

ORISSA ACT IX of 1946

THE ORISSA MOTOR SPIRIT (TAXATION ON SALES)
ACT, 1946

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AN ACT TO IMPOSE A TAX ON RETAIL SALES OF MOTOR SPIRIT IN THE PROVINCE OF ORISSA

Preamble

WHEREAS it is expedient to provide for the levy of a tax on retail sales of motor spirit ;

It is hereby enacted as follows :—

CHAPTER I

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Motor Spirit (Taxation on Sales) Act, 1946.

(2) It extends to the whole of the Province of Orissa.

(3) This section shall come into force at once and the rest of this Act shall come into force on such date as the Provincial Government may, by notification, appoint.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "Collector" in any provision of the Act means the Collector or the Deputy Commissioner of the district or such other officer, as the Provincial Government may, by notification, appoint to discharge any of the functions of the Collector under that provision ;

(b) "motor spirit" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) which is ordinarily used for providing reasonably efficient motive power for any form of motor vehicle ;

(c) "prescribed" means prescribed by rules made under this Act ;

(d) "retail dealer" means any person who, on commission or otherwise, sells or keeps for sale motor spirit for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased ;

(e) "retail sale" means a sale by a retail dealer of motor spirit to a person for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased ;

Explanation—The sale of motor spirit by a retail dealer to himself for his own consumption shall be deemed to be retail sale within the meaning of this clause.

(f) "wholesale distributor" means any person who sells motor spirit or keeps motor spirit for sale to dealers in such spirit for the purpose of trade ;

Explanation—As respects a wholesale distributor who resides, or has his office outside Orissa the term “wholesale distributor” includes his manager or agent who resides or carries on business in Orissa.

(g) “offence under the Act” includes an offence under the rules made under the Act.

CHAPTER II

LEVY OF TAX

Levy of tax. 3. (1) There shall be levied and collected from every retail dealer a tax on the retail sales at the rate of two annas per gallon of the motor spirit sold :

Provided that the Provincial Government may from time to time by notification vary the rate at which the tax shall be levied and collected.

(2) If any tax payable under sub-section (1) is not paid within the time fixed by a notice issued in accordance with the rules made under this Act, the authority to whom such tax is payable may, in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid which such authority may think it reasonable to recover.

Recovery of sums as public demand. 4. Any sum recoverable under section 3 may be recovered as a public demand payable to the Collector.

Levy of tax on wholesale distributor. 5. Where retail dealers obtain their supplies of motor spirit from a wholesale distributor, it shall be open to the Provincial Government by agreement with the wholesale distributor to levy from him in advance the tax which may be payable by the retail dealers under sub-section (1) of section 3 on the sale by them of the motor spirit, and the provisions of this Act relating to the assessment and recovery of tax shall, subject to such conditions as may be agreed upon, apply to the wholesale distributor accordingly.

Tax not to be levied twice. 6. No tax shall be levied under this Act on the sale of motor spirit in respect of which such tax has already been paid.

CHAPTER III

REGISTRATION OF RETAIL DEALERS AND WHOLESALE DISTRIBUTORS

Registration of retail dealers and wholesale distributors. 7. (1) (a) Every person carrying on business as a retail dealer on the date on which the remaining provisions of this Act other than section 1 come into force shall, within three months from the said date, and every person intending to start business as a retail dealer after the said date shall, before starting such business, make an application for the registration of his name as a retail dealer in respect of the place where he carries on or intends to start such business or, if he carries on or intends to start such business at more than one place, in respect of each such place.

(b) Every person carrying on business as a wholesale distributor on the date on which the remaining provisions of this Act other than section 1 come into force shall, within three months from the said date, and every person intending to start such business as a wholesale distributor after the said date shall, before starting such business, make an application for the registration of his name as a wholesale distributor in respect of such business whether he carries on or intends to start such business at one place or more.

(c) No wholesale distributor shall, unless also registered as a retail dealer under this Act, sell motor spirit for consumption or sale in the Province to any person other than a wholesale distributor or a retail dealer, registered as such under this Act.

(2) Every application under sub-section (1) shall be in the prescribed form, shall contain the prescribed particulars and shall be presented, in the case of an application under clause (a) of the said sub-section, to the Collector within whose jurisdiction the place in respect of which the application is made is situated and, in the case of an application under clause (b) of the said sub-section, to the prescribed authority.

(3) On receipt of an application under sub-section (1) if the Collector or the prescribed authority is satisfied that it is in order, he shall grant to the applicant a registration certificate in the prescribed form and subject to such conditions as may be prescribed ;

Provided that no registration certificate under this Act shall be granted to any person who does not hold a licence for the storage of dangerous petroleum under the Petroleum Act, 1934 and if any such licence granted under that Act is cancelled, suspended or is not renewed, any registration certificate granted under this Act to the holder thereof shall be deemed to be cancelled, suspended or not renewed as the case may be.

