

THE ODISHA VALUE ADDED TAX ACT, 2004

¹ORISSA ACT 4 OF 2005

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

1. Short title, extent and commencement.-

(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)² 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.

2. Definitions.-

In this Act, unless the context otherwise requires,—

³[(1-a) "**ADVANCE RULING AUTHORITY**" means the Orissa Sales Tax Tribunal constituted under sub-section (1) of Section 4;

(1-b) "**ADVANCE RULING**" means a determination made by the Advance Ruling Authority of a disputed question raised under sub-section (1) of Section 78A;

(1-c) "**APPLICANT FOR ADVANCE RULING**" means a registered dealer who has filed an

¹ This Orissa Act 4 of 2005 of the Orissa Legislative Assembly has been assented to by the President of India on 25.03.2005; vide Law Department Notification No. 4780-Legis., dt. 30.03.2005, published in Orissa Gazette Extraordinary No. 535, dt. 30.03.2005

² Finance Department in Government of Orissa has appointed 01.04.2005 as the date of effect on which the Orissa Act 4 of 2005 came into force vide Orissa Gazette Extraordinary No. 539 dt. 31.03.2005 by the following notification:

**"FINANCE DEPARTMENT
NOTIFICATION
The 31st March, 2005.**

S.R.O. No. 198/2005 – In exercise of the powers conferred by sub-section (3) of Section 1 of the Orissa Value Added Tax Act, 2004 (Orissa Act 4 of 2005), the State Government do hereby appoint the 1st day of April 2005 as the date on which the said Act shall come into force.

[No. 15231-CTA-82/2002 (Pt. II) -F.]

By Order of the Governor

K. C. PARIJA

Deputy Secretary to Government"

³ Substituted "(1) "**APPELLATE AUTHORITY**" means any authority prescribed for the purpose of Section 77;" by the Orissa Value Added Tax (Amendment) Act, 2010 (Orissa Act 8 of 2010), assented to by the Governor on 16.09.2010, vide Law Department Notification No.10564/I-Legis-26/10, dt.24.09.2010, published in the Orissa Gazette Extraordinary No.1517, dt.24.09.2010, w.e.f. 01.10.2010, vide Finance Department Notification No.42157-CTA-41/2010-F. (SRO No.421/2010), dt.30.09.2010, published in the Orissa Gazette Extraordinary No.1557, dt.30.09.2010.

- application under sub-section (1) of Section 78A;
- (1-d) **“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 ⁴[and shall include the components and spare parts thereof,

⁴ *Substituted “, but does not include” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department*

but shall 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 ⁵[* * *] 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 (Orissa Act 2 of 1963) and includes a co-operative 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 buying, 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

Notification No.5495/Legis.,dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.

⁵ *Omitted “without having a fixed place of business” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/ Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

- (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 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 the 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, timber land 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 business⁶ [* * *];
- (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 business⁷ [* * *];
- (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

⁶ Omitted “, but does not include tax collected on the sale of goods made to a commission agent purchasing such goods on behalf of such dealer” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/ 2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.

⁷ Omitted “, and includes tax payable by a commission agent in respect of sale of taxable goods on behalf of such dealer” *ibid.*

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 in corporal, 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 (Orissa Act 3 of 1956) or any such authority as the Government may, by 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 sub-section (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;

⁸ [(43) “REVERSE TAX” means that portion of input tax on the value of goods purchased for which credit has been availed by a dealer to which he is not entitled under sub-section (9) of Section 20;]

(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

⁸ *Substituted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008. Prior to substitution clause (43) of Section 2 stood thus:*

[(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;]

(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;

⁹[(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 at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by the dealer in respect of the

⁹ *Substituted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008. Prior to substitution clause (46) of Section 2 stood thus:*

[(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 (1 of 1944), and the Customs Act, 1962 (52 of 1962), whether such duties are payable by the seller or any other person, shall be included in the sale price.

(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;]

goods at the time of or before delivery thereof and the expression '**PURCHASE PRICE**' shall be construed accordingly;

Explanations.—

- (a) Where any sum charged for freight, delivery, distribution, installation or insurance at the time of delivery or before delivery of such goods it shall be included in the sale price.
- (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) Any amount of duties, charges, taxes levied or leviable under any Act (other than tax levied or leviable under this Act) in respect of such goods shall be included in the sale price.
- (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.]

(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 ¹⁰[such other particulars as may be prescribed];

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

¹⁰ *Substituted "other details as required under Section 62" by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008*

- (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 ¹¹[* * *] 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 (59 of 1988) as the holder thereof, the driver or any other person in-charge of such vehicle;
- (58) **"TRIBUNAL"** means the Orissa Sales Tax Tribunal constituted or deemed to have been constituted under Section 4;
- (59) **"TURNOVER 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) ¹² [**"TURNOVER OF 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.

