
Orissa Luxury Tax Act, 1995

[26 August 1995]

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Orissa Luxury Tax Act, 1995

[26 August 1995]

An act to provide for the imposition of tax on luxuries and for matters connected therewith or incidental thereto. BE it enacted by the Legislature of the State of Orissa in the Forty-sixth year of the Republic of India as follows :- 1. Published vide O.G.E. No. 984 dated 26.8.1995.

1. Short Title Extent And Commencement :-

- (1) This Act may be called the Orissa Luxury Tax Act, 1995.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context, -

- (a) "Commissioner" means the Commissioner of Luxury Tax

appointed under Sub-section (1) of Section (3);.

(b) "licensed stockiest" means a stockiest to whom a license has been granted under Sub-section (4) of Section 6;

(c) "luxuries" means the commodities as specified

(e) "prescribed" means prescribed by rules made under this Act;

(f) "stock of luxuries" means the quantity of luxuries that a stockiest receives in, or procures for, his stock, or records or accounts for in his books of account in Orissa during any prescribed period for stocking, vending, supplying or distributing to a wholesaler, dealer, retailer, distributor or any other person, but shall not include any quantity of such luxuries held by him in stock on the first day of such prescribed period;

(g) "stockiest" means a person who is, in regular course of business, in his possession of, or control over, a stock of luxuries, whether manufactured, made or processed by him in Orissa, or brought by him into Orissa, either on his own account or on account of others, from any place outside Orissa, for stocking, vending, supplying or distributing such luxuries in Orissa;

(h) "Tribunal" means the Orissa Sales Tax Tribunal constituted under Sub-section (2) of Section 3 of the Orissa Sales Tax Act, 1947;

(i) "turnover of stock of luxuries", in relation to a stockiest in respect of any prescribed period or part thereof, means the aggregate of the values of stock of luxuries;

(j) "value of stock of luxuries" means,-

(i) in respect of any stockiest, being a manufacturer of any of the luxuries, the value of such luxuries calculated at the ex-factory price at the time of receipt or entry thereof in his stock, and

(ii) in respect of any stockiest being an importer of any of the luxuries, the value of such luxuries calculated at the price thereof as per consignor's bill, invoice or consignment note or other document of like nature, and shall include-

(a) excise duty and central sales tax, if any, paid or payable on such luxuries by the manufacturer or importer thereof, as the case may be, and

(b) transport charges and insurance charges, if any, for carrying such luxuries to any premises, godown, warehouse or any other place for delivery to a wholesaler, dealer, retailer, distributor or any other person;

(k) "year" means the financial year.

3. Taxing Authorities :-

(1) The State Government may appoint any person to be the Commissioner of Luxury Tax, Orissa who shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act, and may appoint such other persons under any prescribed designation to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act within such local area as may be assigned to them by the Commissioner.

(2) The Commissioner and the persons appointed under Sub-section (1) shall be deemed to be the public servants within the meaning of Section 21 of the Indian Penal Code.

(3) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and duties under this Act to any person appointed under Sub-section (1) to assist him.

(4) No suit, prosecution or other legal proceedings shall lie against the Commissioner or the persons appointed under Sub-section (1) to assist him, for any thing which is in good faith done or intended to be done under this Act or the rules made there under.

4. Incidence Of Luxury Tax :-

Every stockiest shall be liable to pay a luxury tax on his turnover of stock of luxuries at such rate, not exceeding twenty per centum, as the State Government may, by notification, fix in this behalf, and different rates may be fixed for different class or classes of luxuries.

5. Levy Of Luxury Tax :-

The luxury tax payable by a stockiest under this Act shall be levied on that part of his turnover of stock of luxuries during any prescribed period which remains after deducting there from his such turnover during that period representing -

(a) the value of such stock of luxuries as shown to the satisfaction of the commissioner to have been dispatched to places outside Orissa;

(b) the value of stock of luxuries of such class or classes or description as may be prescribed.