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1934.

(4) Every registration certificate granted under sub-section (3) shall, unless sooner cancelled or suspended under section 8 or deemed to be cancelled or suspended under the proviso to sub-section (3), expire on the 31st day of March following the date on which it is granted.

(5) A retail dealer or wholesale distributor whose certificate of registration has expired by efflux of time under sub-section (4) may apply to the Collector or the prescribed authority for renewal of his certificate of registration, and the Collector or the prescribed authority shall, if on receipt of such an application he is satisfied that it is in order, renew the certificate of registration for a period of one year commencing from the date on which the previous certificate expired.

(6) The grant or renewal of a registration certificate may be refused if any previous registration certificate has been cancelled.

(7) If an application for the renewal of a registration certificate granted under sub-section (3) is made within such time before its expiry as may be prescribed, the holder of the registration certificate shall be deemed to be in possession of a valid registration certificate until the registration certificate is renewed or until he is informed that the renewal of the certificate has been refused.

(8) Every certificate of registration shall be granted or renewed free of charge.

Suspension
or
cancellation
of certificate
of
registration.

8. (1) Subject to such conditions as may be prescribed, the Collector may suspend for such period as he considers fit or cancel any certificate of registration granted or renewed to a retail dealer—

(a) if any tax payable by the holder of such certificate under section 3 is not duly paid ; or

(b) if there is a breach of any of the conditions subject to which the certificate of registration is granted or renewed.

(2) When a certificate of registration is suspended or cancelled under sub-section (1) or deemed to be suspended or cancelled under the proviso to sub-section (3) of section 7 the holder of such certificate shall not be entitled to any compensation for any loss or damage directly or indirectly suffered by him as a result of such suspension or cancellation.

Prohibition
of sale
without
certificate
of
registration.

9. Save as otherwise provided in sub-sections (1) and (7) of section 7, no person shall carry on business as a retail dealer or wholesale distributor unless he has obtained a certificate of registration under the said section.

CHAPTER IV

OFFENCES AND PENALTIES

Penalty for
unautho-
rised sale.

10. Any person who contravenes the provisions of section 9 shall be punishable with fine which may extend to five hundred rupees or to a sum not exceeding double the amount of the tax in respect of the sale of any motor spirit conducted by or on behalf of such person, whichever is greater.

Punishment
for
vexatious
search and
arrest.

11. Any officer or person exercising powers under this Act, who—

(a) without reasonable suspicion, enters or searches, or causes to be entered or searched, any building, vessel, vehicle or place ; or

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act ; or

(c) vexatiously and unnecessarily detains, searches or arrests any person ; or

(d) in any other way maliciously exceeds or abuses his lawful powers ;
shall be punishable with fine which may extend to five hundred rupees.

Punishment
for vexatious
delay in
forwarding
an arrested
person.

12. Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail, shall be punishable with fine which may extend to five hundred rupees.

Punishment
for vexatious
delay in
forwarding
a seized
article.

13. Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to the Magistrate or to the Collector under clause (a) or (b) of section 18 as the case may be, anything seized and not returned by him under clause (c) of the said section to the person from whose possession it was taken, shall be punishable with fine which may extend to two hundred rupees.

CHAPTER V

PROCEDURE AND POWERS AND DUTIES OF OFFICERS

Issue of
warrants.

14. (1) The Collector or any officer specially empowered by the Provincial Government by notification in this behalf or any Magistrate may issue a warrant—

(a) for the arrest of any retail dealer who he has reason to believe has committed an offence under this Act; or

(b) for the search whether by day or by night of any building, vessel, vehicle or place in which he has reason to believe that any motor spirit is sold or is kept for sale by a retail dealer and in respect of which he has a reasonable suspicion that an offence under this Act has been committed.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or, if the officer V of 1898 issuing the warrant so directs, by any other person.

Power of
entry,
search,
seizure,
arrest and
detention.

15. The Collector or any officer specially empowered by the Provincial Government by notification in this behalf may—

(a) enter and search, at any time, by day or by night, any building, vessel, vehicle or place in which he has reason to believe that any motor spirit liable to confiscation under this Act is kept or concealed ;

(b) seize any motor spirit or any other article which he has reason to believe is liable to confiscation under this Act ; and

(c) detain and arrest without warrant any person whom he has reason to believe to be guilty of any offence under this Act.

Searches,
how made.

16. All searches made under this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. V of 1898

Procedure
for arrest
without
warrant.

17. The provisions of sections 60 and 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests made V of 1898 under section 15.

Procedure on seizure.

18. When anything has been seized by an officer empowered under section 20, such officer, after making such enquiry as he considers necessary, shall—

(a) if it appears that such thing is or is likely to be required as evidence in the case of any person arrested, forward the thing to the Magistrate to whom such person is forwarded or before whom such person, if granted bail, is required to appear ;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, send the thing with a report of the particulars of the seizure to the Collector ; and

(c) if no offence appears to have been committed, return the thing to the person from whose possession it was taken and shall report the fact to the Collector.