¹¹ Omitted "of sales or purchases, as the case may be," *ibid.*

¹² Substituted "turnover sales" *ibid.*

CHAPTER II

TAXING AUTHORITIES AND TRIBUNAL

3. Taxing authorities.—

- (1) The Government shall, for carrying out the purposes of this Act, appoint a person to be the Commissioner of Sales Tax.
- (2) The Government may appoint such other persons under any prescribed designation including a Special Commissioner, an Additional Commissioner, ¹[a Special Additional Commissioner,] a Joint Commissioner, a Deputy Commissioner, an Assistant Commissioner, a Sales Tax Officer, or an Assistant Sales Tax Officer to assist the Commissioner and they shall exercise such powers as may be conferred, and discharge such functions as may be required, by or under this Act within such local area as may be assigned by the Commissioner.
- (3) The Commissioner shall have jurisdiction over the whole of the State and the other persons appointed under sub-section (2) shall, within such areas as the Commissioner may, by general or special order specify, exercise such powers as are, or may be conferred and discharge such functions as may be required, by or under this Act.
- (4) 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 the 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.

4. Orissa Sales Tax Tribunal.—

- (1)(a) The Government shall, by notification, constitute a Tribunal to be called the Orissa Sales Tax Tribunal, which shall exercise such powers and discharge such functions as may be conferred or imposed by or under the provisions of this Act.

¹ *Inserted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

- (b) The Tribunal shall consist of six members, of whom, three shall be appointed from among the Members of the Orissa Superior Judicial Service (Senior Branch) (hereinafter called the Judicial Members of the Tribunal) and the other three Members shall be appointed from among the Members of the Orissa Finance Service, ²[not below the rank of] Class-I (Upgraded Super time) (hereinafter called the Accounts Members of the Tribunal).
- (c) The senior-most Judicial Member of the Tribunal shall be the Chairman of the Tribunal, who shall constitute Benches, allot cases to the Benches and exercise supervision in respect of their disposal.
- (d) The Chairman of the Tribunal shall look to the overall administration of the Tribunal subject to regulations to be made by the Tribunal with the previous sanction of the Government consistent with the provisions of this Act and rules.
- (e) Any vacancy in the Membership of the Tribunal shall be filled up by the Government.
- (2) Notwithstanding anything contained in sub-section (1), the Orissa Sales Tax Tribunal constituted under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) shall be deemed to have been constituted under this Act with effect from the appointed day and shall be called as such from that date.
- (3) The functions of the Tribunal may be exercised by a Bench consisting of-
- (a) the Chairman or any other single Member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case does not exceed rupees two lakhs;
- (b) the Chairman or any other Judicial Member and an Accounts Member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees two lakhs, but does not exceed rupees ten lakhs; ³[* * *]
- (c) three Members of the Tribunal, which shall include the Chairman or any other Judicial Member and one Accounts Member, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees ten lakhs and shall be presided over by the Chairman or, as the case may be, the senior Judicial Member ⁴]; and]

² *Inserted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

³ *Omitted "and" by the Orissa Value Added Tax (Amendment) Act, 2010 (Orissa Act 8 of 2010), assented to by the Governor on 16.09.2010, vide Law Department Notification No.10564/I-Legis-26/10, dt.24.09.2010, published in the Orissa Gazette Extraordinary No.1517, dt.24.09.2010, w.e.f. 01.10.2010, vide Finance Department Notification No.42157-CTA- 41/2010-F. (SRO No.421/2010), dt.30.09.2010, published in the Orissa Gazette Extraordinary No.1557, dt.30.09.2010.*

⁴ *Substituted ". [full stop]" ibid.*

- ⁵ [(d) three Members of the Tribunal, which shall include the Chairman or the senior Judicial Member and one Accounts Member and another Judicial Member when the case is to hear an application seeking an advance ruling and shall be presided over by the Chairman or, as the case may be, the senior Judicial Member.]
- (4) (a) Where an appeal or application is heard by a Bench consisting of two Members and the Members are divided in opinion on any point or points shall be referred to the Tribunal consisting of three Members.
- (b) Where an appeal or application is heard by three Members of the Tribunal and the Members are divided in opinion on any point or points, such point or points shall be decided in accordance with the opinion of the majority. Any Member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case.
- (5) Any Member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case.

5. Delegation of the Commissioner's powers and functions. —

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 the rules to any person appointed under sub-section (2) of Section 3, 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.

