

Orissa Motor Vehicles Taxation (Amendment) Act, 1993

12 of 1993

[01 June 1993]

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AN ACT FURTHER TO AMEND THE ORISSA MOTOR VEHICLES TAXATION ACT, 1975 BE it enacted by the Legislature of the State of Orissa in the Forty-fourth Year of the Republic of India as follows:- For the Bill See Orissa Gazette Extraordinary, dated the 11th November 1992 (No. 1519)

1. Short Title :-

This Act may be called the Orissa Motor Vehicle Taxation (Amendment) Act, 1993.

2. Amendment Of Section 2 :-

In the Orissa Motor Vehicles Taxation Act, 1975 (hereinafter referred to as the principal Act), in Section 2,-

(i) For clauses (a), (b), (c) and (d), the following clauses shall respectively be substituted, namely:-

(a) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority under the Motor Vehicle Act as permissible for that vehicle;

(b) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four-wheels fitted with engine capacity of not exceeding thirty-five cubic centimeters;

(c) "Motor Vehicle Act" means the Motor Vehicle Act, 1988(59 of 1988) as amended from time to time;

(d) "Motor Vehicles Rules" means the Motor Vehicles Rules made under the Motor Vehicles Act; and

(ii) in clause (m), for the word "including", the word "excluding" shall be substituted.

3. Amendment Of Section 3 :-

In Section 3 of the principal Act,-

(i) for the words " the Schedule" wherever they occur, the word and numeral "Schedule I" shall be substituted;

(ii) in sub-section (I), the words "on and from the date of commencement of this Act" shall be omitted; and

(iii) in the proviso to sub-section (2), the words "in the aggregate" and "on the date of publication of this Act in the Gazette" shall be omitted.

4. Amendment Of Section 3-A :-

In section 3-A of the principal Act,-

(i) in Sub-section (I), for the words "on and from the 18th October 1985, there shall be levied on every stage carriage and goods vehicle" and "the Schedule", the words and numeral "there shall be levied on every public service vehicle and goods carriage" and "Schedule I" shall respectively be substituted; and

For Select Committee Report, See Orissa Gazette Extraordinary, dated the 10th March 1993 (No. 395)

(ii) in sub-Section (2),-

(a) For the words "the Schedule" wherever they occur including the proviso, the word and numeral "Schedule I" shall be substituted; and

(b) the words "in the aggregate" and "as on the 18th October 1985" appearing in the proviso shall be omitted.

5. Omission Of Section 3-B :-

Section 3-B of the principal Act shall be omitted.

6. Amendment Of Section 4 :-

In Section 4 of the principal Act, in sub-section (2), for the words "the Schedule" wherever they occur, the word and numeral "Schedule I" shall be substituted.

7. Amendment Of Section 4-A :-

In Section 4-A of the principal Act,-

(i) for the words "the Schedule" wherever they occur, the word and numeral "Schedule I" shall be substituted; and

(ii) in the proviso to sub-section (1), for the words "for each completed year" the words "for each completed period of twelve months commencing on the date of initial purchase or acquisition of the vehicle" shall be substituted.

8. Amendment Of Section 5 :-

In Section 5 of the principal Act,-

(i) for the words and figures "Section 3 or Section 4", the words, letters and figures "Sections 3, 3-A, 4 or 4-A" shall be substituted; and

(ii) the words and figures "in lieu of the tax leviable under Section 3" shall be omitted.

9. Amendment Of Section 6 :-

In Section 6 of the principal Act, in Explanation II, for the word and figure "Section 32" the word and figure "Section 52" shall be substituted.

10. Amendment Of Section 7 :-

In section 7 of the Principal Act, in clause (b), for the word "issue", the words "save in the case of a motor vehicle in respect of which one time tax has been paid, issue" shall be substituted.

11. Amendment Of Section 9 :-

To Section 9 of the principal Act, the following proviso shall be added, namely:-

"Provided that nothing in this section shall apply to a motor vehicle in respect of which one time tax has been paid."

12. Amendment Of Section 14 :-

In Section 14 of the principal Act,-

(i) in sub-section (1), the words and numeral "or in accordance with the provisions contained in Schedule II" shall be added at the end; and

(ii) after section (1), the following sub-section shall be inserted, namely:-

"(1-A) Any tax levied under this Act shall be deemed to be a first charge on the vehicle to which it relates".

13. Amendment Of Section 17 :-

In Section 17 of the principal Act,-

(i) in sub-section (1), after the words "amount of tax" the words and figure "including the penalty, if any, levied under Section 13" shall be inserted; and

(ii) in sub-section (2),-

(a) after the words " the officer may, if the tax" the words "or the penalty, if any, or both tax and penalty" shall be inserted; and

(b) after the words "detail it till the tax", the word "or the penalty, or both as the case may be" shall be inserted.

