



The Orissa Entry Tax Act, 1999

Act 11 of 1999

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THE ORISSA ENTRY TAX ACT, 1999
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ORISSA ACT 11 OF 1999

***THE ORISSA ENTRY TAX ACT, 1999**

[Received the assent of the Governor on the 20th September 1999, first published in an extraordinary issue of the *Orissa Gazette*, dated the 27th September, 1999]

AN ACT TO PROVIDE FOR THE LEVY AND COLLECTION OF TAX ON THE ENTRY OF GOODS INTO THE LOCAL AREAS OF THE STATE OF ORISSA FOR CONSUMPTION, USE OR SALE THEREIN AND MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH

Be it enacted by the Legislature of the State of Orissa in the Fiftieth Year of the Republic of India, as follows:—

CHAPTER I**PRELIMINARY**

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Entry Tax Act, 1999.
- (2) It shall extend to the whole of the State of Orissa.
- (3) It shall ** come into force on such date as the State Government may, by notification, appoint.

Definition.

2. In this Act, unless the context otherwise requires,—
 - (a) "Assessing Authority" means the Sales Tax Officer appointed under the Sales Tax Act within the area of his jurisdiction;
 - (b) "Commissioner" means the Commissioner of Sales Tax, Orissaa appointed under the Sales Tax Act;
 - (c) "Dealer" shall have the meaning assigned to it in clause (c) of Section 2 of the Sales Tax Act, and shall include a handling or delivery agent of an agent acting in any manner on behalf of the Principal;
 - (d) "Entry of goods" with all its grammatical variations and cognate expressions, means entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use or sale therein;
 - (e) "Importer" means a Dealer or any other person who in any capacity brings or causes to be brought any scheduled goods into a local area for consumption, use or sale therein;
 - (f) "Local area" means the areas within the limits of any—
 - (i) Municipal Corporation,
 - (ii) Municipality,
 - (iii) Notified Area Council,
 - (iv) Grama Panchayat, and
 - (v) Other local authority by whatever name called, constituted or continued in any law for the time being in force and shall also include an industrial township constituted under section 4 of the Orissa Act 23 of 1950. Municipal Act, 1950;

*For the Bill, see *Orissa Gazette*, Extraordinary, dated the (No.)

**Come in to force w.e.f. 1st D 1999 Vide F. D. Notification No. 44748-C. T. A. 30/99-F, *Orissa Gazette* Extraordiae 4th November, 1999 (No. 1509)

- (g) "Person" includes any Company or Association or Body of individuals whether incorporated or not and also a Hindu undivided family, a Firm, a Local Authority, Government of India, the Government of any State or Union Territory;
- (h) "Motor Vehicle" means a Motor Vehicle as defined in clause 28 of section 2 of the Motor Vehicles Act, 1988; 59 of 1988
- (i) "Prescribed" means prescribed by rules;
- (j) "Purchase value" means the value of scheduled goods as ascertained, from original invoice or bill and includes Insurance charges, excise duties countervailing charges, sales tax, transport charges, freight charges and all other charges incidental to the purchase of such goods;

Provided that where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill produced is proved to be false or if the scheduled goods are required or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market;

- (k) "Rules" means rules made under this Act;
- (l) "Sales Tax Act" means the Orissa Sales Tax Act, 1947; Orissa Act
14 of 1947.
- (m) "Scheduled goods" means the goods, specified in the schedule to this Act;
- (n) "State Government" means the Government of Orissa;
- (o) "Tribunal" means the Orissa Sales Tax Tribunal referred to in sub-section (2) of Section 3 of the Sales Tax Act;
- (p) "Year" means the Financial year; and
- (q) words and expressions used herein and not defined in this Act, but defined in the Sales Tax Act shall have the meaning respectively assigned to them in that Act.

CHAPTER II

LEVY OF TAX

Levy of tax

3. (1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve per centum of the purchase value of such goods from such date as may be specified by the State Government not later than thirty days after this Act comes into force and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.

(2) The tax leviable under this Act shall be paid by every Dealer in scheduled goods or any other person who brings or causes to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry;

Provided that no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or Dealer under this Act.

Explanation—Where the goods are taken delivery of on their entry in to a local area or brought into the local area by a person other than a Dealer, the Dealer who takes delivery of the goods from such person or make carriage of the goods shall be deemed to have brought or caused to have brought the goods into the local area

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State of Orissa under the Motor Vehicles Act, 1988 and rate of tax shall be at such rate or rates as may be specified by the State Government by notification on the purchase value of such motor vehicle. 59 of 1988

Reduction in tax liability 4. (1) Where an importer of motor vehicle liable to pay tax under sub-section (3) of section 3 being a Dealer in motor vehicles becomes liable to pay of tax under the Sales Tax Act by virtue sale of such motor vehicles then his liability under the Sales Tax Act shall be reduced to the extent of tax paid under this Act.

Explanation—For the purpose of this sub-section the chassis and the vehicle with body built on the chassis shall be treated as one and the same goods.

(2) When an importer or manufacturer of goods specified in Part-III of the schedule except motor vehicles pays tax under sub-section (1) of section 3 or section 26 of this Act, being a Dealer under the Sales Tax Act becomes liable to pay tax under the said Act by virtue of Sale of such goods, then his liability under the Sales Tax Act shall be reduced to the extent of tax paid under this Act.

Registration of dealers 5. (1) Every Dealer in scheduled goods who is liable to be registered under the Sales Tax Act shall get himself registered under this Act, in such manner and within such periods as may be prescribed.

(2) The registration under sub-section (1) shall be made in such manner and for such period as may be prescribed:

Provided that the Dealers already registered under the Sales Tax Act shall be deemed to be registered under this Act without furnishing any security under this Act on submission of an application and necessary fees in the prescribed manner.

Exemption from tax. 6. The State Government may by notification and subject to such condition and restrictions as it may impose exempt from levy of tax any class of person who are engaged in charity or social services.

CHAPTER III

RETURN, ASSESSMENT, PAYMENT, RECOVERY AND COLLECTION OF TAX

Returns and assessment. 7. (1) Notwithstanding anything contained in section 10, every registered Dealer and every Dealer who is liable to get himself registered under this Act shall every year submit a return to the assessing authority within such period and in such manner containing such particulars as may be prescribed.

(2) Before any Dealer submits any return under sub-section (1) he shall in the prescribed manner pay in advance the full amount of tax payable by him on the basis of such return as reduced by any tax already paid under section 10 and shall furnish along with the return satisfactory proof of the Payment of such tax and after the final assessment is made, the amount of tax so paid shall be deemed to have been paid towards the tax finally assessed.

(3) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the Dealer on the basis thereof.

(4) If no return is submitted by the Dealer under section (1) within the period prescribed or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, he shall assess the Dealer to the best of his judgment recording the reasons for such assessment:

Provided that before taking action under this sub-section the Dealer shall be given reasonable opportunity of proving the correctness and completeness of the return submitted by him.

(5) While making any assessment under sub-section (4), the assessing authority may also direct the Dealer to pay in addition to the tax assessed a penalty not exceeding one and a half times the amount of tax due that was not disclosed by the Dealer in his return or in the case of failure to submit a return one and a half times the tax assessed, as the case may be.

Security
Deposit.

8. Subject to the provisions of section 5, the provisions of Sales Tax Act shall *mutatis mutandis* apply to the security and enhancement of security for registered Dealer under this Act.

Payment of
tax for entry
of goods
escaping
assessment.

9. (1) Where for any reason all or any of the scheduled goods brought by a Dealer has escaped assessment to tax, the assessing authority may subject to the provisions of sub-section (3) at any time within a period of three years from the expiry of the year to which the tax relates proceed to assess to the best of his judgment the tax payable on the entry of such goods after issuing a notice to the Dealer and after making such enquiry as he considers necessary.

(2) In making an assessment under sub-section (1) the assessing authority may, if he is satisfied that the escape from assessment is due to willful non-disclosure of the entry of such goods by the Dealer, direct him to pay in addition to the tax assessed under sub-section (1) a penalty not exceeding one and a half times the tax so assessed:

Provided that no penalty under this sub-section shall be directed to be paid unless the Dealer affected has been given a reasonable opportunity of showing cause against such imposition.

(3) In computing the period of limitation for assessment under this section the time during which an assessment has been deferred on account of any stay order granted by any Court, shall be excluded.

Payment of
tax in
advance.

10. (1) Subject to the provisions of the rules, every registered Dealer and every Dealer liable to get himself registered under this Act shall send every month to the assessing authority a statement containing such particulars as may be prescribed and shall pay in advance the full amount of tax payable by him on the basis of the scheduled goods brought by him during the preceding month in to the local area and the amount so payable shall for the purpose of sub-section (4) of section 11 be deemed to be the amount due under this Act from such Dealer.

(2) If at the end of the year it is found that the amount of tax paid in advance by any Dealer for any month or for the whole year in the aggregate was less than the tax payable for that month or the tax for the whole year as the case may be, as finally assessed, by more than fifteen per cent, the assessing authority may direct such Dealer to pay, in addition to the tax, by way of penalty, a sum not exceeding one and a half times the differential amount between the tax payable and the tax paid for the month or for the whole year, as the case may be:

Provided that no penalty under this sub-section shall be imposed unless the Dealer affected has been given a reasonable opportunity of showing cause against such imposition.

(3) If no such statement is submitted by a Dealer under sub-section (1) before the date prescribed or if the statement submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority may assess the Dealer provisionally for that month to the best of his judgment, recording the reasons for such assessment, and proceed to demand and collect the tax on the basis of such assessment:

Provided that before taking action under this sub-section the Dealer shall be given a reasonable opportunity of being heard.

Payment and
Recovery of
tax.

11. (1) The tax under this Act shall be paid in such manner, in such instalments, if any, and within such time, as may be prescribed.

(2) If default is made in making payment in accordance with sub-section (1)—

(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the property of the Dealer or any other person or persons liable to pay tax under this Act; and

(ii) the Dealer or any other person or persons liable to pay the tax under this Act shall pay a penalty equal to two and half per cent of such amount for each month subsequent to the first three months as aforesaid.

Explanation—For the purposes of clause (ii) the penalty payable for a part of a month shall be proportionately determined.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner may subject to such conditions as may be prescribed remit the whole or any part of the penalty payable in respect of any period by any Dealer or person or class of persons.