6. Power to transfer proceedings. —

- (1) Notwithstanding anything contained elsewhere in this Act or in the rules, the Commissioner may, by order in writing, transfer any proceeding or class of proceedings under any provision of this Act from any person appointed under sub-section (2) of Section 3 to any other person so appointed, whether or not such other person has jurisdiction in respect of the local areas to which such proceedings or class of proceedings relate.
- (2) The person to whom any proceeding is transferred under sub-section (1) shall proceed to dispose of such proceeding as if it has been initiated by himself.
- (3) The transfer of a proceeding shall not require reissue of any notice, if such a notice has already been issued before transfer and the person to whom the proceeding is transferred may, at his discretion, continue the proceeding from the stage at which it was left by the person from whom it was transferred.

7. Person appointed under Section 3 and Members of the Tribunal to be public servants. —

The Commissioner and all persons appointed under Section 3, and the Members of

⁵ *Added ibid.*

the Tribunal appointed under Section 4 shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860).

8. Indemnity.—

No suit, prosecution or other legal proceedings shall lie against any officer or servant of Government employed for execution of the provisions of this Act or the rules for anything which is in good faith done or intended to be done.

CHAPTER IV
REGISTRATION OF DEALERS, CANCELLATION AND AMENDMENT OF
REGISTRATION CERTIFICATE

24. Persons liable to be registered.—

No dealer shall, while being liable to pay tax under Section 10, carry on business as a dealer unless he has been registered under this Act and possesses a certificate of registration, and no dealer shall be issued more than one certificate of registration for his business in the State.

25. Compulsory registration of dealers.—

(1) Every dealer required under Section 24 to be registered shall make an application in the prescribed manner to the registering authority within thirty days from the date of his liability to pay tax, and such application shall be accompanied by a declaration in the prescribed form duly filled in and signed by the dealer specifying therein such particulars as may be prescribed:

Provided that where a dealer has more than one place of business inside the State, he shall declare one of such places as the principal place of business and make the application for the principal place of business, in the manner prescribed.

(2) If the registering authority, after causing such enquiry as he deems necessary, is satisfied that the applicant is a *bona fide* dealer and the application for registration is correct and complete and that the requirements of the provisions of this Act and rules have been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form, which shall specify the class or classes of goods dealt in or manufactured by him and such registration certificate shall be assigned a number in the manner as may be prescribed:

Provided that the registration certificate issued in respect of dealers liable to pay turnover tax under Section 16 shall be in such different form and bear such number in such manner, as may be prescribed.

(3) Nothing in sub-section (2) shall debar the registering authority from refusing to grant a certificate of registration to the applicant after giving him a reasonable opportunity of being heard, if—

(a) the applicant has not paid any dues payable by him under this Act or under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) or under the Central Sales Tax Act, 1956 (74 of 1956) in respect of any business;

(b) any person associated with the business for which the application for grant of registration is made is in arrears of any dues under the provisions of this Act or the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) in respect of any business; or

(c) any earlier certificate of registration granted to the applicant or any person associated with the business for which the application for grant of registration is made, has been cancelled under the provisions of this Act or the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) and the circumstances and reasons for which the

certificate was cancelled continue to exist; or

(d) for any other good and sufficient reasons to be recorded in writing.

(4) Where the application for registration is made under this section, the registering authority shall grant him the certificate of registration effective from the date of filing of such application:

Provided that the registering authority shall grant to such dealer the certificate of registration from the date of commencement of liability to pay tax where the application for registration has been made within thirty days of such date.

(5) Where a dealer registered under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) continues to be so registered on the day immediately before the appointed day and is liable to pay tax under this Act on such appointed day, shall be deemed to be registered under this Act and the registering authority shall issue to such dealer, in the prescribed manner, a certificate of registration under this Act in the prescribed form and the certificate of registration so issued shall be effective from the appointed day:

¹ **Provided that** where any dealer has more than one place of business inside the State and such place or places of business come under the jurisdiction of different registering authorities, the dealer shall intimate to the registering authority within fifteen days from the date of commencement of the Orissa Value Added Tax (Amendment) Act, 2008 failing which the Commissioner may, on his own information or on receipt of information from any registering authority, decide the principal place of business of such dealer and, by order, direct the registering authority of that principal place of business to issue certificate of registration to the dealer in the prescribed manner.]

(6) When any dealer has been convicted or has paid composition money under Section 86, in respect of any contravention of the provision of Section 24, the registering authority shall register such dealer and grant him a certificate of registration and such registration shall take effect from the date of the order granting such registration.