14. Amendment Of Section 19 :-

In section 19 of the principal Act, in the first proviso, the words "or erroneous in so far as it is Prejudicial to the interest of revenue" shall be added at the end.

15. Amendment Of Schedule :-

The Schedule to the principal Act, shall be renumbered as

"Schedule I" and in Schedule I as so renumbered,-

(i) in item 4,-

(a) in the opening portion, for the word "passengers", the words "persons or passengers" shall be substituted; and

(b) in sub-item (A), for the word "passenger" wherever it occurs, the words "persons or passengers" shall be substituted and for the explanation to the said sub item, the following proviso shall be substituted, namely :-

Provided further that the additional tax in respect of a deluxe stage carriage shall be thirty per centum more than that of an Express Stage Carriage.

(c) in sub-item (B),-

(i) in column (2), for the figures "600.00" and "1500.00" appearing against clauses (ii) and (iii), the figures "256.00" and "640.00" shall respectively be substituted; and

(ii) in column (3), against clauses (ii) and (iii), the figures "344.00" and "860.00" shall respectively be inserted.

(d) in the Explanation,-

(i) in sub-clause (a) of clause (i), for the words and figure "Motor Vehicles Act, 1939", the words "motor Vehicles Act" shall be substituted;

(ii) in sub-clause (a) of clause (ii), for the words and figure "Motor Vehicles Act, 1939", the words "motor Vehicles Act" shall be substituted;

(iii) in sub-clause (b) of clause (ii), the brackets and words "(Express) and the entire period during which the vehicle was without permit shall be taken into account for calculation of the tax and additional tax" shall be added at the end.

(iv) after clause (ii), the following clause shall be inserted, namely:-
"(iii) In the case of a contract carriage playing without permit granted under the Motor Vehicles Act, the entire period during which the vehicle was without permit shall be taken into account for calculation of tax and additional tax.

(iv) For the omnibus, not being a private service vehicle or an educational institution bus, kept for use in respect of which no permit is granted on application under the Motor Vehicles Act, the tax payable shall be rupees six hundred per seat per annum, excluding the driver and conductor" ; and

(e) the existing clauses (iii) and (iv) shall be renumbered as clauses (v) and (vi) respectively;

(ii) after item 5, the following items shall be inserted, namely :-

"5-A. Private service vehicles-

For every sitting person excluding the driver, the vehicle is permitted to carry, 180.00 5-B. Educational institution buses-
For every sitting person excluding the driver, the vehicle is permitted to carry 60.00" ; and
(iii) in item 8, for the words "goods vehicles", the words "goods carriages" shall be substituted.

16. Insertion Of New Schedule :-

After Schedule I to the principal Act as renumbered, the following Schedule shall be inserted, namely:-

SCHEDULE II

PROCEDURE FOR RECOVERY OF TAX OR PENALTY

[See sub-section (1) of section 14]

PART I

1. Definitions--

In this Schedule, unless the context otherwise requires,-

- (a) "certificate" means a certificate signed by the Tax Recovery Officer under rule 2 ;
- (b) "defaulter" means the person mentioned as defaulter in the certificate and includes any person whose name is substituted or added by the Tax Recovery Officer;
- (c) "execution" in relation to a certificate, means recovery of arrears in pursuance of the certificate;
- (d) "From" means a from given in the Annexure to this Schedule;
- (e) "moveable property" includes growing crops ;
- (f) "rule" means a rule contained in this Schedule ;
- (g) "share in a corporation" includes stock, debentures or bonds ; and
- (h) "Tax Recovery Officer" means a Regional Transport officer appointed by the State Government and any other officer who may be authorized by the State Government, by notification, to exercise the powers of Tax Recovery Officer under the Schedule within the jurisdiction as may be specified.

2. Filling of certificate and amendment thereof--

(1) when the Tax Recovery Officer is satisfied that a registered owner or person having possession or control of a vehicle is in default in making payment of any tax or additional tax due or any penalty directed to be recovered under the Orissa Motor Vehicles Act, 1975, he may sign a certificate in Form-1 stating that the amount is due and shall proceed to recover the amount in accordance with the provisions of this Schedule.

(2) Subject to the law of limitation, the Tax Recovery Officer may at any time amend the certificate by addition, omission or substitution of the name of any defaulter or by alteration of the amount mentioned in the certificate, as the case may be, on being satisfied that the amendment is so necessary:

Provided that when any such amendment is made, a fresh notice as provided in rule 3 shall be issued to the defaulter.

(3) Issue or service of notice and effect thereof-

(1) When a certificate has been signed by the Tax Recovery Officer under rule 2, he shall issue a notice to the defaulter in Form 2 alongwith a copy of the certificate directing him to pay the amount within a period not exceeding thirty days from the date of service of the notice.