(4) Any tax assessed, or any other amount due under this Act from a Dealer or any other person or persons may without prejudice to any other mode of collection be recovered as an arrear of public demand or in accordance with the provisions contained in the schedule to the Sales Tax Act:

Provided that where a Dealer or any other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of tax or other amount, no proceedings for recovery under this sub-section shall be made or continued until the disposal of such appeal or application for revision.

Recovery of
tax from
certain
other
persons.

12. (1) The assessing authority may, at any time, by notice in writing, a copy of which shall be forwarded to the Dealer from whom any tax assessed is due at his last address known to the assessing authority, require any person from whom money is due to the Dealer or any person who holds or may subsequently hold money for or on account of the Dealer to pay to the assessing authority either forthwith upon the money becoming due or being held at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the Dealer in respect of arrears of tax or penalty or the whole of the money when it is equal to or less than that amount.

(2) The assessing authority may, at any time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice, not exceeding six months.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the Dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the Dealer after receipt of the notice referred to in this section shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the liability of the Dealer for the amount due under this Act, whichever is less.

(5) Where any person to whom a notice under this section is sent objects to it on the ground that the sum demanded or any part thereof is not due by him to the Dealer or that he does not hold any money for or on account of the Dealer, then, nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid, be charged on the properties of the said person and may be recovered as if it were an arrear of land revenue.

Explanation—For the purpose of this section, the amount due to Dealer or money held for or on account of Dealer shall be computed after taking into account such claims, as may have fallen due for payment by such Dealer to such person as may be lawfully subsisting.

Liability
of firm.

13. (1) Where any firm is liable to pay any tax or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Where a partner of a firm liable to pay any tax, or other amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax or other amount remaining unpaid at the time of his retirement and any tax or other amount due up to the date of retirement, though unassessed, after due assessment of the same.

Tax payable on transfer of business etc. 14. (1) When the ownership of the business of a Dealer liable to pay any tax or penalty, or any other amount under the provisions of this Act, is transferred to the transferee and the transferee shall jointly and severally be liable to pay any tax or penalty or any other amount payable but remaining unpaid at the time of transfer, and for the purpose of recovery from the transferee, such transferee shall be deemed to be the Dealer liable to pay the tax or penalty or other amount under this Act.

Explanation—When a person carries on business in the same premises substantially in the same scheduled goods in succession to a dealer liable under this Act, it shall be presumed that there has been entire transfer of the business unless the contrary is proved.

(2) When a firm liable to pay the tax or penalty is dissolved, the assessment of the tax and imposition of penalty shall be made as if no dissolution of the firm had taken place and every person who was at the time of dissolution a partner of the firm and the legal representative of any such partner, who is deceased, shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(3) When an undivided Hindu family liable to pay the tax or penalty is partitioned the assessment of the tax and the imposition of penalty shall be made as if no partition of the family had taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(4) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the Dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that in respect of any tax or penalty assessed as payable by any such dealer or any tax or penalty which would have been payable by him under this Act, if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

CHAPTER IV

TAX AUTHORITIES

Tax Authorities. 15. (1) There shall be such classes and such number of tax authorities including assessing authorities as may be specified by the State Government for the purposes of this Act.

(2) The authorities specified under sub-section (1) shall be appointed by the State Government and shall exercise, discharge and perform such powers, duties and functions in respect of such areas and such classes of persons or such dealers as may be specified by the State Government.

(3) Where any orders issued under sub-section (2) have assigned to two or more tax authorities the same area or the same Dealers or classes of dealers or the same cases or classes of cases, they shall perform their functions in accordance with such order as the Commissioner may make for the distribution and allocation of the work.

(4) The Commissioner shall have the power of superintendence and control over all persons employed in the administration of this Act.

Appeals. 16. (1) Any person objecting to an order affecting him passed under the provisions of this Act may appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority)

(2) The appeal shall be preferred within thirty days,

(i) in respect of an order of assessment, from the date on which the notice of assessment was served on the appellant, and

(ii) in respect of any other order from the date on which the order was communicated to the appellant:

Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid but within a period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(3) (a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the tax and penalty not disputed in the appeal.

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred :

Provided that the appellate authority may in its discretion, give such directions as it thinks fit in regard to the payment of tax or other amount payable under clause (b) if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(5) In disposing of an appeal, the appellate authority may after giving the appellant a reasonable opportunity of being heard,—

(a) in the case of an order of assessment or penalty,—

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed ; or

(iii) pass such other orders as it may think fit; and

(b) in the case of any other order, confirm, cancel or vary such order.

(6) Every order passed on appeal under this section shall, subject to the provision of sections 17 to 20, be final.

Appeal
to the
Tribunal.

17. (1) Any officer empowered by the State Government in this behalf or any other person objecting to an order passed by the appellate authority may appeal to the tribunal within a period of sixty days from the date on which the order was communicated to him.

(2) The Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1) but within the period of six months if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(3) No appeal preferred by a dealer or any other firm against an order passed by the appellate authority shall be entertained by the tribunal unless fifty per cent of the disputed amount of tax and penalty confirmed by the appellate authority is paid by the dealer.

(4) Subject to the provisions of the Sales Tax Act, the Tribunal shall dispose of the appeal in the prescribed manner.

Revision by
the Commi-
ssioner of
orders
prejudicial to
revenue.

18. (1) The Commissioner or any other officer specially empowered by him in this behalf may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any assessing authority or appellate authority is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) The power under sub-section (1) shall be exercisable only within a period of four years from the date of the order sought to be revised was passed.

Explanation—In computing the period of limitation for the purposes of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Appeal to
High Court:

19. (1) Any assessee objecting to an order passed under section 18 may appeal to the High Court within sixty days from the date on which the order was communicated to him:

Provided that the High Court may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(2) The appeal shall be in the prescribed form, shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred rupees.

(3) The High Court shall, after giving both parties to the appeal a reasonable opportunity of being heard pass such order thereon as it thinks fit.

Rectification
of mistakes:

20. (1) With a view to rectifying any mistake apparent from the record, the assessing authority, appellate authority or revising authority may, at any time, within five years from the date of an order passed by it, amend such order:

Provided that an amendment which has the effect of enhancing an assessment or otherwise the liability of the assessee shall not be made unless the assessing authority, appellate authority or revising authority, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(2) Where an order has been considered and decided in any proceedings by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) An order passed under sub-section (1), shall be deemed to be an order under the same provision of law under which the original order the mistake in which was rectified had been passed.

CHAPTER V

MISCELLANEOUS

Maintenance of
accounts
by dealers
and issue
of sale bills
or cash
Memorandum.

21. (1) Every registered dealer and every dealer liable to get himself registered for the purposes of this Act shall maintain and keep true and complete accounts relating to his business as well as such other registers or records as laid down under Sales Tax Act and all such accounts, registers or records shall be retained by the dealer in his safe custody till his assessment or reassessment, as the case may be, for the relevant year is completed or, in case where any appeal, revision or other proceedings in respect of such year has been filed and is pending, the same is disposed of.

(2) Every registered dealer and every dealer liable to get himself registered for the purposes of this Act shall issue, in respect of all scheduled goods sold by him a bill or cash memorandum signed and dated by him or his servant, manager or agent showing particulars of his name, address, registration number, if any, and description, quantity and value of goods sold and shall keep the counterfoil or duplicate of such bill or cash memorandum with him and retain it in his custody for the period mentioned in sub-section (1):

Provided that the selling dealer shall also obtain and record in the sale bill or cash memorandum, the name and full address of the buyer, together with his registration number, if any, where the buyer is a dealer, in cases where the price of goods is one thousand rupees or more:

Provided further that the provisions of this sub-section shall not apply to a dealer whose total turn over in scheduled as well as other goods in a year does not exceed ten thousand rupees.

(3) Every sale bill or cash memorandum to be issued as per sub-section (2) shall be serially machine numbered.

Power to order production of accounts and powers of entry, inspection and seizure.

22. (1) Any officer empowered by the State Government in this behalf including the assessing authority, may for the purpose of this Act, require any dealer to produce before him the accounts and any other documents, and to furnish any information relating to the stocks, purchases, sale and deliveries of scheduled goods by the dealer and also any other information relating to his business.

(2) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers, records and other documents of the dealer as he may consider necessary, and shall give the dealer a receipt for the same and the accounts, registers, records and documents so seized shall be retained by such officer so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

Recognition of Sales Tax check-gate or barriers for the purpose of this Act.

23. (1) With a view to preventing or checking evasion of tax under this Act, check-posts or barriers or both, as the case may be, established, or erected under the provisions of Sales Tax Act shall be deemed to be recognised check-posts or barriers for the purpose of this Act.

(2) At every check-post or barrier mentioned in sub-section (1) or at any other place when so required by an officer empowered by the State Government in this behalf, the driver or any other person in charge of a goods vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may reasonably be necessary and allow the officer-in-charge of the check-post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat and inspect all records relating to the goods carried, which are in the possession of such driver or other person in charge who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat.

(3) The officer-in-charge of the check-post or barrier or the officer empowered as aforesaid shall have power to seize and confiscate any goods which are under transport by a goods vehicle or a boat and are not covered by a way bill issued by the person who consigns the goods in the manner prescribed under the Sales Tax Act:

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

Provided further that where the person affected makes payment to such officer of the amount of tax payable in respect of such goods to be assessed in the prescribed manner, the goods seized as aforesaid shall be released:

Provided also that no order of confiscation shall be made in respect of goods which are not liable to payment of tax under this Act.

Transport of goods by road through the State and issue of transit pass.

24. When a vehicle or boat coming from any place outside the State and bound for any other place outside the State and carrying scheduled goods, passes through the States the driver or any other person in charge of such vehicle shall furnish the necessary information and obtain a transit pass in the prescribed manner and subject to the conditions provided under section 16 AA of the Sales Tax Act and the rules made thereunder:

Provided that when a transit pass has been issued under Sales Tax Act, no separate transit pass under this section shall be required.

Penalties for contravention of provisions of sections 23 and 24.

25. (1) If any person, being the driver or the person in charge of a goods vehicle or boat contravenes the provisions of section 23 or section 24, the assessing authority after giving such person a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding twice the amount of tax payable in respect of the goods and may for the purpose of realisation of the penalty seize such goods.

(2) Where the penalty levied under sub-section (1) is paid, the goods so seized shall be released, but where such penalty is not paid by the person concerned within the time prescribed, the Commissioner shall confiscate the goods so seized.

