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LAW DEPARTMENT

NOTIFICATION

The 30th March, 2005

No. 4780-Legis-The following Act of the Orissa Legislative Assembly having been assented to by the President on the 25th March, 2005 is hereby published for general information.

ORISSA ACT 4 OF 2005

THE ORISSA VALUE ADDED TAX ACT, 2004

AN ACT TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF TAX ON THE SALE OR PURCHASE OF GOODS IN THE STATE.

Be it enacted by the Legislature of the State of Orissa in the Fifty- fifth 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 Value Added Tax Act, 2004.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act.

Definitions

2. In this Act, unless the context otherwise requires,-
 - (1) “**appellate authority**” means any authority prescribed for the purpose of section 77 ;

(2) “**appointed day**” in relation to any provision of this Act, means the date on which such provision comes into force;

(3) “**assessee**” means any dealer by whom tax or any other sum of money is payable under this Act, and includes every dealer in respect of whom any proceedings under this Act has been initiated for the assessment of tax payable by him;

(4) “**assessing authority**” means any officer appointed under sub-section(2) of section 3 who is authorised by the Commissioner to make assessment under this Act;

(5) “**assessment**” means determination of tax liability under this Act and includes self assessment, provisional assessment, audit assessment, assessment of escaped turnover, assessment of unregistered dealers liable to be registered, assessment of casual dealers and reassessment ;

(6) “**audit assessment**” means an audit assessment made under section 42;

(7) “**business**” includes -

(a) any trade, commerce or manufacture;

(b) any adventure or concern in the nature of trade, commerce or manufacture;

(c) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(d) any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;

(e) any occasional transaction, whether or not there is volume, frequency, continuity or regularity of such transaction, in the nature of such trade, commerce, manufacture, adventure or concern,

whether or not such trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to gain or profit or whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

Explanation.- For the purposes of this clause,-

(i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be a business,

(ii) transaction of sale or purchase of capital goods pertaining to any trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business,

(iii) purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which

are credited to the business shall be deemed to be transactions comprised in business;

(8) “**capital goods**” means plants, machinery and equipments used directly in the process of manufacturing, but does not include such plant, machinery and equipments which are used for the purposes and in the circumstances specified in Schedule ‘D’;

(9) “**casual dealer**” means any person, whether as principal, agent or in any other capacity, who has occasional transactions of buying, selling or supplying or distributing goods in the State without having a fixed place of business for cash or deferred payment or for commission, remuneration or other valuable consideration and includes, whether he has a fixed place of business in this State or not,-

(a) a transporter who, while carrying any goods in his goods vehicle, fails to disclose the name and address of the consignor or consignee in the State or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or

(b) an owner or a lessee of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner that such goods are for his personal use or consumption;

(10) “**Commissioner**” means the Commissioner of Sales Tax appointed under sub-section (1) of section 3 or deemed to have been appointed under clause (a) of sub-section (2) of section 106;

(11) “**co-operative society**” means a co-operative society registered under the Orissa Co-operative Societies Act, 1962 and includes a Co-opera Orissa Act 2 of 1963. registered under the Orissa Self-Help Co-operatives Act, 2001; Orissa Act 4 of 2002.

(12) “**dealer**” means any person who carries on the business of buy selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or any system of payment by instalments, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes :-

(a) a casual dealer ;

(b) a commission agent, a broker or a del credere agent or an auctioneer or any other mercantile agent, by whatever name called;

(c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;

(d) a person who, whether in the course of business or not, –

(i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or

(ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;

(iii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

(13) “**declared goods**” means goods declared to be of special importance as specified under section 14 of the Central Sales Tax Act, 1956; 74 of 1956.

(14) “**documents**” means title deeds, writing or inscription and includes electronic records and the like which is produced as documentary evidence;

(15) “**Electronic Hardware Technology Park (EHTP)Unit**” is a unit set up under the EHTP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the Export Processing Zone or any other competent authority duly authorised by the Ministry of Industry, Government of India for the purpose;

(16) “**electronic record**” means electronic record as defined in Information Technology Act, 2000; 21 of 2000.

