

ORISSA ACT 1 OF 1996

THE ORISSA SALES TAX (SECOND AMENDMENT) ACT, 1995

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

Be it enacted by the Legislature of the State of Orissa in the Forty-sixth Year of Republic of India as follows :—

Short title and commencement.

1. (1) This Act may be called the Orissa Sales Tax (Second Amendment) Act, 1995.

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

Amendment of section 9.

2. In section 9 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the principal Act), for sub-section (3), the following sub-section shall be substituted, namely :—

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

Provided that the prescribed authority shall refuse to grant a certificate of registration, if the applicant has not paid the dues payable by him in respect of any business under the provisions of this Act and the rules made thereunder :

Provided further that the prescribed authority may, after giving the applicant a reasonable opportunity of being heard, refuse to grant a certificate of registration to the applicant, if—

- (i) any person associated with the business for which the application is made has not paid the dues payable by him in respect of any business under the provisions of this Act and the rules made thereunder ; or
- (ii) any earlier certificate of registration granted to the applicant or any person associated with the business for which the application is made, has been cancelled under the provisions of this Act and the circumstances and reasons, for which such certificate was cancelled, continue to exist ; or
- (iii) for any other good and sufficient reasons to be recorded in writing.”

Insertion of new section 16-AA.

3. After section 16-A of the principal Act, the following section shall be inserted, namely :—

“Regulatory measures for transport of goods through Orissa.

16-AA. (1) When a vehicle or boat carrying goods, coming from any place outside the State and bound for any other place outside the State, passes through the State, the driver or other person in-charge of such vehicle or boat shall—

- (a) declare in such form and manner before the officer-in-charge of the first check-post or barrier after his entry into the State that the goods under transport shall not be unloaded, delivered or sold in the State ;
- (b) obtain, in the prescribed manner, a transit pass in such form containing such particulars as may be prescribed from the said officer ; and
- (c) deliver the transit pass so obtained to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle or boat :

Provided that where the goods carried by such vehicle or boat are, after their entry into the State, transported outside the State by any other vehicle, boat or conveyance, the onus of proving that the goods have actually been moved out of the State shall be on the owner or person-in-charge of the vehicle or boat.

Explanation—In a case where a vehicle or boat owned by a person is hired for transportation of goods by any other person, the hirer of that vehicle or boat shall, for the purpose of this section, be deemed to be the owner of the vehicle or boat, as the case may be.

(2) The officer-in-charge of any check-post or barrier or any other officer, not below the rank of a Sales Tax Officer, duly authorised by the Commissioner, may detain any vehicle or boat and keep it stationary as long as may reasonably be necessary for examination of the contents therein and the records relating to the goods under transport by such vehicle or boat, and seize the same if—

- (a) it is presumed under sub-section (1) that the goods carried by the vehicle or boat, as the case may be, has been sold in the State; or
- (b) the driver or the other person-in-charge of the vehicle or boat, as the case may be, fails, without reasonable cause, to produce or deliver the transit pass required under sub-section (1); or
- (c) he has reason to believe that the goods carried by the vehicle or boat, as the case may be, has been unloaded, delivered or sold within the State in contravention of the declaration furnished under sub-section (1),

he may direct the driver or the other person-in-charge of the vehicle or boat, as the case may be, to pay within a specified period, by way of penalty, a sum equivalent to twenty per centum of the value of the goods under transport by such vehicle or boat, as the case may be, or rupees twenty thousand, whichever is higher, in addition to tax as otherwise payable under this Act, failing which the officer may confiscate the goods under transport in the prescribed manner to recover such penalty and tax :

Provided that—

- (a) before taking any action for confiscation of the goods the officer shall give the driver or the person-in-charge of the vehicle or boat, as the case may be, an opportunity of being heard and, if necessary, may make an enquiry in the manner prescribed ; and
- (b) where the goods under transport are not available at the time of seizure of the vehicle or boat, as the case may be, the officer may detain the vehicle until such penalty and tax are paid.

(3) Where the goods seized are of a perishable nature they shall be sold in the prescribed manner.

(4) Where any goods seized under this section are sold, the sale proceeds thereof, after deduction of the tax including penalty payable under this section and the expenses of such sale, be paid to the person from whom the goods are seized.

(5) No order of penalty shall be made under this section in respect of goods which are not liable to payment of tax under this Act.”.

Insertion of
new Section
16-D.

4. After section 16-C of the principal Act, the following section shall be inserted, namely :—

“Production
and inspec-
tion of
accounts and
documents in
certain cases.

16-D. (1) Without prejudice to the provisions contained in sections 16-A and 16-B, where a transporter or a bailee or the owner or lessee of a warehouse to whom goods are delivered for transmission keeps such goods, before delivery thereof is taken from him, in any office, shop, warehouse, godown, vessel, boat, receptacle, vehicle or any other place, the Commissioner shall have the power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place, as the case may be, and to examine the goods and inspect all records relating thereto and in every such case, the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records shall give all facilities for such examination and inspection and shall produce the bills of sale or such other documents as may be required relating to the goods and give his name and address and the name and address of the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records, as the case may be.

Explanation I—For the purposes of this section—

- (i) "transporter" means the owner or any person having possession or control of a goods vehicle, who transports on account of any other person for hire or on his own account, any goods from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 as the holder thereof, the driver or any other person 59 of 1988 in-charge of such vehicle ;
- (ii) "bailee" means the person to whom goods are delivered ;
- (iii) "lessee" means the person to whom the lease of goods is granted by the lesser ; and
- (iv) "goods vehicle" means a goods carriage as defined in the Motor Vehicles Act, 1988. 59 of 1988

Explanation II—For the purpose of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.

- (2) If the Commissioner has reason to suspect that any transporter, bailee or the owner or lessee of a warehouse is attempting to contravene the provisions of sub-section (1) or to evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the transporter bailee or, as the case may be, the owner or lessee of the warehouse, as may be necessary, granting a receipt for the same and shall retain the same as long as may reasonably be necessary for examination thereof or for a prosecution.
- (3) The power conferred under sub-section (2), shall include the power to break open any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents or any goods may be kept.
- (4) The powers exercisable under sub-section (3) shall not be delegated to any officer below the rank of a Sales Tax Officer appointed under this Act or the rules made thereunder.
- (5) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods :

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make an enquiry in the prescribed manner :

Provided further that where the person affected makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods to be assessed in the prescribed manner with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released."