(3) If the goods which are seized or confiscated under the preceding sub-sections are of perishable nature, they shall be sold in the prescribed manner.

Manufactures to collect and pay tax.

26. (1) Notwithstanding anything contained in this Act, every manufacturer of scheduled goods who is registered under the Sales Tax Act shall in respect of sale of its finished products effected by it to a buying dealer, either directly or through an intermediary, shall collect by way of tax an amount equal to the tax payable on the value of such finished products under section 3 of this Act by the buying dealer in prescribed manner and shall pay the tax so collected into the Government Treasury:

Provided that the liability of the manufacturer for payment of tax under the sub-section during a year shall be reduced to the extent of tax paid under this Act on the raw materials which directly go into the composition of the finished products during that year in the prescribed manner.

(2) Every manufacturer collecting tax under sub-section (1) shall send every month to the assessing authority of the area a statement in the prescribed form containing particulars of tax collected during the preceding month and pay the full amount of tax so collected by it within twenty days after close of the preceding month in which such collection were made.

(3) The amount of tax collected under sub-section (1) and not paid as required under sub-section (2) shall for the purpose of section 11 be deemed to be an amount due under this Act.

(4) Every manufacturer collecting tax under sub-section (1) shall reflect the amount of tax collected under this Section in the cash memo or sale invoice issued to the buyer.

(5) Collection and payment of tax in accordance with sub-sections (1) and (2) shall be without prejudice to any other mode of recovery of tax under this Act from the buying dealer and shall be subject to such adjustments as may be necessary on the completion of assessment of such buying dealer.

Forwarding agency, etc., to submit returns.

27. Every clearing or forwarding house or agency, commission agency, transporting agency, shipping agency, shipping out-agency or steamer agency in the State shall submit to the assessing authority of the area such return as may be prescribed of all scheduled goods cleared, forwarded, transported or shipped by it into the concerned local area and the assessing authority concerned shall have the power to call for and examine the books of accounts or other documents in the possession of such agency with a view to verify the correctness of the return submitted.

Submission of certain records by owners.

28. The owner or other person in charge of a scheduled goods vehicle or boat shall, in respect of the goods transported by him in such vehicle or boat submit to the assessing authority having jurisdiction over the local area in which the scheduled goods are delivered, such particulars thereof within such time and manner as may be prescribed.

Offences and penalties.

29. (1) Any person who:-

- (a) being a dealer in scheduled goods fails to submit a return as required by the provisions of this Act or the rules made thereunder; or
- (b) being a person obliged to get himself registered under this Act does not get himself so registered; or
- (c) fails to pay within the time allowed any tax assessed on him or any penalty levied on him under this Act; or
- (d) fails to keep true and complete accounts; or
- (e) fails to comply with notice issued under section 9; or
- (f) fails to submit a statement as required by section 10; or
- (g) fails to issue sale bill or cash memorandum in accordance with the provisions of sub-sections (2) and (3) of section 21;

shall, on conviction by a Magistrate, be punishable with simple imprisonment for a term which may extend to six months or fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both.

(2) Any person who:-

- (a) wilfully submits an untrue return, or not being already an assessee under this Act, fails to submit a return as required by the provisions of this Act or the rules made thereunder; or
- (b) wilfully submits an untrue statement under Section 10; or
- (c) fraudulently evades the payments of any tax assessed on him or other amount due from him under this Act; or
- (d) wilfully acts in contravention of any of the provisions of this Act; shall, on conviction, in addition to the recovery of any tax that may be due from him, be punishable with simple imprisonment which may extend to twelve months or fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees or with both and when the offence is continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence.

Cognizance of offences.

30. No court shall take cognizance of any offence punishable under sub-section (2) of section 29 except with the previous sanction of the Commissioner.

Composition of offences.

31. The prescribed authority may accept from any person who has committed or is reasonable suspected of having committed an offence punishable under this Act, by way of composition of such offence,—

- (a) Where the offence consists of the failure to pay or the evasion of any tax or other amount recoverable under this Act in addition to the tax or amount so recoverable, a sum of money not exceeding five thousand rupees or double the amount of the tax or amount recoverable whichever is greater, and
- (b) in other cases, a sum of money not exceeding five thousand rupees.

Offences by companies.

32. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible, to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other Officer of the company, such director, manager, managing agent or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—

- (a) "Company" means any body corporate and includes a firm or other association of individuals; and
- (b) "Director" in relation to a firm means a partner in the firm.

Bar of certain proceedings.

33. (1) No suit, prosecution or other proceedings shall lie against any officer or servant of the State Government, for any act done or purporting to be done under this Act without the previous sanction of the State Government.

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceedings if the act was done in good faith in the course of the performance of duties or the discharge of the functions imposed by or under this Act.

Burden of proof.

34. For the purpose of levy and assessment of tax under this Act, it shall be presumed that every registered dealer or person liable to get himself registered for the purposes of this Act whose place of business is within a local area is liable to pay the tax on the purchase price of all scheduled goods as are dealt with by him and the burden of proving that any transaction of such dealer or person in any of the scheduled goods is not liable to tax shall lie on such dealer or the person, as the case may be.

Refund of tax in certain cases.

35. The tax paid by a registered dealer in respect of any scheduled goods shall be refunded to him, where such goods are sold by him in the course of export out of the territory of India.

Explanation—(1) For the purposes of this section, the expression "export out of the territory of India" shall have the meaning assigned to it under the provisions of sub-section (1) of section 5 of the Central Sales Tax Act, 1956. 74 of 1954

(2) The burden of proving that any scheduled goods were sold in the course of export out of the territory of India shall be on the registered dealer.

Assignment of proceeds of the tax.

36. Subject to such conditions and in such manner as may be prescribed, there shall be paid to each local authority every year such sum as may be determined by the State Government from out of the tax collected under this Act.

Power to make rules.

37. (1) The State Government shall subject to the condition of previous publication, make rules, by notification, to carry out the purpose of this Act:

Provided that previous publication shall not be necessary where the rules are made for the first time after the commencement of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

- (a) all matters expressly or otherwise required or allowed by this Act to be prescribed;
- (b) the assessment to tax in respect of business which is discontinued or the ownership of which has changed;
- (c) the assessment to tax in respect of business owned by minor and other incapacitated persons or by persons residing outside the State of Orissa;
- (d) the assessment to tax under this Act of any scheduled goods which have escaped assessment;
- (e) procedure for registration of dealers under section 5;
- (f) refund of tax collected if the scheduled good has not been consumed sold or used within the local area;
- (g) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;
- (h) the duties and power of officers appointed for the purpose of enforcing the provisions of this Act;
- (i) generally regulating the procedure to be followed, and the forms to be adopted in proceedings under this Act;
- (j) any other matter including levy of fees for which there is no provision or no sufficient provision in this Act and for which provision is in the opinion of the State Government necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the State Government may provide that a person guilty of a breach thereof shall on conviction be punishable with fine which may extend to one thousand rupees and, where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

Servants and officer to be public servants. 38. All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. **XLV of 1860.**

Notifications to be laid before the Assembly. 39. All notifications issued under section 3 and 6 shall, as soon as possible after they are published, be laid before the Orissa Legislative Assembly for a total period of fourteen days which may comprise in one or more sessions.

Power to remove difficulties. 40. If any difficulty arises in giving effect to the provisions of this Act the Government may, as the occasion may require, by order, do anything not inconsistent with the provisions of this Act or the rules, which appears to them necessary for the purpose of removing the doubt or difficulty:

Provided that no order shall be issued under this section after the expiry of a period of two years from the date of commencement of this Act.

Repeal and Saving. 41. (1) Clause (kk) of sub-section (1) of section 131 of the Orissa Municipal Act, 1950 is hereby repealed. **Orissa Act 23 of 1950.**

(2) Notwithstanding such repeal it shall not affect—

- (a) the previous operation of the said clause or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred thereunder; or
- (c) any penalty, forfeiture or punishment incurred in respect of the offence committed against the said clause; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said clause has not been repealed.

SCHEDULE

PART I

1. Coal, Coke
2. Cotton yarn, Waste Cotton
3. Iron and Steel in bucket, flat, rods and other products or iron and steel including those for buildings/structural works.
4. Crude Petroleum Oil
5. Pure silk fabric, silk, artificial silk yarn, raw-silk
6. Drugs & Chemicals including Medicine
7. Furnace Oil
8. Gunny bags, jute twine, jute & jute products
9. Kerosene
10. Safety matches
11. Sheets, rods, etc. of non-ferrous metal including aluminium
12. Bricks & roofing tiles
13. Caustic soda, soda ash & silicate of soda
14. Paper including news-print
15. Hides, skin-raw or dusted
16. Tobacco & Tobacco products
17. Jeera, Dhania
18. Onion & Ginger
19. Sugar
20. Staple fibre yarn
21. Pepper & other spices
22. LPG, Natural gas & other gases
23. Plastic goods, moulded luggage & plastic furniture
24. Tooth brush, tooth paste, tooth powder
25. Toilet soap, detergents & cosmetic products
26. Paints & Varnishes of any form
27. Sanitary wares & fittings
28. Footwear
29. Telephone & Accessories
30. Typewriting machine with components
31. Cigarettes & lighter
32. Pan-masala & other tobacco products
33. IMFL/Beer
34. Aeroplanes, spare parts & accessories

35. Arms, rifles, pistols etc.
36. Wireless reception equipments, VSAT & Tele communication equipments
37. Agriculture machinery i.e. pump sets, tractor and power tiller, combined hardware etc. and components/accessories thereof.
38. Raw prawn/processed prawn/all sea food
39. Betel nut
40. Petrol, diesel, diesel lubricants; etc.
41. Timber and Kendu leaf
42. Spectacles, lenses, glasses
43. Butter, ghee and pasteurised milk
44. Vanaspati edible oil/vegetable oil/solvent oil
45. Cement and Asbestos

PART II

1. Cakes, Pastries, Sweetmeat, Eatalc
2. Electrical good including motors, materials for transmission towers and conductors/cable for manufacture.
3. Textile products including cotton fabrics and ready made garments
4. Soft drinks, fruit juices, etc.
5. Cinematographic equipment including camera, projector, sound recorder etc.
6. Photographic cameras, enlargers, lenses with spare parts/components thereof.
7. Electrical appliances excluding those specified elsewhere in this schedule.
8. Voltage stabiliser and other office equipments not specified elsewhere including its accessories and spare parts.
9. Machinery and equipments used in manufacture, mining, generation of electricity, or for execution of works contract or for any other purpose.
10. Furniture including steel, plastic and aluminium furnitures

PART III

1. Copier, xerox machine, Fax, TV, VCR, VCP
2. Motor vehicles, two-wheelers, three-wheelers
3. Marble, Decorative Stones/Tiles, Cuddpah Stone, Granite Stone
4. Air-Conditioners
5. Air-Coolers

ORISSA ACT 5 OF 2000

THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2000

[Received the assent of the Governor on the 21st July 2000, first published in an extraordinary issue of the Orissa Gazette, dated the 24th July 2000]

AN ACT TO AMEND THE ORISSA ENTRY TAX ACT, 1999.

