

GOVERNMENT OF ORISSA

LAW DEPARTMENT

ORISSA ACT I OF 1955

THE ORISSA SALES TAX (AMENDMENT) ACT, 1954
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ORISSA ACT I OF 1955

**THE ORISSA SALES TAX (AMENDMENT)
ACT, 1954**

*[Received the assent of the President on the 14th
January 1955, first published in an extra-
ordinary issue of the Orissa Gazette,
dated the 1st February 1955]*

AN ACT FURTHER TO AMEND THE ORISSA SALES TAX
ACT, 1947

WHEREAS it is expedient further to amend the Orissa Sales Tax Act, 1947, in the manner herein-after appearing; Orissa Act
XIV of 1947.

It is hereby enacted by the Legislature of the State of Orissa in the Fifth Year of the Republic of India as follows :—

Short title
and com-
mencement.

***1.** (1) This Act may be called the Orissa Sales Tax (Amendment) Act, 1954.

(2) Sections 1, 2, 4, 5, 6, 7 and 11 shall come into force at once and the rest of the sections shall come into force on such date as the State Government may, by notification, appoint.

Amendment
of section
2, Orissa
Act XIV of
1947.

2. In section 2 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the said Act), — Orissa Act
XIV of 1947

(i) after clause (a) the following new clause shall be inserted, namely :—

“ (aa) ‘Commissioner’ means the Commissioner of Sales Tax appointed under sub-section (1) of section 3-A ; ”

* For Statement of Objects and Reasons see Orissa Gazette extraordinary dated the 3rd September 1954 and for S. C. Report see Orissa Gazette extraordinary dated the 25th September 1954.

(ii) to clause (g) the following Explanation shall be added, and shall be deemed to be added with effect from the date of commencement of the Constitution, namely :—

“*Explanation*—The sale of any goods actually delivered in the State of Orissa as a direct result of such sale for the purpose of consumption in the said State shall be deemed for the purpose of this Act to have taken place in the said State, notwithstanding that under the general law relating to sale of goods the property in the goods has, by reason of such sale, passed in another State ;”

(iii) for sub-clause (ii) of clause (h) the following sub-clause shall be substituted, namely :—

“ (ii) the carrying out of any contract less the cost of materials supplied by the party giving the contract and the amount of the actual labour charges incurred and proved to the satisfaction of the assessing authority to have been so incurred in carrying out the contract ; ”

(iv) after clause (h) the following new clause shall be inserted, namely :—

“ (hh) ‘ Tribunal ’ means the Tribunal constituted under sub-section (1) of section 3-B ”.

Insertion of
new sec-
tions 3-A,
3-B, 3-C and
3-D, Orissa
Act XIV of
1947.

3. After section 3 of the said Act, the following new sections shall be inserted, namely :—

Appoint-
ment of the
Commis-
sioner and
his powers
and func-
tions.

“ 3-A. (1) The State Government may by notification appoint any person to be the Commissioner of Sales Tax and such other persons under any prescribed designations to assist him as the State Government may direct.

(2) The Commissioner shall exercise the following powers and discharge the following functions :—

(i) to superintend and control all persons employed in the executive administration of Sales Tax ;

(ii) subject to the provisions of this Act and the rules made thereunder, to make rules of procedure and conduct of administration for the guidance of the Collector and other persons subordinate to himself and the Collector ;

(iii) to call for any record from the Collector or any other subordinate officer and also to call for any papers in connection with any assessment ;

(iv) to be made a party in all judicial proceedings before the Tribunal ; and

(v) to inspect the records and to superintend the work of the offices and of the courts of the Collector or any other officer subordinate to the Collector ”.

Constitution
of a Tribu-
nal and
their powers
and func-
tions.

“ 3-B. (1) The State Government may constitute a Tribunal to be appointed by them to exercise the powers, perform the functions and discharge the duties conferred and imposed on the Tribunal by or under this Act.

(2) The Tribunal shall consist of three members as follows :—

(i) a person who has been a District Judge for a period not less than five years .. Chairman

(ii) a person who is a member of the Orissa Finance Service and has held the post of a Collector of Sales Tax or who is a retired member of the Indian Income Tax Service and had immediately before retirement held a post not below the rank of an Assistant Commissioner of Income Tax .. Member

(iii) a person who has been a member of the Indian Administrative Service for a period not less than ten years ; provided that the State Government shall have power to relax the period in the case of an officer promoted from the Orissa Administrative Service Member

(3) All questions raised before the Tribunal shall be determined by a majority and the decision of the majority shall be the decision of the Tribunal :

Provided that any two members of the Tribunal shall be competent to dispose of its business and if in any event the opinions of the two members differ the matter shall be heard and disposed of by all the three members sitting together :

Provided further that the proceedings of the Tribunal shall not be deemed to be invalid merely

by reason of a temporary vacancy caused by the death, retirement or removal of any member.

