effected

*For the Bill see Orissa Gazette, Extraordinary dated the 25th March, 1975 (No. 608).

by a dealer liable to pay tax under this Act, the price of the goods so declared shall be included in his taxable turnover, notwithstanding that the goods so specified are sold to a registered dealer in whose certificate of registration the goods so specified are included.”;

(ii) item (iii) shall be renumbered as item (iv), and before item (iv) as so renumbered, the following item shall be inserted, namely:—

“(ii) the cost of outward freight or of delivery or the cost of installation for the purpose of sale or supply of goods by the dealer when such cost is separately charged;”.

Amendment
of section 9.

4. In section 9 of the principal Act,—

(a) for sub-sections (2), (3) and (3-a), the following sub-sections and Explanation shall be substituted, namely:—

“(2) Every dealer required by sub-section (1) to be registered shall make an application in this behalf in such manner and to such authority as may be prescribed and every such application shall be accompanied by a fee of five rupees and two passport size photographs of himself and two sheets containing specimen signature of the dealer duly attested by a Gazetted Officer:

Provided that no such photograph and specimen signature shall be required to be furnished in the case of companies registered under the Companies Act, 1956, Societies registered or deemed to be registered under the Orissa Co-operative Societies Act, 1962 or the Departments of Government.

1 of 1956
Orissa Act
2 of 1963.

(3) On receipt of an application, the prescribed authority shall if he is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder, register the applicant and grant him a certificate of registration in the prescribed form which shall specify the class or classes of goods in which the dealer carries on business at the time of the grant of the certificate and such other particulars as may be prescribed.

(3-a) The registering authority may for proper realisation of tax payable under this Act or for proper custody and use of forms referred to in clause (A) of sub-section (2) of section 5, from time to time demand from a registered dealer or from a dealer who has applied for registration under this Act 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 security, the said authority may, notwithstanding anything contained in this Act,—

(i) if the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him; or

(ii) if the defaulter is a dealer who has applied for registration, refuse to grant him a certificate of registration:

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

(3-b) The registering authority may by order forfeit the whole or any portion of the security furnished by a dealer—

(i) for realising any amount of tax or penalty payable by the dealer; or

(ii) if the dealer is found to have misused any of the forms referred to in clause(A) or sub-section (2) of section 5 or has failed to keep them in proper custody:

Provided that no order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.

(3-c) The registration of a dealer upon application made under this section shall remain in force till the end of the year during which it is granted unless earlier cancelled and may be renewed thereafter from year to year, in the prescribed manner:

Provided that in the case of a dealer who has been registered prior to the date of commencement of the Orissa Sales Tax (Amendment) Act, 1975, the registration shall, unless earlier cancelled, remain in force till the end of the year in which the said date falls.

(3-d) A dealer may renew his registration certificate every year by an application made in this behalf accompanied by a fee of five rupees to the prescribed authority, in the prescribed manner.

(3-e) If a registered dealer fails to make an application for renewal without any reasonable cause, within the prescribed time or having applied for it, has been refused renewal by the registering authority, the registration certificate shall be deemed to have been cancelled with effect from the date following the period for which it was valid.

(3-f) The registering authority shall refuse renewal of the registration of the dealer if he has not paid the dues payable up to the end of the quarter preceding the prescribed date of application.

Explanation—A dealer shall not be deemed to have made default in making payment of the dues as aforesaid if an application for stay of recovery of the dues has been duly filed by him and is pending on the date of application for renewal.”;

(b) In sub-section (5), the words “ of this section ” wherever they occur shall be deleted ;

(c) in sub-section (6), the words and figure “ of section 9 ” shall be deleted.

Substitution
of section
9-A.

5. For section 9-A of the principal Act, the following section shall be substituted, namely :—

“ 9-A. (1) Any dealer whose gross turnover during a period not exceeding twelve months exceeds ten thousand rupees, may, not withstanding that he is not liable to pay tax under section 4, apply in the prescribed manner accompanied by a fee of five rupees to the prescribed authority for registration under this Act:

Provided that the limit regarding the amount of gross turnover as aforesaid shall not apply in the case of a company registered under the Companies Act, 1956, a Society registered under the Orissa Co-operative Societies Act, 1962 or a Department of Government.

1 of 1956.
Orissa Act 2
of 1963.