B it enacted by the Legislature of the State of Orissa in the Fifty first Year of the Republic of India as follows:—

- Short title. 1. This Act may be called the Orissa Entry Tax (Amendment) Act, 2000.
- Amendment of section 2. 2. In section 2 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as the principal Act), for clause (f), the following clause shall be substituted, namely :—
- Orissa Act 11 of 1999.
- (f) "Local area" means the areas within the limits of any —
- (i) Municipality constituted under the Orissa Municipal Act, 1950. Orissa Act 23 of 1950.
- (ii) Grama Panchayat constituted under the Orissa Grama Panchayats Act, 1964 ; Orissa Act 13 of 1965.
- (iii) other local authority by whatever name called, constituted or continued in any law for the time being in force,
- and includes the area within an industrial township constituted under section 4 of the Orissa Municipal Act, 1950 ; Orissa Act 23 of 1950.
- Amendment of section 3. 3. In section 3 of the principal Act,—
- (i) in sub-section (1), the words "not later than thirty days after this Act comes into force" shall be omitted ;
- (ii) to sub-section (1), the following proviso shall be added, namely :—
- "Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a Dealer shall pay in lieu, of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded." ; and
- (iii) the following Explanation shall be added at the end, namely :—
- "*Explanation*—For the removal of doubts, it is hereby declared that where any scheduled goods have been subjected to the levy of Octroi under the Orissa Municipal Act, 1950 prior to the commencement of this Act for entry into any local area, those goods shall not be subjected to the levy of entry tax under this Act for their entry into that area on or after such commencement." Orissa Act 23 of 1950.
- Amendment of section 4. 4. In section 4 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—
- "(3) The reduction in tax liability of an importer as provided in sub-section (1) or of an importer or manufacturer as provided in sub-section (2) shall not be allowed, unless the entry tax paid and tax payable under Sales Tax Act are shown separately in the cash memo or the bill or invoice issued by him for the sale by virtue of which such liability accrues."
- Amendment of section 7. 5. In section 7 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—
- "(2) Before any Dealer submits a return under sub-section (1), he shall, in the prescribed manner, pay in advance the full amount of tax payable by him on the basis of such return as reduced by any tax already paid under section 10, or of the composition money fixed under the proviso to sub-section (1) of section 3, as the case may be, and shall furnish alongwith the return satisfactory proof of such payment; and after the final assessment is made, the amount of tax so paid shall be deemed to have been paid towards the tax finally assessed."

*For the Bill, see Orissa Gazette, Extraordinary, dated the 29th June, 2000 (No. 942)

Amendment of section 25. 6. In section 25 of the principal Act, in sub-section (1), for the words "not exceeding", the words "equal to" shall be substituted.

Amendment of Schedule. 7. In the Schedule to the principal Act,—

(i) in Part I,—

(a) for item 3, the following item shall be substituted, namely :—

"3. Iron and Steel as specified under section 14 of the Central Sales Tax Act, 1956".

(b) for item 23, the following item shall be substituted, namely :—

"23. Polythene, High Density Poly Ethylene (HDPE), Poly Propylene (PP) including wovensack, plastic goods, moulded luggage excluding plastic or moulded furniture.",

(c) for item 28, the following item shall be substituted, namely :—

"28. Foot Wear of all varieties",

(d) in item 32, the words "including Zarda" shall be added at the end,

(e) in item 37, for the words "combined hardware", the words "combined harvester" shall be substituted,

(f) in item 38, the expression "all sea food" shall be omitted,

(g) in item 41, after the word "Timber", the commas and words, "Bamboo, Wood pulp and Mahua flower" shall be inserted,

(h) for item 45, the following item shall be substituted, namely :—

"45. Cement, Asbestos including Asbestos Cement, other Asbestos products and Asbestos Cement products.", and

(i) after item 45, the following items shall be added, namely :—

"46. Rubber and Synthetic Rubber products including tyres and tubes.

47. Leather goods not including Footwear

48. Carry bags of all varieties, Ladies handbags and Vanity bags of all varieties.

49. Doors, Shutters and Hardware products

50. Automobile spare parts and components

51. Potato

52. Egg

53. Milk powder, Tinned food and beverages

54. Adhesives

55. Plywood, Laminated sheets, Sheet glass

56. Agarbati

57. Gudakhu

58. Tea and Coffee (loose or packed)

59. Minerals including Bauxite, Chromite, Dolomite, Limestone, Manganese and Iron ore, but not including Coal and Coke.

60. Fruits

61. Fish

62. Sulphur, Rock Phosphates, Ammonia, Sulphuric Acid, Hydrochloric Acid, Liquid Chlorine, Caustic soda, Alumina.

63. Precious and semi-precious gemstones ;

(f) In part II,—

- (a) in item 1, for the word "Eatable", the words and commas "Toffees, Biscuits, Chocolates, Ice cream" shall be substituted,
- (b) in item 6, the words "and Photographic films" shall be added at the end,
- (c) in item 8, after the words "Voltage stabiliser", the comma, words, letters and brackets, "Uninterrupted Power supply System (UPS)" shall be inserted,
- (d) in item 9, after the words "Machinery and equipments", the words "and spare parts and components" shall be inserted, and
- (e) after item 10, the following items shall be added, namely :—
 11. Bitumen and Asphalts
 12. Elevator and Lift and their spare parts and components
 13. Generator and Transformer
 14. Mobile telephone and its spare parts and components
 15. Poultry
 16. Fireworks
 17. Clocks, Watches and Time pieces
 18. Cushions, mattresses, pillows and other articles made wholly or partly of rubber foam or synthetic resin and plastic foam.
 19. Steel Almirah and Steel Cabinet
 20. Dry fruits, Jam, Potato chips, Packaged Cashew Nuts and Pickles
 21. Cornflakes, Noodles and Pappad
 22. Greeting Cards"

ORISSA ACT 2 OF 2004
THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2003

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ORISSA ACT 2 OF 2004

***THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2003**

[Received the assent of the Governor on the 30th January, 2004, first published in an Extraordinary issue of the *Orissa Gazette*, dated the 5th February, 2004 (No. 192)]

AN ACT FURTHER TO AMEND THE ORISSA ENTRY TAX ACT, 1999.

BE it enacted by the Legislature of the State of Orissa in the Fifty-fourth Year of the Republic of India as follows:—

Short title
and
commencement.

1. (1) This Act may be called the Orissa Entry Tax (Amendment) Act, 2003.

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

Amendment
of Section 2.

2. In Section 2 of the Orissa Entry Tax Act, 1999 (hereinafter referred to as the principal Act),—

Orissa Act
11 of 1999.

(i) for clause (a), the following clause shall be substituted, namely:—

(a) "Assessing Authority" means the Sales Tax Officer appointed under the Sales Tax Act or an Assistant Commissioner of Sales Tax who has been delegated with the powers and duties of assessment by the Commissioner under Section 17 of the Sale Tax Act, within the area of his jurisdiction; and

(ii) in clause (h), the words "excluding any tractor, earth mover, excavator, bulldozer or road-roller" shall be added at the end.

Omission of
Section 4.

3. Section 4 of the principal Act shall be omitted.

Amendment
of Section 6.

4. In Section 6 of the principal Act, after the words "levy of tax", the words "any Scheduled goods, either in part or in full, in the public interest or" shall be inserted.

Amendment
of Section 10.

5. In Section 10 of the principal Act,—

(a) to sub-section (1), the following proviso shall be added, namely:—

"Provided that a Dealer who files quarterly return under the Sales Tax Act may send the said statement every quarter paying in advance the full amount of such tax as payable for the preceding quarter;";

(b) in sub-section (2), after the word "month" wherever it occurs, the words "or quarter" shall be inserted; and

(c) in sub-section (3), after the word "month", the words and commas "or quarter, as the case may be," shall be inserted.

Amendment
of Section 23.

6. In Section 23 of the principal Act, —

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

*For the Bill, See *Orissa Gazette*, Extraordinary, dated the 4th February 2004 (No. 192)

"(2) At every check-post or barrier mentioned in sub-section (1) or at any other place when so required by the officer-in-charge of the check-post or barrier or any Assessing Authority, the driver or any other person in charge of--

- (a) a goods vehicle, boat or other carrier by which any goods are under transport; or
- (b) a motor vehicle referred to in sub-section (3) of Section 3 which is in transit,

shall stop the goods vehicle, boat or other carrier or the motor vehicle, as the case may be, and keep it stationary as long as may reasonably be necessary and allow the officer-in-charge of the check-post or barrier, or as the case may be, the Assessing Authority to examine the contents of the goods vehicle, boat or other carrier and inspect all records relating to the goods carried by it or, as the case may be, to inspect the records relating to the motor vehicle, which are in possession of such driver or other person in charge, who shall, if so required, give his name and address and the name and address of the owner of the goods vehicle, boat or other carrier, or the motor vehicle, as the case may be."; and

- (ii) for sub-section (3) excluding the provisos thereto, the following shall be substituted, namely :-

"(3) The officer-in-charge of the check-post or barrier or the Assessing Authority referred to in sub-section (2) may seize and confiscate the Scheduled goods under transport or, as the case may be, the motor vehicle in transit as referred to in the said sub-section, where such Scheduled goods or motor vehicle are liable to tax under this Act but are not covered by a way bill (as prescribed for the purposes of the Sales Tax Act) signed by the person consigning such goods or vehicle, as the case may be, or where such officer or Authority has a reasonable apprehension of evasion of tax in respect of such goods or vehicle :".

Amendment
of Section 24.