(2) After the service of notice of any certificate under sub-rule (1) upon a default,-

(a) Any private transfer or delivery of any of his immovable property or any interest in such property shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequent to the service of the said notice shall be postponed :

Provided that the Tax recovery Officer may, at any time for reasons to be recorded in writing, direct an attachment of the whole or any part of the immovable property belonging to the defaulter

(3) The defaulter may, within the period of time specified in the notice issued under sub-rule (1), present to the Tax Recovery Officer a petition denying his liability only on the ground that-

(a) the demanded amounts have been fully or partly paid ; or

(b) the person on whom such notice has been served is not the defaulter; or

(c) the amount by law is not recoverable from him.

4. Hearing and determining the petition denying liability--

The Tax Recovery Officer may after hearing petition and taking evidence, as may be necessary, confirm the amount mentioned in the certificate or aside, modify or vary the same as he deems fit.

5. Execution of certificate--

A certificate signed under rule 2 may be executed by-

(a) the Tax recovery Officer who signed the certificate; or

(b) the tax Recovery Officer to whom a copy of the certificate is sent for execution under rule 6.

6. Transmission of certificate to any other Tax Recovery Officer for

Execution--

(1) A Tax Recovery officer who signed the certificate may send the copy thereof for execution to any other Tax Recovery Officer in whose jurisdiction the defaulter resides, carries on his business or the property of the defaulter are situated or kept.

(2) If the copy of the certificate is transmitted by the Tax Recovery Officer who signed the certificate, to another Tax Recovery Officer before the notice under rule 3 is issued or served, the latter shall issue the notice or cause it to be served, as the case may be heard the petition filed denying liability, if any and shall proceed to recover the amount under this Schedule. In that case, he shall intimate the position from time to time to the Tax recovery Officer who signed the original certificate.

7. When the certificate may be executed--

No step in execution of a certificate shall be taken until the period specified in the notice issued under rule 3 has elapsed since the date of the service of the notice or when a petition has been filed denying liability until such petition has been heard and determined: Provided that when the whole or any part of the movable property of the defaulter is liable to attachment under this Schedule, the Tax Recovery Officer may, at any time for reasons to be recorded in writing, direct and attachment of the whole or any part of such movable property.

8. Mode for recovery--

If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant, the Tax Recovery Officer shall proceed to realize the amount by one or more of the following modes-

- (a) by attachment and sale of the defaulters movable property;
- (b) by attachment and sale of the defaulters immovable property;
- (c) by arrest of the defaulter and his detention in prison.

9. Interest, cost and charges recoverable--

There shall be recoverable in the proceedings in execution of every certificate-

- (a) interest at the rate as may be notified by the State Government, from the day commencing after the end of the period specified in the notice issued under rule 3;
- (b) all charges incurred in respect of-
 - (i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes; and
 - (ii) all other proceedings taken for realizing the arrears.

10. Purchasers title--

(1) Where property is sold in execution of a certificate, there shall vest in the purchaser the right, title and interest of the defaulter at the time of the sale, free from all encumbrances.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchasers right, title and interest shall be deemed to have vested in him from the time when the property so sold, and not from the time when the sale becomes absolute.

11. Disposal of proceeds of executions (1) –

Whenever assets are realized by sale or otherwise in execution a certificate, they shall be disposed of in the following manner-

(a) there shall first be paid to the Tax Recovery Officer the costs incurred by him in the proceeding;

(b) There shall, in the next place, be paid to the Tax Recovery Officer the amount due under the certificate in execution of which the assets were realized; and

(c) The balance, if any, remaining after the payment of the amount, if any, referred to in clause (d) shall be paid to the defaulter.

12. Property exempt from attachment ;--

(1) All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale in execution of a decree of a Civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officers decision as to what property is so entitled to exemption shall be conclusive

13. Investigation by Tax Recovery Officer--

(1) Where any claim is preferred to, or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designed or to cause unnecessary delay,

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Offices ordering the sale may postpone it pending the investigation of the claim or objection upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector shall adduce evidence to show that-

(a) in the case of immovable property, at the date of the service of

notice issued under this Schedule to pay the arrears ; or

(b) in case of immovable property, at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person, in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order of the Tax Recovery Officer shall be conclusive.

14. Removal of attachment on satisfaction or cancellation of certificate:--

Where-

(a) the amount due with cost and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer ; or

(b) the certificate is cancelled, the attachment shall be deemed to be withdrawn and in the case of immovable property the withdrawal shall, if the defaulter so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

15. Officer entitled to attach and sell--

The attachment and sale of property shall be made by the Tax Recovery Officer.

16. Defaulting purchaser answerable for loss on resale--

Any deficiency of price which may happen on a resale by reason of the purchasers default, and all expenses attending such resale shall be certified by the Tax Recovery Officer and shall be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.