(4) Any vacancy in the membership of the Tribunal may be filled up by appointment under a notification of the State Government.

(5) The Tribunal may, with the previous sanction of the State Government make regulations consistent with the provisions of this Act and the rules made thereunder, for regulating its procedure and the disposal of its business.

(6) The regulations made under sub-section (5) shall be published in the Gazette.

(7) All members of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."

XLV of
1860.

Conditions
of service.

"3-C. The conditions of service of the Commissioner and the members of the Tribunal shall be regulated by rules made under this Act."

Supply of
informations
to State
Government.

"3-D. Notwithstanding anything contained in section 28, the Tribunal shall on application by the State Government in the manner prescribed supply all informations in all statistical matters available with the Tribunal."

Amendment
of section 4,
Orissa Act
XIV of
1947.

4. In sub-section (5) of section 4 of the said Act, for the words "Where a registered dealer" the words "Where a dealer liable to pay tax under this Act" shall be substituted.

Amendment
of section 5,
Orissa Act
XIV of
1947.

5. In section 5 of the said Act—

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

"Provided that the State Government may, from time to time by notification and subject to such conditions as it may impose, fix a higher rate of tax payable under this Act—

(i) not exceeding one anna in the rupee or any lower rate of tax on account of sale of certain goods or classes of goods ; and

(ii) not exceeding two annas a rupee on account of any tobacco products other than raw tobacco such as Picca, Chewing tobacco, Chunapatra and the like ; such goods, classes of goods and tobacco products having been specified in such notification.

(2) sub-section (2) shall be renumbered as clause (A) of the said sub-section and in sub-clause (b) of the said clause as so renumbered for the words "the tax, if any" the words "any amount by way of tax" shall be substituted;

(3) after sub-clause (b) of clause (A) of sub-section (2) the following new sub-clause shall be inserted, namely:—

"(c) any collections for charitable purposes separately made as Bitty or Dharmada or otherwise in aid of such institutions as are notified in this behalf by the District Collectors or notified by the Central Board of Revenue, Government of India for purposes of section 15-B of the Indian Income-tax Act, 1922; provided that no amount has been collected as XI of 1922 sales tax on such collections and provided further that such collections have actually been made over to the proper authorities of such institutions and receipts therefor have been obtained;"

(4) after clause (A) of sub-section (2) the following new clause shall be inserted, namely:—

"(B) For the purpose of ascertaining the deductions under this sub-section the same shall be proved in the prescribed manner."

Amendment
of section
9-B, Orissa
Act XIV of
1947.

6. In section 9-B of the said Act—

(i) in sub-section (1) for the words "any tax" the words "any amount by way of tax" shall be substituted;

(ii) in sub-section (2) for the words "who realises tax" the words "who realises any amount by way of tax" and for the words "as tax" wherever they occur the words "by way of tax" shall be respectively substituted;

(iii) in sub-section (3) for the words "by any person as tax" the words "by any person by way of tax" shall be substituted.

Amendment
of section
12, Orissa
Act XIV of
1947.

7. To the existing provisos to sub-section (6) of section 12 of the said Act, the following new proviso shall be added, namely:—

"Provided further that the period of limitation fixed in the proviso immediately preceding shall not apply to assessment under sub-section (7) of this section or to enhancement of assessment or order of fresh assessment made or passed under section 23."

Amendment
of section 21,
Orissa Act
XIV of
1947.

8. For section 21 of the said Act, the following section shall be substituted, namely :—

“ 21. (1) For the purposes of this Act—

(a) The Tribunal and the Collector or any person appointed to assist him under sub-section (1) of section 3, shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908^{v of 1908} when trying a suit in respect of the following matters, namely :—

(i) summoning and enforcing the attendance of any person and examining him on oath or affirmation ;

(ii) compelling the production of documents ;
and

(iii) issuing commissions for the examination of witnesses.

(b) The Tribunal shall have the same powers as are vested in a Civil Court in respect of proof of facts by affidavits and for this purpose any officer authorised by the Tribunal may administer the oath to the deponent.

(2) Any proceedings under this Act before the Tribunal, the Collector or any person appointed to assist him under sub-section (1) of section 3 shall be deemed to be “ judicial proceedings ” within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

XLV of
1860.

Amendment
of section
23, Orissa
Act XIV
of 1947.