(2) The provisions of sub-sections (2), (3), (3-a) to (3-f) and (4) and clause (a) of sub-section (6) of section 9 shall apply in respect of such application for registration :

Provided that if the prescribed authority is satisfied that the applicant is liable to pay tax under section 4, he shall grant him a certificate of registration under section 9, notwithstanding the fact that the application has been made under sub-section (1):

Provided further that in the case of a dealer who has been registered prior to the date of commencement of the Orissa Sales Tax (Amendment) Act, 1975, the registration shall, unless earlier cancelled, remain in force till the end of the year in which the said date falls.

(3) Every dealer who has been registered upon application made under this section, shall so long as his registration remains in force be liable to pay tax under this Act.

(4) Subject to the provisions of sub-section (2) a dealer registered upon application made under this section may apply in the prescribed manner, not less than three months before the end of a year, to the authority which granted him his certificate of registration for the cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made; and the said authority, unless the dealer is liable to pay tax under section 4, shall cancel the registration accordingly.”.

Amendment
of section
9-B.

6. In section 9-B of the principal Act,—

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

“(a) No person who is not a registered dealer shall collect in respect of any sale by him any amount by way of tax under the provisions of this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.”;

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

“ Provided that every dealer (other than a dealer permitted to compound the tax) who is liable to pay tax under this Act, while selling goods shall, whether or not any amount is realised or stipulated for realisation by way of tax, issue a cash, or, as the case may be, credit memo serially numbered showing the price of the goods sold and signed by the dealer or by his servant, manager or agent, and shall keep a counterfoil duly signed by him or by his servant, manager or agent and shall also maintain a true and correct account of all moneys realised or stipulated for realisation in the prescribed manner.”.

Amendment
of section
11.

7. In section 11 of the principal Act,—

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

“(1-a) Every such return shall be accompanied by a dealerwise list (in duplicate) of sales to registered dealers in respect of which deductions under item (ii) of sub-clause (a) of clause (A) of sub-section (2) of section 5 is claimed and by proof of payment of the admitted tax or composition money, as the case may be.”;

(b) in sub-section (3), 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 crossed cheque or crossed bank draft covering the admitted tax or composition money, as the case may be, and by a dealerwise list of sales to the registered dealers in duplicate in respect of which deduction is claimed under item (ii) of sub-clause (a) of clause (A) of sub-section (2) of section 5 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.”

Amendment
of section 12.

8. In section 12 of the principal Act,—

(a) for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) If upon information which has come to his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless, without sufficient cause, failed to get himself registered, the Commissioner may, at any time within thirty-six months from the expiry of the year to which that period relates, call for return under sub-section (1) of section 11, and after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and may also direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and half times that amount :

Provided that no penalty shall be levied for the quarter during which the dealer first or again becomes liable to pay tax under this Act and for the period between the date of application for registration and the date of registration.”;

(b) in sub-section (7), in the third proviso, for the words, figure and brackets “under sub-section (8)”, the words, figures and brackets “under sub-section (5) or sub-section (8)” shall be substituted.

Insertion of
new section
12-C.

9. After section 12-B of the principal Act, the following section shall be inserted, namely :—

Rounding off
of tax, etc.

“12-C. The amount of tax, interest, penalty or any other sum payable by a dealer, and the amount of refund due under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.”

Amendment
of section
13.

10. In section 13 of the principal Act,—

(a) in sub-section (4), in clause (b), the word, letter and figure “or 12-B” shall be deleted ;

(b) in sub-section (5), in clause (i) in the third proviso, for the words, figures and letters “section 12, 12-A or 12-B”, the words, figures and letter “section 12 or 12-A” shall be substituted ;

(c) for sub-section (6) including the provisos thereto, the following sub-section shall be substituted, namely :—

“(6) In case a dealer makes default in payment of any amount for the payment of which a notice has been issued under sub-section (4), by the date of expiry of the period allowed under that sub-section, he shall pay interest on the said amount at the rate of six per cent per annum from the said date for the first three months and thereafter at the rate of twelve per cent per annum :

Provided that where any appeal or revision under section 23 or reference under section 24 has been preferred, the interest as aforesaid shall be payable from the date specified above on the tax or penalty, if any, ultimately found due from the dealer :

Provided further that in case the tax or penalty, if any, is enhanced in such appeal, revision or reference, the interest on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount :

Provided also that no interest under this sub-section shall be charged in respect of any amount which remained unpaid at any time prior to the 1st day of January, 1971.”;

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

“(7) The amount which remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) or sub-section (5) together with interest payable under sub-section (6) shall be recoverable as an arrear of public demand, or in accordance with the provisions contained in the Schedule.” ;

(e) sub-section (8) including the explanation occurring thereunder shall be deleted.

