ORISSA ORDINANCE No. 1 OF 1964

THE ORISSA SALES TAX (AMENDMENT) ORDINANCE, 1964

[*Promulgated by the Governor on the 15th January 1964, published in an Extraordinary issue of the* Orissa Gazette, *dated the 20th January 1964*]

AN

ORDINANCE

TO AMEND THE ORISSA SALES TAX ACT, 1947

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

AND WHEREAS the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Orissa Sales Tax Act, 1947 in the manner hereinafter appearing ; Orissa Act 14 of 1947.

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

Short title

1. This Ordinance may be called the Orissa Sales Tax (Amendment) Ordinance, 1964.

Amendment of section 3 Orissa Act, 14 of 1947.

2. In section 3 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the principal Act) in sub-section (3) for the words "that of a Deputy Commissioner" the words "an Additional Commissioner and a Deputy Commissioner" shall be substituted. Orissa Act 14 of 1947.

Amendment of section 4, Orissa Act 14 of 1947.

3. In section 4 of the principal Act—

(*i*) in sub-section (2) for the word "quarter" the word "month" shall be substituted;

(*ii*) in sub-section (4) for the word "quarter" the word "month" shall be substituted;

(*iii*) for sub-section (6) the following sub-section shall be substituted, namely :—

"(6) A dealer, who is not liable to pay tax under the foregoing sub-sections shall nevertheless be liable to pay tax on sales or purchases, if such dealer is liable to pay tax under the Central Sales Tax Act, 1956 or is registered as a dealer under the said Act." 74 of 1956

Amendment of section 5, Orissa Act 14 of 1947.

4. In section 5 of the principal Act for item (*i*) of sub-clause (*a*) of clause (A) of sub-section (2) the following item shall be substituted, namely :—

"(*i*) the sale of any goods notified from time to time as tax free under section 6 and of the packing materials, if any, in respect of such goods."

Amendment of section 9, Orissa Act 14 of 1947.

5. In section 9 of the principal Act—

(*i*) in sub-section (2) clauses (*b*), (*bb*), (*c*) and (*d*) shall be omitted;

(*ii*) in sub-section (3-a) after the words "registering authority may" the words and comma "from time to time," shall be inserted.

Amendment of section 9-A, Orissa Act 14 of 1947.

6. In section 9-A in clause (*b*) of sub-section (4) the words, letters, figure and brackets "clauses (*b*), (*c*) and (*d*) of sub-section (2) and those of" shall be omitted.

Amendment of section 9-B, Orissa Act 14 of 1947.

7. In section 9-B of the principal Act in the proviso to sub-section (2) after the words "every dealer" the words "whose turnover exceeds the prescribed amount and who is" shall be inserted.

Amendment of section 11, Orissa Act 14 of 1947.

8. In section 11 of the principal Act—

(*i*) in sub-section (2) for the words "at any time before the assessment is made" the words "within three months from the due date prescribed for furnishing of returns under sub-section (1)" shall be substituted;

(*ii*) in sub-section (3)—

(*a*) in the Explanation after the words "crossed bank draft" the words "or crossed cheque" and after the words "such bank draft" the words "or crossed cheque" shall be inserted ;

(*b*) in the proviso to the said Explanation after the words "crossed bank draft" the words "or crossed cheque" shall be inserted.

Amendment of section 13, Orissa Act 14 of 1947.

9. In section 13 of the principal Act—

(*i*) in sub-section (4) for the words "by such date as may be specified in a notice issued by the Commissioner for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice" the words "within thirty days from the date of service of the notice issued by the Commissioner for the purpose" shall be substituted ;

(*ii*) in sub-section (5)—

(*a*) for the words "is not paid by the date fixed in the notice under sub-section (4)" the words "is not paid by the due date in pursuance of a notice issued under sub-section (4)" shall be substituted and the words "such date not being less than" shall be deleted ;

(*b*) for the second proviso the following provisos shall be substituted, namely :—

"Provided further that when the dealer has presented an appeal under section 23 the Commissioner may, on an application in that behalf filed by such dealer within thirty days from the date of receipt by him of the notice under sub-section (4), in his discretion, stay the recovery of the amount in respect of which such notice has been issued or any portion thereof for such period as the Commissioner thinks fit:

Provided also that where as a result of an order passed in an appeal, revision or reference the assessment or the penalty imposed under sub-section (3) of section 11 or sub-section (5) or sub-section (8) of section 12—

(*a*) is annulled, the penalty imposed under this sub-section shall be refunded; or

(*b*) is reduced, the penalty imposed under this sub-section shall be proportionately reduced and the excess amount shall be refunded,

and all such refunds shall be made in the prescribed manner provided under section 14."