7. For Section 24 of the principal Act excluding the proviso thereto, the following shall be substituted, namely :-

"24. When any goods vehicle, boat or other carrier which carries Scheduled goods or any motor vehicle as is referred to in sub-section (3) of Section 3, coming from any place outside the State and bound for any other place outside the State, passes through the State, the driver or any other person in charge of such goods vehicle, boat or other carrier or of such motor vehicle, as the case may be, shall furnish such particulars, in such form and to the officer-in-charge of such check-post or barrier, as provided in Section 16-AA of the Sales Tax Act and the rules made under that Act and obtain from such officer-in-charge a transit pass in accordance therewith, and then pass through the State delivering the transit pass, so obtained, to the officer-in-charge of the last check-post or barrier before exit from the State;".

Amendment
of Section 25.

8. In Section 25 of the principal Act, –

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

“(1) if any person, being the driver or the person in charge of a goods vehicle, boat or other carrier or of a motor vehicle referred to in sub-section (3) of Section 3, contravenes the provisions of Section 23 or Section 24, the officer-in-charge of the check-post or barrier or the Assessing Authority referred to in sub-section (2) of Section 23 may, after giving such person a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding twice the amount of tax payable in respect of the Scheduled goods under transport or of the motor vehicle in transit, as the case may be, and may, for the purpose of realisation of the penalty, seize such goods or, as the case may be, motor vehicle.”; and

- (ii) in sub-section (2), for the words “Commissioner”, the words “officer making the seizure” shall be substituted.

Amendment
of Section 26.

9. In Section 26 of the principal Act,–

- (i) for the proviso to sub-section (1), the following provisos and Explanation shall be substituted, namely :–

“Provided that the tax so payable by a manufacturer under this sub-section during a year shall be reduced by the amount of tax paid under this Act on the raw materials which directly go into the composition of the finished products during that year in the prescribed manner :

Provided further that where a buying dealer, under the Rules providing for the rates of tax required to be specified with reference to Section 3, is entitled to pay tax at a concessional rate or not to pay any tax, as the case may be, in respect of such finished products, the manufacturer shall, on a declaration furnished by the buying dealer in the prescribed form, collect the tax at such concessional rate or shall not collect any tax, as the case may be.

Explanation – For the purposes of this Section, “manufacturer” shall include a person who is engaged in mining and sells goods produced or extracted therefrom.”; and

- (ii) after sub-section (5), the following sub-section shall be inserted, namely :–

“(6) If any manufacturer contravenes the provisions of sub-section (1) or sub-section (2), the Assessing Authority may, after giving him an opportunity of being heard, impose on him by an order in writing, a penalty not exceeding twice the amount of tax required to be collected and paid by him.”.

Amendment
of Schedule.

10. In the Schedule to the principal Act,–

- (a) In Part I,–

- (i) in item 1, for the words “Coal, Coke”, the words “Coal including Coke in all its forms” shall be substituted,

- (ii) in item 6, for the words "Drugs and Chemicals including Medicine", the words "Drugs including medicine, surgical instrument, apparatus and materials" shall be substituted,
- (iii) in item 18, for the words "Onion and", the words "Onion, Garlic and" shall be substituted,
- (iv) in item 19, after the word "Sugar", the words "and sugar candy" shall be inserted,
- (v) in item 46, for the words "Rubber and", the words "Raw Rubber, Rubber and" shall be substituted,
- (vi) in item 50, for the words "and components", the comma and words, "components and accessories" shall be substituted,
- (vii) item 57 shall be omitted, and
- (viii) after item 63, the following items shall be inserted, namely :-

- 64. Jaggery and gur
- 65. Oil cake and de-oiled cake
- 66. Cattle feed, prawn feed and poultry feed
- 67. High Density Poly Ethylene and Poly Propylene granules
- 68. Cycle, cycle rickshaw and their spare parts
- 69. Pen including ball pen and refills
- 70. Computer, its spare parts, accessories, stationeries and consumables and computer software.
- 71. Gold and silver bullion, jewelry made out of gold and silver
- 72. Sports materials
- 73. Chemicals used for any purpose
- 74. All kinds of electronic goods not specified elsewhere in this Schedule.
- 75. Mosquito repellants (Mats, coils and liquid or any other preparations).
- 76. Stainless steel utensils
- 77. Dal and pulses
- 78. Candle
- 79. Articles made of China Clay or Porcelaine wire
- 80. Dry fish
- 81. Banana whether ripe or not";

(b) In Part II, -

- (i) in item 1, the words "Bhujia and Mixure" shall be added at the end,
- (ii) in item 9, after the word "equipments", the words "including earthmovers, excavators, bulldozers and road-rollers" shall be inserted,
- (iii) in item 10, after the word "plastic", the comma and word, "moulded" shall be inserted,

- (iv) in item 11, after the word "Bitumen", the comma and words
", Tarfelting materials" shall be inserted, and
- (v) after item 22, the following items shall be inserted, namely :-
23. Copier, Xerox machine, Fax, TV, VCR, VCP, VCD, DVD, Video
Camera.
 24. Motor Vehicles, two-wheelers, three-wheelers
 25. Marble, Decorative Stones and Tiles, Cuddpah Stone, Granite
Stone.
 26. Air Conditioners, Refrigerators and Deep Freezers
 27. Air Coolers
 28. Aviation Turbine Fuel (ATF)
 29. Dry cell and wet cell batteries
 30. Mineral water
 31. Washing machine
 32. Molasses
 33. Gudakhu"; and
- (c) Part III shall be omitted.

***THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2004**

(ORISSA ACT 1 OF 2005)

**[Received the assent of the Governor on the 28th January 2005,
first published in an extraordinary issue of the Orissa Gazette,
dated the 31st January, 2005 (No. 181)]**

AN ACT FURTHER TO AMEND THE ORISSA ENTRY TAX ACT, 1999.

BE it enacted by the Legislature of the State of Orissa in the
Fifty-fifth Year of the Republic of India as follows :—

Short title
and
commence-
ment.

1. (1) This Act may be called the Orissa Entry Tax (Amendment) Act,
2004.

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

Amendment
of
Schedule.

2. In the Schedule to the Orissa Entry Tax Act, 1999,—

Orissa Act
11 of 1999.

(i) In Part I, after item 81, the following item shall be inserted,
namely :—

"82. Fire bricks and Refractories

83. Pulp wood

84. Poly Urethane Foam

85. Blades/Razors/Shaving Kits

86. Audio and Video Cassettes and Compact Discs

87. Rice Cooker, Pressure Cooker and Kitchen ware/
Utensils.

88. Plastic Bangles and Imitation Jewellery

89. Crystal items, Cut glass items and Chandeliers

90. Rexine and Rubberised cloth

91. Glassware and Crockery

92. Acrylic sheets

93. Stoves of all kinds

94. Incandescent Lamps and Lanterns, parts thereof and
incandescent mantels.

* For the Bill, see *Orissa Gazette*, Extraordinary dated the 22nd December
2004 (No. 1822).

95. Thermowares, Vacuum flasks of all kinds including thermoses, Thermic jugs, Ice buckets or boxes, Urns and other domestic receptacles to keep food or beverages hot or cold and refills thereof.
96. Gas lights
97. Coal tar and Road tar
98. Brass and Bell metal goods
99. Umbrella, Rain coat and Rain caps
100. Sanitary Napkins and Baby Napkins
101. Paper bag, Paper box, Paper covers and Corrugated box
102. Explosives including saltpatre, Gun powder and Potash
103. Processed Gem stone, Synthetic Gem stone and Pearls
104. Honey in packed form
105. Peas or Matar in packed form
106. Card board, Art board, Paste board, Mill board and Straw board.
107. Whitener or Blue, both liquid and in powder form of any brand including Robin Blue used for brightening of washed clothes and starches for clothes.
108. Duplicating Ink and Duplicating materials
109. Fire Extinguisher" ; and

(ii) in Part II, after item 33, the following items shall be inserted, namely :-

- "34. Hosiery goods
35. All kinds of Kitchen Appliances including Mixer grinder, Food Processor, Juicer, Sandwich Toaster, O. T. G. (Oven Toaster Griller), 33 Electric Ovan, Microwave and Tandoori Oven, Electric Egg beater/ biender, Cooking range, Electric kettle.
36. Baking powder, Custard powder, Ice-cream powder, Cocoa powder, Corn flour, Chocolate powder, Soup powder, Idly mix, Cake mix, Dosa mix, Jallebi mix, Gulab jamun mix, Milkshake powder.
37. Packaged Drinking water or pure/safe drinking water in sealed containers or packets.
38. Ferro Alloys including Ferro Silicon."

ORISSA ACT 10 OF 2005
THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2005

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ORISSA ACT 10 OF 2005

*THE ORISSA ENTRY TAX (AMENDMENT) ACT, 2005

[Received the assent of the Governor on the 9th September, 2005, first published in an Extraordinary issue of the *Orissa Gazette*, dated the 9th September, 2005 (No. 1464)]

AN ACT FURTHER TO AMEND THE ORISSA ENTRY TAX ACT, 1999.

BE It enacted by the Legislature of the State of Orissa in the fifty-sixth Year of the Republic of India as follows:—

Short title
and
commence-
ment.

1. (1) This Act may be called the Orissa Entry Tax (Amendment) Act, 2005.

(2) It shall be deemed to have been come into force on the 19th day of May, 2005.

Amendment
of section 2.

2. In the Orissa Entry Tax Act, 1999 (hereinafter referred to as the principal Act), in section 2,—

Orissa Act
11 of 1999.

(i) for clause (a), the following clause shall be substituted, namely :—

(a) "assessing authority" means any officer appointed or deemed to have been appointed under VAT Act and authorised by the Commissioner to make assessment under that Act;"

(ii) for clause (b), the following clause shall be substituted, namely :—

(b) "Commissioner" means Commissioner of Sales Tax appointed or deemed to have been appointed under VAT Act;"

(iii) in clause (c), for the words, brackets, figure and comma "clause (c) of section 2 of the Sales Tax Act," the words, brackets, figures and comma "sub-section (12) of section 2 of VAT Act;" shall be substituted;

(iv) in clause (j), after the words and comma "sales tax," the words and comma "Value Added Tax or, as the case may be, turnover tax" shall be inserted;

(v) after clause (j), the following clause shall be inserted, namely :—

(jj) "registering authority" means any officer authorised by the commissioner to function as registering authority under VAT Act;"

(vi) for clause (l), shall be omitted;

(vii) for clause (o), the following clause shall be substituted, namely :—

(o) "Tribunal" means the Orissa Sales Tax Tribunal constituted under VAT Act;"

(viii) after clause (o), the following clauses shall be inserted, namely :—

(oo) "Tax period" means such period for which return is required to be furnished by or under this Act;

(ooo) "VAT Act" means the Orissa Value Added Tax Act, 2004;" and

(ix) in clause (q), for the words "Sales Tax Act", the words "VAT Act" shall be substituted.