Amendment
of Section
13-A.

11. In section 13-A of the principal Act, in sub-section (6), for the words “be recoverable as an arrear of land revenue”, the words “be recoverable in the same manner as provided in sub-section (7) of section 13” shall be substituted.

Amendment
of Section 14.

12. In section 14 of the principal Act, in the proviso, for the words “or within twelve months”, the words “or from the date” shall be substituted.

Substitution
of section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely :

“15. (1) Every registered dealer or other dealer on whom a notice has been served to furnish returns under sub-section (1) of section 11, shall keep a true account of the value of goods bought and sold by him :

Provided that if the Commissioner considers that the accounts so kept by any dealer are not sufficiently clear so as to enable him to make a proper check of the returns referred to in that sub-section, he may require such dealer by notice in writing to keep such accounts (including records of sales) as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(2) Every registered dealer other than a registered dealer who is permitted to compound the tax, shall, in addition to the account mentioned in sub-section (1), maintain an annual account of the stock of goods purchased and sold by him showing the opening balance and the closing balance at the beginning and close of each accounting year which he follows.”.

Amendment
of section
23.

14. In section 23 of the principal Act,—

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

“Provided further that the prescribed authority may admit the appeal after the period herein before specified that the appellant had sufficient cause for not preferring the appeal within the said period.” ;

(b) in sub-section (3), in clause (b), for the words "within thirty days" the words "within sixty days" shall be substituted;

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

"(c) Any dealer or, as the case may be, the State Government aggrieved by any order passed by the Commissioner on his own motion may, within sixty days from the date of receipt of such order, prefer an appeal—

(i) if the order was passed by the Commissioner, to the High Court ; and

(ii) if the order was passed by any authority subordinate to the Commissioner, to the Commissioner.

(cc) All orders passed under this sub-section shall, subject to orders passed in an appeal, if any, be final." ;

(d) in sub-section (6), the proviso thereto shall be deleted.

Substitution
of section
25.

15. For section 25 of the principal Act, the following section shall be substituted, namely:—

"25. (1) Whoever—

(a) Contravenes the provisions of sub-section (1) of section 9 ; or

(b) demands or charges from any purchaser, tax on sale of any goods in respect of which no tax is payable or tax at a rate higher than that payable under the provisions of this Act or in any manner contravenes the provisions of section 9-B ; or

(c) carries on business as a dealer without furnishing the security demanded under section 9 ; or

(d) fails, without sufficient cause, to submit any return as required by section 11 or submits a false return ; or

(e) fails, to maintain the accounts required under section 15 ; or

(f) refuses to comply with any requirement made of him under sub-section (1) of section 16 ; or

(g) contravenes the provisions of section 16-B ; or

(h) neglects to furnish any information required by section 18,

shall be punishable with simple imprisonment which may extend to six months or with fine or with both and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

(2) Whoever, being a registered dealer falsely represents when purchasing any class of goods, that goods of such class are covered by his certificate of registration, or, not being a registered dealer, falsely represents when purchasing goods that he is a registered dealer, shall be punishable with imprisonment of either description, which may extend to six months, or with fine, or with both.

(3) Whoever has in his possession any prescribed form referred to in clause (A) of sub-section (2) of section 5, not obtained by him or by his principal or agent in accordance with the provisions of this Act, or any rules made thereunder shall be punishable with imprisonment of either description for a term which may extend to three years or with fine, or with both.

(4) Whoever wilfully attempts in any manner to evade payment of tax or to defeat the imposition of tax under this Act, shall be punishable with imprisonment of either description for a term which may extend to two years or with fine or with both.

(5) Whoever knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(6) Whoever obstructs any officer making an inspection, a search or seizure under section 16, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(7) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such culpable mental state until the contrary is proved.