6. Licence :-

(1) No stockiest shall, while being liable to pay luxury tax under Section 4, hold any stock of luxuries in any premises, go down, warehouse or any other place in Orissa unless he obtains, on application, a licence in the prescribed form.

(2) If a stockiest fails to obtain a license under Sub-section (1) within a period of one month of the commencement of this Act or within a period of Seven days from the date of his liability under Section 4, whichever is later, the Commissioner may, after giving him a reasonable opportunity of being heard, impose, by way of penalty, a sum being not less than five thousand rupees and not more than ten thousand rupees, for each month of delay in obtaining the license and direct the stockiest by a notice to pay the amount of such penalty into a Government Treasury within the date specified in the notice :

Provided that no penalty under this Sub-section shall be imposed in respect of the same fact for which a prosecution under sub-section (2) of Section 18 has been instituted and no prosecution would lie vice versa.

(3) Every stockiest required to obtain a license under Sub-section (1) shall make an application in this behalf in the prescribed manner to the Commissioner.

(4) If the Commissioner is satisfied that the application for license is in order, he shall, subject to such conditions and restrictions and in such manner as may be prescribed, grant the applicant a license in the prescribed form.

(5) Where a stockiest makes an application for license under Sub-section (3) within the period referred to in Sub-section (2), such stockiest shall be deemed to have complied with the provisions of Sub-section (1) during the pendency of his application for the grant of the license.

(6) Where a license has been granted to a stockiest under Sub-section (4), the Commissioner may, if he is of opinion that it is necessary or expedient so to do for the proper realisation or recovery of the luxury tax under this Act, at any time while such license is in force, by an order in writing and for reasons to be recorded therein, require the stockiest to furnish within such period and in such manner as may be prescribed, a security for the proper payment of the luxury tax payable by him under this Act:

Provided that no order shall be passed under this Sub-section without giving the stockiest an opportunity of being heard.

(7) The Commissioner may, on application or otherwise, from time to time amend the license of a stockiest.

(8) Where the liability of a stockiest to whom a license has been granted under Sub-section (4), to pay the luxury tax under this Act has ceased, such license may, on application by him, be cancelled by the Commissioner in the manner prescribed.

(9) A license granted to a stockiest under Sub-section (4) may be cancelled by the Commissioner after due notice to such stockiest if he is satisfied that the stockiest has failed to pay the luxury tax, penalty or interest payable under this Act or to furnish the security under Sub-section (6) :

Provided that the license so cancelled may be restored if the stockiest to whom the license was granted pays the arrear luxury tax, penalty and interest and furnishes a receipted challan therefor.

7. Returns And Payment Of Luxury Tax :-

(1) Every licensed stockiest shall furnish returns of turnover of stock of luxuries to such authority, in such manner, for such period or periods, and by such date or dates, as may be prescribed.

(2) Before any licensed stockiest furnishes the returns under Sub section (1), he shall, in the prescribed manner, pay into a Government Treasury the full amount of luxury tax due from him under this Act according to such returns, and shall furnish along with each such return a receipt from such Treasury showing the payment of such amount.

8. Interest :-

(1) If the amount of luxury tax payable under Section 5 in respect of any period is not paid by the stockiest referred to in Section 7 by the date prescribed under that Section, such stockiest shall pay a simple interest at the rate of three per centum for each month of default from the first day of such month next following the prescribed date to the last day of the month prior to the month in which such tax is fully paid or up to the month prior to the month of assessment under Section 9 in respect of such period, whichever is earlier, upon so much of the amount of luxury tax payable by him according to return where return is furnished, or according to such assessment where return is not furnished, as remains unpaid at the end of each such month of default.