(*iii*) in sub-section (6)—

(*a*) after the words "the tax" wherever they occur the words "together with the penalty, if any," shall be inserted ;

(*b*) for the words "by the date specified therein" the words "by the date of expiry of the period allowed under the said sub-section" shall be substituted ;

(*iv*) in sub-section (7) for the words, figures and brackets "the date specified in the notice issued under sub-section (4) or after the date specified in the notice under sub-section (5)" the words, figures and brackets "the due date of payment in pursuance of the notice issued under sub-section (4) or sub-section (5)" shall be substituted.

Insertion of new sections 13-B and 13-C, Orissa Act 14 of 1947.

10. After section 13-A of the principal Act the following new sections shall be inserted, namely :—

Tax to be first charge on property.

"13-B. Notwithstanding anything to the contrary contained in any law for the time being in force any amount payable by a dealer under this Act on account of tax, penalty or interest or any amount which a person is required to pay under sub-section (1) of section 13-A or for which he is personally liable to the State Government under sub-section (4) of the said section shall be a first charge on the property of the dealer or such person, as the case may be.

Period of limitation for recovery of tax, etc.

13-C. Notwithstanding anything contained in any law for the time being in force no proceedings for the recovery of any amount under sub-section (7) of section 13 or under sub-section (6) of section 13-A shall be initiated after the expiry of twelve years from the date of the relevant assessment :

Provided that when an appeal or application for revision or reference has been filed, the period of limitation shall run from the date on which the amount due is finally determined."

Amendment of section 14, Orissa Act 14 of 1947.

11. In section 14 of the principal Act—

(*a*) after the word "tax", wherever it occurs the words and comma ", penalty or interest" shall be inserted;

(*b*) in the proviso—

(*i*) after the words "order of assessment" as they occur for the first time the words and commas "or order imposing penalty, as the case may be," shall be inserted;

(*ii*) for the words "order of assessment" as they occur for the second time the words and comma "order earlier mentioned," shall be substituted.

Amendment of section 16-A, Orissa Act 14 of 1947.

12. In section 16-A of the principal Act in sub-section (2) for the words "State Government" the word "Commissioner" shall be substituted.

Amendment of section 16-B, Orissa Act 14 of 1947.

13. In section 16-B of the principal Act in sub-section (2) for the words "State Government" the word "Commissioner" shall be substituted.

Amendment of section 18, Orissa Act 14 of 1947.

14. In section 18 of the principal Act in clause (*c*) the word "or" shall be added at the end and after the said clause the following new clause shall be inserted, namely :—

"(*d*) has knowledge of or effects any change in any of the particulars in the list of immovable properties, if any, furnished in an application made under clause (*a*) of sub-section (2) of section 9".

Amendment of section 23, Orissa Act 14 of 1947.

15. In section 23 of the principal Act in sub-section (6) the words "or the State Government as the case may be" shall be and shall be deemed always to have been omitted and to the said sub-section the following new proviso shall be added, namely:—

"Provided that where the relief claimed is allowed in whole or in part as a result of the final order passed at the conclusion of all the proceedings in accordance with the provisions of this Act in relation to the assessment or imposition of penalty, as the case may be, the fees paid under this sub-section shall, on an application in that behalf made by the dealer within one year from the date of the said order, be refunded in the prescribed manner, in proportion to the relief granted".

Insertion of new section 28-A, Orissa Act 14 of 1947.

16. After section 28 of the principal Act, the following new section shall be inserted, namely:—

Appearance before any authority in proceedings.

"28-A. (1) Any person, who is entitled or required to attend before any authority in connection with any proceeding under this Act, may attend—

(*a*) by a person authorised by him in writing in this behalf, being a relative or a person regularly employed by him ; or

(*b*) by a legal practitioner or Chartered Accountant, who is not disqualified by or under sub-section (2); or

c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2).

(2) The Commissioner may by order in writing and for reasons to be recorded therein disqualify for such period as is stated in the order from attending before any such authority any legal practitioner, Chartered Accountant or sales tax practitioner—

(*i*) who has been removed or dismissed from Government service, or

(*ii*) who being a legal practitioner or Chartered Accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs, or

(*iii*) who being a sales tax practitioner is found guilty of such misconduct by the Commissioner.

(3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any order of disqualification is made under this section may within one month of the date of communication of such order appeal to the Tribunal to have the order cancelled.

(5) The order of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred, until the appeal is decided.

(6) The Commissioner may at any time *suo motu* or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such persons shall cease to be disqualified. "

A. N. KHOSLA

Dated the 15th January 1964 *Governor of Orissa*