Explanation—In this sub-section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe a fact.

(8) No Court shall take cognizance of any offence under this Act or under the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Judicial Magistrate of the first class shall try such offence.

(9) The offence punishable under sub-sections (3) and (5) shall be cognizable and non-bailable and the offences punishable under sub-sections (1), (2), (4) and (6) shall be cognizable and bailable.”

Amendment
of section
26.

16. In section 26 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Commissioner may, either before or after the institution of proceedings under section 25, except from any person charged with an offence under the said section or any rule made under this Act, by way of composition of the offence a sum not exceeding three thousand rupees or, where the offence charged is one under clause (a) or clause (d) of sub-section (1) of that section, a sum not exceeding double the amount of tax which would have been payable by the dealer had he complied with the provisions of this Act, whichever is greater.”

Insertion of
Schedule. 17. After section 29-A of the principal Act, the following Schedule shall be inserted, namely :—

“SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

[See sub-section (7) of section 13]

PART I

GENERAL PROVISIONS

1. *Definitions*—In this part, unless the context otherwise requires—

- (a) “certificate” means a certificate received by the Tax Recovery Officer under rule 2;
- (b) “defaulter” means the assessee or dealer or any other person mentioned in the certificate;
- (c) “execution” in relation to a certificate, means recovery of arrears in pursuance of the certificate;
- (d) “form” means form given in the Annexure to this Schedule;
- (e) “movable property” includes growing crops;
- (f) “rule” means a rule contained in this Schedule;
- (g) “share in a corporation” includes, stock, debentures or bonds; and
- (h) “Tax Recovery Officer” means any Officer of the State Government not below the rank of Sales Tax Officer who may be authorised by the State Government, by general or special notification, to exercise the powers of a Tax Recovery Officer and Government may appoint more than one such officer and specify their local jurisdiction.

2. *Issue of certificate and the Validity and amendment thereof*—(1) Where an assessee or dealer or any other person is in default or is deemed to be in default in making a payment of tax or any other amount due under this Act, the assessing authority may forward to the Tax Recovery Officer within whose jurisdiction the assessee or dealer carries on his business or within whose jurisdiction the principal place of his business is situate a certificate in Form I under his signature specifying the amount of tax and any other amount due from the assessee or dealer or any other person and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee, dealer or other person the amount specified therein in accordance with the provisions in this Schedule.

(2) The assessing authority may issue a certificate under sub-rule (1) notwithstanding that proceedings for recovery of the amount by any other mode has been taken

(3) When the assessing authority sends a certificate to the Tax Recovery Officer under this rule, it shall not be open to the assessee or dealer or such other person, as the case may be, to dispute before the Tax Recovery Officer, the correctness of the assessment or of the order imposing penalty, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(4) Notwithstanding the issue of a certificate to a Tax Recovery Officer, the assessing authority shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(5) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer to whom a certificate is sent by a Sales Tax Officer :—

- (a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Schedule, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property, and thereupon that Tax Recovery Officer shall also proceed to recover the amount under the Schedule as if the certificate or the copy thereof had been a certificate sent to him by the Sales Tax Officer.

3. *Issue of notice*—When a certificate has been received by the Tax Recovery Officer from the assessing authority for the recovery of arrears, the Tax Recovery Officer shall cause to be served upon the defaulter a notice in Form 2 requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

4. *When certificate may be executed*—No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the noticed required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a Civil Court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may, at any time direct, for reasons to be recorded in writing, attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

5. *Mode of Recovery*—If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by arrest of the defaulter and his detention in prison.

6. *Interest, costs and charges recoverable*—There shall be recoverable in these proceedings in execution of every certificate :—

- (a) interest at the rate of six per cent per annum from the day commencing after the end of the period specified in rule 3; and
- (b) all charges incurred in respect of—
 - (i) the service of notice upon the defaulter to pay the arrears and of warrants and other processes; and
 - (ii) all other proceedings taken for realising the arrears.

7. Purchaser's title—(1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate and such sale has become absolute the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold and not from the time when the sale becomes absolute.