26. Voluntary registration.—

² [(1) Any dealer or person,—

¹ *Substituted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008. Prior to substitution proviso to sub-section (5) of Section 25 stood thus:*

[Provided that where any such dealer has more than one place of business inside the State, the registering authority shall issue to the dealer, one registration certificate in respect of any such place of business, as he deems appropriate, unless the dealer intimates in writing, to the registering authority, within fifteen days from the appointed day, the principal place of his business in the State in respect of which the certificate of registration shall be issued.]

² *Substituted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis.,*

- (a) who intends to establish a business for the purpose of manufacturing of goods of value exceeding rupees one lakh during a period of twelve consecutive months for sale, or
- (b) who intends to carry on business in respect of goods of value exceeding rupees three lakhs during a period of twelve consecutive months,

may, notwithstanding that he is not liable to pay tax under Section 10, apply in the prescribed form and manner to the registering authority for registration:

Provided that for the purposes of this sub-section, the dealer or person, as the case may be, shall have to furnish such evidence as may be required by the registering authority in support of his intention to establish a business for manufacturing of goods for sale or, as the case may be, in support of his business.]

(2) In respect of an application for registration under sub-section (1), the provisions of³ [sub-

dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008. Prior to substitution sub-section

(1) of Section 26 stood thus:

a [(1) Any dealer or person,—

(a) who intends to establish a business for the purpose of manufacturing or processing of taxable goods of value exceeding rupees one lakhs per year for sale, or

(b) whose gross turnover during a period not exceeding twelve months exceeds ten thousand rupees, may, notwithstanding that he is not liable to pay tax under Section 10, apply in the prescribed form and manner to the registering authority for registration:

Provided that for the purpose of clause (b) the limit regarding the amount of gross turnover as aforesaid shall not apply in case of a company registered under the Companies Act, 1956 (1 of 1956), a Society registered under the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1963) or a Department of Government:

Provided further that for the purposes of this sub-section, the dealer or person, as the case may be, shall have to furnish such evidence as may be required by the registering authority in support of his business or as the case may be, in support of his intention to establish a business for manufacturing or processing of taxable goods for sale.]

a. Substituted w.e.f. 01.07.2005, by the Orissa Value Added Tax (Amendment) Act, 2005 (Orissa Act 11 of 2005), vide Law Department Notification No. 13604/Legis., dt. 09.09.2005, published in the Orissa Gazette Extraordinary No. 1466, dt.09.09.2005 repealing Orissa Value Added Tax (Amendment) Ordinance, 2005 (Orissa Ordinance No.2 of 2005), vide Law Department Notification No. 10823/Legis., dt. 30.06.2005, published in the Orissa Gazette Extraordinary No. 1034, dt.01.07.2005. Prior to the amendment sub-section (1) of Section 26 stood thus:

[(1) Any person, who intends to establish a business for the purpose of manufacturing or processing of taxable goods of value exceeding rupees two lakhs per year for sale, may, notwithstanding that he is not liable to pay tax under Section 10, apply in the prescribed form and manner to the registering authority for registration:

Provided that for the purpose of this sub-section, the person shall have to furnish such evidence as may be required by the registering authority in support of his intention to establish a business for manufacturing or processing of taxable goods for sale.]

³ *Substituted "sub-sections (2), (3) and (4)" by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901,*

sections (2) and (3)] of Section 25 shall apply.

(3) Every dealer who has been registered on application made under this section shall, so long as his registration remains in force, be liable to pay tax under this Act.

⁴ [(4)(a) The certificate of registration granted to a dealer or person referred to in clause (a) of sub-section (1) shall be in force for such period as may be specified therein:

Provided that for good and sufficient reasons to the satisfaction of the registering authority, the period for which the registration is in force can be extended, but in no case such extension shall be allowed beyond a period of one year at a time.

(b) The certificate of registration granted to a dealer or person referred to in clause (b) of sub-section (1) shall be in force for a period of not less than three complete years, unless cancelled earlier.

(5) The certificate of registration granted under this section shall be effective from the date of issue of such certificate.]

27. Security.—

(1) The registering authority may, for proper realisation of tax payable under this Act and for enforcement of lawful conduct of any dealer from time to time, demand from a registered dealer or from a dealer who has applied for registration under this Act, a reasonable security, or additional security, as the case may be, 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,—

(a) if the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him; or

(b) if the defaulter is a dealer who has applied for registration, refuse to grant him such registration:

Provided that no such cancellation or refusal shall be made unless the dealer has been given a reasonable opportunity of being heard.