9. In section 23 of the said Act, for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely :—

“ (3) (a) Any dealer dissatisfied with an order made under sub-section (2), or the Commissioner, as the case may be, may, within thirty days from the date of receipt of such order prefer an appeal in the prescribed manner to the Tribunal, against such order:

Provided that the Tribunal may admit such appeal after the period hereinbefore specified if it is satisfied that the dealer or the Commissioner, as the case may be, had sufficient cause for not preferring the said appeal within the said period.

(b) Notwithstanding that an appeal has been preferred under clause (a) the tax or the penalty due shall be paid in accordance with the assessment made in the case :

Provided that the Tribunal may, in its discretion, permit the appellant to pay such tax or penalty in such number of instalments, or give such other direction in regard to the payment thereof as it thinks fit and shall communicate such order to the appellant and the authority against whose orders such appeal has been preferred and a copy of such order shall also be sent to the Commissioner."

(c) The Commissioner or the dealer, as the case may be, on receipt of notice that an appeal has been preferred under clause (a) may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the service upon him of the notice, file a memorandum of cross objections and such memorandum shall be disposed of by the Tribunal as if it were an appeal presented within time under clause (a).

(d) The Tribunal may, after giving the parties an opportunity of being heard, pass such orders thereon as it may think fit and shall communicate such order to the appellant and the authority against whose orders such appeal was preferred and a copy of such order shall also if he is not the appellant be sent to the Commissioner.

(4) (a) Subject to such rules as may be made and for reasons to be recorded in writing, the Collector may, upon application by a dealer or of his own motion, revise any order made under this Act or the rules made thereunder not being an order under sub-section (3), made by any person appointed under sub-section (1) of section 3 to assist him :

Provided that the Collector shall not entertain any such application for revision if the dealer filing the same having a remedy by way of appeal under sub-section (1) did not avail of such remedy.

(b) If the Collector proposes to reject an application for revision under the foregoing provision, he shall record the reasons for such rejection.

(c) Except as otherwise provided in this section and section 24, any order made by the Collector under this section shall be final.

(5) (a) Subject to such rules as may be made—

(1) a dealer objecting to—

(i) an enhancement of the tax due from him by an order in revision, or

(ii) an order in revision against the levy of penalty under sub-section (5) of section 13, or

(iii) an order determining the dispute under section 20, or

(iv) an order affecting the liability of any dealer under section 9, 9-A or 9-B, made by the Collector, or

(2) the Commissioner objecting to,—

(i) a reduction of the tax payable by an order in revision, or

(ii) an order determining a dispute under section 20 ; may within thirty days of the receipt by him of such order, prefer an appeal to the Tribunal against such order.

(b) The Tribunal may, after giving the parties an opportunity of being heard, pass such orders thereon as it may think fit and shall communicate such order to the appellant and the authority against whose orders such appeal was preferred and a copy of such order shall also be sent to the Commissioner.

(6) Subject to such rules as may be made, any order made under this Act or the rules made thereunder by the Tribunal or any person appointed under sub-section (1) of section 3, may be reviewed by the person making the same.

(7) Any person likely to be affected prejudicially by any order under this section shall be given a reasonable opportunity of being heard before such order is made :

Provided that an order passed on revision by the Collector declining to interfere with the order which is sought to be revised, shall not be deemed to be an order prejudicial to the applicant."

Amendment
of section
24, Orissa
Act XIV of
1947

10. In section 24 of the said Act--

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

“(1) Within sixty days from the making of any order by the Tribunal under sub-section (3) to sub-section (5) of section 23, affecting any liability of any dealer to pay tax under this Act, such dealer or the Commissioner as the case may be, may by application in writing accompanied, where the application is made by any person other than the Commissioner, with a fee of one hundred

rupees, require the Tribunal to refer to the High Court any question of law arising out of such order and except in cases covered under sub-section (2), the Tribunal may within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court ;”

(ii) in sub-sections (2), (3), (4), (5) and (7) for the words “ Revenue Commissioner ” wherever they occur the word “ Tribunal ” shall be substituted.

Amendment
of section
28, Orissa
Act XIV of
1947.

11. In section 28 of the said Act, for sub-sections (3) and (4), the following sub-section shall be substituted, namely :—

“(3) Nothing in this section shall apply to the disclosure of—

(a) any of the particulars referred to in sub-section (1) for the purpose of a prosecution under the Indian Penal Code, in respect of any statement, XLV of 1860 return, accounts, document or evidence or for the purposes of a prosecution under this Act, or

(b) such facts to an officer of the Government of India as may be necessary, for the purpose of enabling that Government to levy or realise any tax imposed by it under the Indian Income-tax Act, XI of 1922 1922, or

(c) such of the particulars referred to in sub-section (1) to the Sales Tax authorities of other Part A/Part B/Part C States as may be necessary for the purpose of enabling such authorities to levy or realise any tax.”