8. Suit against purchaser not maintainable on ground of purchase being made on behalf of Plaintiff—(1) No suit shall be maintainable against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this part on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this rule shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser or interfere with the right of a third person to proceed against that property though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

9. Disposal of proceeds of executions—(1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner:—

- (a) there shall first be paid to the assessing authority the costs incurred by him;
- (b) there shall, in the next place, be paid to the assessing authority the amount due under the certificate in execution of which the assets were realised;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the assessing authority therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realised; and
- (d) the balance, if any, remaining after the payment of the amount, if any, referred to in clause (c) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the assessing authority to receive any amount referred to in clause (c) the Tax Recovery Officer shall determine the dispute.

10. General bar to jurisdiction of Civil Courts, save where fraud alleged—Except as otherwise expressly provided in this Act every question arising between the assessing authority and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate or relating to the confirmation or setting aside of a sale held in execution of such certificate, shall be determined, not by suit, but by the order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

11. Property exempt from attachment—(1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a Civil Court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

12. Investigation by Tax Recovery Officer—(1) Where any claim is preferred to, or any objection is made to the attachment or sale, of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector shall adduce evidence to show that—

(a) (in the case of immovable property) at the date of the service of notice issued under this Schedule to pay the arrears ; or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that for the reason stated in the claim or objection, such property was not, at the said date in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or on his own account, and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order of the Tax Recovery Officer shall be conclusive.

13. *Removal of attachment on satisfaction or cancellation of certificate—Where—*

(a) the amount due with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer ; or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and in the case of immovable property, the withdrawal shall, if the defaulter so desires be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

14. *Officer entitled to attach and sell—*The attachment and sale of property shall be made by the Tax Recovery Officer.

15. *Defaulting purchaser answerable for loss on resale—*Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified by the Tax Recovery Officer and shall, at the instance of either the assessing authority or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by the Schedule :

Provided that no such application shall be entertained unless filed within fifteen days from the dates of resale.

16. *Adjournment or stoppage of sale—*(1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the Tax Recovery Officer.

17. *Private alienation to be void in certain cases*—(1) Where a notice has been served on a defaulter under rule 3, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

18. *Prohibition against bidding or purchase by officer*—No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

19. *Prohibition against sale on holidays*—No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

20. *Assistance by Police*—The Tax Recovery Officer may apply to the Officer-in-charge of the nearest police-station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of Police Officers for furnishing such assistance.

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

21. *Warrant*—When any movable property is to be attached the Tax Recovery Officer shall prepare a warrant under his signature in Form 3 specifying the name of the defaulter and the amount to be realised and cause a copy of the warrant to be served on the defaulter.

22. *Attachment*—If, after service of the copy of the warrant, the amount is not paid forthwith, the Tax Recovery Officer shall proceed to attach the movable property of the defaulter.

23. *Property in defaulter's possession*—Where the property proceeded against is movable property (other than agricultural produce) in the possession of the defaulter, it shall be attached by actual seizure and the officer shall keep the property in his custody or in the custody of one of his subordinates and shall be responsible for due custody thereof :

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value the officer may sell it at once.

24. *Agricultural Produce*—Where the property proceeded against is agricultural produce, it shall be attached by affixing a copy of the warrant—

(a) where such produce is growing crop, on the land on which such crop has grown, or

- (b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. Provisions as to Agricultural produce under attachment—(1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and the assessing authority shall bear such amount as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored, shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

26. Debts and shares, etc.—(1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order in Form 4 prohibiting—

- (i) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until further order of the Tax Recovery Officer,
- (ii) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon,
- (iii) in the case of any other movable property (except as aforesaid), the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the Office of the Tax Recovery Officer, and another copy shall be sent, in the case of debt, to the debtor, in the case of share, to the proper officer of the corporation and in the case of other movable property (except as aforesaid) to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. Attachment of Decrees—(1) Where the property proceeded against is a decree of a Civil Court for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made by the issue to the Civil Court of a notice in Form 5 requesting the Civil Court to stay the execution of the decree unless and until—

(i) the Tax Recovery Officer cancels the notice, or

(ii) the assessing authority or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (ii) of sub-rule (1) it shall, on the application of the assessing authority or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The assessing authority shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Share in movable property—Where the property proceeded against consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice in Form 6 to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

29. Attachment of Negotiable Instrument—Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure.

30. Attachment of property in custody of Courts or Public Officer—Where the property proceeded against is in the custody of any Court or Public Officer, the attachment shall be made by a notice in Form 7 to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued :

Provided that, where such property is in the custody of a court any question of title or priority arising between the assessing authority and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such court.