(17) “**exempted goods**” means any goods exempted from tax under section 17;

(18) “**Export Oriented Unit (EOU)**” means any industrial unit, which undertakes to export their entire production of goods and is approved as such by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorised for the purpose by the Ministry of Industry, Government of India;

(19) “**fixed place of business**” means the place of business from which the dealer carries out his business activities, and includes-

(a) a place where the management of the business is undertaken, any of its branch, office, factory or workshop, godown or warehouse;

(b) a mine, oil or gas well, quarry, timberland or any other place from which natural resources are extracted; or

(c) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the normal course of business) who is carrying on business on behalf of the dealer in the State in ordinary course of business;

(20) “**Fund**” means the Orissa Consumer Welfare Fund referred to in section 53;

(21) “**goods**” means every kind of movable property not being newspapers, actionable claims, money, stock, shares or securities, and includes all materials, commodities and articles (including goods as goods or in some other form) involved in the execution of any works contract or goods used in the fitting out, improvement or repair of movable property and growing crops, grass and trees, plants including the produce thereof and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(22) “**goods vehicle**” means any motor vehicle constructed or adapted for use solely for carriage of goods, or any motor vehicle not so constructed or adapted but when used for carriage of goods solely or in addition to passengers, and includes any vessel, boat, animal or any other means of conveyance other than railway wagon or coach;

(23) “**Government**” means the Government of Orissa;

(24) “**gross turnover**” in relation to any period, means the aggregate of the turnover of sales and the turnover of purchases made by a dealer during that period;

(25) “**input**” means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where, such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing;

(26) “**input tax**” in relation to any registered dealer means the tax collected and payable under this Act in respect of sale to him of any taxable goods for use in the course of his business, but does not include tax collected on the sale

of goods made to a commission agent purchasing such goods on behalf of such dealer;

(27) “**input tax credit**” in relation to any tax period means the setting off of the amount of input tax or part thereof under section 20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax under section 16;

(28) “**Manufacture**” means any activity that brings out a change in an article or articles as result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be notified;

(29) “**output tax**” in relation to any registered dealer means the tax leviable and payable under this Act in respect of sale of any taxable goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of sale of taxable goods on behalf of such dealer;

(30) “**passenger vehicle**” means a motor vehicle constructed or adapted for the carriage of passengers;

(31) “**person**” means any individual or association or body of individuals and includes a Hindu Undivided Family, a firm, a company whether incorporated or not, a society including a co-operative society, a trust, a club, an institution, an agency, a corporation, other artificial or legal person, local authority, a department of Government, a Government enterprise and a Financial institution or Bank;

(32) “**place of business**” means any place where a dealer carries on business and includes-

(a) any warehouse, godown or other place where the dealer stores or processes his goods,

(b) any place where a dealer produces or manufactures goods,

(c) any place where a dealer keeps his books of account,

(d) in case where a dealer carries on business through an agent by whatever name called, the place of business of such agent, or

(e) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;

Explanation. – The place of business specified in sub-clause (e) shall not be construed as such for the purpose of registration under sections 25 and 26.

(33) “**prescribed**” means prescribed by rules;

(34) “**prevailing market price**” in relation to any goods sold means the published price in force in the market at the time when the sale of such goods occasioned or, in the absence of any such published price, the price at which such goods were capable of being sold in the open market at that time;

(35) “**property**” means any property, whether real or personal, movable or immovable, tangible or intangible, corporal or incorporeal, and includes a right or interest of any kind, but does not include money;

(36) “**published**” means published in any newspaper, journal or periodical or notified by a market committee established under the Orissa Agricultural Produce Markets Act, 1956 or any such authority as the Government may Orissa Act 3 of 1956. notification, specify from time to time;

(37) “**purchase**” with all its grammatical variations and cognate expressions shall be construed from the word sale;

(38) “**registered dealer**” means a dealer registered under this Act;

(39) “**registering authority**” means any officer appointed under subsection(2) of section 3 who is authorised by the Commissioner to function as registering authority;

(40) “**resale**” means a sale of goods in the same form in which they were purchased;

(41) “**retailer**” means a dealer, not being a manufacturer or a person selling or despatching goods outside the State, or purchases or receives goods other than by way of purchase from outside the State, who ordinarily effects sales to consumers ;