(2) Where a stockiest fails to make payment of any luxury tax payable after assessment made under Sub-section (1), of Sub-section (2), by the date specified in the notice issued under Sub-section (8), of Section 9 for payment thereof, he shall pay a simple

interest at the rate of three per centum for each month of default from the first day of such month next following the date specified in such notice to the last day of the month prior to the month of full payment of such luxury tax, or up to the month prior to the month of commencement of proceedings under Sub-section (10) of Section 9, whichever is earlier, upon so much of the amount of luxury tax due from him according to such notice as remains unpaid at the end of each such month of default.

(3) Where as a result of an order under Section 15, the amount of luxury tax on which interest was payable under this Section is modified, the interest shall be payable on the modified amount.

(4) A stockiest liable to pay interest under Sub-section (1) or Sub section (2), shall pay into a Government Treasury the amount of such interest in such manner and by such date or dates as may be prescribed.

(5) Notwithstanding anything contained in Sub-section (1) or Sub - section (2), no interest shall be payable in such cases or under such circumstances, and subject to such conditions, if any, as may be prescribed.

(6) The State Government shall, in the prescribed manner, pay a simple interest at the rate of three per centum for each month of delay in making refund of luxury tax paid in excess which arises out of an order passed under Section 15, from the first day of such month next following the expiry of three months from the date of passing of such order to the last day of the month prior to the month in which the refund is made upon the amount of tax refundable to him according to such order.

(7) In calculating the interest payable under this Section, the amount of luxury tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

9. Assessment Of Luxury Tax, Imposition Of Penalty And Determination Of Interest :-

(1) If no return is furnished by a licensed stockiest in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the return furnished is correct and complete, the Commissioner shall proceed in such manner as may be prescribed

to assess to the best of his judgment the amount of luxury tax due from the licensed stockiest in respect of a year comprising all such periods and, in making such assessment, shall give the licensed stockiest a reasonable opportunity of being heard, and in the case of failure by a licensed stockiest to submit in respect of any period a return accompanied by a receipt from a Government Treasury as required under Section 7 by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause for such period, direct that the licensed stockiest shall pay, by way of penalty, in addition to the amount of luxury tax so assessed in respect of such period, a sum not exceeding that amount :

Provided that no penalty under this Sub-section shall be directed to be paid in respect of the same fact for which a prosecution under clause (c) of Sub-section (1) of Section 18 has been instituted and no prosecution would lie vice versa.

(2) If, upon information, the Commissioner is satisfied that any stockiest who has been liable to pay luxury tax under Section 4, has failed to obtain license, or has not been granted license, he shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of luxury tax due from such stockiest in respect of any period or part thereof during which such stockiest has either failed to obtain licence, or has not been granted licence, after giving him a reasonable opportunity of being heard.

(3) No assessment under Sub-section (1) shall be made after the expiry of two years, and no assessment under Sub-section (2) shall be made after the expiry of six years, from the end of the year in respect of which or part of which the assessment is made.

(4) In computing the period limited by Sub-section (3) for making any assessment under Sub-section (1) or Sub-section (2), the period during which the Commissioner is restrained from commencing or continuing any proceeding for which such assessment by an order of any Court shall be excluded.

(5) Where the Commissioner is satisfied that a stockiest is liable to pay interest under Section 8, he shall, in such manner as may be prescribed, determine the amount of interest payable by such stockiest and if, on such determination, any additional amount is found to be payable by the stockiest or any excess amount is found to be refundable to the stockiest, the Commissioner shall issue a notice, in the prescribed manner, to such stockiest directing him to pay such additional amount or informing him of the amount of excess payment, as the case may be.

(6) No determination under Sub-section (5) of interest payable under Sub-section (1) of Section 8 shall be made after the expiry of one year from the date of assessment of luxury tax under Sub-section (1) in respect of the period for which such determination is made.

(7) Where there is an apparent mistake in the determination of interest under Sub-section (5), the Commissioner may, on his own motion, or upon application made by a stockiest within six months from the date of determination, rectify the amount of interest payable by such stockiest and issue a fresh notice in the prescribed manner.