(2) In case there is reasonable apprehension or likelihood of evasion of tax as a result of misutilisation of way bills, the registering authority may, for reasons to be recorded in writing, demand adequate security or additional security, as the case may be, in the prescribed manner from the dealer before issue of way bills to him on application made in that behalf.

(3) The registering authority may, by order, adjust or forfeit, as the case may be, the whole or any portion of the security furnished by a dealer—

(a) for realising any amount of tax, penalty or interest payable by the dealer; or

dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.

⁴ *Substituted ibid. Prior to substitution sub-section (4) of Section 26 stood thus:*

[(4) The registration of a dealer on application made under this section shall be in force for a period of not less than three complete years, unless cancelled earlier.]

(b) if the dealer has misused any forms or has failed to keep them in proper custody:

Provided that no order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.

(4) Where, by reason of any order under sub-section (3), the security furnished by a dealer is forfeited in whole or is rendered insufficient, such dealer shall, on demand made by order of the registering authority, furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be, in such manner and within such period as may be specified in such order.

(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 any amount of security or part thereof if such security is not required for the purposes for which it was furnished.

28. Penalty for failure to be registered. —

(1) Without prejudice to any other provision in this Act, when a dealer has, without reasonable cause, failed to get himself registered within the time provided under sub-section (1) of Section 25, the registering authority may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum of rupees five thousand:

Provided that no such penalty shall be imposed under this sub-section in respect of the same offence for which a prosecution under Section 82 has been instituted and no such prosecution shall be initiated in respect of an offence for which a penalty has been imposed under this section.

(2) If a penalty is imposed under sub-section (1), the registering authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice and the penalty imposed shall be paid to Government Treasury.

29. Liability in case of grant of registration by mistake. —

Where a dealer after being registered under this Act is found that he was not entitled under the provisions of Section 25 or Section 26 to be so registered, he shall be liable to pay tax during the period from the date on which his certificate of registration took effect till it is cancelled, notwithstanding that he was not liable to pay tax under this Act.

30. Suspension of registration certificate. —

(1) If a dealer—

(a) fails to file the return under this Act within the time prescribed; or

(b) knowingly furnishes incomplete or incorrect particulars in his returns; or

(c) fails to pay any tax including penalty or interest, if any, due from him under the provisions of this Act; or

(d) having issued tax or retail invoices, fails to account for the said invoices in his books of account; or

(e) holds, accepts or furnishes or causes to be furnished, a way bill which he knows or has reason to believe to be false; or

(f) is found to have no business at the place declared in the application for registration

as his place of business; or

(g) contravenes any of the provisions of this Act; or

(h) discontinues his business and fails to furnish information regarding such discontinuation, or if there is any other reason for apprehension of evasion of tax or any attempt to evade tax, which, in the opinion of the registering authority, is good and sufficient, the registering authority may, at any time, for reasons to be recorded in writing, suspend the certificate of registration of such dealer, by notification, in the manner prescribed.

(2) Where a certificate of registration is suspended under sub-section (1), the registering authority shall issue a notice to the dealer concerned requiring him to appear in person or through authorized representative and produce records, documents and evidence on the date and time specified therein, which in no case shall be later than thirty days from the date of such suspension, relying on which he intends to rebut such suspension.

(3) The certificate of registration suspended under sub-section (1) may be restored on an application made by the dealer along with evidence, to the satisfaction of the registering authority, of payment of taxes due and submission of returns or the evidence to the effect that the grounds on which the certificate of registration has been so suspended is erroneous or not applicable, as the case may be.

(4) Where the certificate of registration of a dealer is suspended or is restored after such suspension, the information shall be widely publicised through publication in the Commercial Tax Gazette and in any other manner as may be prescribed.

31. Cancellation of certificate of registration. —

(1) Where—

(a) any business in respect of which a certificate of registration has been granted to a dealer under this Act is discontinued; or

(b) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or

(c) an incorporated body is closed down or otherwise ceases to exist; or

(d) the owner of a proprietorship business dies leaving no successor; or

(e) in case of a firm or association of persons, if it is dissolved; or

(f) a dealer has ceased to be liable to pay tax under this Act,

⁵ [(g) any change alters the basic status of a dealer as referred to in sub-section (6) of Section 32,] the registering authority may, by order, cancel the certificate of registration of such dealer or the transferor dealer, as the case may be, from such date as may be specified in that order.

(2) The certificate of registration shall be deemed to be inoperative—

(a) in case of clause (a) and clause (b) of sub-section (1), with effect from the date of

⁵ *Inserted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

- discontinuance or transfer of the business, as the case may be;
- (b) in case of clauses (c), (d), (e) and (f) of sub-section (1), from date on which the liability of the dealer to pay tax has ceased,
- notwithstanding the fact that the certificate of registration is cancelled from a later date.
- (3) A registered dealer, whose certificate of registration becomes liable for cancellation under clauses (a), (b), (c), (e) and (f) of sub-section (1) shall apply for cancellation of the registration to the registering authority in such manner and within such time as may be prescribed.
- (4) On receipt of such application, if the registering authority is satisfied that the certificate of registration of the dealer is liable to be cancelled under sub-section (1), he may cancel such certificate.
- (5) Where the dealer whose certificate of registration has been suspended under sub-section (1) of Section 30 fails to furnish the requisite evidence within the time specified under sub-section (3) of the said section, the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of being heard to the dealer, cancel the certificate of registration held by him and the cancellation shall take effect from the date of order of cancellation.
- (6) Every dealer whose certificate of registration is cancelled under this section shall pay in respect of every taxable goods held as stock in trade or as capital goods on the date of cancellation, an amount equal to the tax that would have been payable in respect of those goods if the goods were sold at prevailing market price on that date or the total input tax credit previously claimed in respect of those goods, whichever is higher.
- (7) Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him along with the unused way bills held on the date of such application and the account of utilisation of such way bills, if any, for which no account has been rendered.
- (8) Every dealer whose certificate of registration is cancelled otherwise than on application shall surrender the certificate of registration along with the unused way bills, if any, held on the date of such cancellation, the account of utilisation of such way bills and the statutory forms, if any, for which no account has been rendered, within seven days from the date of receipt, by him, of the order of cancellation.
- (9) If a dealer—
- (a) fails, without sufficient cause, to comply with the provisions of sub-section (3) or sub-section (6); or
 - (b) fails to surrender his certificate of registration as required under sub-section (7); or
 - (c) fails to surrender his registration certificate along with unused way bills and the statutory declaration forms and the account of utilisation of such way bills and declaration forms, for which no account has been rendered under sub-section (8),
- the registering authority may, by an order in writing and after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to rupees one hundred for each day of default subject to a maximum of rupees ten thousand.

- (10) The registering authority shall, at intervals of one month, publish in the Commercial Tax Gazette such particulars, as may be prescribed, in respect of every dealer whose certificate of registration has been cancelled under the provisions of this Act during the intervening period.
- (11) The cancellation of a certificate of registration shall not affect the liability of any dealer to pay tax for any period till the date of such cancellation which remains unpaid or is assessed after the said date, notwithstanding that he is not liable to pay tax under this Act.

32. Amendment of certificate of registration.—

(1) If any dealer registered under this Act—

- (a) sells or disposes of his business or any part thereof or the place of business, or discontinues his business; or
- (b) effects, or comes to know of, any other change in the ownership of the business, or changes the name, style, constitution or nature of business, or changes his place of business or warehouse, or opens a new place of business, or makes any addition or deletion in the class or classes of goods dealt in or manufactured, he or any person duly authorized by him shall, within the prescribed time, inform the registering authority accordingly.

(2) If under circumstances mentioned in clause (b) of sub-section (1) a registered dealer makes an application for amendment of the certificate of registration, the registering authority may, subject to provisions of sub-section (6), make or cause to be made such enquiry as he deems necessary and amend the certificate of registration of the dealer or reject the application for such amendment:

Provided that before an application for amendment of certificate of registration is rejected, an opportunity of being heard shall be allowed to the dealer.

(3) Notwithstanding anything contained in sub-section (2), where the registering authority is satisfied on his own information that the certificate of registration issued to a dealer requires amendment with regard to certain particulars specified therein, he may amend the said certificate after giving the dealer an opportunity of being heard.

(4) Where no order either granting or rejecting the application for amendment of the registration certificate is passed within ⁶[ninety days] from the date of receipt of such application, it shall be deemed that the amendment as applied for has been granted and the certificate of registration shall accordingly be amended:

Provided that if the delay in disposal of the application for amendment of the certificate of registration is attributable to the lapse on the part of the dealer, the limitation as

⁶ *Substituted "thirty days" by the Orissa Value Added Tax (Amendment) Act, 2010 (Orissa Act 8 of 2010), assented to by the Governor on 16.09.2010, vide Law Department Notification No.10564/I-Legis-26/10, dt.24.09.2010, published in the Orissa Gazette Extraordinary No.1517, dt.24.09.2010, w.e.f. 01.10.2010, vide Finance Department Notification No.42157-CTA-41/2010-F. (SRO No.421/2010), dt.30.09.2010, published in the Orissa Gazette Extraordinary No.1557, dt.30.09.2010.*

provided under this sub-section shall not apply.