(42) “**return**” means any return prescribed or otherwise required to be furnished by or under this Act;

(43) “**reverse tax**” means that portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials ;

(44) “**rules**” means rules made under this Act;

(45) “**sale**” with all its grammatical variations and cognate expressions, means every transfer of the property in goods, other than by way of mortgage, hypothecation, charge or pledge, by one person to another in the course of

trade or business for cash, deferred payment or other valuable consideration, and includes -

- (a) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration,
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract,
- (c) delivery of goods on hire purchase or any other system of payment by instalments,
- (d) a transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration,
- (e) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,
- (f) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanations.-(a) A sale or purchase of goods shall be deemed to have taken place inside the State if the goods are within the State -

- (i) in the case of specific or ascertained goods, at the time the contract of sale is made, and
- (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, or by the buyer, whether assent is prior or subsequent to such appropriation.

(b) Where there is a single contract of sale or purchase of goods situated in more than one place, the provisions of this Explanation shall apply as if there were separate contracts in respect of the goods at each of such places.

Note. -A sale or purchase of goods shall not be deemed to have taken place inside the State, if the goods are sold –

- (i) in the course of inter-State trade or commerce, or
- (ii) outside the State, or
- (iii) in the course of import into or export out of the territory of India;

(46) “**sale price**” means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount according to the practice normally prevailing in the trade but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, and the expression “purchase price” shall be construed accordingly.

Explanations.– (a) Where according to the terms of contract, the cost of freight in respect of transportation of goods are incurred by the dealer for or on behalf of the purchaser such cost of freight shall not be included in the sale price but the burden of proof thereof shall be on the dealer.

(b) In case of sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.

(c) In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the hire charges received or receivable for such transfer shall be the sale price.

(d) Amount of duties levied or leviable on the goods under the Central Excise Act, 1944, and the Customs Act, 1962, whether such duties are payable by the seller or any other person, shall be included in the sale price. 1 of 1944.
52 of 1962.

(e) Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental or ancillary to, the sale of goods shall be deemed to be included in the sale price,

(f) The sale price shall not include the tax paid or payable under this Act;

(47) “**self assessment**” means a true and correct determination of net tax liability by a dealer in relation to any tax period;

(48) “**Software Technology Park(STP)**” unit means a unit set up under the STP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the

concerned Export Processing Zone or any other competent authority duly authorised by Ministry of Industry, Government of India for the purpose;

(49) **“Special Economic Zone (SEZ)”** means any Special Economic Zone specified by the Government of India by notification under section 76A of the Customs Act, 1962;

52 of
1962.

(50) **“State”** means the State of Orissa;

(51) **“tax”** means tax chargeable under this Act;

(52) **“tax invoice”** means a document showing the goods sold with price, quantity and other details as required under section 62;

(53) **“tax period”** means such period for which return is required to be furnished by or under this Act;

(54) **“taxable goods”** means goods liable to tax under this Act;

(55) **“taxable limit”**, in relation to the business of a dealer is that part of the gross turnover of sales or purchases, as the case may be, specified in sub-section (4) of section 10;

(56) **“taxable turnover”** means the turnover on which a dealer is liable to pay tax as determined after making such deduction from his gross turnover and in such manner as may be prescribed ;

(57) **“transporter”, “carrier” or “transporting agent”** means the owner or any person having possession or control of a goods vehicle, who transports on account of any other person for hire or on his own account, any goods from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 as the holder thereof, a driver or any other person in-charge of such vehicle ;

59 of
1988.

(58) **“Tribunal”** means the Orissa Sales Tax Tribunal constituted or deemed to have been constituted under section 4;

(59) **“turn over of purchases”** means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of the purchase or receipt of goods liable to tax under section 12 during a given period :

(60) **“turn over sales”** means the aggregate of the amounts of sale price received or receivable by a dealer in respect of sale or supply of goods effected or made during a given period :

(61) **“vehicle”** includes every wheeled conveyance used for the carriage of goods or goods in addition to passengers;

(62) **“vessel”** includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(63) **“works contract”** means a contract for the construction, building, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any property;

(64) **“year”** means the financial year.