(8) The amount of luxury tax due from a stockiest upon assessment made under Sub-section (1) or Sub-section (2), as the case may be, shall, together with any penalty directed to be paid under Sub-section (1), be paid by the stockiest into a Government Treasury by such date as may be specified in a notice issued by the Commissioner for this purpose, and the date to be so specified shall not ordinarily be less than thirty days, from the date of service of such notice.

(9) The amount of interest that may become due from a stockiest upon determination under Sub-section (5) shall be paid by the stockiest into a Government Treasury by such date as may be specified in the notice issued under that Sub-section by the Commissioner and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(10) Any amount of luxury tax, penalty or interest which remains unpaid after the date specified in the notice under Sub-section (8) or Sub-section (9) shall be recoverable as an arrear of land revenue.

10. Refunds :-

The Commissioner shall, in the prescribed manner, refund to a stockiest any amount of luxury tax, penalty or interest paid by such stockiest in excess of the amount due from him under this Act, either by cash payment or by deduction from or adjustment in, the amount of luxury tax, penalty or interest due in respect of any other period.

11. Accounts :-

Every stockiest shall maintain and keep true and upto date account of the quantity and value of luxuries held in stock by him and

vended, supplied or distributed by him during the prescribed period and also keep documents in support of other charges, duties and tax, paid or payable by him, and if the Commissioner considers that such account is not sufficiently clear or intelligible to enable him to make a proper check of the return referred to in Section 7, he may require such stockiest to keep such accounts as he may direct.

12. Production And Inspection Of Accounts And Search Of Premises :-

(1) The Commissioner may, subject to such conditions as may be prescribed, require any person -

(a) to produce any accounts, registers or documents before him and explain them; and

(b) to furnish any information in relation to manufacture, import, use or sale and stock of luxuries and relating to any other matter, as may be deemed necessary for the purposes of this Act.

(2) All accounts, registers and documents and luxuries kept in any place of business of a stockiest shall, at all reasonable times, be open to inspection by the Commissioner.

(3) If the Commissioner or any person appointed under Sub-section (1) of Section 3 to assist him has reasons to suspect that any stockiest is attempting to evade payment of luxury tax he may enter into and search any place of business and, for reasons to be recorded in, writing, seize such accounts, registers or documents of the stockiest as may be necessary, for determination of liability to pay luxury tax by such stockiest or for assessment of such tax or for determination of interest or for any other purposes as may be required by or under this Act.

(4) The Commissioner, or any person appointed under Sub-section (1) of Section 3 to assist him, shall grant a receipt for any accounts, registers, or documents seized by him and shall retain any of such accounts, registers or documents only for a period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act :

Provided that no accounts, registers or documents seized by the Commissioner shall be retained for any period exceeding one year from the date of seizure unless he records, in writing, reasons there for, but where seizure is made by any person appointed under Sub-section (1) of Section 3 to assist the Commissioner such person shall not retain any of the accounts, registers or documents seized by him under Sub-section (3) for any period exceeding one year

from the date of seizure unless he records, in writing, the reasons for further retention and obtains sanction of the Commissioner in writing in this behalf.

13. Search And Seizure Of :-

(1) if the Commissioner, or any person appointed under Sub-section (1) of Section 3 to assist him, has reasons to believe that a person is holding a stock of any of the luxuries manufactured by him in Orissa or brought by him into Orissa from any place outside Orissa in any premises and that he is attempting to evade payment of luxury tax, the Commissioner or the person appointed under Sub-section (1) of Section 3 to assist him may, subject to such restrictions and conditions as may be prescribed, enter into such premises and conduct search therein and seize such luxuries to secure payment of luxury tax that may become payable on assessment under Section 9.

(2) While making seizure, the Commissioner, or the person who seizes luxuries, shall grant a receipt thereof in the prescribed manner:

Provided that when the Commissioner, or the person appointed under Sub-section (1) of Section 3 to assist him, thinks it necessary not to seize such luxuries for the time being, he shall seal in the prescribed manner any room, godown or warehouse or any container found within such premises.