Duty of certain persons to report.

19. Every officer of the Crown and every officer of a local authority shall be bound to give immediate information at the nearest police-station or to the Collector of the commission of any offence or of the intention or preparation to commit any offence under this Act which may come to his knowledge, and all such officers shall be bound to take all reasonable measures in their power to prevent the commission of any such offence which they make know or have reason to believe is about or is, likely to be committed.

Power of investigation.

20. (1) The Provincial Government may, by notification invest any officer of a rank not below the prescribed rank with all or any of the powers or duties conferred or imposed by the Code of Criminal Procedure, 1898, on the officer in charge of a police-station in respect of investigations, arrests, searches, seizures and detention in custody for offences under this Act, and may, in such notification, determine the area with which the officer specified in the notification shall exercise such powers or perform such duties. V of 1898

(2) If such officer is of opinion that there is not sufficient evidence or reasonable suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release, him on his executing a bond, with or without sureties, to appear if and when so required before a Magistrate and shall make a full report of the case to the Collector and be guided by the order which he shall receive on such report.

Offences to be cognizable.

21. All offences under this Act shall be cognizable and bailable.

Power to grant bail.

22. Any officer empowered under section 20 shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence under this Act. V of 1898

Things liable to confiscation.

23. When an offence under this Act has been committed, the motor spirit in respect of which the offence has been committed shall be liable to confiscation together with the receptacles in which it is contained.

Procedure in
making
confiscation.

24. (1) When in any case tried by a Magistrate, the Magistrate decides that anything is liable to confiscation under section 23 he may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order either release or confiscation or may give the owner the option to pay such penalty as the Magistrate thinks fit in lieu of confiscation.

(2) When any offence under this Act has been committed but the offender is not known or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case may be inquired into and determined by the Magistrate or the Collector; and the Magistrate or the Collector, as the case may be, may order such confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they may produce in support of their claims.

Power to
compound
offences.

25. (1) The Collector may, either before or after the institution of proceedings under section 26, accept from any person charged with an offence under section 10 or under any rules made under this Act, by way of composition of the offence, a sum of money not exceeding five hundred rupees or a sum equal to double the amount of the tax payable by such person under section 3 in respect of the retail sales made during the period in which he carried on business as a retail dealer without obtaining a certificate of registration, whichever is greater.

(2) On payment to the Collector of any sum referred to in sub-section 1 the accused person shall be discharged, the property seized, if any, shall be released and no further proceedings shall be taken against such person or property in respect of such offence.

Cognizance
of offences.

26. (1) No Court shall taken cognizance of any offence under this Act except with the previous sanction of the Collector and no Court inferior to that of a Magistrate of the second class shall try any such offence.

(2) Except with the previous sanction of the Provincial Government no Court shall take cognizance of any offence under this Act unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed.

CHAPTER VI MISCELLANEOUS

Protection
of persons
acting in
good faith.

27. No suit shall lie against any person for anything in good faith done or intended to be done under this Act or under any rules made thereunder.

Appeal and
revision.

28. (1) Any person aggrieved by any order passed under sub-section (2) of section 3 or under section 8 may, within thirty days after the date of such order, appeal—

(a) to the Revenue Commissioner, if such order is passed by the Collector or Deputy Commissioner of a district, or

(b) to the Collector or Deputy Commissioner of the district, if such order is passed by an officer exercising the powers of a Collector under this Act.

(2) Every order passed in appeal under this section shall, subject to the provisions of sub-section (3), be final.

(3) The Revenue Commissioner may, at any time, call for and examine the record of any case in which any order referred to in sub-section (1) or sub-section (2) is passed for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record, pass any order which he thinks proper.

Exemption
of certain
class of
motor spirits

29. The Provincial Government may, by notification, exempt any motor spirit or any specified class of motor spirits from the provisions of this Act.

Power to
make rules

30. (1) The Provincial Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(a) regulating the recovery of any sum recoverable under section 3;

(b) regulating the assessment of the tax and the issue and service of notices requiring payment;

(c) prescribing the conditions subject to which a certificate of registration under this Act shall be granted and on the breach of which such certificate may be cancelled or suspended;

(d) prescribing the records, books and accounts relating to retail sales to be maintained by retail dealers, the form of and particulars to be contained in such records, books and accounts, the returns and statements relating to retail sales to be furnished by such dealers, and the manner in which such returns and statements shall be verified; and

(e) regulating the production, inspection and impounding of the records, books and accounts relating to retail sales of any retail dealer.

(3) The Provincial Government may, in making any rule under this section, direct that the breach thereof shall be punishable with fine not exceeding five hundred rupees, and in case of a continuing offence a further fine not exceeding one hundred rupees for each day after the first during which the breach has been persisted in.