31. Attachment of partnership Property—(1) Where the property proceeded against consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment or the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or in the case of a sale being directed, to purchase the same.

32. Attachment not to be excessive—The attachment by seizure shall not be excessive, that is to say the property seized shall be as nearly as possible proportionate to the amount specified in the warrant.

33. Inventory—In the case of attachment of movable property by actual seizure, the officer shall after seizure of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and a copy of the inventory shall be delivered to the defaulter.

34. Seizure between sunrise and sunset—Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

35. Power to break open door, etc.—The officer may break open any inner or outer door of any building and enter any building in order to seize any movable property if he has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and he has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

36. Sale—The Tax Recovery Officer may direct that any movable property attached under this schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

37. Issue of proclamation—When any sale of movable property is ordered by the Tax Recovery Officer he shall issue a proclamation in Form 8 in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

38. Proclamation how made—(1) Such proclamation shall be made by beat of drum or other customary mode,—

(a) in the case of property attached by actual seizure—

(i) in the village in which the property was seized or if the property was seized in a town or city then in the locality in which it was seized, and

(ii) at such other places as the Tax Recovery Officer may direct ; and

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the Office of the Tax Recovery Officer.

39. Sale after fifteen days—Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the Office of the Tax Recovery Officer.

40. Sale of agricultural produce—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited :

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale—

(a) Fair price, in the estimation of the Tax Recovery Officer is not offered for it and

- (b) The owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, till the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

41. *Special provisions relating to growing crops*—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage, as in the case of green wheat, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

42. *Sale to be by auction*—The property shall be sold by public action in one or more lots as the Officer may consider advisable and if the amount to be realised by sale is satisfied by the sale of a portion of the property the sale shall be immediately stopped with respect to the remainder of the lots.

43. *Sale by public auction*—(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the Officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase money, the Officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be binding of the co-owner.

44. *Irregularity not to vitiate sale, but any person injured may sue*—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person, may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

45. *Negotiable instruments and shares in a Corporation*—Notwithstanding anything contained in this schedule, where the property to be sold is a negotiable instrument or a share in a Corporation, the Tax Recovery Officer may, instead of selling it by public auction, sell such instrument or share through a broker.

46. *Order for payment of coin or currency notes to the Tax Recovery Officer*—Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment direct that such coin or notes, or a part thereof sufficient to satisfy the certificate be paid over to the assessing authority.

PART III

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

47. *Attachment*—Attachment of immovable property of the defaulter shall be made by an order in Form 9 prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

48. Service of notice of attachment—A copy of the order of attachment shall be served on the defaulter.

49. Proclamation of attachment—The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

50. Attachment to relate back from the date of service of notice—Where any immovable property is attached under this schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this schedule was served on the defaulter.

51. Sale and Proclamation of sale—(1) The Tax Recovery Officer may direct that any immovable property which has been attached or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation in Form 8 of the intended sale to be made in the language of the district.

52. Contents of Proclamation—A proclamation of sale of immovable property shall be drawn up after notice to defaulter, and shall state the time and place of sale and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered, and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know in order to judge the nature and value of the property.

53. Mode of making Proclamation—(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be cost of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

54. Time of sale—No sale of immovable property under this schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of the sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

55. Sale to be by auction—The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

56. Deposit by purchaser and resale in default—(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent of the amount of his purchase money, to the Tax Recovery Officer and in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

57. Procedure in default of payment—In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sales, be forfeited to the Government, and the property shall be resold; and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

58. Authority to bid—All persons bidding at the sale shall be required to declare if they are bidding on their behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

59. Application to set aside sale of immovable property on deposit—(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of sale, apply to the Tax Recovery Officer to set aside the sale, on this depositing—

- (a) for the payment to the assessing authority, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve per cent per annum calculated from the date of proclamation of sale to the date when the deposit is made, and
- (b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under rule 60 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

60. Application to set aside sale of immovable property on ground of non-service of notice or irregularity—Where immovable property has been sold in execution of a certificate, the assessing authority, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this schedule on the ground of a material irregularity in publishing or conducting the sale :

Provided that—

- (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and
- (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

61. Setting aside sale where defaulter has no saleable interest—At any time within thirty days of the sale the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

62. Confirmation of sale—(1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, he shall (if the full amount of the purchase money has been paid) make an order confirming the sale; and thereupon, the sale shall become absolute.