Orissa Act 4
of 2005.

*For the Bill, see *Orissa Gazette*, Extraordinary dated the 9th August, 2005

3. In the principal Act, for section 5, the following section shall be substituted, namely:—

"5. (1) Every dealer in Scheduled goods who is,—

- (a) registered under VAT Act; or
- (b) liable to be registered under VAT Act, but not registered under the said Act,

shall get himself registered under this Act, in such manner and within such period as may be prescribed.

(2) Where a dealer,—

- (a) registered under VAT Act is granted registration under this Act, the certificate of registration issued under VAT Act shall be the certificate of registration for the purposes of this Act and the Identification Number assigned to the dealer under VAT Act shall be the Identification Number of the dealer for the purposes of this Act; or
- (b) not registered under VAT Act is granted registration under this Act, the registering authority shall issue to such dealer, a certificate of registration under this Act in such manner and in such form as may be prescribed and the certificate of registration so issued shall be assigned with an Identification Number and shall be effective from the date of filing of application for registration;

Provided that where any such dealer has more than one place of business inside the State, he shall declare one of such places as the principal place of business in the application and the registering authority shall issue to the dealer one certificate of registration in respect of such principal place of business:

Provided further that where the dealer does not declare his principal place of business in the application for registration, the registering authority, shall issue one certificate of registration in respect of any such place of business, as he deems appropriate.

(3) The registration granted under this Act to a dealer, who has been granted a certificate of registration under VAT Act, shall remain in force so long as his certificate of registration is valid under that Act.

(4) The certificate of registration granted under this Act to a dealer not registered under VAT Act, shall remain valid until it is cancelled under this Act.

(5) Where certificate of registration of a dealer under VAT Act is amended, the certificate of registration of such dealer granted under clause (a) of sub-section (1) shall be deemed to have been amended under this Act and Rules.

(6) If a dealer who has been granted registration under clause (b) of sub-section (1) —

- (i) sells or otherwise disposes of business or any part of his business or effects or comes to know of, any other change in the ownership of the business; or
 - (ii) changes his place of business or opens a new place of business;
- or

- (iii) changes the name, style, constitution or nature of his business or effects any change in the class of goods in which he carries on business,

he shall within the prescribed time inform the registering authority accordingly.

(7) If the registering authority, either on application from the dealer or otherwise after conducting or causing to be conducted such enquiry as he deems necessary, is satisfied that amendment of the certificate of registration is required, he shall amend the certificate of registration with effect from the date to be specified in that order :

Provided that the registering authority may, after giving the dealer a reasonable opportunity of being heard, reject an application for amendment for the reasons to be recorded in writing.

(8) Notwithstanding anything contained in sub-section (6), where any change alters the basic status of a dealer, such as, conversion of proprietorship concern to partnership firm or *vice versa*; dissolution of an existing firm and creation of a new firm formation of a firm into a company or *vice versa*, a fresh certificate of registration shall be required to be obtained by the dealer.

(9) Where,—

- (i) any business in respect of which a certificate of registration has been granted to a dealer under this Act is discontinued; or
- (ii) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or
- (iii) an incorporated body is closed down or otherwise ceases to exist; or
- (iv) the owner of a proprietorship business dies leaving no successor; or
- (v) in case of firm or association or persons, if it is dissolved; or
- (vi) a dealer is no longer liable to be registered under this Act; or
- (vii) there is any other sufficient reasons so to do,

the registering authority shall, after conducting or causing to be conducted such enquiry as he deems necessary, cancel the registration of the dealer who has been registered under clause (b) of sub-section (1) with effect from the prescribed date.

(10) Every dealer whose certificate of registration is cancelled shall surrender the certificate of registration within seven days from the date of receipt, by him, of the order of cancellation.

(11) In the event of death of a dealer being the proprietor of the business, the legal heir shall, within one month from the date of death of such proprietor, inform, in writing, the registering authority the date of death of such proprietor and produce evidence as may be required and the registering authority shall cancel the certificate of registration immediately.”

4. In the principal Act, for section 7 including its marginal heading, the following section shall be substituted, namely :—

7. (1) Every registered dealer and every dealer who is liable to get himself registered under this Act shall furnish every month to the Commissioner, a return in such form, by such date as may be prescribed and shall furnish along with such return satisfactory proof of payment of tax payable by him under this Act :

Provided that a dealer who files quarterly return under VAT Act may furnish return under this Act every quarter paying the full amount of such tax as payable for the preceding quarter.

Explanation—A return not accompanied by proof of full payment of the tax due in respect of a tax period shall not be deemed to be a return for the purpose of this section.

(2) (a) If any dealer, having furnished a return under sub-section (1), discovers any omission or error in the return so furnished, he may file a revised return before the date on which the return for the next tax period becomes due.

(b) Revised returns may also be furnished by the registered dealer under this Act if revised returns are furnished under VAT Act and the rules made thereunder :

Provided that revised return may not be filed under this Act if the revised return furnished under VAT Act does not relate to the transaction of Scheduled goods.

(3) Every return under this section shall be signed and verified by—

- (a) the individual himself, in case of an individual, and where the individual is absent, any person duly authorised by him in this behalf ;
- (b) the Karta, in the case of a Undivided Hindu Family;
- (c) the principal officer, in the case of a Company or local authority;
- (d) any partner thereof not being a minor in the case of a firm;
- (e) any person competent to act in that behalf, in the case of any other association;
- (f) an officer duly authorised by that Government, in case of a Government.

Explanation—For the purpose of clause (c) of sub-section (3), the expression "principal officer" shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961.

43 of 1961.

(4) Any return signed by a person who is not authorised under sub-section (3) shall not be treated as a return for the purposes of this Act :

Provided that any amount deposited on the basis of such return shall not be refunded except where it is established under the provisions of this Act to be otherwise payable.

(5) Where a dealer required to file return under this section fails without sufficient cause to pay the amount of tax due as per the return for any tax period or fails to furnish return, such dealer shall be liable to pay interest in respect of—

- (i) the tax, which he fails to pay according to the return ; or
- (ii) the tax payable for the period for which he has failed to furnish return,

at the rate of two per centum per month from the date the return for the period was due to the date of its payment or the date of order of assessment, whichever is earlier.

(6) If any dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with return under sub-section (1) or revised return under sub-section (2), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two per centum per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

(7) If any dealer, without any sufficient cause, fails to furnish the proof of payment as required under sub-section (1), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (5) or (6) payable or paid by him, a penalty of a sum of rupees fifty per each day of default subject to a maximum of rupees five thousand.

(8) The penalties under this section may be imposed by the Commissioner notwithstanding the fact that assessment proceedings have not been initiated against the dealer under section 9-C or section 10.

(9) Any penalty imposed under this section shall be without prejudice to any prosecution for any offence under this Act.

(10) Each and every return in relation to any tax period furnished by a dealer under this section, shall be subject to scrutiny by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of deductions, if any, under this Act and full payment of tax and interest payable by the dealer for such period.

(11) If any mistake is detected as a result of scrutiny made under sub-section (10), the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, by the date specified in the said notice.”.

Amendment
of section 8.

5. In the principal Act, for section 8, the following section shall be substituted, namely :—

“8. (1) The registering authority may, for proper realisation of tax payable under this Act and for enforcement of lawful conduct of a dealer, who has applied for registration under this Act, demand from him a 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 such security, he may, notwithstanding anything contained in this Act, refuse to grant him such registration :

Provided that no security under this Act shall be demanded from a dealer who has applied for registration, if such dealer is already registered under VAT Act and the rules.

(2) In case there is reasonable apprehension or likelihood of evasion of tax the registering authority may, at any time, for reasons to be recorded in writing, demand adequate security or additional security, as the case may be, in the prescribed manner.

(3) The security or additional security as referred to in sub-sections (1) and (2) shall not exceed the tax estimated to be paid by the dealer for one year.

(4) The registering authority may, after giving the dealer a reasonable opportunity of being heard, by order, adjust or forfeit, as the case may be the whole or any portion of the security furnished by a dealer—

- (a) for realizing any amount of tax, penalty or interest payable by the dealer ; or
- (b) if the dealer has misused any form or has failed to keep them in proper custody.

(5) The registering authority may, on application by a dealer who has furnished security as required under sub-section (1), refund in the prescribed manner the entire amount of security or part thereof if such security is not required for the purposes for which it was furnished."

Amendment of section 9.

6. In the principal Act, for section 9 including its marginal heading, the following section shall be substituted, namely :—

"Self assessment.

9. (1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or periods during which the dealer is so liable.

(2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return."

Insertion of new sections.

7. In the principal Act, after section 9, the following section shall be inserted, namely :—

"Provisional assessment.

9-A. (1) If no return under sub-section (1) of section 7 is furnished within the prescribed time, the assessing authority may proceed to assess the dealer provisionally for that period, notwithstanding anything contained in section 9-C.

(2) The provisional assessment under sub-section (1) shall be made on the basis of past returns or past records, and, where no such returns or records are available, on the basis of information received by the assessing

authority and in every such case the assessing authority shall direct the dealer to deposit the amount of tax so assessed in such manner and by such dates as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of the tax due, interest and penalty, payable, if any, on or before the date specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the assessing authority from making assessment under section 9-C and any tax, interest or penalty paid against the provisional assessment under this section shall be adjusted against tax, interest or penalty payable on such assessment.

Identification
of tax payer.

9-B. (1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.

(2) After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such individual dealers or class of dealers be conducted and for the purpose of conduct of such tax audit under this section, the provisions contained in section 41 of VAT Act shall *mutatis mutandis* apply :

Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

(3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.

Audit
assessment.

9-C. (1) Where the tax audit conducted under section 9-B results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions, evasion of tax or contravention of any provisions of this Act affecting the tax liability of the dealer, the assessing authority notwithstanding the fact that the dealer may have been assessed under section 9 or 9-A, serve on such dealer a notice in the form and manner prescribed alongwith a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.

(2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(3) Where the dealer to whom a notice is issued under sub-section (1) produces the books of account and other documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(4) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (1), the assessing authority may proceed to complete the assessment to the best of his judgment basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

(5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.

