

CHAPTER III

THE INCIDENCE, LEVY AND RATE OF TAX

Charge to
tax and
incidence.

9. There shall be levied in accordance with the provisions of this Act, –

(a) a Value Added Tax hereinafter called VAT on the sale or purchase of goods by a dealer; and

(b) a turnover tax in lieu of VAT on the taxable turnover of sales of every retailer registered under this Act, whose annual gross turnover does not exceed rupees ten lakh and dealers of any specific class or category as may be notified under section 16.

Liability.

10. (1) Subject to other provisions of this Act, every dealer –

(i) whose gross turnover of sales or purchases, as the case may be, during a period of twelve consecutive months immediately preceding the appointed day exceeded the taxable limit; or

(ii) who is registered or liable to be registered under the Orissa sales Tax Act, 1947 or the Central Sales Tax Act, 1956; or

Orissa
Act 14 of
1947.
74 of 1956.

(iii) to whom clauses (i) and (ii) do not apply, but -

(a) whose gross turnover exceeds the taxable limit during any period of twelve consecutive months, or

(b) who has become liable to pay tax under the Central Sales Tax Act, 1956, or

(c) who is registered as a dealer under the Central Sales Tax Act, 1956 or under this Act at any time on and from the appointed day,

74 of
1956.

shall be liable to pay tax in accordance with the provisions of this Act, –

(a) in cases of clauses (i) and (ii), with effect from the appointed day,

(b) in case of sub-clause (a) of clause (iii), with effect from the date immediately following the day on which his gross turnover exceeded the taxable limit during a period of any twelve consecutive months, and

(c) in cases of sub-clauses (b) and (c) of clause (iii), with effect from the date on which he becomes so liable, or the date of registration, whichever is earlier.

(2) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable limit and his liability to pay tax under this Act shall cease on the expiry of the period specified above.

Explanation.- In computing the period of three years, the part of a year shall be ignored.

(3) Every dealer who has ceased to be liable under sub-section (2) shall be again liable to pay tax under this Act with effect from the date immediately following a period not exceeding twelve consecutive months during which his gross turnover again exceeds the taxable limit.

(4) For the purposes of this Act, taxable limit shall be in relation to any dealer who-

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|-----|---|---------------|
| (a) | purchases or receives any goods from outside the State for sale within the State on his own behalf or on behalf of his principal: | Nil |
| (b) | executes any works contract: | Rs.50,000/- |
| (c) | manufactures or produces any goods for sale: | Rs1,00,000/- |
| (d) | carries on any business other than those referred to in clauses (a), (b) and (c): | Rs.2,00,000/- |

(5) For the purpose of calculating the gross turnover to determine the liability of a dealer to pay tax under this Act the turnover of all sales whether taxable or not and all purchases subject to tax shall be taken.

Explanation.- The expressions sales and purchases shall mean sales and purchases made by a dealer on his own account and those made on behalf of principal whether disclosed or not.

Levy of tax
on sale.

11.(1) The tax shall be levied under this Act on every dealer who is liable to pay tax under section 10 on his taxable turnover of sales.

(2) For the purposes of sub-section (1), the expression “taxable turnover of sales” shall mean, in relation to a dealer liable to pay tax on sale of goods under sub-section (1) of section 10, that part of the gross turnover of sales during any period which remains after deducting therefrom -

(a) the turnover of sales of goods exempted from tax under section 17;

(b) the turnover of sales of goods which are shown to the satisfaction of the Commissioner to have taken place –

(i) in 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.

Explanation.- Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale has taken place in the manner indicated in sub-clauses (i), (ii) and (iii) of clause (b);

(c) in case of turnover of sales in relation to works contract, the charges towards labour, services and other like charges subject to such conditions and restrictions as may be prescribed :

Provided that where the amount charged towards labour, services and other like charges in such contract are not ascertainable from the terms and conditions of the contract or the books of account maintained for the purpose, the amount of such charges shall be calculated at the prescribed rate; and

(d) such other sales on such conditions and restrictions as may be prescribed.