(2) Where such application is made and allowed and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

63. Return of purchase money in certain cases—Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

64. Sale Certificate—(1) When a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate in Form 10 specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

65. Postponement of sale to enable defaulter to raise amount due under certificate—(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter authorising him within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter but to the Tax Recovery Officer:

Provided further that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

66. Fresh proclamation before resale—Every resale of immovable property in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

67. Bid of co-sharer to have preference—When the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

PART IV

ARREST AND DETENTION OF THE DEFAULTER

68. Notice to show cause—(1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer for reasons recorded in writing, is satisfied—

(a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears of some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey).

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the Officer arresting him, such officer shall at once release him.

69. Hearing—When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under Rule 68, the Tax Recovery Officer shall proceed to hear the assessing authority and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

70. Custody Pending Hearing—Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such Officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

71. Order of Detention—(1) Upon the conclusion of the enquiry the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1), he shall, if the defaulter is under arrest, direct his release.

72. Detention in and release from prison—(1) Every person detained in the civil prison in execution of a certificate may be so detained—

(a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees for a period of six months, and

(b) in any other case for a period of six weeks:

Provided that he shall be released from such detention—

(i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(ii) on the request of the assessing authority who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 73 and 74:

Provided also that where he is to be released on the request of the assessing authority, he shall not be so released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

73. Release—(1) The Tax Recovery officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72.

74. Release on ground of illness—(1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer, may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72.

75. Entry into dwelling house—For the purpose of making an arrest under this Schedule—

- (a) no dwelling house shall be entered after sun-set and before sunrise ;
- (b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or any other occupant of the house refuses or in any way prevents access thereto ; but when the person executing any warrant has duly gained access to any dwelling house he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there ;
- (c) no room, which is in the actual occupancy of a woman who according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

76. Prohibition against arrest of women or minors, etc.—The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

77. Subsistence allowance—(1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the assessing authority.

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding :

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable:

PART V
MISCELLANEOUS

78. Power to take evidence—Every Tax Recovery Officer or other officer acting under this schedule shall have the powers of a Civil Court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

79. Appeals—(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 such authority as the State Government may, by general or special notification, specify in that behalf.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

80. Review—Any order passed under this schedule may, after notice to all persons interested, be reviewed by the Officer who made the order, or by his successor-in-office, on account of any mistake apparent from the record.

81. Recovery from surety—Where any person has under this schedule become surety for the amount due by the defaulter, he may be proceeded against under this schedule as if he were the defaulter.

82. Saving regarding charge—Nothing in this schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

ANNEXURE

FORM 1

(See rule 2)

Certificate of tax, etc., due

To
The Tax Recovery Officer

.....
.....

Sir,

This is to certify that Shri.....doing business in (goods)
..... at (place).....
is in arrears of tax/penalty/interest as shown in the following table. I request you to take action to recover the said amount of Rs.....under sub-section (7) of section 13 of the Orissa Sales Tax Act, 1947.

TABLE

Year of Assessment	Date of Assessment order	Date of service of demand notice	Amount in arrears	Whether tax or penalty or interest
1	2	3	4	5
			Total	

Assistant Sales Tax Officer
..... Circle

FORM 2

(See rule 3)

NOTICE

Take notice that you have failed to pay Rs.....being the arrears of tax/penalty/interest levied on you under the Orissa Sales Tax Act, 1947 and/or the details of which are furnished in the following table. If the said amount is not paid within a period of fifteen days from the date of service of the notice, it shall be recovered by attachment and sale of your movable or immovable property. In addition to the said amount you will also be liable to pay the expenses involved in the attachment and/or sale of your movable and/or immovable property.