(6) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of receipt of the Audit Visit Report :

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case allow such further time not exceeding six months for completion of the assessment proceeding.

(7) No order of assessment shall be made under sub-section (3) or (4) after expiry of one year from the date of receipt of the Audit Visit Report.

Assessment of dealer who being liable to pay tax fails to register.

9-D. (1) If the assessing authority, on the basis of information in his possession, is satisfied that any dealer, who has been liable to get himself registered under this Act, has failed to get himself registered, the assessing authority shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of the period during which he was liable to get himself registered and all subsequent periods and, in making such assessment, shall give the dealer reasonable opportunity of being heard, and the assessing authority may, if he is satisfied that the default is without reasonable cause, direct the dealer to pay, in addition to the amount of tax so assessed, a penalty equal to the amount of tax so assessed.

(2) No assessment under sub-section (1) shall be made after expiry of five years from the end of the tax period or the tax periods to which the assessment relates."

Amendment of section 10.

8. In the principal Act, for section 10 including its marginal heading, the following section shall be substituted, namely :—

"Reassessment in certain cases.

10. (1) Where for any reason all or any of the Scheduled goods brought by a dealer has escaped assessment of tax, or where value of all

or any of the Scheduled goods has been under-assessed, or any deduction has been allowed wrongly, the assessing authority, on the basis of information in his possession, may, within a period of five years from the end of the year to which the tax period relates, serve a notice on the dealer in such form and in such manner as may be prescribed and after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer accordingly.

(2) If the assessing authority is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay in addition to the tax assessed under sub-section (1), by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.

(3) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgment or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the judgment or order.

Insertion of
new section
10-A.

9. In the principal Act, after section 10, the following section shall be inserted, namely:—

“Exclusion
of period for
assessment.

10-A. In Computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.”

Amendment
of section 11.

10. In the principal Act, in section 11, in sub-section (4),—

- (i) after the words and comma “tax assessed,” the words and commas “or any interest levied, or any penalty imposed,” shall be inserted; and
- (ii) for the words “in the Schedule to the Sales Tax Act”, the words “in the Schedule E of VAT Act” shall be substituted.

Amendment
of section 12.

11. In the principal Act, in section 12, in sub-section (1),—

- (i) for the words “from whom any tax assessed”, the words and commas “on whom any tax assessed, or any interest levied, or any penalty imposed,”; and
- (ii) for the words “arrear of tax”, the words “arrear of tax or interest” shall be substituted.

Amendment
of section 14.

12. In the principal Act, in section 14, for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:—

“(2) When a firm liable to pay tax, interest or penalty is dissolved, the assessment of the tax, levy of interest and imposition of penalty shall be made as if no dissolution of the firm had taken place, and every person who was at the time of dissolution a partner of the firm and the legal representative of any such partner, who is deceased, shall be jointly and severally liable to pay the tax assessed or interest levied or penalty imposed.

(3) When an Undivided Hindu Family liable to pay the tax, interest or penalty is partitioned, the assessment of the tax, levy of interest and the imposition of penalty shall be made as if no partition of the family and taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax assessed or interest levied or penalty imposed.

(4) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that in respect of any tax assessed, or interest levied, or penalty imposed as payable by any such dealer or any tax, interest or penalty which would have been payable by him under this Act, if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands."

Amendment of section 15. 13. In the principal Act, for section 15, the following section shall be substituted, namely :—

"15. (1) Persons appointed under any prescribed designation including a Special Commissioner of Sales Tax, an Additional Commissioner of Sales Tax, a Joint Commissioner of Sales Tax, a Deputy Commissioner of Sales Tax, an Assistant Commissioner of Sales Tax, a Sales Tax Officer and an Assistant Sales Tax Officer to assist the Commissioner under VAT Act shall, for the purpose of this Act, exercise such powers and discharge such functions as may be required, by or under this Act within such local area as assigned by the Commissioner under that Act.

(2) Without prejudice to any other functions that the Commissioner may perform under the provisions of this Act, he shall exercise the following powers and discharge the following functions —

- (a) to superintend and control all persons employed in the executive administration of tax;
- (b) subject to the provisions of this Act and Rules, to make rules of procedure and conduct of administration for the guidance of persons subordinate to him;
- (c) to call for any record from any subordinate officer and also to call for any paper or document in connection with any assessment under this Act;
- (d) to inspect the records and to superintend the work of officers subordinate to him and their offices."

Insertion of new section 15-A. 14. In the principal Act, after section 15, the following section shall be inserted, namely :—

"Delegation of the Commissioner's powers and functions.

"15-A. Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act or Rules to any persons appointed under any prescribed designation under VAT Act to assist the Commissioner and any order passed by any such person in exercise of the powers so delegated shall be deemed to be an order passed by that person."

15. In the principal Act, for section 16, the following section shall be substituted, namely :—

"16. (1) Any dealer or person aggrieved by an order passed under the provisions of this Act may prefer an appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority).

(2) Notwithstanding anything contained in sub-section (1), no appeal shall lie against—

- (a) a notice issued under this Act calling upon a dealer for assessment or any person to show cause as to why he shall not be prosecuted for an offence under this Act; or
- (b) an order pertaining to the seizure or retention of any books of accounts, registers and other documents of a dealer; or
- (c) an order sanctioning prosecution of a dealer under this Act; or
- (d) an interim order passed in the course of any proceeding under this Act.

(3) The appeal under sub-section (1) shall be preferred within thirty days from the date on which the order is served on the dealer or person :

Provided that an appeal preferred after thirty days may be admitted, if the appellate authority is satisfied that the appellant had sufficient cause for not preferring appeal within the said period.

(4) No appeal against an order of assessment shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute

(5) Subject to the provisions contained in sub-section (4), the appellate authority may, on application in that behalf filed by the dealer or person within the period as provided in sub-section (3), stay the realisation of the balance of tax, interest or penalty, as the case may be, under dispute either in part or in full till disposal of the appeal.

(6) The appeal shall be preferred in the prescribed form and shall be verified in the prescribed manner.

(7) In disposing of an appeal, the appellate authority may after giving the appellant a reasonable opportunity of being heard and after conducting such enquiry as he may deem necessary,—

- (a) in the case of an order of assessment of tax or levy of interest or imposition of penalty,—
 - (i) confirm, reduce or annul the assessment of tax, or the levy of interest or imposition of penalty, if any; or
 - (ii) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal; or
 - (iii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or
- (b) in the case of any other order confirm, annul or modify such order.

(8) Every order passed under this section shall, subject to the provisions of sections 17 to 19, be final."

Amendment
of section
17.

16. In the principal Act, for section 17, the following section shall be substituted, namely :—

"17. (1) Any dealer or, person or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of section 16 may, within sixty days from the date of receipt of such order prefer an appeal in the prescribed manner to the Tribunal :

Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The dealer or, person or, the Government, as the case may, be on receipt of notice that an appeal has been preferred under sub-section (1) may, notwithstanding that such dealer or, person or, the Government may not have appealed against such order or any part thereof, within sixty days of the service 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 the time under sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred.

(4) The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal.

(5) For the purpose of sub-section (4), the Tribunal shall have the same powers and shall be subject to the same conditions as provided in sub-section (7) of section 16, and any order passed under sub-section (4) shall be final.

(6) Subject to the provisions of VAT Act, the Tribunal shall dispose of the appeal in the prescribed manner.

(7) Where a dealer or person has preferred an appeal under sub-section (1), the Commissioner may, stay realisation, either in part or in full, the amount of tax or interest or penalty, as the case may be remaining outstanding or recovery as a result of disposal of appeal under sub-section (7) of section 16, on application in that behalf filed by the dealer within the period as provided in sub-section (1)."

Amendment
of section
18.

17. In the principal Act, for section 18, including its marginal heading, the following section shall be substituted, namely :—

"Revisional
powers of
Commissioner.

18. (1) Subject to rules and for reasons to be recorded in writing the Commissioner may, on his own motion at any time within five years, from the date of passing of an order by any authority subordinate to him, call for records of proceeding in which such order was passed if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of revenue, he may, after making or causing to be made such enquiry as he deems necessary, revise any such order :

Provided that any dealer or person likely to be affected by any order passed under this sub-section shall be given a reasonable opportunity of being heard before such order is made.

(2) The Commissioner shall not revise, under sub-section (1), any order, if—

- (i) period for filing of appeal against the order as provided under section 16 or 17 has not expired; or
- (ii) the order has been made a subject matter of appeal under section 16 or 17; or
- (iii) more than five years have expired after the order, sought to be revised, was passed.

Explanation— In computing the period of limitation for the purposes of this sub-section, any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

(3) Subject to the rules and for reasons to be recorded in writing the Commissioner may, upon application filed within the prescribed time, revise any order passed by any authority subordinate to him :

Provided that the Commissioner may, for reasons to be recorded in writing, reject an application for revision.

(4) The Commissioner shall not entertain any application for revision under sub-section (3), if the dealer or person filing the application, having a remedy by way of appeal under section 16 or section 17, did not avail of such remedy or did not file the application within the prescribed time.

(5) Any dealer or person or, as the case may be, the Government aggrieved by any order passed by the Commissioner under sub-section (1) may, within sixty days from the date of receipt of such order, prefer an appeal if—

- (a) the order is passed by the Commissioner, to the High Court, and
- (b) the order is passed by any authorities subordinate to the Commissioner, to the Commissioner.

(6) All orders passed under sub-section (1) shall be subject to order passed in an appeal, if any, be final."

Amendment of section 19.

18. In the principal Act, for section 19, including its marginal heading, the following section shall be substituted, namely :—

*Revision by High Court in certain cases.

19. (1) Within sixty days from the date on which an order under sub-section (4) of Section 17 was served affecting liability of any dealer to pay tax, or interest, or penalty under this Act, such dealer by petition in writing accompanied by fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal :

Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner.

(3) If the High Court, in perusing the petition, considers that there is no sufficient grounds for interfering, it may dismiss the petition :

Provided that no petition shall be dismissed without giving the petitioner a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petition under sub-section (3), it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Tribunal under clause (a), with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue.

(6) Notwithstanding that a petition has been moved under sub-section (1), the tax or any other dues under this Act shall be paid in accordance with the order against which the petition has been moved :

Provided that if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment and the assessing authority shall amend the assessment accordingly and, thereupon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with provisions of this Act, as the case may be.

(7) (a) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (4), on the basis of facts, which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred."

Amendment of section 21.