(3) Notwithstanding anything contained in any other provision of this Act and subject to such conditions as may be prescribed, a dealer executing works contract may exercise option in writing to pay tax by way of composition at such rate and on such portion of the value of consideration received or receivable and in such manner as may be prescribed.

(4) (a) Notwithstanding anything contained in the Sale of Goods Act, 1930, but subject to clauses (b) and (c), the sale of goods shall, for the purposes of this Act, be

deemed to have taken place when title or possession of the goods is transferred or, in the case of works contract, when the goods are incorporated in the course of execution of the works contract, whether or not there is receipt of payment for such sale.

(b) Where, before the time applicable under clause (a), the dealer selling the goods issues a tax invoice in respect of such sale, the sale shall, to the extent it is covered by the invoice or payment, be deemed to have taken place at the time the invoice is issued or the payment is received, whichever is earlier.

(c) Where a dealer issues a tax invoice in respect of any sale not falling under clause (b) within fourteen days from the time specified under clause (a), the sale shall be deemed to have taken place at the time the invoice is issued.

Levy of tax
on
purchase.

12. Every dealer who, in the course of his business, purchases or receives any goods –

(i) from a registered dealer, in the circumstances in which no tax under section 11 is payable by that registered dealer on such goods, or

(ii) from any person other than a registered dealer,

shall be liable to pay tax on the purchase price or prevailing market price of such goods, if after such purchase or, as the case may be, receipt, the goods are not sold within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, but are –

(a) sold or disposed of otherwise; or

(b) consumed or used in the manufacture of goods declared to be exempt from tax under this Act; or

(c) after their use or consumption in the manufacture of goods, such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or export out of the territory of India; or

(d) used or consumed otherwise,

and such tax shall be levied at the same rate, at which tax under section 11 would have been levied, on the sale of such goods within the State on the date of such purchase or receipt.

Levy of tax
on containers
and packing
material.

13. Where any goods is packed in any container or packing materials are sold, such container or packing material shall be deemed to have been sold or purchased along with such goods and the tax under section 11 or section 12 shall be levied on the sale or

purchase of such container or packing material at the same rate as applicable to the sale or purchase of the goods contained therein:

Provided that no tax under section 11 or section 12 shall be levied where the container or packing material is sold or purchased along with the goods exempted from tax under section 17.

Rates of VAT.

14.(1) The Value Added Tax payable by a dealer under this Act shall be levied on his taxable turnover in respect of different goods specified in Schedule B and Schedule C at the rate mentioned under the said Schedules in respect of those goods.

(2) The levy of tax under sub-section (1) in respect of goods specified in Schedule C shall be in the manner provided in section 15.

Points of levy in respect of certain goods.

15. The levy of Value Added Tax in respect of different goods as specified in Schedule C shall be at such point of sale in a series of sales by successive dealers as the Government may, by notification, specify in relation to those goods.

Levy of turnover tax.

16. Every retailer registered under this Act whose gross turnover does not exceed rupees ten lakhs and every registered dealer of any specific class or category as the Government may by notification, direct, shall pay, in such manner and subject to such conditions and restrictions as may be prescribed, in lieu of the tax payable under section 11, a turnover tax at such percentage of the taxable turnover as the Government may, by notification, specify, in addition to the tax payable on the taxable turnover of purchases under section 12:

Provided that any such retailer or dealer may, by exercising option in the prescribed manner, elect to pay tax as specified under section 11 in lieu of the turnover tax.

Sales of goods exempt from tax.

17. The sale of all goods specified in Schedule A shall be exempt from tax subject to conditions and exceptions set out therein.

Zero rated sales.

18. The rate of tax on the sale of goods subject to levy of tax shall be zero when such goods are sold –

- (a) in course of inter-State trade or commerce ; or
- (b) in course of export out of the territory of India; or
- (c) to a dealer having business under –
 - (i) a SEZ; or

- (ii) a STP; or
- (iii) a EHTP; or

(d) to an EOU

Net tax payable.