- (5) When a certificate of registration is amended under sub-section (3) on any of the events specified in sub-section (1), such amendment shall take effect from the date of such event and in any other case of amendment coming under sub-section (2), the amendment shall take effect from the date of application.
- (6) Notwithstanding anything contained in sub-section (1), 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*, ⁷ [a new certificate of registration shall be issued on application being filed in this behalf in the manner prescribed].
- (7) Where a dealer fails, without any reasonable cause, to inform the registering authority the changes as provided under sub-section (1) within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default.

⁷ *Substituted "a fresh certificate of registration shall be required to be obtained by the dealer" by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA- 11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

CHAPTER V
RETURN AND RETURN DEFAULTS

33. Periodical returns and payment of tax.—

(1) Every registered dealer shall furnish returns in such form, for such period, by such dates and to such authority, as may be prescribed:

Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or require any such dealer to furnish—

(a) returns for such different periods; or

(b) separate return for each or any branch or place of business inside the State, where such registered dealer has more than one branch or place of business in the State.

(2) If the Commissioner has reason to believe that ¹[the gross turnover] of any dealer is likely to exceed or has exceeded the taxable limit as specified in sub-section (4) of Section 10, he may, by notice, served in the prescribed manner, require such dealer to furnish return as if he were a registered dealer, but no tax shall be payable by him unless his gross turnover exceeds the taxable limit provided under the said sub-section.

(3) A registered dealer, whose certificate of registration is cancelled by the registering authority under Section 31, shall furnish a final return in such form as may be prescribed, within thirty days from the date of order of such cancellation.

²[(4) If any dealer, having furnished returns under sub-section (1) or sub-section (2),—

(a) discovers any omission or error in any return so furnished, or

(b) where there is requirement for adjustment of the sale price or tax or both, as the case may be, in relation to sale of any goods, makes such adjustment by way of issue of credit note or debit note, as the case may be,

he may file a revised return within three months following the tax period to which the original return relates.]

(5) If any dealer, after furnishing a return under sub-section (1) or sub-section (2), discovers that a higher amount of tax was due than the amount of tax admitted by him in the original return for any reason, he may voluntarily disclose the same by filing a revised

¹ *Substituted "the turnover of sales or the turnover of purchases" by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/ 2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

² *Substituted *ibid*. Prior to substitution sub-section (4) of Section 33 stood thus: [(4) If any dealer, having furnished returns under sub-section (1) or sub-section (2), discovers any omission or error in any return so furnished, he may file a revised return before the date on which the return for next tax period becomes due.]*

return for the purpose and pay the higher amount of tax as due at any time, in the manner provided under Section 50:

Provided that no such voluntary disclosure shall be accepted where the disclosure is made or intended to be made after receipt of the notice for tax audit under this Act, or as a result of such audit.

(6) Every dealer required to file return under sub-section (1)³ [, sub-section (2) or sub-section (3)] shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, in the manner provided under Section 50.

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

(a) in case of an individual, by the individual himself, and where the individual is absent, by any person duly authorised by him in this behalf;

(b) in the case of a Hindu Undivided Family, by the *Karta*;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof not being a minor;

(e) in the case of any other association, by any person competent to act in that behalf.

Explanation.—

For the purpose of clause (c) of sub-section (7), 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). (8) Any return signed by a person who is not authorised under sub-section (7) 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 not payable.

34. Default in filing of return.—

(1) Where a dealer required to file return under⁴ [* * *] Section 33—

(a) fails without sufficient cause to pay the amount of tax due as per the return⁵ [, revised return or final return, as the case may be,] for any tax period; or

³ *Substituted “or sub-section (2)” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

⁴ *Omitted “sub-section (1), (2) or (3) of” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.*

⁵ *Inserted ibid*

- (b) makes voluntary disclosure under sub-section (5) of Section 33 showing a higher amount of tax to be due than was shown by him in the original return; or
- (c) fails to furnish return ⁵⁶[, revised return or final return, as the case may be,] ⁶[or]
- ⁵⁷[(d) fails to pay the amount of tax due for any month in the manner prescribed;] such dealer shall be liable to pay interest in respect of—
- (i) the tax, which he fails to pay according to the return ⁷[, revised return or final return, as the case may be,]; or
- (ii) the difference of the amount of tax according to the voluntary disclosure; or
- (iii) the tax payable for the period for which he has failed to furnish return ¹[, revised return or final return, as the case may be,]; ⁵⁹ [or]
- ⁸ [(iv) the tax payable for any month or months within the prescribed time, at the rate of ⁹ [one per centum] per month from the date the return for the period ⁵⁹ [or payment for the month] was due to the date of its payment or to the date of order of assessment, whichever is earlier.
- (2) If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with ¹⁰[return, revised return or final return, as the case may be,] in accordance with the provisions of sub-section (1), the Commissioner may,

⁶ Added by the Orissa Value Added Tax (Amendment) Act, 2010 (Orissa Act 8 of 2010), assented to by the Governor on 16.09.2010, vide Law Department Notification No.10564/I-Legis-26/10, dt.24.09.2010, published in the Orissa Gazette Extraordinary No.1517, dt.24.09.2010, w.e.f. 01.10.2010, vide Finance Department Notification No.42157-CTA- 41/2010-F. (SRO No.421/2010), dt.30.09.2010, published in the Orissa Gazette Extraordinary No.1557, dt.30.09.2010.

⁷ Inserted by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008

⁸ Inserted by the Orissa Value Added Tax (Amendment) Act, 2010 (Orissa Act 8 of 2010), assented to by the Governor on 16.09.2010, vide Law Department Notification No.10564/I-Legis-26/10, dt.24.09.2010, published in the Orissa Gazette Extraordinary No.1517, dt.24.09.2010, w.e.f. 01.10.2010, vide Finance Department Notification No.42157-CTA- 41/2010-F. (SRO No.421/2010), dt.30.09.2010, published in the Orissa Gazette Extraordinary No.1557, dt.30.09.2010.

⁹ Substituted "two per centum" w.e.f. 01.07.2005, by the Orissa Value Added Tax (Amendment) Act, 2005 (Orissa Act 11 of 2005), vide Law Department Notification No. 13604/Legis., dt. 09.09.2005, published in the Orissa Gazette Extraordinary No. 1466, dt.09.09.2005 repealing Orissa Value Added Tax (Amendment) Ordinance, 2005 (Orissa Ordinance No.2 of 2005), vide Law Department Notification No. 10823/Legis., dt. 30.06.2005, published in the Orissa Gazette Extraordinary No. 1034, dt.01.07.2005.

¹⁰ Substituted "return or revised return" by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008.

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.

- (3) If a registered dealer or any other dealer required to furnish return under ¹¹[sub-sections (1), (2) or (3) of Section 33], without any sufficient cause,—
- (a) fails to comply with the requirements under ¹²[sub-sections (1), (2) or (3) of Section 33]; or
- (b) fails to furnish, the proof of payment in relation to any voluntary disclosure made in accordance with sub-section (5) of Section 33; or
- (c) fails to furnish the proof of payment as required under sub-section (6) of Section 33, 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-sections (1) and (2) payable or paid by him, a penalty of a sum of rupees one hundred per each day of default subject to a maximum of rupees ten thousand.
- (4) The penalties as provided under this section may be imposed by the Commissioner notwithstanding the fact that assessment proceedings have not been initiated against the dealer under Section 42 or Section 43.
- (5) Any penalty imposed under this section shall be without prejudice to any prosecution for any offence under this Act.

35. Tax to be collected by registered dealers.—

No person who is not a registered dealer shall collect in respect of any sale of goods by him in the State any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules and at any rate in excess of the rate specified for the purpose by or under this Act.

36. Rounding off of amount of tax or penalty.—

The amount of tax or penalty payable or refundable for any period under the provisions of this Act shall be rounded off to the nearest rupee where such amount contains a fraction of a rupee being fifty paise or more, and where such fraction is less than fifty paise, it shall be ignored.

37. Rounding off of tax or penalty for calculation of interest.—

In calculating the interest payable under Section 34, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such amount contains a part of rupees one hundred being fifty

¹¹ *Substituted “sub-section (2) of Section 33” by the Orissa Value Added Tax (Amendment) Act, 2008 (Orissa Act 3 of 2008), assented to by the Governor on 05.05.2008, vide Law Department Notification No.5495/Legis., dt.07.05.2008, published in the Orissa Gazette Extraordinary No.901, dt.08.05.2008, w.e.f. 01.06.2008, vide Finance Department Notification No.27252-CTA-11/07-F. (SRO No.248/2008), dt.28.05.2008, published in the Orissa Gazette Extraordinary No.1042, dt.29.05.2008*

¹² *Substituted “sub-section (2) or (3) of Section 33” ibid.*

rupees or more, and if such part is less than fifty rupees it shall be ignored.

38. Scrutiny of return. —

- (1)** Each and every return in relation to any tax period furnished by a registered dealer under Section 33, 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 input tax credit made therein and full payment of tax and interest, payable by the dealer for such period.
- (2)** If any mistake is detected as a result of scrutiny made under sub-section (1), 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.