TABLE

Assessment year to which the amount in arrears relate	Whether the amount due is tax, or penalty or interest	The amount in arrears (tax or penalty or interest) should be shown separately	Date of service of the demand notice in respect of the amount in arrear	Date on which the amount became due
1	2	3	4	5

Tax Recovery Officer

FORM 3

(See rule 21)

Warrant of attachment

Whereas Shri.....has failed to pay Rs..... being the tax/penalty/interest, the details of which are furnished in the table below, the movable property of the said Shri..... as set forth in the schedule hereunto annexed or which shall be found by me shall be attached and sold unless the said Shri..... pays the said sum of Rs..... (in words)..... with Rs..... cost of this attachment.

Table

Amount in arrears	Whether tax/penalty/interest
1	2

SCHEDULE

Dated.....19

Tax Recovery Officer

FORM 4

(See rule 26)

Attachment of a debt not secured by negotiable instrument/share in a corporation/movable property not in the possession of the defaulter except property in the custody of a court.

To

.....

Sir,

Whereas Shri..... has failed to pay Rs..... being the tax/penalty, it is ordered that said Shri..... be and is hereby prohibited and restrained until further order by me.

*(i) from receiving from you the debt alleged now to be due from you to the said Shri..... and that you are hereby prohibited and restrained until further order by me from making payment of the said debt or any part thereto any person whomsoever or otherwise than to me.

*(ii) from making any transfer of shares in..... corporation or from receiving payment of any dividend thereon, and you the secretary of the said corporation are hereby prohibited and restrained from permitting any such transfer or making any such payment.

*(iii) from receiving you the following property in your possession to which defaulter Shri..... is entitled and you are hereby prohibited and restrained until further order by me from delivering the said property to any person or persons whomsoever.

Description of property

.....

Given under my hand and seal on this day of.....19

*Strike off whichever is not applicable.

Tax Recovery Officer

FORM 5

(See rule 27)

Attachment of a decree

To

The Munsif/

Judge of the Court of.....

Sir,

I have the honour to inform you that the decree obtained in your Court on the day of.....19.... by Shri.....in Suit No.....of 19.....has been attached by me in execution of a certificate issued by the assessing authority. You are therefore requested to stay the execution of the decree of your court until you receive an intimation from me that the present notice has been cancelled or until execution of the said decree is applied for by the assessing authority, i. eor by Shri.....

Yours faithfully,

Dated this..... day of.....19

Tax Recovery Officer

FORM 6

(See rule 28)

Attachment of the share or interest in movable property

To

Shri.....

.....

Whereas you have failed to pay Rs.....being the tax/penalty/interest. You are hereby prohibited and restrained until further order by me from transferring the share or interest you have in the property specified below or from charging it in any way.

Description of the property.....

Dated thisday of.....19

Tax Recovery Officer

FORM 7

(See rule 30)

Prohibitory order

To

Shri.....

Sir,

The assessing authority, i. e.,.....has issued a certificate under rule 2 of the schedule to the Orissa Sales Tax Act, 1947 for recovery of Rs.....from Shri..... It is stated that Rs.....is due by you to said Shri..... on account of.....(Specify how money is due and on what account).....I request that you will hold the said money subject to the further order by me.

Yours faithfully,

Dated this..... day of.....19....

Tax Recovery Officer

FORM 8

(See rules 37 & 51)

Proclamation of sale

Name and address of the defaulter.....

Whereas an order has been made by me for the sale of the attached property specified in the schedule below in satisfaction of the certificate issued by the assessing authority..... under rule 2 of the schedule to the Orissa Sales Tax Act, 1947 for Rs..... interest thereon and costs of this execution.

The sale will be by public auction and the property shall be put up for sale in the lots specified in the schedule. The sale will be of the right, title and interest of the defaulter said Shri..... and the liabilities are those specified in the schedule against each lot.

In the absence of any order of postponement the sale will be held at..... at..... A. M. In the event however the entire amount due is tendered or paid before the knocking down of any lot the sale will be stopped.

The sale will be subject to and in accordance with the schedule to the Orissa Sales Tax Act, 1947.

In the case of movable property the price of each lot shall be paid at the time of sale or as soon as after the Tax Recovery Officer directs and in default of payment the property shall forthwith be again put up and resold.

In the case of immovable property the person declared to be the purchaser shall pay immediately after such declaration twenty-five per cent of the amount of his purchase money to the Tax Recovery Officer and in default the property shall forthwith be resold. The balance purchase money shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day of the date of the sale of the property ; if the fifteenth day be a Sunday or other holiday then on the first office day after the fifteenth day.