19.(1)The net tax payable by a registered dealer for a tax period shall be the difference between the output tax (plus purchase tax, if any), and the input tax, which can be determined from the following formula.

$$\text{Net tax payable} = (\text{O} + \text{P}) - \text{I}$$

Where 'O' denotes the output tax payable for any tax period, 'P' denotes the tax payable on purchases by a registered dealer for that tax period under section 12 and 'I' denotes the input tax paid or payable for the said tax period.

(2) The net tax payable by a dealer liable to pay tax but not registered under this Act for a tax period shall be equal to the output tax payable for the said tax period.

(3) If the amount calculated under sub-section (1) is negative, the same shall be carried forward to the next tax period or periods for adjustment against the output tax payable.

Input tax credit.

20.(1) Subject to the provisions of this Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period, an input tax credit as determined under this section shall be allowed to such registered dealer against the tax paid or payable in respect of all sales or purchases taxable under this Act, other than sales or purchases of goods specified in Schedule C and Schedule D.

(2) The input tax credit to which a registered dealer is entitled under sub-section (1) shall be the amount of tax paid by the registered dealer to the seller on his turnover of purchase of goods during the tax period, calculated, subject to the provisions contained in sub-sections (3), (4) and (5), in such manner as may be prescribed.

(3) Input tax credit shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of –

- (a) sale or resale by him in the State;
- (b) use as inputs or as capital goods in the manufacturing or processing of goods, other than those specified in Schedule A and Schedule C and Schedule D for sale;
- (c) sale of goods subject to levy of tax at zero rate under section 18;
- (d) for use as containers for packing of goods, other than those exempt from tax under this Act, for sale or resale ; or

(e) transfer of stock of taxable goods other than by way of sale, to any place outside the State :

Provided that –

(a) the input tax credit on purchases intended for the purpose of clause(e) shall only be allowed in respect of the amount of tax paid or payable in excess of tax at the rate of four per centum;

(b) if goods purchased are used partially for the purposes specified in this sub-section, input tax credit shall be allowed proportionately to the extent they are used for such purposes; and

(c) where a registered dealer sells or despatches goods, both taxable and exempt under this Act, the input tax credit shall be allowed proportionately only in relation to the goods which are not so exempt.

(4) Notwithstanding anything contained in this section or elsewhere in this Act, and subject to such conditions and restrictions and in such manner, as may be prescribed, input tax credit may be allowed partially or in phased manner, in respect of such goods or such class of dealers or in such cases, as may be prescribed.

(5) (a) Input tax credit on capital goods shall be allowed from the date of first sale of taxable goods produced or manufactured after the commencement of such production and shall be adjusted against the output tax over a period not exceeding three years:

Provided that no input tax credit shall be allowed on such capital goods used for the purposes and in the circumstances as specified in Schedule 'D'.

(b) Input tax credit under clause (a) of this sub-section shall be allowed in lumpsum provided the value of such capital goods is rupees one lakh or less.

(c) Input tax credit on capital goods shall be allowed only on purchase of such goods made on or after the appointed day.

(d) In case of closure of business before the commencement of commercial production, no input tax credit on capital goods shall be allowed and input tax credit carried forward, if any, shall be forfeited.

(e) In case where there is production of both taxable goods and goods exempt from tax, the input tax credit admissible on capital goods shall be determined in the manner prescribed.

(f) where the used capital goods are sold, the same shall be subject to tax under this Act.

(6) Input tax credit shall not be claimed by the dealer for any tax period until the dealer receives the tax invoice in original evidencing the amount of input tax :

Provided that for good and sufficient reasons to be recorded in writing, the Commissioner may, in the prescribed manner, allow such credit subject to such conditions and restrictions as may be specified in the order allowing the credit.