19. In the principal Act, in section 21, in sub-section (1), for the words "Sales Tax Act", the words "VAT Act and the Rules" shall be substituted.

Amendment of section 23.

20. In the principal Act, in section 23,—

(a) in sub-section (1), for the words "Sales Tax Act", the words "VAT Act" shall be substituted;

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

"(2) At every check-post or barrier mentioned in sub-section (1) or at any other place when so required by the officer-in-charge of the check-post or barrier or an officer authorised by the Commissioner in this behalf, the driver or any other person in-charge of—

- (a) a goods vehicle, boat or any other carrier by which any goods are under transport; or
- (b) a motor vehicle referred to in sub-section (3) of section 3 which is in transit; or
- (c) any machinery or equipment including earthmover, excavator, bulldozer or road roller is in transit,

shall stop the goods vehicle, boat or other carrier or the motor vehicle or the machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be, and keep it stationary as long as may reasonably be necessary and allow the officer-in-charge of the check-post or barrier or, as the case may be, the officer authorised by the Commissioner in this behalf to examine the contents of the goods vehicle, boat or other carrier and inspect all records relating to the goods carried by it or, as the case may be, to inspect the records relating to the motor vehicle or machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be, which are in the possession of such driver or other person in charge who shall, if so required, give his name and address and the name and address of the owner of the goods vehicle, boat or other carrier, or the motor vehicle or the machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be."; and

- (c) for sub-section (3), excluding second and third provisos thereto, the following sub-section shall be substituted, namely :—

"(3) The officer-in-charge of the check-post or barrier or the officer authorised by the Commissioner in this behalf may seize and confiscate the Scheduled goods under transport or the motor vehicle or the machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be, in transit as referred to in sub-section (2) where such Scheduled goods or motor vehicle or machinery or equipment including earthmover, excavator, bulldozer or road roller, are liable to tax under this Act but are not covered by a way bill (as prescribed for the purposes of VAT Act) signed by the person consigning such goods or motor vehicle or, machinery or equipment including earthmover, excavator, bulldozer or road roller, as the case may be, or where such officer has a reasonable apprehension of evasion of tax in respect of such goods or motor vehicle or machinery or equipment including earthmover, excavator, bulldozer or road roller :

Provided that before taking action for the confiscation of goods under this sub-section, the officer shall give the person affected an opportunity of being heard and make an enquiry, as he shall deem proper and for this purpose the provisions of VAT Act and the rules shall *mutatis mutandis* apply."

Amendment of
section 24.

21. In the principal Act, in section 24, —

- (i) after the words, brackets, figures and comma "sub-section (3) of section 3," the words and commas "or any machinery or equipment including earthmovers, excavator, bulldozer or road roller" shall be inserted;
- (ii) for the words, figures and letters " section 16-AA of the Sales Tax Act", the words and figures "section 74 of VAT Act" shall be substituted; and
- (iii) for the words "Sales Tax Act" appearing in the proviso, the words "VAT Act" shall be substituted.

Amendment of
section 25.

22. In the principal Act, in section 25, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) If any person, being the driver or the person in-charge of a goods vehicle, boat or other carrier or of a motor vehicle referred to in sub-section (3) of section 3 or any machinery or equipment including earthmover, excavator, bulldozer or road roller contravenes the provisions of section 23 or section 24, the officer-in-charge of the check-post or barrier or the officer authorised by the Commissioner in this behalf referred to in sub-section (2) of section 23 may, after giving such person a reasonable opportunity of being heard, direct him to pay, by way of penalty a sum not exceeding twice the amount of tax payable in respect of the Scheduled goods under transport or of the motor vehicle or machinery or equipment referred to in sub-section (2) of section 23, in transit, as the case may be and may, for the purpose of realisation of the penalty, seize such goods or such motor vehicle or such machinery or equipment, as the case may be."

Amendment of
Section 26.

23. In section 26 of the principal Act,—

- (a) in sub-section (1) excluding the provisos thereto,—
 - (i) for the words "Sales Tax Act", the words "VAT Act" shall be substituted;
 - (ii) for the words "buying dealer", the words "buying dealer or person" shall be substituted; and
- (b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Every manufacturer collecting tax under sub-section (1) shall reflect in returns submitted under sub-section (1) of section 7 the particulars of tax so collected along with the proof of payment of tax."

Amendment of
section 29.

24. In the principal Act, in section 29,—

- (a) in sub-section (1),—
 - (i) in clause (c), for the words "penalty levied", the words "interest levied or penalty imposed" shall be substituted;
 - (ii) in clause (e), for the word and figure "section 9", the word and figure "section 10" shall be substituted;
 - (iii) clause (f) shall be omitted; and
- (b) in sub-section (2), clause (b) shall be omitted.

25. In the principal Act, in section 34,—

- (a) the existing section shall be renumbered as sub-section (1) thereof ;
and
- (b) after sub-section (1), as so renumbered, the following sub-section shall be inserted, namely :—

“(2) Where any registered dealer or person liable to get himself registered, for the purpose of this Act, claims that any book, document or account kept or found in his business premises or any place including a godown, warehouse, vehicle or vessel over which he has ultimate control, does not relate to his business, the burden of so proving shall be on such dealer or the person, as the case may be.”

26. In the principal Act, for section 35, the following section shall be substituted, namely :—

“35. (1) Subject to other provisions of this Act and Rules, the assessing authority shall refund to a dealer, or a person, as the case may be, within a period of sixty days of the date of receipt of such order giving rise to such refund, the amount of tax, including interest or penalty or both, if any, paid by such dealer in excess of the amount due from him, through refund adjustment voucher or through refund voucher :

Provided that the assessing authority shall first adjust such excess amount towards the recovery of any amount due in respect of which a demand notice under this Act and Rules has been issued, or any amount due for any period covered by a return but not paid and, thereafter, refund only the balance, if any.

(2) Where any refund is due to any dealer according to the return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable, as per the return filed under sub-section (1) of section 7 for any subsequent period :

Provided that the amount of tax, including interest or penalty or both, if any, due from, and payable by, the dealer on the date of such adjustment shall first be deducted from the amount of such refund before adjustment.

(3) No claim for refund of any tax, including interest or penalty or both, if any, paid for any tax period or periods under this Act shall be allowed in any case where there is an order for reassessment for such period until such reassessment is completed.

(4) (a) Where any return filed under this Act shows any amount to be refundable to a dealer on account of sale in course of export out of the territory of India or, on account of claim of deductions or exemptions provided under this Act, the dealer may make an application in such form to the assessing authority for refund in such manner and in such form as may be prescribed.

Explanation—For the purpose of this sub-section, the expression “export out of the territory of India” shall have the meaning assigned to it under the provisions of sub-section (1) of section 5 of the Central Sales Tax Act, 1956 :

Provided that the burden of proving that any Scheduled goods were sold in the course of export out of the territory of India shall be on the registered dealer.

(b) As soon as may be, on receipt of the application for such refund, the assessing authority shall direct a tax audit under section 9-C for the tax period pertaining to such refund as covered under the return referred to in clause (a) which shall be completed within a period of one month from the date of issue of such direction, to establish the correctness of such claim :

Provided that if there is any delay in completing the audit under this sub-section due to non-co-operation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation and such period shall not be reckoned for grant of interest, if any, admissible under sub-section (5) :

Provided further that if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after giving the dealer an opportunity of being heard.

(c) Where, on assessment based on tax audit under clause (b) the amount of refund claimed is found to be inadmissible or more than what is admissible then, the claim of refund of excess amount shall be disallowed and if, in consequence thereof, any amount is found due from the dealer, he shall be liable to pay interest at the rate of two per centum per month on that amount from the date of filing of the return giving rise to the refund till the date of assessment.

(5) A registered dealer entitled to refund in pursuance of any order under this Act including an order of assessment under section 9-A or section 9-C and section 10 or in pursuance of any order of a Court shall, in addition to the refund, be paid in the prescribed manner simple interest at the rate of eight per centum per annum for period commencing immediately after expiry of sixty days of receipt of the order till the date on which refund is granted :

Provided that interest as applicable under this sub-section shall be admissible after expiry of the period of ninety days from the date of receipt of the application for grant of refund under sub-section (4) till the date of sanction.

(6) (a) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the commissioner is of the opinion that, the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding.

(b) Where a refund is withheld under clause (a) the dealer shall be entitled to interest as provided under sub-section (5), if he becomes entitled to the refund as a result of the appeal or further proceeding or, as the case may be, any other proceeding under this Act."

Insertion of new section 37-A.

"Powers to amend Schedule.

27. In the principal Act, after section 37, the following section shall be inserted, namely :—

37-A. (1) The State Government may, by notification, alter, add to or cancel any item or entry in the Schedule.

(2) References made in this Act to the Schedule, or any entry or item thereof, shall be construed as references to the Schedule or, as the case may be, the Entry or item thereof as, for the time being, amended in exercise of the powers conferred by this section."

Insertion of new sections.

28. In the principal Act, after section 38, the following sections shall be inserted, namely :—

"Powers to summon and take evidence on oath etc.

38-A. With regard to the powers to summon and take evidence on oath, the Commissioner and any person appointed to assist him under VAT Act and the Tribunal shall, for purposes of this Act have the same powers as are vested under section 92 of VAT Act.

Provisional attachment.

38-B. (1) The Commissioner, during the course of inquiry in any proceeding including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, if he is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may attach provisionally, by notice in writing, the stock in trade held by such person or dealer during such enquiry, inspection or search :

Provided that the Commissioner may, by order, revoke such notice if the dealer furnishes to the Commissioner, such security, for such period and within such time, as may be specified in the said order.

(2) Every such provisional attachment, shall cease to have effect after the expiry of one year from the date of service of the notice issued under sub-section (1) :

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit to do so, however that the total period of such extension shall not in any case exceed one year.

(3) Where a notice under sub-section (1) is served upon any person or dealer provisionally attaching the stock in trade held by him, such person or dealer shall be personally liable, so long as the attachment notice is not revoked or has not ceased to have effect, to pay, to the Commissioner, the amount of money covered under such attachment."

Amendment of Section 39.

29. In the principal Act, in Section 39, for the words and figures "Sections 3 and 6", the words, figures and comma "Sections 3, 6 and 37-A" shall be substituted.

Repeal and savings.

30. (1) The Orissa Entry Tax (Amendment) Ordinance, 2005 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

Orissa Ordinance No. 1 of 2005.