(7) A registered dealer who intends to claim input tax credit shall, for the purpose of determining the amount of input tax credit, maintain accounts and such other records as may be prescribed in respect of the purchases and sales made by him and stock in trade held.

(8) No input tax credit shall be claimed by or be allowed to a registered dealer

—
(a) in respect of any taxable goods purchased by him from another registered dealer for resale but given away by way of free sample or gift;

(b) who makes payment of turnover tax as provided in section 16;

(c) in respect of capital goods used for the purposes and in the circumstances as specified in Schedule 'D';

(d) in respect of goods brought from outside the State against the tax paid in any other State;

(e) in respect of stock of goods remaining unsold at the time of closure of business;

(f) in respect of goods purchased on payment of tax, if such goods are not sold because of any theft, damage and destruction;

(g) where the tax invoice is not available with the dealer or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;

(h) in respect of goods purchased from a dealer whose certificate of registration has been suspended;

(i) in respect of sale of goods specified in Schedule A;

(j) in respect of sale of goods specified in Schedule C;

(k) in respect of raw materials used in manufacture or processing of goods, where the finished products are exempt from tax;

(l) executing works contract, in relation to works contracts executed by him, where he has exercised option under sub-section (3) of section 11 to pay tax by way of composition; and

(m) in any other case as the Government may, by notification, specify.

(9) If goods purchased -

(a) are intended for any of the purposes specified under sub-section (3) but are subsequently used otherwise, or

(b) are lost due to theft, damage or for any other reason, or

(c) remain unsold at the time of closure of business,

the input tax credit availed in respect of purchase of such goods shall be deducted from the input tax credit admissible for the tax period during which any one or more of such events occurs :

Provided that if part of the goods so purchased are used otherwise or lost or remain unsold, the amount of reverse tax credit shall be proportionately calculated :

Provided further that if no input tax credit is available for such deduction, the input tax credit availed of shall be repayable in the manner prescribed.

(10) Where the Commissioner is of the opinion that the method used by a registered dealer to determine the extent to which goods are used, consumed or supplied or intended to be used, consumed or supplied, in the course of manufacturing taxable goods or making sales liable to tax, is not fair and appropriate in the circumstances, he may, after giving the dealer an opportunity of being heard, for reasons to be recorded in writing, reject the method adopted by the dealer and determine the amount of input tax credit admissible.

(11) Subject to the restrictions specified in sub-section (8), input tax credit shall be allowed to a registered dealer in respect of the amount of tax paid or payable on purchase of taxable goods from a registered dealer, which the dealer holds on the date of registration, if such purchases were made within three months prior to the date of his registration.

Input tax
credit
exceeding
tax liability.

21.(1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 20 for any tax period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act against that dealer.

(2) The excess input tax credit after adjustment under sub-section (1), shall be carried forward as an input tax credit, to the subsequent tax period or periods, till it is fully adjusted:

Provided that no excess input tax credit for a tax period shall be carried forward exceeding a period of twenty-four months from the close of the year to which that tax period relates.

(3) Where input tax credit is so carried forward, a quarterly credit statement shall be forwarded to the concerned dealer and the claims reconciled accordingly.

Adjustment
of input tax
credit.

22. Where any purchaser, being a registered dealer, has been issued with a credit note or debit note in terms of section 23, or where he returns or rejects goods purchased, as a consequence of which the input tax credit, availed by him for any period to which the purchase of goods relates, becomes less or excess, he shall make due adjustment of the amount of such less credit or excess credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to conditions as may be prescribed.

Credit
notes and
debit notes.

23.(1) Where a tax invoice has been issued in respect of any sale and the amount shown as tax charged in the tax invoice is found to be in excess of the tax payable under this Act in respect of that sale, the registered dealer making the sale shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed.

(2) Where the tax invoice has been issued in respect of any sale and the tax charged in the tax invoice in respect of that sale is found to be less than the amount of tax payable under this Act, the registered dealer making the sale shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed.

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed.