

# Technical Guide to Odisha VAT



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
New Delhi

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First Edition : January, 2015

Second Edition : August, 2015

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Price : ₹150 /-

ISBN No : 978-81-8441-773-9

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra 282 003  
August/2015/1,000

# Foreword

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VAT is an internationally recognized multipoint tax system. The principle of VAT contemplates levy of tax at each stage of value addition till the point of consumption, and realization of full tax on the final sale value from the consumer. In India, VAT was introduced in most of the State from April 1, 2005. Introduction of uniform VAT in the States was a challenging exercise in the federal country like India, where each State Government, in terms of constitutional provision, is sovereign in levying and collecting state taxes.

The system of VAT, on the one hand, remove the cascading effect of taxes as it allow credit of taxes paid at the earlier stages and thus benefiting the consumer. On the other hand, it increases the collection of revenue of the State Governments due to better compliance of the VAT Law by the dealers. The country is on the verge of most ambitious and largest ever indirect tax reform i.e. introduction of Goods and Services Tax which seeks to create a common national market by bringing down fiscal barriers between the States and reduce the complexities of current tax structure.

Considering that though the broad design of the State-level VAT is uniform across the country, every State has its own VAT legislation and procedures differ on many counts from one State to another, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) published Technical Guides to VAT in respect of 10 States in the year 2014-15. During the year, the Committee has been revising all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. I compliment CA. Atul Gupta, Chairman, CA. Shyam Lal Agarwal, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for their untiring efforts in bringing out the revised edition of *Technical Guide to Odisha VAT*.

I am sure that this updated Guide would be warmly received and appreciated by the members and other interested readers.

Date: 31<sup>st</sup> July, 2015  
Place: New Delhi

CA. Manoj Fadnis  
President



# Preface

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Based on sound economic rationale, the system of Value Added Tax was introduced in majority of the States from April 1, 2005. The objective of bringing transparency in taxation, minimizing cascading effect of taxes and cutting trade barriers to large extent has been achieved as it allow credit of taxes paid on earlier stages and meticulous documentation is a *sine quo non* for it. Further, the requirement of maintaining tax invoices for claiming input tax credit has also increased self-compliance by the dealer and has thus resulted in increase in the total revenue of State Governments. The Country is now all set to witness another major reform i.e. introduction of GST which will integrate the principle of taxation of value added in India at the State level in the form of State VAT and at the Central level in the form of CENVAT.

In order to facilitate the members in understanding the State level VATs, the Indirect Taxes Committee in the year 2014-15 has brought out Technical Guides to VAT in respect of various States. Considering the changes made in the VAT Law through Finance Act, notifications/ circulars etc., the Committee thought it fit to revise all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. Accordingly, it has been revised. This revised guide intends to give a general guidance to the members to address the various issues that may arise in the Odisha VAT.

I am extremely thankful to CA. Manoj Fadnis, President and CA. M. Devaraja Reddy, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thank CA. Tarun Kumar Agarwalla for thoroughly revising the Guide with updated provisions of Odisha VAT. I am sure that this revised publication would help the members and readers to be well equipped in effectively discharging their duties as Odisha VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at [itdc@icai.in](mailto:itdc@icai.in).

Date: 31<sup>st</sup> July, 2015  
Place: New Delhi.

**CA. Atul Gupta**  
Chairman  
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# Contents

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Glossary	1
1 Introduction	9
2 Incidence and Levy of Tax	11
3 Input Tax Credit (ITC)	18
4 Registration Procedure	28
5 Amendment, Cancellation and Suspension of Registration	36
6 Returns	41
7 Assessment, TDS, Recovery of Tax and Refund	46
8 Accounts and Audit	60
9 Inspection, Production of Information & Accounts and Powers of the Authorities	68
10 Liability to Pay Tax in Special Circumstances	77
11 Special Provisions for Specific Assessee	82
12 Appeals, Revision and Rectification	90
13 Offences, Penalties and Prosecution	96
<b>Appendix</b>	
1 Appendix-1: VAT Forms	101
2 Appendix-2: VAT Schedules	108



# Glossary

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The Odisha Value Added Tax Act, 2004 comes into effect from 01.04.2005. It extends to the whole of the State of Odisha. The Odisha Value Added Tax Rules, 2005 has also come into force on 01.04.2005.

- **Business** includes any trade, commerce or manufacture; any adventure or concern in nature of trade, commerce or manufacture; any transaction in connection with or incidental or ancillary to such to, such trade, commerce, manufacture, adventure or concern; any transaction in connection with or incidental or ancillary to commencement or closure of such trade, commerce, manufacture, adventure or concern; 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.

Furthermore, the following activities have been specifically deemed to be business:

- (a) Raising of man-made forest or rearing of seedlings or plants.
  - (b) 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,.
  - (c) 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. [Section 2(7)]
- **Capital goods** means plants, machinery and equipments used directly in the process of manufacturing and shall include the components and spare parts thereof, but does not include such plant, machinery and equipments which are used for the purposes and in the circumstances specified in Schedule 'D'. [Section 2(8)]
  - **Casual dealer** means any person, whether as principal, agent or in any other capacity, who has occasional transactions of buying, selling

*Technical Guide to Odisha VAT*

or supplying or distributing goods in the State for cash or deferred payment or for commission, remuneration or other valuable consideration.

Further, the definition of casual dealer irrespective of the fact of having *fixed* place of business in the state or not can include:

- (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;
- (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; [Section 2(9)]

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

- (a) a casual dealer;
- (b) a commission agent, a broker or a del-credere agent or an auctioneer or any other mercantile agent, by whatever name called;
- (c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not situated outside the state;
- (d) a person who, whether in the course of business or not:-
  - (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
  - (ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;

## *Glossary*

- (iii) supplies by way of or as part of service or otherwise goods being food or any other article for human consumption or drinks (intoxicating or not) for cash, deferred payment or other valuable consideration. [Section 2(12)]
- **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) [Section 2(13)]
  - **Electronic hardware technology park (EHTP) unit** is a unit set up under the EHTP Scheme, which undertakes to export its entire production of goods and is approved by the Development Commissioner of the Export Processing Zone or by any other competent authority duly authorized by the Ministry of Industry, Govt. of India. [Section 2(15)]
  - **Export oriented unit (EOU)** means any industrial unit which undertakes to export their entire production of goods and is approved by the Development Commissioner of the Export Processing Zone or by any other competent authority duly authorized by the Ministry of Industry, Govt. of India. [Section 2(18)]
  - **Fixed place of business** means the place of business from which the dealer carries out his business activities, and includes:-
    - (a) a place where 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 the ordinary course of business. [Section 2(19)]
  - **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

*Technical Guide to Odisha VAT*

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; [Section 2(21)]

- **Goods vehicle** means any motor vehicles constructed or adopted 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. [Section 2(22)]
- **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; [Section 2(24)]
- **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; [Section 2(25)]
- **Input tax** in relation to any registered dealer means the tax collected and payable under this Act in respect of sale to him of any taxable goods for use in the course of his business; [Section 2(26)]
- **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; [Section 2(27)]
- **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; [Section 2(28)]
- **Output tax** in relation to any registered dealer means the tax leviable and payable under this Act in respect of sale of any taxable goods made by that dealer in the course of his business [Section 2(29)]
- **Person** means any individual or association, HUF or body of individuals and includes a Hindu Undivided Family, a firm, a company

## *Glossary*

whether incorporated or not, a society including a co-operative society, a trust, a club, an institution, an agency, a corporation, other artificial or legal person, local authority, department of Government, a Government enterprise and a financial institution or Bank [Section 2(31)]

- **Place of business** means any place where a dealer carries on business and includes-any warehouse, godown or other place where the dealer stores or processes his goods; any place of production or manufacture of goods; place where books of accounts of dealer are kept; place where the agent carries the business; any vehicle or vessel or other carrier where in the goods are stored or used for transportation except for the purpose of registration under Section 25 and 26. [Section 2(32)]
- **Resale** means a sale of goods in the same form in which they have purchased. [Section 2(40)]
- **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 [Section 2(41)]
- **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. [Section 2(43)]
- **Sale** means transfer of 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) sale otherwise than in pursuance of a contract,
  - (b) transfer of property in goods (whether as goods or in some other form) involved in execution of works a contract,
  - (c) delivery of goods on hire purchase or any other system of payment by installment,
  - (d) a transfer of goods by any unincorporated association or body of persons to a member thereof,
  - (e) supply of food or other article of human consumption or any drink (intoxicating or not) by way of or as part of service.
  - (f) transfer of right to use any goods whether or not for a specified period.

*Technical Guide to Odisha VAT*

Further sale or purchase shall be deemed to have taken place inside the state if the goods are within the State:-

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

Further, more where there is a single contract of sale or purchase of goods situated in more than one place the provisions shall apply as if there were separate contract in respect of the goods at each of such places.

Further, more to exclude certain transaction which are covered under central sales tax act it is being specifically provided that, a sale or purchase of goods shall not be deemed to have taken place inside the state, if the goods are sold:-

- (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.  
[Section 2(45)]

- **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 goods at the time of or before delivery thereof, and the expression 'purchase price' shall be construed accordingly.
  - ✓ 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.
  - ✓ In case of sale by hire purchase agreement, the prevailing market price of goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.
  - ✓ In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the

## *Glossary*

hire charges received or receivable for such transfer shall be the sale price.

- ✓ Any amount of duties, charges, taxes levied or livable under any act (other than tax levied or livable under this act) in respect of such goods shall be included in the sale price.
- ✓ Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or 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.
- **Software Technology Park (STP)** means a unit set up under the STP Scheme, which undertakes to export its 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 authorized by the Ministry of Industry, Govt. of India for the purpose. [Section 2(48)]
- **Tax invoice** means a document showing the goods sold with price, quantity and such other particulars as may be prescribed. [Section 2(52)]
- **Taxable Limit**, in relation to business of a dealer is that part of the gross turnover specified in sub section (4) of section 10. [Section 2(55)]
- **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 prescribed. [Section 2(56)]
- **Transporter', carrier or 'Transporting agent** means the owner or any person having possession or control of the goods vehicle, who transport 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 Vehicle Act, 1988 as the holder thereof, the driver or any other person in-charge of such vehicle. [Section 2(57)]
- **Turn-over of purchases** means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of the purchase or receipt of goods liable to tax under section 12 during a given period [Section 2(59)]

*Technical Guide to Odisha VAT*

- **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 [Section 2(60)]
- **Zero rated sales** denotes any sale or purchase made which qualifies to be an event of such sale or purchases referred under section 18 of the Odisha VAT ACT
- **Zero rated sales and exempted sales:** Every incidence of tax may not warrant a liability to pay tax. Any goods which are exempt can be regarded as out of incidence of tax whereas there can be a case where the incidence of tax is their but because of applicable rate of tax being zero there is no liability. Hence there is a difference between 'exemption of tax' and 'zero rated sales'. Certain goods are enlisted in Schedule 'A' which are declared as tax free or exempted of tax under section 17 of the Act. Sale or purchase of these goods is not to be taxed in any circumstance. Zero rated sales do not refer to any goods. It refers to the event of sale only. Any goods put to sales specified in Section 18 are zero rated sales and not to be taxed under the VAT Act. Thus there shall not be output tax for the dealer on such sale, but he remains entitled to claim ITC of the tax paid by him at the time of purchase of such goods. Such input tax shall be refunded to the dealer.

The following sales are termed as zero rated sales:

1. sale in course of inter-state trade and commerce;
2. sale in course of export outside the territory of India
3. sale to a dealer having business under a Special Economic Zone (SEZ) or a Software Technology Park (STP) or a Electronic Hardware Technology park (EHTP)
4. sale to an Export Oriented Unit (EOU) [Section 18]

# Chapter 1

## Introduction

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Value added tax or VAT in brief, was introduced in Odisha from 1st April, 2005 as a part of indirect tax law. VAT is a subject of State Government and is levied on sale or purchase of goods within a State. Introduction of State VAT is an important reform measure at State level. The State VAT has replaced the earlier sales tax levy of the States. The main motive of VAT has been the rationalization of overall tax burden and reduction in general price level. Thus, it seeks to help common people, traders, industrialists as well as the Government. It is an important move towards more equal competition, efficiency and uniformity in the taxation system.

VAT is a multi-point destination based system of taxation, with tax being levied on value addition at each stage of transaction in the production/distribution chain. The term 'value addition' implies the increase in value of goods at each stage of production or its transfer. VAT is a tax on the final consumption of goods and is ultimately borne by the consumer, hence it is also known as consumption tax.

The main benefits of implementation of VAT are:

- VAT is imposed on the basis of Invoice/ bill at each stage, hence tax evasion is reduced; thereby it increases the revenue for the government.
- Set off is available for input tax as well as tax paid on previous purchases, which removes cascading effect
- Tax structure more transparent, simple and easy to understand
- Promotes competitiveness of exports; etc.
- Removal of anomaly of first point taxation.

And the disadvantages of VAT are:

- Cause of inflation
- Refund of tax (VAT credit cannot be availed if no tax is payable on final product being exempt or taxable at lower rate)

### *Technical Guide to Odisha VAT*

- Increase in investment
- Non availability of credit for tax paid on interstate purchase in initial years.

## **Odisha VAT**

VAT in Odisha came into force from 1st April, 2005. The Odisha Value Added Tax Act, 2004 (OVAT Act, 2004) is the basic legal framework regulating VAT in Odisha. VAT and sales tax collection contributes a major portion of the total revenue of Odisha Government.

On implementation of OVAT Act, 2004, the Odisha sales tax law ceased to be operative.

## **Role of Chartered Accountant**

Chartered Accountants are well trained by, the Institute of Chartered Accountants of India for successful implementation and compliance of VAT. They can guide the dealers in proper record keeping, tax planning and compliance procedures. As a tax practitioner a Chartered Accountant can cater to the industry requirements very efficiently. Through negotiations with suppliers, fulfilment of VAT audit requirement and sorting out its queries, a Chartered Accountant plays a vital role in helping the dealer to conduct the business with ease.

The Chartered Accountants through attest function also ensure to the dealer as well as to the government that taxes are paid properly, returns are filed timely and provisions of the Act are properly complied with, and thereby they help the Government in controlling tax evasion practices. The Chartered Accountants through their service to the industry also help the government in revenue growth by ensuring adherence to the provisions of law.

## Chapter 2

# Incidence and Levy of Tax

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### 1. Incidence of tax [Section 9]

1.1 As per Section 9(a) there shall be levied a value added tax on every dealer [except those covered under Section 9(b)] hereinafter called VAT on the sale or purchase of goods by a dealer;

1.2 As per Section 9(b), a turnover tax is leviable 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 forty lakhs and dealers of any specific class or category as may be notified under Section 16.

### 2. Levy of tax [Section 10]

2.1 Every dealer *whose* gross turnover, during a period of twelve consecutive months immediately preceding the appointed day exceeded the taxable limit; or *who* is registered or liable to be registered under the Odisha Sales Tax Act, 1947 or the Central Sales tax Act, 1956; *shall* be liable to pay tax with effect from the appointed day in accordance with the provisions of this Act.

2.2 Every *dealer whose* gross turnover exceeds the taxable limit during any period of twelve consecutive months, *shall* be liable to pay tax 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

2.3 Every dealer *who* has become liable to pay tax under the Central Sales tax Act, of 1956, or *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 *shall* be liable to pay tax with effect from the date on which he becomes so liable, or the date of registration, whichever is earlier.

2.4 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. In computing the period of three years, the part of a year shall be ignored. [Under Section 10(2)]

*Technical Guide to Odisha VAT*

2.5 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. [Under Section 10(3)]

2.5.1 For the purposes of this Act, taxable limit shall be asunder :

	Particular	Amount
(a)	Any dealer who 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)	Any dealer who executes any works contract:	₹50,000/-
(c)	Any dealer who manufactures or produces any goods for sale:	₹1,00,000/-
(d)	Any dealer who carries on any business other than those referred to in clauses (a), (b) and (c):	₹5,00,000/-

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 [Under Section 10(5)].

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.

### **3. Levy of tax on sale [Section 11 read with Rule 6]**

3.1 Every dealer shall be liable to pay tax on his taxable turnover of sales subject to Section 10. The expression "taxable turnover of sales" shall mean, gross turnover of sales during any period after deduction of following:-

- (a) the turnover of sales of goods which are shown to the satisfaction of the Commissioner to have taken place as per Sections 3, 4 and 5 of the Central Sales tax Act 1956 –[in the course of inter-State trade or commerce, or outside the State, or in the course of import into or export out of the territory of India.]
- (b) the turnover of sales of goods exempted from tax under Section 17;
- (c) the turnover of sales of goods as specified in Schedule C which has suffered tax under this Act in the State;

### *Incidence and Levy of Tax*

- (d) 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;

- (e) the turnover of sales of goods, when such goods are intended to be used as capital goods as referred to in sub-section (8) of Section 2 or for use in manufacturing of goods by a dealer under a SEZ; or a STP; or an EHTP along with a certificate issued by the purchasing dealer in a SEZ/STP/EHTP in form VAT -616;
- (f) the turnover of sale of goods to a EOU when such goods are intended to be used as capital goods as referred to in sub-section (8) of Section 2 or for use in manufacturing of goods;
- (g) the turnover of sale of a retailer liable to pay turnover tax, of such goods which are declared under Section 14 of the CST Act and which have been purchased on payment of tax under the Act;
- (h) the turnover of sale of a retailer, who is liable to pay turnover tax, of such goods on which tax has been paid on MRP under the Act;
- (i) such other sales on such conditions and restrictions as may be prescribed.

3.2 **Composition scheme:** Subject to the provisions of the Act 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. [Under Section 11 (3)] Rule- 8 has been prescribed to be followed with this respect.

### 3.3 **Point of taxation of sales:**

- (a) Notwithstanding anything contained in the Sale Of Goods Act, 1930, 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.

*Technical Guide to Odisha VAT*

- (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 Invoices 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 Invoices issued. [Section 11(4)]

3.4 **Point/manner of levy for goods under Schedule C:** 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. [Section 15]

#### **4. Levy of turnover tax on sale (Section 16)**

- Every retailer registered under this Act whose gross turnover does not exceed rupees forty lakhs (*if it chooses to do so*) subject to the terms and conditions laid down as per Rule 9 and every other specific class or category of dealer as per the order of *Government* shall pay a turnover tax at such percentage of the taxable turnover in lieu of tax as per Section 11.
- No turnover tax shall be payable on turnover of sales of declared goods purchased from a registered dealer on which tax has been paid.
- No turnover tax shall be payable of turnover of sales of goods purchased within the state on which tax on MRP has been paid. [Rule 9a]

#### **5. Levy of tax on purchase or receipt of good in specific situations**

Every dealer who, in the course of his business, purchases or receives any taxable goods from any person other than a registered dealer or from a registered dealer, in the circumstances in which no tax under Section 11 is payable by that registered dealer on such goods, shall be liable to pay tax on the purchase price or prevailing market price of

### *Incidence and Levy of Tax*

such goods, if after such purchase or, as the case may be, such 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,

then, 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 receipts.

## **6. Incidence, levy and rate for container and packing material**

Where any goods are 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. However when container or packing material is being sold along with goods exempted from tax under Section 17, the same is also exempted. [Section 13]

## **7. General Provisions**

**7.1 The Sale of goods exempt from tax:** The sale of all goods specified in Schedule-A shall be exempt from tax subject to conditions and exceptions set out therein. [Section 17]

**7.2 Rate of levy on Schedules B and C:** 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

*Technical Guide to Odisha VAT*

mentioned under the said Schedules in respect of those goods. The levy of tax in respect of goods specified in Schedule C shall be in the manner provided in Section 15. [Section 14]

**7.3 Zero rated sales [Section 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 in a SEZ; or a STP; or a EHTP; or to an EOU

**7.4 Rate Chart:** With respect to tax calculation in indirect taxation classification is considered as the most important aspect where the question of incidence of tax on particular activity or goods is determined. This aspect is to be checked through the exemptions available to particular activity or goods. Similarly the applicable rate of taxation is also determined by the principles of classification.

In the case of Odisha VAT Act 2004 the schedule of tax rates and classifications were the subject matter of amendment from time to time. There are 4 Schedules namely A, B, C & D. Schedule B consists of three parts. The following table presents a summary thereof:

Schedule	Part	Rate	Particulars
A	NA	Exempted	Each item specified ( Section 17)
B	Part-I	1%	Mainly precious metal and stones etc.
	Part-II	5%	Each items specified
	Part-III	13.5%	All other goods excluding those mention in schedule C
C	NA	18% to 25%	Specified items where single point taxation is applicable
D	NA	Nil	List of capital goods on which ITC is not allowed [Section 2(8) and 20(5)]

**7.5 Net tax payable:** 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.

*Incidence and Levy of Tax*

- ✓ [net tax payable = (o + p) - 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.
- ✓ 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.
- ✓ If the net tax payable calculated above is negative, the same shall be carried forward to the next tax period or periods for adjustment against the output tax payable.
- ✓ *Bifurcation of tax and sale value:*[Rule 2(1)(s) & 10(2)]: Where the tax charged is included in the sale price of the goods, the tax exclusive sale price shall be determined by applying the following formula:

$$\text{Sale Price (Exclusive of Tax)} = A - (A \times B)$$

Whereas 'A' stand for sale price inclusive of tax and

'B' stands for the tax fraction. And

$$'B' \text{ (Tax Fraction)} = r / (r + 100)$$

'r' stands for applicable tax rate as per the schedule

$$\text{Alternatively Sale price (exclusive of tax)} = (A \times 100) / (r + 100)$$

## Chapter 3

# Input Tax Credit (ITC)

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Input tax credit (ITC) is available on the purchase of goods by the dealer from the State immediately on receipt of Tax Invoice. The ITC is available either on VAT paid goods or purchase tax paid goods.

### 1. Eligibility, Terms and Conditions

- (a) The input tax credit 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'. [Section 20(1)]
- (b) The input tax credit to which a registered dealer is entitled under subsection (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. [Section 20(2)]
- (c) 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. However 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. [Section 20(6)]
- (d) 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. [Section 20(7)]
- (e) 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 –
  - (i) sale or resale by him in the State;
  - (ii) 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;

### *Input Tax Credit (ITC)*

- (iii) sale of goods subject to levy of tax at zero rate under Section 18;
  - (iv) for use as containers or materials for packing of goods, other than those exempt from tax under this act, for sale or resale; or
  - (v) transfer of stock of taxable goods other than by way of sale, to any place outside the state [Section 20(3)]
- (f) Input tax credit must be allowed to the extent provided as per the proviso to Section 20(3), as enumerated hereunder:
- (i) the input tax credit on purchases intended for the purpose of branch transfer to a place outside the State 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;
  - (ii) 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;
  - (iii) 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.;
  - (iv) the input tax credit on purchase when sold in course of interstate trade or commerce shall be allowed only to the extent of the Central Sales Tax payable under the Central Sales Tax Act, 1956 Section 20(3)]
- (g) The State Government have power to prescribe conditions and restrictions, overriding the provisions of ITC in general including the manner in which 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. [Section 20(4)] [Rule 12 & 13]

## **2. Special circumstances of input tax credit on goods**

**2.1 Input tax credit prior to registration:** 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. [Section 20(11) & Rule 11(4)]

**2.2 ITC in respect of tax paid on goods purchased before the appointed day (01.04.2005) - Transitional Provisions:** The dealer was required to claim ITC in form VAT -607 by the end of April, 2005. [Section 107(1) & Rule 123(2) (f) & (i). After verification the same could be allowed to be apportioned over a period of six months in equal instalments and shall be adjusted against output tax.

**2.3 Input tax credit on branch/ consignment transfer transactions:** Input Tax Credit on goods dispatched by way of branch or consignment transfer outside the State of Odisha or of raw materials used in the manufacture of goods which are dispatched by way of branch/consignment transfer outside the State of Odisha, shall be eligible after reversal of ITC at a rate of 4% on taxable turnover of their purchases within the State. However if the applicable rate to the goods is lower than 4%, such lower rate will be applicable in place of 4%.

**2.4 Inter State Sales:** If the goods are either sold / resold in the course of inter-State trade and commerce or are used as input in the manufacture of goods, which are sold in the course of inter-State trade and commerce, input tax credit paid while purchasing such goods inside the State will be admissible.

### **3. Input Tax on Capital Goods [Section 20(5)]**

- 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*.
- No input tax credit shall be allowed on such capital goods used for the purposes and in the circumstances as specified in Schedule 'D'.
- Input tax credit shall be allowed in lump sum where the value of such capital goods is rupees one Lakh or less.
- Input tax credit on capital goods shall be allowed only on purchase of such goods made on or after the appointed day.
- 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.
- In case where there is production of both taxable goods and goods

*Input Tax Credit (ITC)*

exempt from tax, the input tax credit admissible on capital goods shall be determined in the manner prescribed.

- Where the used capital goods are sold, the same shall be subject to tax under this act. [Section 20(5)]

**4. 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 Invoices are not available with the dealer or there is evidence that the same had 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 the manufacture or processing of goods, where the finished products are exempt from tax;
- (l) 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.

#### **4A. Specific Non Entitlement of Input Tax Credit [Section 20(1a)]<sup>1</sup>**

Notwithstanding anything to the contrary contained in this Act, a dealer shall not be entitled for input tax credit in respect of purchase of the following taxable goods subject to the circumstances mentioned against each such goods. The lists are

- (i) Coal when used for generation of electricity for sale and captive use.
- (ii) Furnace oil except when purchased for resale.
- (iii) Kerosene except when purchased for resale.
- (iv) All automobiles including commercial vehicle, two wheelers and three wheelers required to be registered under the Motor Vehicles Act, 1988 (Act 59 of 1988) except when purchased for resale and including tyres and tubes, spare parts and accessories for the repair and maintenance thereof.
- (v) Air conditioning units except when purchased for resale and except when used in plant and laboratory.
- (vi) Earth moving equipment such as dozers, loaders and excavators; and poclairn, dumpers and tippers except when purchased for resale.
- (vii) Machinery and equipments including accessories and component parts thereof purchased for use in mining.
- (viii) Machinery and equipments including accessories and component parts thereof purchased for use in construction activities such as mixer, road roller, paver, vibrator.
- (ix) Fuels used for automobiles or used for captive power generation or used in power plants.
- (x) Natural gas except when purchased for resale.

#### **5. Reverse tax credit**

Where the law provides for the Input Tax Credit subject to terms and

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<sup>1</sup> Section 20(1a) Inserted vide NOTIFICATION No.6785-Legis-35/11/L Dated 27th June, 2012

### *Input Tax Credit (ITC)*

conditions, the adherence to such terms and conditions become the precondition for the availment. In case such terms of conditions are not fulfilled law requires reversal of the ITC. The following are the circumstances and the manner of reversal or deduction of ITC. It is obvious that the act of such reversal or deduction could amount to reduction in ITC.

5.1 Where the sale price of any taxable goods, for any reason, is less than the purchase price of the said goods, the input tax credit on the purchase of such goods shall be allowed only to the extent of output tax payable on the sale of such goods and in such case the input tax credit which has been availed in excess of the output tax paid or payable, shall be reversed in the manner prescribed.

5.2. In the following cases if the goods were purchased and

- (a) are intended for any of the purposes specified under Section 20(3) [vide Para 1.1(e) vide supra] 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,
- (d) are subsequently transferred to any place outside the State otherwise than by way of sale on which input tax credit has already been availed at the full rate; or
- (e) remain unutilized or unsold on the date on which the exercise of option for composition of tax under this Act, is allowed; or
- (f) remain unutilized or unsold on the date on which the liability of the dealer to pay tax under Section 11 is changed to Section 16; or
- (g) are utilized in manufacture of goods exempted from tax, on which input tax credit has been availed in a tax period prior to its utilization, by a dealer manufacturing both taxable goods and goods exempted from tax; or
- (h) are exempted from levy of tax subsequently; or
- (i) are returned to the selling dealer and necessary adjustment is made by revising the tax Invoice or Retail Invoice, or by issue of credit or debit notes in respect of such goods

5.3 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. However 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. Further if no input tax credit is available for such deduction, the input tax credit availed of shall be repayable in the manner prescribed.

5.4 *ITC reversal for inter-State sales:* If the goods are either sold/ resold in the course of inter-State trade and commerce or are used as input in the manufacture of goods, which are sold in the course of inter-State trade and commerce, the reversal of input tax credit will be equal to output tax on sale under CST Act, which in any case is required to be paid along with output tax during the month or quarter in which such sale took place

5.5 *ITC reversal @ 4% for branch transfer-* The input tax credit on purchases intended for the purpose of branch transfer to a place outside the State 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. Hence where input tax credit has already been availed at the full rate, reversal of input tax credit shall be limited to four per centum of the value of the goods in respect of which input tax credit has been allowed.

5.6 Rule 14 of the Orissa VAT rule has provided the manner of calculation of Input tax for the purpose of reversal.

## **6. Other applicable provisions with respect to ITC**

6.1 Input credit shall be claimed by the dealer only on receipt of Tax Invoice in original evidencing the amount of input tax. However Commissioner may give exemption in general or in specific cases. [Section 20(6)]

6.2 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. [Section 20(7)]

6.3 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. [Section 20(10)]

## **7. Adjustment, accounting etc. of ITC**

**7.1 *Unutilised input credit of dealer other than exporter.*** 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 input tax credit shall be set off against the tax payable under the provisions of the Central Sales Tax Act, 1956 for that period at the first instance and if any balance input tax credit is still available, the same shall be carried forward for being set off against the tax payable for subsequent tax period or periods by that dealer. The excess input tax credit after adjustment shall be carried forward as an input tax credit, to the subsequent tax period or periods, till it is fully adjusted. However 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. Where input tax credit is so carried forward, a quarterly credit statement shall be forwarded to the concerned dealer and the claims reconciled accordingly. [Section 21]

### **7.2 *Accounting of credit and debit note***

7.2.1 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 more, he shall make due adjustment of the amount of such shortfall in 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. [Section 22]

#### **7.2.1A**

However any credit note issued after the date of issue of tax invoice and related to cash discount or sales incentive may not be eligible for the adjustments mentioned above<sup>2</sup>

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<sup>2</sup> Proviso to Section 22 inserted vide NOTIFICATION No. 5495-Legis.-Dated 7th May 2008

*Technical Guide to Odisha VAT*

7.2.2 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.

7.2.3 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.

7.2.4 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[Section23]

7.2.5 Rule 7 stipulates that such credit note must be issued within 3 months following the tax period, during which the original sale had taken place.

An adjustment of the sale price and tax in relation to a taxable sale can be made, where-

- (a) the sale is cancelled; or
- (b) the nature of the sale is fundamentally altered; or
- (c) the previously agreed consideration for the sale is altered by agreement with the buyer, whether due to reasons of quality or any other reason, consistent with the normal trade practice; or
- (d) the goods or part thereof are returned to the seller and, the seller accepts the return of the goods subject to the condition that such return of goods is made within thirty days from the date of sale.

## **8. Calculation of input tax credit**

### **When a dealer effects sale of both taxable and exempted goods**

As per Rule 11, where a dealer effects sale of goods both, subject to tax and exempt from tax, under the Act, the calculation for claiming input tax credit shall be as under :—

- (a) Where all the sales effected by a dealer in a tax period are subject to tax under the Act, the whole of the input tax may be claimed as credit.

*Input Tax Credit (ITC)*

- (b) Where all the sales effected by the dealer for a tax period are exempt from tax under the Act, no input tax may be claimed as credit.
- (c) Where a part of the sales effected by a dealer in a tax period is subject to tax and the remaining part of the sale is exempt from tax under the Act, the amount that can be claimed as input tax credit will be =  $(P \times Q) / R$

Where—

'P' is the total amount of input tax;

'Q' is the taxable turnover of sales including zero-rated sales; and

'R' is the total amount of all sales including exempt sales during that tax period.

- (d) Where the fraction  $Q/R$ , is less than 0.05, the dealer may not claim any input tax credit for that period.
- (e) Where the fraction  $Q/R$  is more than 0.95, the dealer may claim the entire input tax as credit for that period.8.2

**Input tax credit on purchase of goods intended for sale by way of transfer of right to use:** Where goods are purchased within the State by a registered dealer on tax invoice which are intended for sale by way of transfer of right to use, the dealer making such purchases shall furnish the required information in Annexure-III-A of there turn and credit of input tax shall be allowed in the tax period during which the first of such sale by way of transfer of right to use is made.

## Chapter 4

# Registration Procedure

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### 1. Registration

Under Section 24, any dealer who is liable to pay tax under provisions of this Act, cannot carry on business as a dealer unless he has been registered under this Act and possesses a certificate of registration. Further every such dealer shall be issued a single certificate of registration for all his place businesses within the jurisdiction of the State. Further under the provisions of the Act registration can be obtained in the following three ways:

- Compulsory Registration [Section 25(1) & Rule 15(1)]
- Voluntary Registration [Section 26 & Rule 15(2)]
- Deemed Registration [Section 25(5) & Rule 15(7)]

#### 1.1 Compulsory Registration [Section 25(1) & Rule 15(1)]

Under the provisions of Odisha Value Added Tax Act, 2004 any dealer who is liable to pay tax under provisions of this Act must apply within 30 days in Form no. VAT-101 immediately after he becomes liable to pay tax under the Act. Further a dealer who is registered or liable to be registered under the CST Act also will be required to be registered under the VAT Act.

#### 1.2 Voluntary Registration

Voluntary registration is provided under section 26 of Orissa VAT Act 2004 where a dealer suo motu offers for registration even though he is not liable to be registered otherwise. Under the Orissa VAT law two specific circumstances are provided where a dealer can apply for registration voluntarily on the basis of its future turnover or activity.

Under section 26 read with Rule 15(2) where

- (a) a dealer who has intended to manufacture goods during future consecutive 12 months for an amount exceeding rupees one Lakh; or
- (b) a dealer who has intended to carry on business in respect of goods during future consecutive 12 months for an amount exceeding ₹ 3,00,000 he is required to obtain registration.

## *Registration Procedure*

However the application for registration so made is subject to the concerned registering authority being satisfied on the basis of the evidence provided in support of the intention of such dealer as mentioned vide supra.

### **1.3 Deemed registration**

The Orissa VAT Act came in to existence by repealing the earlier Sales Tax Act. Hence under section 25(5) it is provided that, every dealer registered under other law (Orissa Sales tax Act or the Central Sales tax Act) as on the appointed day (1st of April 2005) shall be deemed to be registered under the VAT Act.

## **2. Registration procedure**

2.1 With effect from 15<sup>th</sup> may 2013 online registration has been made mandatory. Every dealer who is labile under Section 24 or any other person as per Section 26 shall apply for registration electronically in Form VAT -101 and shall submit the duly signed hard copy of the said form with required documents in original within seven days. [Rule 15]

- Along with the documents prescribed fees as processing charges also need to be paid at the time of registration.
- Section 27 provides that, as per the circumstances provided in the provisions the Registering Authority may require an amount of security and pass an order in this respect. The security so demanded shall have to be deposited within fourteen days from the date of receipt of the notice [Rule 24]

### **2.2 Jurisdiction of concerned Registering Authority for application for registration**

1. Dealers having only one place of business shall apply to the concerned registering Authority under whose jurisdiction such place of business is situated. [Section 25(1)]
2. In case of dealers having more than one place of business within jurisdiction of more than one Registering Authority they shall apply to the registering Authority under whose jurisdiction the principal place of business is located. [proviso to Section 25(1)]

*Technical Guide to Odisha VAT*

3. A dealer with or without fixed place of business in the State who sells or supplies or purchases goods either direct or through traveling agent/salesmen shall apply to the Commissioner who shall direct the dealer by general or special order to be registered in the circle as specified in that order. [Rule16]

**2.3 Forms and Documents for registration:** The Odisha VAT Act and Rules made thereunder require the following forms to be filled along with the following documents for seeking registration.

The applicant should deposit a processing fee of rupees five hundred, in the shape of receipt from govt. treasury or e-Challan or a crossed demand draft or a bankers' cheque in favor of DC/AC/STO along with the form of application.

Sl. No	Form no	Subject	Applicable provision
1	VAT 101	Form of application	Rule 15 and 16
2	VAT -101A	Additional place of business situated within the State	Rule 15(9)(a)
3	VAT -101B	Additional place of business situated at a place outside the State	Rule 15(9)(b)
4	VAT -101C	Specimen signature of authorized persons	Rule 15(9)(c)
5	VAT -101D	Furnishing name and address of the persons authorized to receive notice etc.	Rule 15(9)(d)

- Declarations in Form VAT 101C affixing thereto two sets of specimen signature of:-
  - (a) proprietor of proprietorship firm,
  - (b) managing partner of partnership firm
  - (c) Managing director, director or any officer duly authorized by the board of directors through a resolution, in case the applicant is a company.
  - (d) President, secretary or authorized officer of an association of person.
  - (e) Karta of a HUF. [Rule15(9)(c)]

### *Registration Procedure*

- Under Rule 15(11) disclosure of PAN is made mandatory and in case of fresh registration, a self-signed copy of the PAN card needs to be submitted along with other documents as prescribed.

The applicant should declare the class or classes of goods it intends to manufacture or sell as the case may be.

- With respect to proof of residence any one of the following documents is required to be submitted-

A voter identity card, passport, Driving license, Adhaar number, INPR (national population register) number, holding tax payment receipt for latest Previous year, Last paid electricity bill in the name of applicant or parents or spouse, Last paid telephone "bill in the name of applicant or parents or spouse, or any other documents notified by the commissioner.

- With respect to proof of place of business any one of the following documents is required to be submitted:

Holding tax payment receipt for the last previous year, record of right (ROR), agreement or lease deed duly executed in case of rented premises, or Certificate issued by the local Authority in respect of shops and establishment.

- With respect to proof of constitution of business any one of the following documents is required to be submitted:

(a) For a company the certificate of incorporation issued by registrar of companies along with memorandum of association and articles of association.

(b) For partnership firms including limited liability partnership firms the Partnership deed.

(c) For other concerns any document in support of their constitution, incorporation or registration.

- Other documents/ authorization, if any,

(a) In case of partnership/company - board resolution for authorization to do so etc.

(b) Copy of VAT/CST registration certificate of other States. (Where the dealer is registered in other States or having a place of business in other States.)

*Technical Guide to Odisha VAT*

- (c) Copy of license or other registration certificate required under other laws to perform such business. (i.e. drug licensee in case of medicine store)
- (d) Proof of payment of processing fee.

**2.4 Procedure, manner and time limit for issue of registration certificate [Rule 18]:** After making an online application an appointment with the registering authority is fixed which is within seven working days from the date of online application. The Applicant (dealer or authorized person) shall appear before the registering Authority on the date and time of appointment so fixed and provide signed copy of the application with copies of all documents along with the original for verification.

- The Registering Authority shall register and issue the registration certificate ordinarily within 15 days and a maximum period of 30 days from the date of filing of signed copy of the application.
- Where the Registering Authority feels it necessary and subject to provisions of the law and the ceiling provided may demand in Form VAT -104 an amount as security within 15 days of the application of registration. [Section 27 & Rule 24]
- However after the registration process so completed, and within a period of 90days from the date of grant of registration certificate, in case the Registering Authority feels it necessary, for reasons to be recorded in writing, he may conduct an enquiry. Such enquiry must be completed within the said 90days. On the basis of the enquiry the Registering Authority may allow the registration certificate to continue or shall, after giving a reasonable opportunity of being heard, cancel the registration certificate with effect from the date to be specified in the order.

**2.5 Registration- General information**

1. The registration number for dealers other than retailers is being issued in Form VAT-103, known as taxpayers' identification number (TIN). It is of eleven digit numerical no. where the first two digits represent the State code.
2. The registration number for retailers is being issued in Form VAT-001, called small Retailers' identification number (SRIN). SRIN is of seven digits where the first two represent the circle code.

### *Registration Procedure*

3. The registration certificate once granted by the Registering Authority to the dealers liable to pay tax shall remain valid till the time it is cancelled by the appropriate Authority.
4. In cases where the registration certificate is being granted voluntarily as per section 26 to a dealer other than manufacturer who intends to carry on business in respect of goods of value exceeding rupees 3 Lakh within a period of future twelve months is to remain valid for a minimum period of three years unless and until it is cancelled earlier.
5. Where the registration certificate is being issued voluntarily as per section 26 to a manufacturer, it shall remain valid for a period specified in the certificate. However the same can also be extended from time to time for a period not more than one year at a time.
6. The Registering Authority shall provide a registration certificate for the principal place of business and copies of it for each of the additional place of business. [Rule 21] .The registration certificate shall be displayed in the place of business for which it is issued [Rule 22]
7. On loss of registration certificate, information to this effect need to be furnished to the concerned registering authority. After completion of the procedures as per law a duplicate of the Registration certificate can be obtained from the Registering Authority on payment of prescribed fee.

**2.6 Consequence of Non-registration:** Where any dealer or person is found to be not registered whereas under the provisions of law he is required to be registered, the Registering Authority after giving a reasonable opportunity of being heard may impose a penalty of Rupees 5000. Where this penalty is imposed no prosecution under Section 82 for the same offence could be launched. the Registering Authority for such imposition need to issue a show cause notice in Form VAT -111, and if found proper may issue notice of demand in Form VAT-313.

**2.7 Change in type of registration [Rule 27 & 27A]:** The VAT law provides a special scheme for dealers who will be paying turnover tax. However any dealer even though he is eligible to be a SRIN Dealer if he so desires can pay VAT and obtain TIN. Hence there will be situations where dealers get converted from SRIN to TIN or vice versa. In case of TIN dealer if he becomes eligible and if so desires and on application can get converted as a SRIN Dealer. However in case of SRIN dealer it is his responsibility to

*Technical Guide to Odisha VAT*

inform and apply for conversion on being ineligible. Further non application on the part of the SRIN dealer, where he is required to apply for TIN, the concerned jurisdiction registering authority after being aware of the situation can proceed suo motu to issue a TIN

**A. When a SRIN dealer becomes a TIN dealer (Rule- 27)**

1. When a SRIN dealer becomes ineligible to pay turnover tax due to non-adherence of the conditions laid down or when it so desires to pay VAT instead of turnover tax, it will have to file application in Form VAT-106 before the Registering Authority for assignment of TIN.
2. The conditions laid down apart from opting to pay VAT are as follows
  - intends to purchase or sell goods in course of inter-State trade or commerce or
  - intends to dispatch or receive goods otherwise than by way of sales to or from outside the State or
  - whose gross turnover exceeds rupees forty lakh at any time during the year in which he has been paying turnover tax
3. The Registering Authority, after enquiry so made if he feels its requirement, shall assign a TIN and issue a registration certificate in form VAT-103.
4. Soon after the registration certificate so issued in Form VAT-103 (TIN), the earlier registration in Form VAT - 001 along with the SRIN shall be deemed to have been cancelled and liable to be surrendered to the Registering Authority with immediate effect. [Rule27(2) Proviso]
5. In case the dealer fails to apply for TIN even though he is required to do so as per the circumstances of Rule 27(1), the Registering Authority will suo moto issue registration certificate in Form VAT -103 along with TIN and the earlier SRIN will stand cancelled automatically . [Rule27(3)]
6. The registration certificate and the TIN shall be made effective from the date of the order granting registration. The input tax credit shall be allowed from the date of such registration. [Rule27(5)]

**B. When a TIN dealer becomes a SRIN dealer**

Where a registered dealer holding a TIN and paying VAT satisfies all the following conditions that it

### *Registration Procedure*

- (a) no longer effects purchase or sale in course of inter-state trade or commerce;
- (b) no longer dispatches to or receives goods from outside the state, and
- (c) The GTO during each of the preceding 3 years does not exceed rupees forty Lakh,

And the dealer desires not to pay VAT but likes to go for SRIN, he may apply in form VAT -106A to the Registering Authority for issue of registration certificate and assignment of SRIN.

On the application so made and upon being satisfied as to the eligibility, the Registering Authority shall issue registration certificate in Form VAT -001 along with SRIN.

On the issuance of SRIN, the earlier registration certificate in Form VAT -103 & TIN shall deem to be cancelled with immediate effect and be surrendered by the dealer from the date of availing of the SRIN.

The registration certificate granted as SRIN shall be effective from the date of order and no input tax credit shall be allowed from that date.

The input tax credit available in the record as on the date of cancellation of TIN, if any, shall be treated as Nil. (Rule27).

#### **2.8 Special circumstances when a dealers having no fixed place of business**

Where a dealer does not have any fixed place of business, he is required to file an application in Form VAT 101 directly to the Commissioner, who shall by order direct the specified circle where the dealer is to be registered. However the other terms and conditions applicable to other registrations along with the pre and post registration procedures provided as per rules 15, 18 and 24 shall apply.

## Chapter 5

# Amendment, Cancellation and Suspension of Registration

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### 1. Amendment of certificate of registration

1.1 Section 32 provides that:

- where a registered dealer sells or disposes of his business or any part thereof or the place of business, or discontinues his business; or
- 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,

such dealer or any other person duly authorized by him shall, within 14 days from the date of such change, inform in Form VAT-108 the Registering Authority for the amendment of the registration certificate. However in case the dealer sells or disposes of his business or place of business to a person or to any other registered dealer, he has to make an application in Form VAT-109.

1.2 The Registering Authority may endorse the amendment or may make such enquiry as it deems fit before effecting any such amendment. The amendment will be effective from the date of application or completion of such enquiry as the case may be. However if the application for amendment is rejected then a reasonable opportunity of being heard to the dealer is required to be given.

1.3 In case no order is passed within 90 days from the date of application the amendment so sought shall be deemed to have been granted. However if any delay is caused due to the lapses on the part of the dealer, the limitation of 90 days will not be applicable.

1.4 Further notwithstanding anything stated above the registering authority after being satisfied on his own information that the certificate of registration

### *Amendment, Cancellation and Suspension of Registration*

issued to a dealer requires amendment with regard to certain particulars specified therein, he may amend it after giving the dealer an opportunity of being heard. If such order is passed the effective date of amendment will be the date of occurrence of the event which necessitates the amendment.

1.5 Where any change alters the basic status of a dealer, such as, conversion of proprietorship concern into a partnership firm or vice versa, dissolution of an existing firm and creation of a new firm, conversion of a firm into a company or vice versa a new certificate of registration shall be issued on an application being filed in this behalf in the manner prescribed. [Section 32(6)]. When a new registration certificate is issued the earlier certificate gets cancelled as per the provisions of section 31(1) (g).

1.6 If the dealer fails to comply with the above provisions without any reasonable cause then he may be directed to pay a penalty of rupees 100 for each day of default.

## **2. Cancellation of registration**

2.1 The following provisions enumerate the circumstances which lead to the cancellation of registration of a dealer.

2.1.1 As per Section 31(1) the registered dealer whose certificate of registration is liable to be cancelled in the below mentioned cases has to apply for cancellation of registration along with original registration certificate within fourteen days from the date of such occurrence:-

1. discontinuance of business, or
2. transfer of business to a person who is already a registered dealer or
3. closure of an incorporated body or when it ceases to exist otherwise, or
4. death of the proprietor leaving no successor, or
5. dissolution of a firm or association of persons, or
6. in the event of the dealer ceasing to be liable to pay tax
7. when the basic status of the dealer is changed as mentioned in Section 32(6)

2.1.2 Under section 31(5), where the dealer has not complied with the requirements for restoration of suspended registration, the registration will be liable to be cancelled.

*Technical Guide to Odisha VAT*

2.1.3 Under rule 31, if a dealer fails to make payment of security amount as demanded under Rule 24(1) and 24(2), the registration will be liable to be cancelled.

**2.2 Procedure for the cancellation of the registration certificate**

1. The registered dealer or the legal heir (in case of deceased proprietor without any successor of business) shall make an application in writing to the Registering Authority within fourteen days from the day of occurrence of the event which requires cancellation of registration certificate. [Section 31(3) and Rule 30(1) & (3)].
2. 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 statement of account of utilization of such way bills, whose details are not been rendered by the date of application. [Section 30(7)]
3. Every dealer whose certificate of registration is cancelled otherwise than on an 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 utilization 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. [section 31(8)]
4. 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.[Section 31(6)]
5. Non-Compliance to the various provisions of section 31 will result in the imposition penalty of ₹ 100 for each day of default subject to a maximum of rupees ten thousand. However a reasonable opportunity of being heard is to be given to the dealer before such imposition of penalty.[Section 31(9)]
6. Information on cancellation of registration will be published in the Commercial Tax Gazette. Further the cancellation of a certificate of

### *Amendment, Cancellation and Suspension of Registration*

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.[Section 31(10) & (11)]

**2.3 Date of effect of cancellation:** Section 31(2) specifies the point of time of the certificate of registration being inoperative.

- Section 31(2)(a) provides that the cancellation of registration certificate for discontinuance of business, or transfer of business to another registered dealer shall be effective from the date of discontinuance or transfer as the case may be.
- Section 31(2)(b) provides cancellation of registration certificate for closure of incorporated body, or death of the proprietor leaving no successor; or dissolution of association of persons or cessation of liability shall be effective from the date on which the liability of the dealer to pay tax ceases.
- Section 31(5) provides that the cancellation of registration certificate for non-compliance of the requirement of suspended registration certificate shall be effective from the date of order of cancellation.
- Rule 31 provides that the cancellation of registration certificate for failure to make payment of security deposit (as ordered under section 27) shall be effective from the date specified in the body of the order of cancellation.

### **3. Suspension of registration certificate**

3.1 Under Section 30(1) of the Odisha VAT Act when a registering authority notices the existence of any of the following nine instances, and in the opinion of the registering authority such instance(s) is/(are) good and sufficient for suspension of the registration, he may proceed, after recording his reasons in writing. The instances are when a dealer:-

1. fails to file return within the prescribed time, or
2. knowingly furnishes incomplete and incorrect particulars in the return, or
3. fails to pay tax, penalty, interest payable under VAT Act, or
4. fails to account for tax Invoice or Retail Invoice, or

*Technical Guide to Odisha VAT*

5. holds, accepts or furnishes or causes to be furnished, a way bill which he knows or has reason to believe to be false, or
6. is found to be having no business at the declared place of business, or
7. contravenes any of the provisions of the Act, or
8. fails to furnish information relating to discontinuance of business, or
9. any other reason for apprehension of evasion of tax or any attempt to evade payment of tax.

**3.2 The following procedure is normally adopted for the purpose of suspension of registration certificate**

1. On being satisfied of good and sufficient reason for the suspension because of any one or more of the nine instances mentioned hereinabove, the Registering Authority after recording the reason in writing may at any time suspend the registration certificate and notify the order of suspension to the dealer in Form VAT -110. [Section 30(1) & Rule 32(2)].
2. Where a certificate of registration is so suspended, 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, not later than thirty days from the date of such suspension, relying on which he intends to rebut such suspension. [Section 30(2) & Rule 32(2)]
3. If the dealer makes an application before the registering authority for restoration of the registration certificate, showing evidence to the satisfaction of the Registering Authority with respect to payment of tax dues and submission of return, or that the grounds of suspension of registration certificate are erroneous or not applicable as the case may be the authority may direct restoration of the certificate. [Section 30(3)]
4. The date of restoration shall be effective from the date of suspension when the ground of suspension is proved to the satisfaction of the registering authority to be erroneous. However in other cases the date of restoration will be the date of order of restoration. [Rule 32(3)]
5. If the dealer fails to furnish requisite evidence within the time specified in the notice, the Registering Authority after causing necessary enquiry shall cancel the registration certificate. [Section 31(5)]

# Chapter 6

## Returns

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### 1. Liability to furnish return

**1.1 Liability to file return in the case of registered dealer:** Under section 33(1), every registered dealer shall furnish returns as per the form, periods and the due dates prescribed before the prescribed authority. However the Commissioner may, subject to such conditions and restrictions exempt any such dealer or class of dealers from furnishing such returns or require any such dealer to

- furnish returns for such different periods; or
- furnish 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

**1.2 Liability to furnish return in the case of unregistered dealer:** Section 33(2) provides that if the Commissioner has reason to believe that the gross turnover of any dealer is likely to exceed or has exceeded the taxable limit, he may by notice, require such dealer to furnish return as if he were a registered dealer. However no tax shall be payable until the gross turnover exceeds the taxable limit.

**1.3** Section 33(3) requires filing of the final return in case of dealer whose registration has been canceled under section 31 within thirty days from the date of order of such cancellation.

**2. General Features with respect to filling of return:** With effect from 1<sup>st</sup> October 2013 all the dealers having TIN Number or SRIN Number are required to file the return electronically only. *[Notification no 18837 dated 05/09/2013.]*

**2.1 Interval and due date for filling return:** The return under the provisions of VAT are guided by tax period. Under rule 34(2), in case of dealers having TIN number the tax period would be regarded as quarter. However in case of large tax payers unit (LTU) as notified under rule 34(7) or any other specific cases where Commissioner under rule 34(3) notify the tax period as one month. Under Rule 34(6) the tax period for the dealer having SRIN number is a quarter.

*Technical Guide to Odisha VAT*

**2.2 Due date, return form etc.:** Rule 34(1) provides that every return in respect of dealers having TIN number shall be filed in Form VAT-201 within twenty-one days from the date of expiry of the respective tax period applicable to the dealer.

- In respect dealers having SRIN number the return shall be filed in Form VAT-002 within twenty-one days from the end of each tax period comprising a quarter.
- All dealers having TIN or SRIN shall furnish return to DC/AC or STO of the concerned circle/ assessment unit. [Rule 34(1) & 34(6)]

**2.3 One return for one Registration:** In the case of dealer having more than one place of business under the jurisdiction of different Registering Authorities, the dealer shall furnish a consolidated return to the concerned authority of the circle/ range as the case may be under whose jurisdiction the principal place of business is situated. [Rule 34(4)]

**2.4** If there is *change in tax rate of any goods* which the dealer deals during a tax period separate return for each part of the tax period shall be furnished. [Rule 34(9)]

**2.5** Rule 34(10) provides that where the business of a dealer is closed down or ceases to function or the registration certificate of the dealer is cancelled during the course of the tax period, a final return in Form VAT-202 for the period during which the business was in operation during that tax period, shall be furnished.

**2.6** Where the Commissioner is satisfied that the turnover of sales or turnover of purchases, as the case may be, of a dealer, exceeded or likely to exceed the taxable limit within such period as referred to in sub-section (2) of section 33, he shall issue a notice to such dealer in Form VAT -204 to file return for such tax period and as may be specified in that notice. The dealer shall furnish the return in Form VAT 204A within 14 days. [Rule 36(1)]

**2.7** Where a certificate of registration is issued to a dealer and the date of liability to pay tax by such dealer precedes the date of order granting such certificate of registration, the dealer, after being registered, shall, within twenty-one days from the date of order, furnish all the returns along with payment of tax, for all the tax period or any part thereof, commencing from the date of liability to pay tax to the date immediately preceding the date of order granting registration. [Rule 37]

## *Returns*

**2.8** Every dealer required to file return 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.

**2.9 *Signing of Return:*** Every return under this section shall be signed and verified—

- (a) in the case of an individual, by the individual himself, and where the individual is absent, by any person duly authorized 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.

### **3. Revised return**

**3.1** Under section 33(4) if any dealer, having furnished returns discovers any omission or error in any return so furnished, or where there is requirement for adjustment of either the sale price or tax or both, as the case may be, in relation to sale of any goods, he may file a revised return within *three months* following the tax period to which the original return relates.

**3.2** If any dealer, after furnishing a return, 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 return for the purpose and pay the higher amount of tax as due at any time. However no such 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

### **4. Annual returns**

With effect from 21.10.2010 new sub Rule (6A) has been inserted in Rule 34, where under it is mandatory for all dealers to file an annual return in Form VAT 201A. Such annual return is required to be filled within six months from the end of the financial year.

### **5. Payment of admitted tax**

**5.1** Every registered dealer or the dealer required by the Commissioner to file return or the registered dealer furnishing final return on cancellation of

*Technical Guide to Odisha VAT*

registration certificate shall pay the full amount of tax payable according to the return / revised return. [Section 33(6)]

5.2 For the month/quarter ending on 31st March, tax due up to 25th March calculated on tentative basis shall be paid on or before 31st March of that year provisionally, subject to submission of return for the month / quarter ending on 31st March, as usual, on 21st of April of the succeeding year. Balance tax payable for the remaining period of the said tax period shall be paid on or before the prescribed date for filing return. [Proviso to Rule 35(1)]

**6. Adjustment of tax paid at check gate or to a Tax Authority**—The Tax paid at check post or to any Tax Authority shall be adjusted against tax payable for the tax period during which such payment is made and the original receipt shall be furnished along with the return [Rule 57(8)]

**7. Penalty for failure to file return revised return or final return**

7.1 Where a dealer required to file return under Section 33—

- (a) fails without sufficient cause to pay the amount of tax due as per the return, revised return or final return, as the case may be, for any tax period; or
- (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, revised return or final return, as the case may be, or
- (d) fails to pay the amount of tax due for any month in the manner prescribed;

he shall be liable to pay interest in respect of—

- (i) the tax, which he fails to pay according to the return, 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, revised return or final return, as the case may be, or

## *Returns*

- (iv) the tax payable for any month or months within the prescribed time, at the rate of one per centum per month from the date the return for the period or payment for the month was due to the date of its payment or to the date of order of assessment, whichever is earlier.

7.2 Further, if a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with return, revised return or final return, as the case may be, as mentioned supra, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay 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

7.3 If a registered dealer or any other dealer required to furnish return under Section 33, without any sufficient cause,—

- (a) fails to comply with the requirements under 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 a penalty of a sum of rupees one hundred per each day of default subject to a maximum of rupees ten thousand.

**8 Scrutiny of return:** Section 38 provides that 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.

If any mistake is detected as a result of scrutiny made under sub-section (1), the assessing authority shall serve a notice in the form VAT - 209 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.

## Chapter 7

# Assessment, TDS, Recovery of Tax and Refund

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### A. Assessment

#### Self-Assessment

1. Where a dealer files return for a tax period within the period specified in rule 34 and the return is found to be correctly and completely filled in and there is no arithmetical mistake apparent on the face of such return the said return shall be accepted as self-assessed.
2. Where there is any arithmetical mistake apparent on the face of such return and such mistake can be reconciled without any reference to the dealer to whom the return relates such return may accordingly be rectified and the rectification so made maybe intimated to that dealer in Form VAT-305 for information.
3. If the rectification as intimated to the dealer under above in Form VAT-305 is not accepted by the dealer, he may, within seven days from the date of receipt of such intimation, file an application stating therein the correct position along with reasons for occurrence of such mistake, to the assessing authority, and if such authority is satisfied, the return shall be accepted as self-assessed.
4. Where the arithmetical mistake apparent on the face of the return furnished for a tax period remains un-reconciled, such mistakes shall be intimated to the dealer to whom the return relates in Form VAT-305 for necessary rectifications within fourteen days from the date of receipt of the intimation and if the assessing authority of the circle or range, as the case may be, is satisfied that the mistake is bona fide and not deliberate, such authority shall accept the return as self-assessed.
5. Where the dealer fails to rectify the mistake as intimated above in Form 305 within the time specified in that sub-rule or the mistakes are found to be deliberate with an intention to evade tax or attempt to evade tax, the return, wherein the mistakes are found, shall be referred to audit under section 41.

## **Provisional Assessment**

Section 40-The law has provided special power to the assessing officer to assess the tax provisionally in certain circumstances and this process is an independent one and it is irrespective of the audit assessment provided under section 42

*Section 40(1):* Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the assessing authority; if he is satisfied that provisional assessment is necessary in that case for that period, he may proceed to assess the dealer provisionally.

*Section 40(2) and Rule 47(2):* Provisional assessment shall be made on the basis of past return or past records and, where no such returns or records are available, on the basis of information received by the assessing authority. The Assessing authority shall serve upon the dealer Form No VAT-304 showing the amount of tax assessed and the amount including tax, interest, and penalty to be payable by the dealer within 30daysfrom the date of receipt of the notice. The dealer shall produce the evidence of payment within 7 days of payment.

*Section 40(3):* If the dealer *furnishes return* along with evidence showing full payment of the tax due and the interest and penalty, payable, if any, under section 34, on or before the due date mentioned supra, the provisional assessment so made shall stand revoked on the date on which such return is filed by the dealer.

*Section 40(4):* The assessing authority can resort to an audit assessment under section 42 and any amount paid under provisional assessment will liable to be adjusted against the demand if any made under such audit assessment.

## **Audit Visit and Assessment**

Audit Visit and Assessment is an important feature of indirect tax Laws. The Odisha VAT law also has provisions where Department has the right to inspect the place of business of a dealer and verify the records, documents and other relevant material on which the dealer has relied upon

**Audit Visit-** As per Rule 41 to 46 of the Odisha VAT Rule following features are relevant for the audit:

- *Rule 41-* The Commissioner shall, select certain number of registered dealers specifying the period(s) for audit, not exceeding previous five

*Technical Guide to Odisha VAT*

years for the audit. Rule 41(2) provides that under special circumstances on which Commissioner may issue an order of audit on selected dealer or class of dealers. Rule 41(3) provides for special investigation audit where apparent revenue risk is envisaged. Rule 41(4) provides that audit is to be done in case of large tax payer unit (LTU) once in three years.

- *Rule 42-* Audit must be conducted after due notice in this respect is issued to the dealer. However in the circumstances mentioned in Rule 41(3) notice may not be issued
- *Rule 43-* Audit will be done by the audit team form the Commercial Tax Department constituted by Commissioner of Commercial Tax, Orissa. Each team must be having two or more members, one of whom shall not be below the rank of Sales Tax Officer and the senior most officers in rank shall function as the head of the audit team.

Further, the audit team for audit of dealers assigned with SRIN shall comprise two or more officers not below the rank of Assistant Sales Tax Officer and the senior most member shall function as the head of the audit team.

- *Rule 44-* Audit shall be conducted in the place of business of the dealer. Prior notice in Form VAT -301 shall be issued except when the audit of individual dealers is on the basis of apparent revenue risk factor under sub-Rule (3) of Rule 41.
- *Rule 44(3)-* For special audit on risk factor under Rule 41(3) prior permission of the next higher Authority shall have to be obtained. In case of emergency (i.e., where there is reasonable apprehension that delay may lead to the disposal of the stock-in-trade or removal or destruction of books of account, records and documents) such permission can be obtained post facto within twenty four hours of the completion of such visit or return to headquarters, after completion of the audit, whichever is later.
- *Rule 45-* If the dealer fails to produce books of account the officer in charge of the audit team may issue a notice in Form VAT-302 requiring the dealer to produce such accounts in his office on a specified date and time. The Audit team shall submit audit visit report in Form VAT-303 to the Assessing Authority within seven days of completion of audit.

*Assessments, TDS, Recovery of Tax and Refund*

- Section 41(4) also provides that the audit visit report must be accompanied by the statements recorded and documents obtained which are relevant for the investigation and assessment.
- Rule 46 Audit to facilitate voluntary tax compliance: The audit team, during any audit, shall explain the provisions of the Act and the above rules so that the dealer does not face any difficulty in maintenance of books of accounts and due discharge of tax liability.

**Audit Assessment- Section 42(1)**

Where the tax audit is conducted under sub-section (3) of Section 41 results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit, evasion of tax or contravention of any provision of this Act affecting the tax liability of the dealer, the assessing authority may, notwithstanding the fact that the dealer may have been assessed under section 39 or section 40, serve on such dealer a notice in the form VAT - 306 enclosing a copy of the audit report directing the dealer to appear with books of account, records, documents on the specified date and time before him and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.

- Section 42(2) provides the dealer a minimum of 30 days' time for the submissions asked for. The dealer may seek adjournment, but more than three adjournments shall not be granted. Rule 49(4) provides that where the dealer does not comply with the notice, the assessment shall be made ex parte and to the best of his judgment of the assessing officer. [Section 42(3) and Rule 49(7)]
- Subject to general condition of limitation the assessment shall be completed within a period of six months from the date of service of notice in Form VAT306. Further period up to six months may be allowed by the Commissioner. However in no case order of assessment shall be made after the expiry of one year.
- Under Section 42(5) where the Audit assessment resulted in demand of tax an amount equal to twice the tax assessed shall be imposed as penalty. [Section 42(5)]

## **Escaped turnover assessment**

Section 43(1) of Orissa VAT Act provides that even after completion of any one or more of the assessment proceeding for any tax period(s) provided under the Act, if the assessing authority, on the basis of *any information in his possession*, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period(s)

- has escaped assessment, or
- has been under-assessed, or
- has been assessed at a rate lower than the rate at which it is assessable; or
- has been allowed wrongly any deduction from his turnover, or
- has been allowed input tax credit, to which he is not eligible,

he may serve a notice on the dealer in Form VAT 307 and after making such enquiry and after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of tax due from the dealer. [Section 43(1) & Rule 50(1), (2) & (3)]

*Rule 50(4):* In case the dealer fails to comply with the requirements of the notice, the Assessing Authority may make the assessment to the best of his judgment, an ex parte assessment of the tax payable by such dealer.

*Section 43(2):* In case the assessing authority is satisfied that the escapement or under assessment of turnover on the part of the dealer is without having any reasonable cause, he may impose an amount equal to twice the amount of tax additionally assessed by way of penalty.

*Section 43(3):* Such reassessment proceeding shall not be initiated after the expiry of seven years from the end of the tax period to which the escapement etc. relates.

## **Assessment of Unregistered Dealer**

*Section 44(1):* Where a dealer is liable to pay tax but fails to get registered the Assessing Authority if satisfied, shall serve a notice in Form VAT 308 on such dealer, directing him to appear before him on such date and time along with books of accounts, evidences and documents as may be required for the assessment of such dealer. [Rule 51(1)]

*Rule 51(2):* The assessing authority shall, after hearing the dealer, examine such books of account, evidence and records produced or made available and cause such enquiry as he deems necessary, and then pass an order in writing, recording the reasons therein and-

- determine the date from which the dealer is liable to pay tax under the Act;
- assess to the best of his judgment, the tax payable by the dealer in respect of the tax period or tax periods or part thereof, as the case may be, from the date of commencement of such liability; and
- impose an amount equal to tax assessed as penalty where it is found that the failure is not on account of any reasonable cause. [Section 44(1)].

*Section 44(2):* No assessment shall be made after the expiry of five years from the end of the tax period or tax periods to which the assessment relates.

### **Assessment of Casual dealer (Section 45)**

*Section 45(1):* Every casual dealer is liable to pay tax on all sales and purchases which are taxable under provisions of the Act.

*Rule 52(4):* This rule provides that every casual dealer who comes from outside the State shall be duty bound within twenty four hours of his arrival in the State, to file Form VAT310 intimating the Assessing Authority the following details:-

- (a) the residence address of his in the State;
- (b) the nature of goods he intends to deal;
- (c) the period during which he intends to carryon business; and
- (d) the date by which he intends to leave the place in the State.

*Rule 52(1):* A casual dealer on his own motion or when called upon to do so by a notice in Form VAT 309 shall immediately furnish a return of estimated turnover in Form VAT 311A.

*Section 45(4):* In case the return filed by the casual dealer is found to be correct and complete the Assessing Authority or the officer-in-charge of check post or barrier after making such enquiry as he feel proper and after scrutiny of the record made available to him, shall provisionally assess the amount of tax due.

### *Technical Guide to Odisha VAT*

*Section 45(3):* In case the casual dealer fails to furnish the return or the return filed is found not to be correct and complete the Assessing Authority or the officer-in-charge of check post or barrier shall, after giving the dealer an opportunity of being heard make best judgment assessment.

*Rule 52(5):* On or before the last day on which he intends to leave the place the casual dealer shall furnish the return to the Assessing Authority in Form VAT311, accompanied by a receipted treasury challan for the tax payable on the basis of such return.

*Rule 52(6):* If no return is furnished or the return furnished is found to be incorrect and incomplete the Assessing Authority shall assess the tax payable to the best of his judgment and issue a notice of demand in Form VAT -313.

*Section 45(6):* No order shall be passed after expiry of six months from the date of notice calling for filing of the return served on the casual dealer or the date on which the return is voluntarily filed by the casual dealer.

### **Power of Reassessment in certain cases**

Section 49(1), Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgment or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the judgment or order.

Section 49(2), Where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then to give effect to the finding or direction contained in such order, the turnover or any part thereof as relates to such assessment may be assessed or reassessed, as the case may be, to tax at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act.

## **B. Deduction of tax at source**

Similar to TDS provisions in the Income Tax Act 1961, in the erstwhile Orissa Sales Tax Act the provision for tax deducted at source (TDS) was there for both works contractors as well as traders. Under the VAT regime it is limited to works contractors only. Section 54 which provides the law relating to TDS clearly indicates its overriding effect on other sections of the law, meaning thereby, the liability placed under section 54 cannot be overruled because of discharge of tax liability on the same transaction elsewhere in the law. Section 54 provides that in case of works contract *any person responsible for making payment* to the said contractor is under an obligation to deduct specified percentage *at the time of crediting to the account of the contractor or at the time of payment whichever is earlier*, to be deposited with the VAT Authorities as prescribed.

- TDS shall be done if the works contract involves *transfer of property* in goods and the value of the works contract exceeds Rupees Fifty thousand.
- The law is applicable irrespective to the fact that wither the payer is a registered dealer or not. It is just a recovery mechanism of tax and must need specific compliance in this regard.
- The provisions are applicable only when the person responsible for making the payment is -
  - (a) Central or any State Government; or
  - (b) Any local Authority; or
  - (c) Any Authority or corporation established under a Statute; or
  - (d) Any company including any State or Central govt. undertaking; or
  - (e) Any co-operative society or any other association registered under Societies Registration Act, 1860 [Section 54(1)]
- An amount equal to four per centum of the amount paid to the contractor shall be deducted. [Section 54(1)]

*Section 54(3), Rule 58(1):* The person responsible to make payment shall within one week from the date of credit or payment as the case may be, deposit the deducted amount in Government treasury through Form VAT 317 or any other mode allowed.

### *Technical Guide to Odisha VAT*

*Section 54(2) & Rule 59:* The tax deducting authority within thirty days from the date of deduction shall grant a certificate in Form VAT 605 to the contractor and send a copy of it to the Assessing Authority under whose jurisdiction the works contract is being executed. Further in case the works contractor is also a registered dealer the assessing authority after receiving VAT-605 shall forward it to the assessing authority under whose jurisdiction the contractor is registered. Further the deducting authority within fourteen days of the expiry of a quarter, shall furnish a consolidated statement of deductions made during the quarter in Form VAT605A to the Authority within whose jurisdiction the works contract is executed. *However at present complete electronically form VAT-605 as well as VAT-605A can be generated at the login portal of the person who deducts and the same certificate is under view is instantly available at the login of the contractor.*

**Lower Deduction or No deduction in certain cases:** Similar to the TDS Provisions under Income tax Act 1961, the contractor if so desires, can apply for a certificate to the concerned Jurisdictional Assessing Authority for lower or NIL deduction of tax under Odisha VAT Act. Section 54(5) provides that where in the works contract only labour and service charges is involved the Assessing Authority may issue a certificate for NIL deduction and in other cases any rate below 4% can be ordered.

- The works contractor for the grant of the-aforesaid certificate shall make an application in Form VAT 606 in duplicate with copies of relevant documents. If the Assessing Authority is satisfied he shall grant the certificate in Part II of Form VAT 606.
- The Assessing Authority shall grant the certificate within thirty days from the date of receipt of the application and shall forward a copy to the deducting Authority. However if the Assessing authority wants to reject the application he can do so after a reasonable opportunity of being heard is being provided to the appellant.
- *Rule 8(5) & 8(8):* Where the works contractor is availing composition scheme he should file Form VAT 603A before the concerned Registering authority. In response the authority may issue VAT-603 to the deducting authority to deduct tax @ 4% of 60% of the gross value received or receivable.

**Deduction Through electronic mode with effect from 01/06/2013:** The works contractor who has been assigned TIN shall apply electronically in Part I of Form VAT 606 for the TDS certificate and the Assessing Authority

shall electronically issue the certificate in Part II the said Form. The detailed procedure in this regard is spelt out in Notification no 12053 dated 25/05/2013.

**Penalty for not complying with the provisions of TD:** Section 54(6) provides, that if any person contravenes the provisions of TDS namely failing to deduct or after deducting failing to deposit the deducted tax within the time prescribed, the Assessing Authority shall, after giving an opportunity of being heard, impose a penalty equal to twice the amount required to be deducted.

### **C. Recovery of Tax**

Section 50 relates to payment and recovery of tax, interest and penalty. Under Section 54(1) the tax payable under this Act shall be paid in the manner provided in this section at such intervals as may be prescribed.

*Section 54(2):* A registered dealer furnishing any return shall pay into Government Treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the tax period covered under the return and, where he furnishes such return after the prescribed date, he shall pay the tax due along with interest, penalty, or both, as may be payable.

*Section 54(3):* A registered dealer furnishing a revised return, where a higher amount of tax is required to be paid or payable shall pay the amount along with interest, penalty, or both, as applicable.

Section 50(4) provides different circumstances where after the dealer fails to pay the amount of tax which has become payable, the assessing authority shall issue notice in Form VAT313. The dealer on receipt of the Form shall pay the tax within 30days from the date of receipt of the same.

*Section 50(5):* Where a dealer fails to make payment of the tax assessed, interest payable or penalty imposed or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, direct in Form VAT314 that such dealer shall pay, in addition to the amount due by way of penalty, a sum equal to two per centum of such amount of tax, interest, penalty or any other amount due, for every month of delay. However where any appeal under Section 77 or 78 or revision under Section 79 has been filed, the period of delay and amount of penalty will be determined as prescribed.

### *Technical Guide to Odisha VAT*

*Section 50(6)* further provides that in case of non-payment on the demand raised vide notice in Form VAT313 or VAT314, the dealer shall be liable to pay penalty @ 2% per month.

*Section 50(7)*: If the dealer fails to make payment in accordance with the above notices the tax dues shall be recovered as an arrear of public demand or in accordance with the tax recovery law contained in Schedule E.

*Section 51* vests in the assessing authority power to recover tax dues through third party. It provides a parallel mechanism to collect the amount due from the dealer that can be recovered from any third party who holds any money payable to the dealer by issue of a notice of attachment in Form VAT316.

Section 56 places a hold on the recovery proceeding after it becomes time barred. It provides that, no proceeding for recovery of dues as arrears of public demand or under the tax recovery Schedule shall be initiated after expiry of five years from the date the amount finally becomes due for payment.

Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined

**Provisional attachment (Section 100)**: The Odisha VAT Act in line with the provisions in other taxing statutes for the purpose of recovery of taxes and for smooth and timely recovery of dues has laid down the provisions for attachment. Under Section 100 where the Commissioner considers that for the purpose of protecting the interest of the revenue it is necessary so to do, may attach provisionally by notice in writing the stock in trade held by the dealer/person during the enquiry, inspection or search. However the Commissioner may revoke the notice of attachment if the dealer furnishes such security as per order of the Commissioner.

## **D. Refund**

Any amount over and above the amount of liability as per the taxing statute if available and if the law so provides is a legitimate right of the assessee to get the refund. Odisha VAT Act also provides certain provisions under which refund will be granted suo motu where the dealer is not required to apply for the refund.

*Section 57*: The Assessing Authority shall refund the excess amount within sixty days from the date of receipt of the order. The refund adjustment

*Assessments, TDS, Recovery of Tax and Refund*

process after being completed, payment instruction shall be sent to the system through secure electronic mode.

- Where for recovery of any dues, notice of demand in Form VAT 313 has been issued or the dealer has filed return for any period without payment of admitted tax, the Assessing Authority shall first adjust such amount and refund the balance, if any.
- However in case any reassessment proceeding is pending, the refund order is required to be kept in abeyance till completion of such assessment.

Where a sale is effected as Zero rated sale as per section 18 of the Act, the refund can be claimed as per section 58.

*Section 58(1)(a):* Where any return filed under this Act shows any amount to be refundable to a dealer on account of sales referred to in section 18 other than in the course of interstate trade and commerce, the dealer may make an application to the assessing authority for refund of that amount in Form Vat320 electronically within 30days of the filling of the return.

*Section 58(1)(b):* On receipt of the application the assessing authority shall direct a tax audit of the transactions pertaining to such refund and such audit need to be completed within one month. However any delay on the part of dealer will be excluded while computing the period of limitation and such period shall not be reckoned for grant of any interest, if admissible. Further if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after a reasonable opportunity of being heard is given.

*Section 58(1)(c):* Where, in an assessment based on tax audit the claim of refund is found to be inadmissible up to or more than the claim then it can be allowed up to the amount of claim only. On the other hand, if any amount is found due from the dealer, he shall be liable to pay the amount along with interest at the rate of two per cent.

*Section 58(1)(d):* The dealer may, exercise option in Form VAT321 for provisional refund while audit or similar process is pending. However the authority may require bank guarantee of an amount equal to the amount of provisional refund. [Section 58(1)(e)]

*Section 58(1)(h):* Any refund if found admissible must be issued within 90days from the date of application.

*Technical Guide to Odisha VAT*

*Rule 65(1)(b):* Where the refund is related to sales made in the course of export, all the following documents shall be furnished along with the application: the purchase order of the foreign buyer, agreement with the foreign buyer, Bill of lading, Letter of credit and/or evidence of payment by the foreign buyer, and such other documents as may be required to establish the claim of refund.

*Rule 65(2)(c):* Where the refund is claimed with respect to sales to SEZ, STP or EHTP the following documents shall be furnished along with the application: Copy of the tax Invoice, Certificate of the competent Authority showing the name and address of the dealer and the SEZ, STP or EHTP under which it is established and entitlement of the dealer to purchase goods free of tax covered under such tax Invoice, such other evidence as may be required to establish the claim of refund.

*Rule 65(3)(b):* Where the refund relates to sales to EOU, the following documents shall be furnished along with the application copy of the tax Invoice, certificate of the competent Authority showing the purchasing dealer is an EOU and that such dealer is entitled to purchase goods free of tax, such other evidence as may be required to establish the claim of refund.

**Refund to foreign diplomatic and international bodies [Section 58(2)]:** All foreign diplomatic missions or consulates in India or the United Nations, and other similar international bodies functioning in India shall be eligible for refund of tax paid for goods purchased in the State.

**Refund on closure of business [Section 58(3)]:** On closure or discontinuation of a business if the net tax payable is a negative figure the dealer shall make an application for refund.

**Refunds of ITC carried forward beyond twenty four months [Section 58(4)]:** Where any excess ITC for a tax period is carried forward and is not fully adjusted in twenty four months from the close of the year to which the tax period relates, the dealer shall be entitled to claim refund of the balance amount that remains unadjusted. The detailed procedure is provided in Rule 66.

- Application through electronic mode has to be made to the Assessing Authority within 45 days from the date of expiry of 24 months.
- On receipt of application through electronic mode, the Assessing Authority shall refer to tax audit which shall be completed within 30 days from the date of receipt of application. The Audit shall be limited only to unaudited tax period. The ITC claimed for the tax period in

*Assessments, TDS, Recovery of Tax and Refund*

which application for refund is filed shall be reduced by the amount of refund claimed.

- Where the tax audit results in assessment, refund shall be subject to the result of the assessment. If assessment under Section 42 is already done, tax period covered under such assessment shall be excluded.
- If there is no adverse finding, refund shall be sanctioned within 30 days from the date of receipt of audit report.

**Refund of interest:** Section 59(1) in addition to the refund, provides for simple interest at the rate of eight per centum per annum for the period of 60 days from the date of receipt of the order till the actual date of refund.

**With holding of refund (Section 60):** If the order giving rise to refund is the subject matter of an appeal or further proceeding and the Commissioner is of opinion that grant of refund is likely to adversely affect the Revenue and it may not be possible to recover the amount later, he may withhold refund till the final order is passed. If the dealer is finally entitled for the refund he shall be entitled for interest as per Section 59(1).

## Chapter 8

# Accounts and Audit

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### Maintenance of accounts and records (Section 61(1))

Every Registered Dealer and the dealer to whom notice has been served requiring him to furnish return under sub-section (2) of section 33 shall maintain true and up to date accounts of the value of goods purchased or manufactured and sold by him or goods held by him in stock.

*Section 61(2):* All accounts, registers and documents shall be kept in the place of business, as recorded in the registration certificate. If there are branches at different places, accounts relevant to each such branch shall be kept in the concerned branch.

*Section 61(3):* If the Commissioner opines that the accounts maintained by any dealer are not sufficient to verify the return, he may require any dealer or class of dealers to keep such accounts in such form and in such manner as he may direct as per the law.

*Section 61(4):* If the Commissioner is satisfied that a dealer or class of dealers are not in a position to maintain accounts as per the provision, he may after recording the reasons exempt such dealer or class of dealer from maintaining such accounts

*Section 61(5):* if a dealer fails to make available the books of accounts at his principal place of business or the branch office, as the case may be, to any officer appointed to assist the Commissioner for inspection other than audit, the Commissioner may impose on such dealer a penalty of rupees five thousand, after giving him an opportunity of being heard. .

*Section 62(3) & (4):* Tax invoice and retail invoice shall be in duplicate. The original shall be given to the purchaser and the counterfoil shall be retained by the selling dealer.

*Section 62(5):* Every registered dealer is required to preserve the books of account including Invoices until the expiry of five years or more if so prescribed from the end of the year to which it relates or until the assessment, appeal or revision, if any, reaches finality whichever is later.

*Section 62(6):* For the failure to issue tax Invoice or retail invoice in accordance with the provisions of law, the Commissioner may impose a

penalty of rupees one thousand or twice the amount of tax due in that Invoice whichever is higher for each occasion of such failure.

*Section 62(7):* Where any tax invoice or retail Invoice issued is found to be incorrect or false, the selling dealer shall, in addition to tax as passed on to the purchaser, pay a penalty equal to twice the amount of such tax.

*Section 62(8):* Where a purchasing dealer arranges a fake or forged tax invoice or retail invoice he shall be liable to pay a penalty equal to twice the amount of tax charged in such invoice. Rules 67 to 72 of the Orissa VAT Rules have prescribed the details of books of accounts along with records etc to be maintained by the dealer. Some of the important aspects are discussed hereunder.

*Rule 67(3):* Every registered dealer shall have to maintain purchase and sales register tax rate wise so that the totalling made at the end of each tax period will show the purchases and sales under each tax rate and tax paid on such purchases and charged on such sales during that tax period.

*Rule 71(5):* Separate accounts shall be maintained in respect of sales made under tax invoice and under retail invoice.

*Rule 71(8) & (9):* A tax invoice or retail invoice issued by a registered dealer shall be signed by him or his authorised representative in case the invoice is generated electronically it must also be signed as above

## **General procedural compliances as enumerated in the VAT Laws**

**Tax Invoice [Section 62(1)]:** A registered dealer having TIN and making taxable sale to another registered dealer also having TIN shall issue a tax invoice. The tax invoice shall not be issued to a retailer paying turnover tax or in respect of sale of goods specified in Schedule 'C'.

- The tax invoice cannot be issued by or issued to a retailer who is paying turnover tax. The VAT Act has made it very clear by differentiating turnover tax and VAT. Even though both the taxes are governed and administered under the same act, the purpose of tax invoice is to carry the VAT amount to next dealer as ITC whereas the retailer paying turnover tax is not eligible for the same.

*Technical Guide to Odisha VAT*

- Rule 68(1) elaborates the contents of the tax invoice which shall contain the following particulars, namely.
  - ✓ the words 'Tax Invoice' in bold letter at the top,
  - ✓ the name, address and registration certificate number of the selling registered dealer,
  - ✓ the name, address and registration certificate number of the purchasing registered dealer,
  - ✓ in case, the sale is in course of export out of the territory of India, the name, address, registration certificate number, if any, of the purchasing dealer or foreign buyer and the type of statutory form, if any, against which the sale has been made,
  - ✓ an individual serialized number and the date on which the tax invoice is issued,
  - ✓ description, quantity, volume and value of goods sold, amount of discount allowed, if any, and the amount of tax charged thereon indicated separately,
  - ✓ signature of the selling dealer or his manager or any other employee or agent, duly authorized by him, and
  - ✓ the name and address of the printer, if any, and first and last serial number of tax invoices printed and supplied by him to the dealer.
- Rule 68(2) prescribes the contents of the retail invoice which shall contain the following particulars, namely.
  - ✓ the words 'Retail Invoice' or 'Cash Memorandum' or 'Bill' in bold letter at the top,
  - ✓ the name, address and registration certificate number of the selling registered dealer,
  - ✓ the name and address of the purchaser, if available,
  - ✓ an individual serialized number and the date on which the retail invoice is issued,
  - ✓ description, quantity, volume and the value of goods sold showing the amount of tax charged separately,
  - ✓ signature of the selling dealer or his manager or any other employee or agent, duly authorized by him, and

- ✓ the name and address of the printer, if any, and the first and last serial number of retail invoices printed and supplied to the dealer
- Rule 9A (2) Dealer paying tax on MRP shall separately indicate the MRP on the body of the tax Invoice and also super scribe on it the words "Invoice for tax on MRP".

**Retail Invoice:** The following are the situations where retail invoice is normally issued

**Section 62(2)-** When tax invoice is not issued under section 62(1) and the value of the single transaction exclusive of tax exceed Rupees two hundred a retail invoice is being issued.

Rule 71(2) When a TIN dealer effects a sale to an unregistered dealer or a person or a SRIN dealer shall issue a Retail Invoice.

Where the sale is made by a SRIN dealer for an amount of Rupees two hundred or more to a Retailer paying turnover tax or to an un-registered dealer or in respect of goods specified in Schedule 'C', and the sale value exclusive of tax in one transaction is rupees two hundred or more a Retail Invoice shall be issued.

#### **Accounts to be audited in certain cases section 65**

- In respect of any particular year if the Gross Turnover (GTO) of a dealer exceeds rupees **one crore**<sup>3</sup> , then the dealer shall get his accounts audited in respect of that year by a chartered accountant or a cost accountant or a person who is entitled to be appointed to act as an auditor of Companies Under Section 226(2) of the Companies act, 1956.
- The audit must be completed within a period of six months from the end of the particular year. The dealer shall obtain the audit report within six months and furnish a true copy of the report to the Commissioner within one month thereafter.
- Along with the copy of the audit report the dealer shall furnish a statement of closing stock in trade held at the end of the year.

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<sup>3</sup> Limit enhanced vide Notification No. III(III)14/2012-2250/CT Dated 11th February, 2015. Earlier the limit was 60 Lakhs.

*Technical Guide to Odisha VAT*

- For failure to furnish the copy of the audit report the Commissioner after giving a reasonable opportunity of being heard, shall impose a penalty of rupees one hundred per each day of default. [Section 65(2)].
- With effect from financial year 2013-14 online filling of audit report has been made mandatory and the same should be filled by the concerned Auditor online.

A certificate in the following form shall be furnished with the audited accounts (trading account, profit and loss account and balance sheet) for each year. [Rule73]

**Form of certificate  
(See Rule 73)**

**Audit report under Section 65 of Odisha Value Added tax Act, 2004 for  
the year \_\_\_\_\_**

M/s. \_\_\_\_\_

\_\_\_\_\_

1. I/we have verified the correctness and completeness of the VAT returns, filed during the year from \_\_\_\_\_ to \_\_\_\_\_ with reference to the books of accounts audited by me/us, and subject to my/our observations and comments mentioned hereunder and in the statement of particulars state that,

- (a) In my/our view the books of accounts and other value added tax related records and registers maintained by the dealer are sufficient for verification of correctness and completeness of the returns. The dealer has maintained and preserved the accounts and records as per the requirement of Rule 67 and 69 of Odisha Value Added Tax Rules, 2004.
- (b) The turnover of sales declared in the returns includes all the transactions of the sales during the period of review.
- (c) The turnover of purchases declared in the returns includes all the transactions of purchases made during the period of review.
- (d) The adjustment to turnover of sales and / or purchases is based on entries made in the books of accounts during the period of review.

- (e) The deductions from the turnover of sales, including deductions on account of goods return, claimed in the returns are in conformity with the provisions of the relevant Act.
- (f) Computation of tax payable as shown in the returns is correct.
- (g) The method adopted by dealer to determine input tax credit is as per the provisions in the Odisha Value Added Tax Act and the Rules framed thereunder. The extent to which goods are sold, used, consumed or supplied or intended to be sold, used, consumed or supplied has been correctly calculated. Computation of admissible input tax credit admissible in respect of purchases made during the year and adjustment to input tax credit claimed in the tax periods under review is correct.
- (h) Computation of incentive benefits (if any) is in conformity of (with?) the provisions of the Act in this regard. Other information furnished in the periodical returns filed during the year is correct and complete.

2. For the purpose of verification of correctness and completeness of the VAT returns filed during the period as well as for the preparation of the statement of particulars, we have relied on –

- A. Books of accounts for the year ended on 31st march\_\_\_\_\_.
- B. Profit and loss account and the balance sheet for the year ended on 31st March (previous year)

3. Records/registers relating to sales, purchases, stock, branch transfers, deductions, concessions. (List the records/registers verified)

(i)

(ii) .

.....

4. The following are the major changes made during the period of review (specify if any of the below or others)

- (1) Changes in the business status.
- (2) Change in the method of valuation of stock.
- (3) Changes in the accounting system.

*Technical Guide to Odisha VAT*

5. Summary of the additional tax liability and/or additional refund due to the dealer, arising on verification of the value added tax annual return together with the books of accounts and other related accounts mentioned herein above, for the period under review is as follows –

SL no.	Particulars	Amount as per return (₹)	Amount as Determined (₹)	Difference (₹)
1.	Value added tax payable under The Odisha VAT Act, 2004.			
2.	Input tax credit availed during the period a) on input b) on capital goods c) on goods for sale by transfer of right to use d) on opening stock on the date of registration.			
3.	Input tax credit - opening - availed during the year: - adjusted during the year: - excess carried forward to Next period.			
4.	(i) Refund claim under Rule 65. (ii) Refund claim under Rule 66			
5.	(i) Refund allowed under Rule 65. (ii) Refund allowed under Rule 66			
6.	Tax payable under CST Act, 1956			
7.	Any other (please specify)			

\*opening balance has been taken from last year audit report / return in case not audited.

*Accounts and Audit*

6. The dealer has been advised to -
- (i) Pay differential tax liability of Rs..... (Rupees.....)
  - (ii) Pay interest liability up to the time of payment.

Place

Signature

Date

Name

Enrolment /Membership No.

Encl:

- 1. Statutory audit report with profit and loss account and balance sheet.
- 2. Statement of other observations comments and notes thereon.
- 3. Statement of other particulars as decided by the commissioner through public circular.

**Quantitative details for major items of stock in trade / raw materials / finished goods.**

Sl. no.	Major item	Unit of measure	Purchase units	Sales units	Adj. units	Balance units
1						
2						
3						

## Chapter 9

# Inspection, Production of Information & Accounts and Powers of the Authorities

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In the following special circumstances the Odisha VAT Act has cast special responsibility on different situations and persons

### **A. Clearing, Forwarding & booking Agents and transporters**

*Section 76(1):* Every clearing, forwarding or booking agent or broker or a person who transports goods or takes delivery of goods on behalf of a dealer shall furnish information about his place of business in Form VAT 408 to the concerned authority within one month from the date of commencement of the business.

*Section 76(2)* requires such broker, agent and transporter to maintain true and complete accounts, registers and documents in respect of goods handled, and when required so to do furnish complete particulars and information about transaction of goods of any dealer to the officer authorized by the Commissioner.

*Section 76(3):* Where any such agent, broker or transporter contravenes any provisions of section 76(1) and 76(2), the Commissioner may, after giving an opportunity of being heard, impose a penalty of rupees two thousand for the failure to furnish information in Form VAT408 (place of business etc.); and an amount equal to three times of the tax payable in respect of goods involved for failure to maintain the records or to furnish information to the authorized officer

*Section 76(4):* The Commissioner shall have the power to enter the premises, vessel, boat etc and examine the goods and inspect the records and in every such case the transporter, bailee etc. shall facilitate such inspection and produce the documents.

Explanation: For the purposes of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the

*Inspection, Production of Information & Accounts and Powers of Authorities*

movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.

Section 76(5): The Commissioner shall have the power to seize the accounts etc. for reasons to be recorded in writing and retain the same as long as may reasonably be necessary for examination thereof or for prosecution.

Section 76(6): The Commissioner shall have the power to-break opens any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents or any goods may be kept.

Section 76(8): The Commissioner shall have the power to seize goods vehicle or to seize and confiscate goods physically found but not accounted for in books of account. Further where goods or goods vehicle is seized the authority shall determine the value of goods as per prevailing market price and assess the tax due and impose penalty equivalent to twenty percent of the value of the goods and shall issue demand notice in form VAT - 313. On payment of the demanded tax and penalty the goods/goods vehicle shall be released.

**B. Establishment of check-posts and inspection of goods while in transit**

**Authority [Section 74(1)]:** The Government may, with a view to preventing or checking avoidance or evasion of tax, by notification, direct the establishment of a check-post or barrier or both at such places as may be specified in the notification and specify the officers to be in charge of every such check-post or barrier

**Movement of goods with documents [Section 74(2)]:** The driver or he person in charge of goods, carrier shall

- carry with him records of the goods including challan, bilties, bills of sales or dispatch memos and way bill in Form VAT -402, declaration in Form VAT -402A or transit pass duly filled in and signed by the consignor.
- Stop the vehicle or carrier; at every check post or barrier, and at any other place when so required by an officer authorized by the commissioner.

*Technical Guide to Odisha VAT*

- produce all documents including way bill
- give all information in his possession
- Allow inspection of the goods and search of the vehicle.

**Power [Section 74(3)]:** Where any goods are in transit within the territory of the State, an officer authorized by the Commissioner in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction.

Section 74(4): When any goods are found to be not supported by any document or the documents produced are found to be false or forged or the way bill has not been obtained in accordance with law

- the person in charge of the goods may be directed not to part with the goods till a verification or an enquiry is made which shall be completed within a period of seven days and
- the goods may be seized, after giving a receipt of seizure and recording the reason for doing so

**Movement of goods without documents or with false documents**

**Penalty [Section 74(5)]-** if the goods in transit are found to be without the prescribed documents or with false documents or the way bill has not been obtained in accordance with law, then irrespective of the fact that the goods are seized or not a penalty equal to *five times of tax or twenty per centum of the value of the goods whichever is higher* may after giving an opportunity of being heard, be levied. However sub-section (7) provides that on payment of the penalty as per sub-section (5) along with the tax payable thereon the goods shall be released.

**Detention & Seizure of vehicle [Section 74(9)]-** when a transporter is found to be in collusion with the dealer to avoid or evade payment of tax the vehicle of such transporter shall be detained and after giving an opportunity of being heard and with the written approval of the commissioner the vehicle shall be seized and confiscated.

**Movement of goods from a place outside the state, to a place outside the state, passes through the State [Section 74(10)]:** The driver or person in charge shall

- declare in prescribed form and manner before the officer-in-charge of the first check-post or barrier, after his entry into the State that the

*Inspection, Production of Information & Accounts and Powers of Authorities*

goods under transport shall not be unloaded, delivered or sold inside the State;

- obtain a transit pass in Form VAT 406 from the officer in charge of the first check post while entering the Orissa State and shall deposit the same with the officer in charge of the exit checkpost;.
- if the transit pass is not delivered to the officer in charge of the last checkpost or barrier it shall be presumed that the goods have been sold inside the State;
- after entry into the State the goods may be transported outside the State by any other vehicle (transshipment), but the onus of proving that the goods have actually been moved out of the State shall be on the owner or hirer or person in charge of the vehicle.

*Section 74(11):* On detaining a vehicle if it is found that the transit pass has not been delivered at the exit checkpost; or the person in charge fails to produce the transit pass, or there is reason to believe that the goods have been sold inside the State the checkpost officer or the authorized officer, after giving an opportunity of being heard,

- may by an order impose penalty of twenty per centum of value of the goods or rupees twenty thousand whichever is higher in addition to tax as otherwise payable;
- if the penalty is not paid within the specified time the goods, if available, shall be seized and confiscated;
- if the goods are not available the vehicle shall be seized and kept detained till such tax and penalty are paid. [Section 74(11) & Rule 83(8)]

*Sale of seized material:* Section 74(12) provides that if the goods are perishable in nature than the same must be sold in the prescribed manner. Section 74(13) provides, that in the event of goods being seized and sold, the tax, penalty and the expenses incurred shall be retained and the balance amount shall be paid to the person from whom the goods are seized.

### **C. Survey of unregistered dealers**

Section 72(1) provides that with a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner

*Technical Guide to Odisha VAT*

shall from time to time cause survey of unregistered dealers to be undertaken. Sub section (2) provides that for the purpose of such survey, the Commissioner may–

- by general or special notice, require any dealer or class of dealers to furnish the details relating to the persons and dealers with whom they have transacted during any given period; and
- call for details and particulars regarding the services provided by public utilities or any person and cause the results of the survey to be published, from time to time, and enter any place where a person is engaged in business, but is not registered and require any person, including any employee or any other person –
  - (i) to afford him the necessary facility to inspect books of account or other documents maintained at such place, and
  - (ii) to furnish such information as he may require as to any matter useful for, or relevant to, any proceeding under this Act

*Section 72(3):* The Commissioner may enter the place where the person is carrying on the business only during the hours at which such place of business is open for business, and make or cause to be made extracts or copies from books of account and other documents inspected by him, make an inventory of things checked or verified by him, take samples of goods available at the time of inspection and record the statement of any such person, which may be useful for, or relevant to, any proceeding under this Act.

*Section 74(4):* The Commissioner while exercising powers under this section shall, on no account, remove or cause to be removed from the place where he has entered, any books of account, other documents, cash, stock or other valuable articles or things without giving receipt thereof.

**Production and Inspection of accounts and search of premises-  
(Section 73)**

*Section 73(1):* provides that The Commissioner may require with prior notice in Form VAT 401 any dealer or any other person to

- (a) produce before him such books of accounts, registers and documents;
- (b) furnish such information relating to stock of goods or purchases sales

*Inspection, Production of Information & Accounts and Powers of Authorities*

or deliveries of goods or any other information relating to his business;  
and

- (c) allow access to the electronic records, if any.

*Section 73(2):* All books of account relating to stock, purchases, sales or deliveries and all goods and cash kept in place of business or at any other place for and on behalf of the dealer shall at all reasonable time be open to inspection by the Commissioner. Further the Commissioner may take copies or extracts of the books of account and inventory of goods and sample of goods.

*Section 73(3):* When Commissioner upon information, in his possession or otherwise, is of the opinion that

- (a) any person, to whom a notice under this Act was issued to produce or cause to be produced any books of account or other documents, has failed to produce or cause to be produced such books of account or other documents as required by or under such notice or
- (b) any person, to whom a notice as aforesaid has been or may be issued, may not produce or cause to be produced any books of account or other documents considered to be useful for, or relevant to, any proceeding under this Act; or
- (c) books of account, registers or documents of any dealer may be destroyed, mutilated, altered, falsified or secreted or any sales by that dealer have been or may be suppressed, or any goods have not been or may not be accounted for in the books of account, registers or other documents required to be maintained under this Act, with a view to evading or attempting to evade payment of tax due under this Act, the Commissioner or any other person appointed if so authorized by the Commissioner may -
- inspect or survey the place of business or any such other place where it is suspected that information and record is being kept related to the business,
  - Direct the dealer to produce books of account relating to his business
  - inspect the goods in possession of the dealer or in possession of any other person on his behalf wherever such goods are placed,

*Technical Guide to Odisha VAT*

- make search of such places and persons where concealment of facts relating to the business is suspected,
- break open door of any premises, box, almirah or any receptacles in which concealment of goods and books of accounts is suspected but the dealer does not facilitate the access to such premises or receptacles,
- record statement of the dealer or his manager, agent or servant or take extracts from the record and put identification mark on accounts, registers, documents and on any door, almirah, box or receptacle.

However any documents or goods found at any place of the dealer shall be deemed to belong to such dealer unless the contrary is proved by him.

Section 73(4): Further more if the Commissioner or any officer not below the rank of an STO considers it necessary, surprise visit can be made without giving any prior notice.

*Section 73(5): Where any accounts are produced before an officer in any proceeding such officer may, for reasons to be recorded in writing, impound and retain in custody, on giving a receipt to the dealer, for a period not exceeding six months or up to maximum period of two years.*

*Section 73(6): During the course of inspection if the authorized officer has reason to suspect that the dealer is attempting to evade tax or is concealing his tax liability, he may, for reasons to be recorded in writing and on giving a receipt to the dealer, seize such accounts and retain in custody for examination, inquiry, prosecution or other legal action for a period not exceeding six months or up to a maximum period of two years.*

*Section 73(7): Accounts, registers or documents impounded or seized may be retained beyond the period of six months and up to a maximum period of two years from the date of impounding or seizure, as the case may be, by such officer, after having obtained permission in writing from the Commissioner. Where the books or documents impounded or seized form a part of the record of assessment, the limitation as provided under this sub-section shall not apply.*

*Section 73(8): If the tax and penalty is not paid the authorized officer may seize the goods. A list of goods seized shall be prepared and a copy thereof shall be given to the dealer or any other person from whose custody the goods are seized.*

*Inspection, Production of Information & Accounts and Powers of Authorities*

*Section 73(9):* Where it is not possible to seize the accounts or the goods the officer concerned may serve on the person who is in immediate control thereof an order that he shall not remove, part with or otherwise deal with them except with prior permission of such officer. After serving such order the officer may take such steps as may be deemed necessary under the circumstances.

*Section 73(10):* The officer after giving the dealer an opportunity of being heard and after holding such further enquiry, may impose on him for the possession of goods not accounted for, a penalty equal to five times of the tax leviable or twenty percent of the value of such goods, whichever is higher, and such officer may release the goods, if seized, on payment of the penalty imposed.

*Section 73(11):* The Commissioner shall have the power to, after giving the dealer or person concerned an opportunity of being heard, confiscate such unaccounted for goods, whether seized or not

*Transporter, bailee, owner or lessee of warehouse [Section 73(12)]:* The authorized officer may require any person who transports or holds in his custody any' goods of a dealer and who maintains or has in his possession any accounts, documents of a dealer to allow inspection of goods and produce the books of account.

- If on the part of the officer, there is reason to suspect that any transporter, bailee, owner or lessee of a warehouse is attempting to avoid disclosing the required information or facilitating inspection of goods or attempting to evade payment of tax, for reasons to be recorded in writing and granting a receipt for the same the he may seize the books of account and retain them as long as may reasonably be necessary for examination or for appropriate legal action.
- The authorized officer may break open any almirah or box or receptacle including doors of any premises in which any book of accounts are believed to have been kept. However an officer below the rank of sales tax officer cannot perform this act.
- The Commissioner may seize *goods vehicle* of any transporter, bailee, owner or lessee of a warehouse which are found in office, shop, and godown or while in transit *with goods* not accounted for in the books of account. The Commissioner after giving an opportunity of being heard to the affected person may confiscate goods not accounted for in the books of account.

*Technical Guide to Odisha VAT*

- However on payment being made by the owner of the goods assessed by determining the value of goods at the prevailing market price and levy of penalty equivalent to twenty per centum of value of goods, the Commissioner shall release the goods and the vehicle.

Section 73(13): deals with general penalty for failure to produce books of accounts or to provide cooperation or for prevention of audit and under this section the Commissioner may after giving the dealer an opportunity of being heard, impose a penalty not exceeding rupees twenty five thousand.

## Chapter 10

# Liability to Pay Tax in Special Circumstances

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In a business environment special circumstances arise on the occasion of business takeover, merger, inheritance, demerger etc. Some of the special circumstances and the liability to be discharge are discussed in following Paras:

A. Once a dealer is liable to pay tax he shall continue to be so liable until expiry of three consecutive complete years during which his GTO fails to exceed the taxable limit. On expiry of this period his liability to pay tax shall cease. Further it is provided that part of a year may be ignored. {Section 10(2)}

Taxable limit, as per section 10(4) are the following:

(a) Dealer who receives goods from outside the State	nil
(b) Works contractor	₹ 50,000
(c) Manufacturer	₹ 1,00,000
(d) Others	₹ 5,00,000

### Liability in case of transfer of business (Section 67)

(1) Where a dealer liable to pay tax under this Act, transfers his business in whole or in part, by sale, lease or license, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay tax, including any interest and penalty, due from the dealer up to the time of such transfer, whether such tax including interest and penalty has been determined before or after such transfer.

(2) Where the transferee of a business referred to in supra carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing registered dealer, apply within the prescribed time for amendment of his certificate of registration.

### **Liability in case of company under liquidation (Section 68)**

- Every person who is a liquidator of any company or who has been appointed as the receiver of any assets of a company shall, within thirty days after he has become such liquidator/ receiver, intimate the fact of his appointment as such to the Commissioner.
- The Commissioner shall, notify to the liquidator within three months from the date of receipt of the intimation of the appointment, the amount which would be sufficient to discharge any tax including interest and penalty, if any, which is then, or is likely payable by the company.
- The liquidator shall not part with any of the assets, properties of the company until he has been notified by the Commissioner within three month.
- On being so notified, the liquidator shall set aside an amount equal to the amount notified,; the liquidator can part with the assets in compliance with any order of a court or for the purpose of payment of tax, interest and penalty, if any, payable by the company under this Act or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.
- If the liquidator fails to comply with the provisions he shall be personally liable for the payment of tax including interest and penalty, if any, which the company would be liable to pay under this Act.
- Where there are more than one liquidator, the obligations and liabilities attached to the liquidator under this section shall get attached to all the liquidators jointly and severally.
- Liability of Director of Private company- when any private company is wound up and any tax including interest and penalty, if any, determined under this Act on the company for any period, cannot be recovered, then every director of the private company, (except the Government nominee directors), shall be jointly and severally liable for payment of such dues, if any, unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any wilful neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- The provisions of this section shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

### **Liability of partners where a Partnership firm is the dealer (Section 69)**

Where any firm is liable to pay any tax including penalty under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment

- Where any such partner retires from the firm, he shall intimate the date of his retirement to the Commissioner in writing and shall be liable to pay
  - tax including penalty remaining unpaid at the time of his retirement and
  - any tax including penalty due up to the date of his retirement though not assessed on that date
- Provided further that if no such intimation is given within fifteen days from the date of retirement, the liability of the partners under the first proviso shall continue until the date on which the intimation is received by the Commissioner.

### **Liability of guardians, trustees, etc (Section 70)**

Where the business in respect of which tax is payable under this Act is carried on by, or is in charge of any guardian, trustee or agent of a minor or other incapacitated person the tax including penalty, if any, shall be levied upon, and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting this business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

### **Liability in Special Cases (Section 71)**

**Discontinue of business [Section 71(1)]:** Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or Family has discontinued its business—

- the tax payable by such firm, association or family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place; and

*Technical Guide to Odisha VAT*

- every person who was at the time of such discontinuance a partner of such firm or a member of such association or family, shall, notwithstanding such discontinuance shall be liable for the tax dues,
- if any partner or member dies his legal representative shall be liable for payment of the tax dues.

**Reconstitution or alteration in Firm or AOP [Section 71(2)]:** Where a change has occurred in the constitution of a firm or association of persons the partners or members of both the old and the new firm or association shall jointly and severally be liable to pay the dues for any period before its reconstitution.

**Dissolution of Firm or AOP, Partition of HUF [Section 71(3)]:** Where the dealer, being a firm or association of persons, is dissolved or where the dealer, being a Hindu Undivided Family, has effected a partition with respect to the business carried on by it, dissolution or partition shall be construed as discontinuation and section 71(1) may be applicable accordingly.

*Section 71(4):* Where a dealer liable to pay tax under this Act dies, then,—

- if the business carried on by the dealer is continued after his death by his legal representative or any other person, he shall be liable to pay tax including penalty due from the dealer under this Act, irrespective of the levy is before or after his death; and
- if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay, out of the estate of the deceased, and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

**Liabilities on successor [Section 71(5)]:** Where a dealer liable to pay tax under this Act is succeeded in the business by any person in any manner, then such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of succession. Any person succeeding to the business of a dealer who dies shall be liable to pay tax on and after the date of succession.

**Commission agent of a dealer [Section 71(6)]:** Where any person sells or purchases any taxable goods as a commission agent on behalf of his principal, such agent and his principal shall both be jointly and severally liable to pay tax

*Liability to Pay Tax in Special Circumstances*

- Where the commission agent has sold or purchased any goods on behalf of the principal and the tax has been paid by such agent, the principal shall not be liable to pay the tax again in respect of the same transaction.
- Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of that non-resident dealer in the State, the non-resident dealer and the manager or agent residing in the State shall be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be
- However if the non-resident dealer shows to the satisfaction of the Commissioner that the tax payable in respect of such sale or purchase has been paid by the manager or agent residing in the State, the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

**Amalgamation of companies [Section 71(7)]:** When two or more companies are to be amalgamated by the order of a Court or Government and the order is to take effect from a date *earlier to the date of order* and such companies have sold or purchased any goods among each other during the period between the date of the order and the effective date, then such transactions of sale or purchase will be included in the turnover of sales or of purchases, as the case may be, of the respective companies and will be assessed to tax accordingly.

For the purposes of this Act, the said "two or more companies" shall be treated as distinct companies and shall also be treated as such for all periods up to the date of the said order (not date of effective), and the registration certificate of the company, which merged, shall be cancelled with effect from the date of the said order.

Explanation - Words and expressions used in this sub-section, but not defined, shall have the respective meanings as assigned to them in the Companies Act, 1956.

# Chapter 11

## Special Provisions for Specific Assesseees

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The Odisha VAT Act also contains specific provisions governing specific kinds of dealers. Dealer who belong to the small retail category or who opt for Maximum Retail price method of billing are some such instances for whom special provisions are provided for. Some of those specific cases are discussed in this Chapter:

### A. Option to pay tax on MRP

Proviso to Section 14(1) provides that the Government may, by notification, specify registered dealer, being an importer or a manufacturer of any particular class or category who may at his option, pay in lieu of tax payable by him on taxable turnover (TTO), tax on the maximum retail price printed on label or packet of the goods -or regulated price of the goods, if any.

- Rule 9A(2): The dealer paying tax on MRP shall separately indicate the MRP on the body of the tax Invoice and also super scribe on it the words 'Invoice for tax on MRP'.
- Rule 9A(3): The dealer shall be entitled to collect output tax equal to the amount of input tax.

Explanation: The expression "maximum retail price (MRP)" means the price printed on level or packet of the goods or regulated price of the goods

### B. Retailer and turnover tax- [Section 16 read with Rule 9]

**Rule 9(1)** When a Retailer, as defined under section 2(41) who full fill all the following three conditions can opt for the scheme of Turnover tax in lieu of paying VAT and get a SRIN No. The conditions to be satisfied are that the retailer-

- does not having gross turnover more than rupees Forty Lakhs
- does not purchase or sell goods in course of inter-State trade or commerce;
- does not dispatch goods to or receive goods from, outside the state, otherwise than by way of sales or purchases, as the case may be;

*Special Provisions for Specific Assesseees*

- does not import goods from or export goods to, outside the territory of India;
- does not process or manufacture goods for sale; and
- does not execute any works contract.

The provisions relating to turnover tax can be summed up as follows:

- (a) The second Proviso to Section 16 provides that no turn over tax is payable on sale of declared goods purchased from an Registered Dealer on which tax has been paid
- (b) The third Proviso to Section 16 provide that no turnover tax shall be payable on sale of goods purchased within the state on which tax on MRP has been paid.
- (c) *Rule 9(2)*: A retailer is entitled to collect tax separately from the buyers.
- (d) *Rule 9(3)*: The retailer is not entitled to claim Input Tax Credit.
- (e) *Rule 9(4)*: Where a dealer liable to pay turnover tax, makes purchase of taxable goods where purchase tax could be applicable as per section 12, he shall pay tax on the purchase price of such goods at the rate applicable to such goods in addition to the turnover tax payable on its sales.
- (f) *Rule 9(5)*: If a dealer does not satisfy any one or more of the conditions specified in sub-rule (1) at any time of a year, he may intimate by exercising option in Form VAT106 to the registering authority, under whose jurisdiction, the place of business of the dealer is situated.
- (g) *Rule 9(6)*: A dealer, who makes an application under sub-rule (5) shall, , be liable to pay tax in accordance with section 14 as TIN Dealer and claim input tax credit as admissible under the Act.
- (h) *Rule 9(7)*: A dealer of any specific class or category, subject to conditions as may be specified by the Government by notification under section 16, shall pay a turnover tax by way of composition, in lieu of tax payable under section 11 a turnover tax at such percentage of the taxable turnover as may be specified in the said notification. Such dealers other than those separately notified by the Govt. shall

### *Technical Guide to Odisha VAT*

pay tax @ 1% of the TTO in addition to purchase tax payable Under Section 12.

### **C. Purchase tax [Section 12]**

Under the VAT Act unlike tax on sale there can be cases where every taxable good might be subject to purchase tax depending on the nature of transaction. Unlike tax on sale purchase tax is event based tax and can be applicable to any goods. The rate of tax shall be the same as prescribed for their sale.

Purchases Tax is payable when a dealer purchases or receives any taxable goods within the State from a registered dealer not liable to pay tax or from a person other than a registered dealer, if the goods are disposed in a manner other than the following.

- (a) sale in the State; or in the course of inter-State trade or commerce; or in course of export or
- (b) use for manufacture of taxable goods, or
- (c) consumption in the manufacture of taxable goods and the manufactured goods are disposed by sale within the State, or in course of inter-state trade or commerce, or in course of export out of the territory of India

### **D. Works Contract**

#### **General information:**

As per section 2(63) of VAT Act 'works contract' means a contract for construction, building, manufacture processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any property. Any person would be liable to pay tax when it reaches the prescribed limit of taxable turnover (TTO). Under section 10(4) the TTO has been fixed at ₹ 50,000.00. Hence any person executing any works contract in a financial year for a TTO of ₹ 50,000 or more, will be liable to be registered and to pay to the commercial tax department tax on such works contract as VAT.

Further Section 11(4) dealing with the point of taxation of works contract says that the sale of goods involved in the execution of works contract will be deemed to have taken place when the goods are incorporated in the course

### *Special Provisions for Specific Assesseees*

of execution of works contract, whether or not there is receipt of payment for such sale.

#### **E. Determination of TTO (Valuation Aspect)**

As VAT is applicable on the transfer of property in goods in the course of execution of works contract and hence any amount which is not related to transaction of transfer of property in goods cannot be taxed under VAT Act. As normally in case of works contract value of labour and like charges are included in the total value of works contract the same need to be bifurcated to arrive the value of material to tax under VAT.

Under section 11(2)(c) read with Rule 6(e) of the Odisha VAT Act and Odisha VAT Rules certain deductions are being specifically provided to arrive the sale value from the total value of the Contract. The deductions are as follows:-

- (a) Labor charges for execution of work.
- (b) Amount paid to a sub-contractor for labour and service.
- (c) Charges for planning, designing and architect's fees.
- (d) Charges for obtaining on hire or otherwise machinery and tools used for the execution of a works contract.
- (e) Cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract.
- (f) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services.
- (g) Other similar expenses relatable to supply of labour and services.
- (h) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

However the proviso to section 11(2)(c) and proviso to Rule 6(e) also address to certain situation where the actual cost of labor, services or like charges could not be ascertained or verifiable. The provision says that, where the works contractor fails to produce evidence in support of expenses towards labour and services etc. or such expenses are not ascertainable a lump sum amount as such charges shall be determined as a percentage of total value of the works contract at the rate provided in the Appendix to the

*Technical Guide to Odisha VAT*

Odisha Vat Rule. The said slab of applicable rate for deduction as applicable is given in the following table:

SI No	Particulars	Labour and service charges component as %
1	Fabrication and installation/erection of- (a) Plant and machinery. (b) Structural including trusses and purlines. (c) Cranes and hoists. (d) Elevators, Lifts and escalators (e) Shutters and collapsible gates.	15%
2	Supplying and fixing/installation of - (a) door, windows, grills including its frames & furniture and fixtures. (b) Air-conditioning, equipments including deep freezer. (c) Air-conditioners and air-coolers. (d) Electrical goods	15% 15% 10% 15%
3	Civil works like- (a) Construction of buildings (b) Construction of bridges and culverts (c) Construction of roads (d) Supplying fixing and polishing of mosaic tiles (e) Supplying, fixing and polishing of marbles (f) Supplying fixing of stones other than those described in (d) and (e) (g) earth dam (h) Masonary dam (i) Concrete dam (j) Spillway (k) Canal lining (l) Other canal structure (m) Wooden/bamboo fair weather bridges	30% 25% 30% 20% 15% 15% 50% 35% 45% 35% 35% 40% 20%

*Special Provisions for Specific Assesseees*

4	Sanitary fitting and plumbing's	15%
5	Painting and polishing	20%
6	Supplying and laying pipes	20%
7	Construction of bodies of motor vehicle and Construction of trailers	20%
8	Services and maintenance of instruments, equipments, appliances, plants and machinery	80%
9	Tire rereading	30%
10	Processing and supplying of photographs and photo negatives	50%
11	Electroplating, electro-galvanizing, anodizing and the like	30%
12	Lamination, rubberisation, framing, coating and similar processes	30%
13	Printing and block making	30%
14	Supply and installing of weighing machine and weigh bridges	15%
15	Sculptural contract/contracts relating to arts	60%
16	Ship & boat building including construction of bridges, juries, tugs, trawlers and draggers	20%
17	Laying of railway sleeper	20%
18	Overhauling or repairing or dismasting on any motor vehicle, vessels of every description meant for plying on water or any other vessel propelled by mechanical means, any aircraft or any equipment or part of any of the aforesaid items.	20%
19	Erection, installation and commissioning of wind turbine generator including power evacuation system	30%
20	Supply and laying of cables	20%
21	Construction of railway coaches or under-carriages supply by railways	30%
22	(a) Electrical contractors: (I) High Tension transmission lines	20%

*Technical Guide to Odisha VAT*

	(ii) Substation equipments	15%
	(iii) Power house equipment and extensions	15%
	(iv) 11 & 33 kV and light distribution lines	17%
	(v) All other electrical contracts	25%
	(vi) All structural contracts	35%
23	All other works contract excluding service contracts	20%

Hence the dealer can derive the value of sales from the total value of works contractor as per the details provided in rule 6(e) on the basis of the books of accounts. In case the same is not practicable then a slab rate given in the Appendix to the Orissa Vat Rules can be used for the same.

### **Tax rate**

In the case of dealers other than those who opt for composition scheme, the rate of tax is not being provided specifically. Explanation to section 14 provides that for works contractors other than those permitted to pay tax on compounding basis the rate of tax prescribed under Schedule A, B & C of the Act shall apply to the individual goods supplied in course of execution of works contract

### **F. Composition scheme for works contract**

The Odisha VAT Act also provides an option to all the dealers engaged in works contract to avail the composition scheme subject to fulfillment of certain conditions. Section 11(3) of Odisha VAT Act read with Rule 8(1) of Odisha Vat Rules provides certain conditions to be fulfilled by the dealer to be eligible for opting the scheme. Such conditions are as follows:-

- (a) He does not purchase or sell goods in course of inter-state trade or commerce.
- (b) He does not dispatch goods to or receive. Goods from outside the state, otherwise than by sale or purchase.
- (c) He does not import goods from or export goods to outside the territory of Odisha.
- (d) He does not undertake any business other than execution of works contract.

### **Procedure for availing Composition Scheme**

- (a) *Rule 8(2) & (3):* Any dealer who is eligible as per the law wishing to opt for the composition scheme shall have to apply by the end of the June for the respective year in Form VAT 601 along with, details of works executed, gross value of the works so executed, Tax deducted at the source and Tax assessed if any.
- (b) Once the option is exercised it will remain valid for three consecutive years or till non-fulfillment of the conditions under rule 8(1), whichever is earlier.
- (c) The Assessing Authority, after being satisfied that the dealer is eligible and the application is correct and complete may grant permission in form VAT-602.
- (d) *Rate of tax payable on Works contract:* In the case of the dealers opting for the composition scheme the tax rate applicable will be Four percent on sixty percent of gross value received or receivable. [Rule 8(5)]

### **G. Tax deduction at source**

Under section 54 read with Rule 58 of the Odisha Vat Act and Odisha Vat Rules, tax need to be deducted by certain specified persons while paying to a dealer with respect to the works contract being executed by such dealer. The applicable rate of deduction is normally at 4% of the value of the works contract [section 54(1)].

However in the case of a dealer permitted for composition scheme and obtaining a certificate for no deduction or lower deduction the deduction rate will be applicable at such rate for such specific dealer only. [Rule 8(8)]

## Chapter 12

# Appeal, Revision and Rectification

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### A. Appeal

Under section 77(1) any dealer aggrieved by an order passed under any section of the Act can file an appeal to the prescribed authorities. The list of instances where appeal lies are as follows:-

- An order under Section 34(3) imposing penalty @ 2% per month on the amount of tax and interest payable, for failure of the dealer to pay admitted tax along with return/revised return.
- An order under Section 34(3) imposing penalty of rupees one hundred per day subject to maximum of rupees ten thousand
- Order of provisional assessment under Section 40
- Order of audit assessment under Section 42
- Order of reassessment under Section 43 of escaped turnover etc
- Order of assessment under Section 44 of a dealer who, though liable to pay tax, does not apply for registration.
- Order of assessment under Section 45 of casual dealers
- Order of reassessment under Section 49 of a past period if it appears to be erroneous in the light of any judgment of a court; and
- Order of forfeiture of excess or illegal collection of tax by a dealer passed under Section 52.

However section 77(2) specifically provides certain instances where the Orders against which appeal do not lie. The instances are as follows:-

1. notice issued calling for assessment or notice to show cause why he should not be prosecuted for an offence under this Act or
2. order pertaining to seizure or retention of books of account, registers and other documents of a dealer or
3. order sanctioning prosecution of a dealer under this Act or
4. An interim order passed in the course of any proceeding under this Act.

### **Procedure of Appeal**

1. The appeal shall be preferred within thirty days from the date on which the order is served on the dealer in VAT 501. However the prescribed authority may condone the delay if he is satisfied as to the reasonable cause on the part of the appellant for doing so.
2. No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute along with fee of ₹ 500 or 5% of the disputed liability whichever is lower.
3. The appellate authority may, on application in that behalf filed by the dealer stay the realization of the balance of tax, interest or penalty, as the case may be, under dispute either in part or in full till disposal of the appeal.
4. In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary—
  - (a) confirm, reduce or annul the assessment of tax, or the imposition of interest or levy of penalty, if any; or
  - (b) enhance the assessment including any part thereof whether or not such part is the subject-matter in the appeal; or
  - (c) set-aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.

### **Appeal to Tribunal and stay of recovery of dues during pendency of appeal [Section 78]**

1. Any dealer or, as the case may be, the Government, if not satisfied with an order passed under section 77(7) may, within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal: how ever delay in filling may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period. (Sub-section 1)

### *Technical Guide to Odisha VAT*

2. The dealer or the Government, as the case may be, on receipt of notice that an appeal has been preferred before the tribunal, within sixty days file a memorandum of cross objections, and such memorandum shall be disposed of by the Tribunal, as if it were an appeal presented within time. [Section 78(2)]
3. The appeal or the memorandum of cross objections shall be in FormVAT-502 and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred. [Section 78(3)]
4. The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal. [Section 78(4)]
5. For disposal of appeal, the Tribunal shall have the same powers and shall be subject to the same conditions as provided in section 77(7), and any order passed under this section shall be final. [Section 78(5)]
6. Where a dealer has preferred an appeal, the Commissioner may, stay realization, either in part or in full, the amount of tax, interest or penalty, as the case may be, remaining outstanding for recovery as a result of the disposal of appeal under sub-section (7) of Section 77, on application in that behalf filed by the dealer within the period as provided in sub-section (1). [Section 78(6)]

### **Revisional powers of Commissioner [Section 79]**

1. Subject to rules and for reasons to be recorded in writing, the Commissioner may, on his *own motion*, revise any order passed under this Act or the rules by any person, other than the Tribunal. [Section 79(1)]
2. Subject to rules and for reasons to be recorded in writing, the Commissioner may, upon application filed within the prescribed period, revise any order, other than an order of the Tribunal. [Section 79(2)]
3. The Commissioner shall not entertain any application for revision if the dealer or person filing the application, having a remedy by way of appeal before 1st appellate authority or tribunal, did not avail of such remedy or did not file the application within prescribed period. [Section 79(3)]

*Appeal, Revision and Rectification*

4. The Commissioner shall not revise, under sub-section (1), any order, if- [Section 79(4)]
  - (a) the period for filing of appeal against the order before 1st appellate authority (Section 77) or Tribunal (Section 78) has not expired; or
  - (b) the order has been made a subject matter of appeal before 1st appellate authority (Section 77) or Tribunal (Section 78); or
  - (c) more than five years have expired after the order sought to be revised was passed.
5. However the Commissioner may pass an order on his own motion on any point which has not been raised and decided in an appeal before 1st appellate authority or Tribunal before the expiry of more than five years. [Section 79(5)]
6. If the Commissioner proposes to reject an application for revision, he shall record the reasons for such rejection. [Section 79(6)]
7. Any dealer or person or, as the case may be, the Government, aggrieved by any order passed by the Commissioner under own motion, may within sixty days from the date of receipt of such order, prefer an appeal—
  - (a) if the order is passed by the Commissioner, to the High Court; and
  - (b) if the order is passed by any authority subordinate to the Commissioner, to the Commissioner. [Section 79(7)]
8. All orders passed under sub-section (1) shall, subject to orders passed in an appeal, if any, be final. [Section 79(8)]

**Revision by High Court in certain cases [Section 80]**

1. Within sixty days from the date on which an order of Tribunal was served affecting liability of any dealer to pay tax, interest or penalty under this Act, such dealer by petition in writing accompanied by a fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal. However that the High Court may admit a petition preferred after the period of sixty days as aforesaid. [Section 80(1)]

*Technical Guide to Odisha VAT*

2. The petition shall be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. [Section 80(2)]
3. If the High Court, while perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition after giving reasonable opportunity of being heard. [Section 80(3)]
4. If the High Court does not dismiss the petition, it shall, after giving both the parties to the petition a reasonable opportunity of being heard,
  - determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.
  - Where the High Court remits the matter to the Tribunal as above with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion. [Section 80(4)]
5. Before passing an order the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue. [Section 80(5)]
6. Notwithstanding that a petition has been moved under sub-section (1), the tax or any Revision by High Court other dues under this Act shall be paid in accordance with the order against which the petition has been moved. however if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment thereupon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with provisions of this Act, as the case may be. [Section 80(6)]
7. (a) The High Court may, on the application of either party to the petition, review any order passed by it, on the basis of facts, which were not before it when it passed the order.  
(b) The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is

*Appeal, Revision and Rectification*

preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred. [Section 80(7)]

**B. Rectification of mistakes [Section 81]**

1. With a view to rectifying any arithmetical or clerical mistake or any error apparent on the face of record, the assessing authority, appellate authority or revisional authority or the Tribunal may, at any time within five years from the date of an order passed by it, amend such order. However every such amendment where the assessment is enhanced or the liability is increased, can be made after notice to the assessee of its intention to do so being issued and has allowed the assessee a reasonable opportunity of being heard. [Section 81(1)]
2. Where any order, sought to be rectified by amendment, has been considered and decided in any proceedings by way of appeal or revision, then, notwithstanding anything contained in any law for the time being in force, the authority shall not make any amendment in relation to any matter which has been so considered and decided. [Section 81(2)]
3. An order of rectification passed shall be deemed to be an order passed under the same provisions of law under which the original order containing the mistake or error was passed. [Section 81(3)]

## Chapter 13

# Offences, Penalties and Prosecution

### Offences and Penalties [Section 82]

1. Section 82(1): That the following acts shall be offences committed by anybody whoever—

- (a) knowingly furnishes a false return; or
- (b) not being a registered dealer, falsely represents that he is a registered dealer at the time when he sells or purchases goods; or
- (c) knowingly produces false bill, invoice, cash memorandum, voucher, declaration, certificate or other documents for evading tax payable under this Act; or
- (d) knowingly keeps false account of the value of the goods purchased or sold by him in contravention of the provisions of this Act; or
- (e) knowingly produces false accounts or documents, or furnishes false information; or
- (f) issues to any person, certificate, declaration or tax invoice under this Act or any false bill, cash memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reason to believe to be false; or
- (g) willfully attempts, in any manner whatsoever, to evade any tax, interest or penalty payable under this Act,

Such person on conviction shall be punished as follows:

- Where the amount of tax, interest or penalty, or all of them together involved is less than rupees fifty thousand in a year, with imprisonment of either description for a term which shall not be less than three months but which may extend to one year and with fine.
- In any other case, with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine.

*Offences, Penalties and Prosecution*

2. Whoever aids, abets or induces any person in the commission of any act specified in the section shall, on conviction, be punished with imprisonment of either description which shall not be less than three months but which may extend to one year and with fine. (Sub-section 2)

3. Whoever

- (a) is engaged in any business as a dealer without being registered in willful contravention of Section 24; or
- (b) fails, without sufficient cause, to keep any accounts or record as directed in accordance with the provisions of this Act; or
- (c) fails, without sufficient cause, to keep such records as required by the Commissioner under sub-section (3) of Section 61; or
- (d) fails, without sufficient cause, to comply with any requirements made of him under Section 73; or
- (e) voluntarily obstructs any officer making inspection or search or seizure under Section 73, 74 or 75,

shall, on conviction, be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to one year and with fine.(Sub-section 3)

4. Whoever fails, without sufficient cause, to furnish any return for any tax period by the date and in the manner prescribed under this Act shall, on conviction, be punished with imprisonment of either description for a term which may extend to one year and with fine which shall not be less than—

- (a) rupees two thousand, if the tax due for the period covered by the return, not so furnished, does not exceed rupees twenty thousand;
- (b) rupees five thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees twenty thousand but does not exceed rupees one Lakh;
- (c) Rupees ten thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees one Lakh.(Sub-section 4)

5. Whoever commits any of the acts specified in sub-sections (1) to (4) and such act is a continuing one, he shall, on conviction, be punished with daily fine amounting to not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishment provided under this section.(Sub-section 5)

*Technical Guide to Odisha VAT*

6. Notwithstanding anything contained in sub-sections (1) to (5), no person shall be prosecuted under any of these sub-sections for any act referred to therein, if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year. (Sub-section 6)

7. When a dealer accused of an offence specified in sub-sections (1) to (5), the person declared to be the manager of the business or the person holding power of attorney of such dealer or the person who in any manner acts for or on behalf of such dealer shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission thereof. (Sub-section 7)

8. In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (Sub-section 8)

9. "Culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

**Offences by companies and Hindu Undivided Families, [Section 83]**

1. Where any act specified in Section 82 has been committed by a company, every person other than a nominated director who, at the time of the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence. (Sub-section 1)

2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or

### *Offences, Penalties and Prosecution*

other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. (Sub-section 2)

3. Where any offence under this Act has been committed by a Hindu Undivided Family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However nothing is applicable if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence. (Sub-section 3)

4. Provided further that where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any adult member of the family, such member shall also be deemed to be guilty and shall be liable to be proceeded against and punished accordingly.

5. For the purpose of this section:

- "COMPANY" means anybody corporate and includes a firm or other association of individuals; and
- "DIRECTOR", in relation to the firm, means partner in the firm.

### **Cognizance of offence [Section 84]**

1. No Court shall take cognizance of any offence except with the previous sanction of the Commissioner and no Court inferior to that of a Magistrate of the First Class shall try such offence. (Sub-section 1)
2. The offences punishable under sub-sections (1), (2) and clause (e) of sub-section (3) of Section 82 shall be cognizable and non-billable and other offences punishable under the said section shall be cognizable. (Sub-section 2)

### **Investigation of offences [Section 85]**

1. Subject to conditions, if any, as may be prescribed, the Commissioner may authorize either generally or in respect of a particular case or class of cases, any officer appointed to investigate all or any of the offences punishable under this Act. (Sub-section 1)
2. Every officer so authorized shall, in the conduct of such investigation, exercise the powers, conferred by the Code of Criminal Procedure,

1973 (2 of 1974), upon an officer-in-charge of the police station for the investigation of a cognizable offence. (Sub-section 2)

### **Compounding of offences [Section 86]**

1. The Commissioner may, either before or after the institution of proceedings of any offence punishable under Section 82, accept, by way of composition, from any person charged with any offence under sub-section (1), (3) or (4) of the said section a sum not exceeding three times the amount of tax which would have been payable on the sale or purchase turnover to which the offence relates or rupees ten thousand, whichever is higher. (Sub-section 1)
2. On payment of such sum as may be determined by the Commissioner under sub-section(1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceeding, if already taken, shall not be proceeded with further. (Sub-section 2)

### **Offences against officers [Section 87]**

Any person who obstructs, molests or assaults an officer appointed to assist the Commissioner in or during the performance of his duties as are or may be conferred or imposed by or under the provisions of this Act, or does anything which is likely to prevent or obstruct the performance of any of such duties including recording of evidence, shall be liable for prosecution and, on conviction, be punished with rigorous imprisonment which may extend up to six months or fine not exceeding rupees twenty five thousand or both.

## Appendix-1

# VAT Forms<sup>4</sup>

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Sl. No.	Form No.	Description
1	Form VAT-I	Information by a dealer deemed to be registered under the Odisha Value Added Tax Act, 2004.
2	Form VAT-001	Registration certificate for Dealers liable to pay turnover tax.
3	Form VAT-002	Return of turnover tax payable by a dealer
4	Form VAT-101	Application for registration
5	Form VAT-101 A	Details of additional places of Business/ Branches/ Godowns/ Warehouses in Odisha
6	Form VAT-101 B	Address of branch offices/ godowns located outside Odisha
7	Form VAT-101 C	Declaration of Proprietors/Partners/Directors/ Authorised persons of the business.
8	Form VAT-101 D	Declaration of Manager Etc.
9	Form VAT-102	Response to application for VAT registration (INTERIM)
10	Form VAT-103	RC for dealers liable to pay VAT
11	Form VAT-104	Notice for demand of security
12	Form VAT-105	Application for refund of security
13	Form VAT-106	Application for registration of dealers intending/liable to pay VAT in lieu of turnover tax

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<sup>4</sup> Form 321 omitted wef 03.03.2014 & Form 604 omitted wef 25.2.2009

*Technical Guide to Odisha VAT*

Sl. No.	Form No.	Description
14	Form VAT-106 A	Application For Registration Of Dealers Intending/Liable To Pay Turnover Tax In Lieu Of VAT
15	Form VAT-107	Intimation to a dealer on his liability to pay VAT in lieu of turnover tax
16	Form VAT-108	Application for amendment of RC
17	Form VAT-109	Intimation of sale of business to a registered dealer
18	Form VAT-110	Notice of suspension of RC
19	Form VAT-111	Show cause notice for failure to be register
20	Form VAT-201	Return of VAT payable by a dealer
21	Form VAT-201 A	Annual Return of Value Added Tax payable by a dealer.
22	Form VAT-202	Final return due to closure of business during the course of a tax period
23	Form VAT-203	Notice for failure to file return omitted w.e.f. 25 February, 2009
24	Form VAT-204	Notice to unregistered dealers to file return (VAT/ Turnover Tax)
25	Form VAT-204 A	Return For Unregistered Dealers
26	Form VAT-205	Show cause notice for failure to file return
27	Form VAT-206	Order imposing penalty for failure to file return
28	Form VAT-207	Show cause notice for failure to file return by an unregistered dealer/ furnish proof of payment of tax admitted in return furnished
29	Form VAT-208	Order imposing penalty under sub-section (3) of Section 34 in case of unregistered dealer.

*Appendix: VAT Forms*

Sl. No.	Form No.	Description
30	Form VAT-209	Notice for less payment of tax
31	Form VAT-301	Notice for audit visit
32	Form VAT-302	Notice for production of document
33	Form VAT-303	Audit visit report
34	Form VAT-304	Notice of demand of tax on provisional assessment
35	Form VAT-305	Intimation of arithmetical mistake in the return
36	Form VAT-306	Notice for assessment of tax as a result of audit
37	Form VAT-307	Notice for assessment of tax on escaped turnover
38	Form VAT-308	Notice for assessment of tax on unregistered dealer liable to be registered under the act
39	Form VAT-309	Notice calling for return from a casual dealer
40	Form VAT-310	Information to be furnished by casual dealer
41	Form VAT-311	Return of total turnover of a casual dealer
42	Form VAT-311 A	Return Of Total Turnover Of Casual Dealer (Estimated Turnover)
43	Form VAT-312	Order of assessment
44	Form VAT-313	Notice of demand
45	Form VAT-314	Notice of demand imposing penalty for failure to make payment of the unpaid amount of tax, interest, penalty.
46	Form VAT-315	Revised notice of demand

*Technical Guide to Odisha VAT*

Sl. No.	Form No.	Description
47	Form VAT-316	Demand for payment of tax from third party
48	Form VAT-317	Challan form
49	Form VAT-318	Order of Adjustment of Refund (substituted by Form VAT 318-A w.e.f 03 <sup>rd</sup> March 2014)
50	Form VAT-318A	Refund Payment/ Adjustment Order
51	Form VAT-319	Refund payment order (substituted by Form VAT 318-A w.e.f 03 <sup>rd</sup> March 2014)
52	Form VAT-320	Application for refund of tax (substituted by Form VAT 318-A w.e.f 03 <sup>rd</sup> March 2014)
53	Form VAT-320A	Application for refund of ITC carried forwarded for adjustment/ Refund of Tax
55	Form VAT-322	Order of release of Bank guarantee
56	Form VAT-323	Application for refund to United Nations Organisation (substituted by Form VAT 323-A w.e.f 03 <sup>rd</sup> March 2014)
57	Form VAT-323A	Application for refund to Foreign Diplomatic Mission/ consulate in India, United Nations Organisations and other international body.
58	Form VAT-324	Application for refund of input tax credit carried forward for adjustment (substituted by Form VAT 320-A w.e.f 03 <sup>rd</sup> March 2014)
59	Form VAT-401	Notice for production of accounts etc.
60	Form VAT-402	Way Bill
61	Form VAT-402 A	Declaration
62	Form VAT-402 B	Way Bill
63	Form VAT-403	Statement of Waybills utilized
64	Form VAT-	Indemnity Bond for loss of way bill

*Appendix: VAT Forms*

Sl. No.	Form No.	Description
	404	
65	Form VAT-405	Notice when goods carried and not fully covered in way bill
66	Form VAT-406	Application, issue & receipt of transit pass
67	Form VAT-407	Notice levying tax and imposing penalty
68	Form VAT-407 A	Levy Of Penalty And Assessment of Tax Under Sub Section 11 Of Section 74
69	Form VAT-408	Intimation regarding place of business/office/godown of clearing and forwarding agent, booking agent, broker or transporter
70	Form VAT-409	Application for issue of way bill
71	Form VAT-410	Application for more than one booklet of way bill
72	Form VAT-501	Form of appeal against order of assessment under section 40,43 or assessment with penalty under section 42,43,44 or levy of penalty under Section 52 of The Orissa Value Added Tax Act, 2004
73	Form VAT-502	Memorandum of memorandum of appeal to the Tribunal
74	Form VAT-503	Notice for remedy of defects for registration of appeal to the Tribunal
75	Form VAT-504	Notice for hearing when the defects intimated are not remedied by the Appellant
76	Form VAT-505	Register showing second appeal filed before the Tribunal by State
77	Form VAT-506	Register showing second appeal filed before the Tribunal by the parties
78	Form VAT-507	Notice for hearing for admission of appeal

*Technical Guide to Odisha VAT*

Sl. No.	Form No.	Description
79	Form VAT-507 A	Notice on admission of application seeking advance ruling
80	Form VAT-508	Notice for filing of memorandum of cross objection
81	Form VAT-509	Notice of hearing
82	Form VAT-509 A	Notice of hearing
83	Form VAT-509 B	Notice of hearing
84	Form VAT-601	Application for option by works contractor
85	Form VAT-602	Notice for payment of tax by composition
86	Form VAT-603	Notice to deducting authority for deduction of tax at source in respect of works-contractor exercising option for payment of tax by way of composition in lieu of VAT
87	Form VAT-603A	Intimation of the name & address of the deducting authorities
89	Form VAT-605	Certificate for deduction of tax at source
90	Form VAT-606	Application for grant of certificate for no deduction/ deduction of tax at source from works contractor under sub-section (5)(a) of Section 54 of the Odisha Value Added Tax Act, 2004
91	Form VAT-607	Claim for credit of sales tax paid on goods in stock at the commencement of Value Added Tax
92	Form VAT-607 A	Claim For Credit of Sales Tax Paid on Goods In Stock on the day of Registration if such purchases were made within 3 months prior to such date / on the day of assignment of TIN from SRIN
93	Form VAT-608	Intimation of sales tax credit admitted

*Appendix: VAT Forms*

Sl. No.	Form No.	Description
94	Form VAT-608 A	Intimation Of Sales Tax Credit Admitted (New Provision)
95	Form VAT-609	Form of application for enrolment as authorised Sales Tax Practitioner
96	Form VAT-610	Register of Sales Tax Practitioner maintained by the Commissioner of Sales Tax
97	Form VAT-611	Application for issue of clearance certificate
98	Form VAT-611 A	Application for issue of clearance certificate to a person / dealer not registered under the Odisha Value Added Tax Act
99	Form VAT-612	Clearance certificate
100	Form VAT-612 A	Clearance certificate
101	Form VAT-613	Notice intimating the prevailing market price
102	Form VAT-614	Notice for purchase of goods
103	Form VAT-615	Notice for unauthorized/ excess collection of tax
104	Form VAT-616	Certificate to be issued by the proprietor / authorized officer of the unit located in an SEZ / STP / EHTP or an EOU to the selling dealer on purchase of goods

## Appendix-2

# VAT Schedules

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1. **Schedule A:** List of goods exempted from Value Added Tax.
2. **Schedule B**
  - Part-I:** List of goods taxable on turnover of sales or purchases at the rate of one percent.
  - Part-II:** List of goods taxable on turnover of sales or purchases at the rate of five percent.
  - Part-IIA:** List of goods taxable on turnover of sales or purchases at other rate.
  - Part-III:** List of goods taxable on turnover of sales or purchases at the rate of 13.5 %
3. **Schedule C:** List of goods taxable on turnover of sales or purchases at single point.
4. **Schedule D:** Capital Goods.
5. **Schedule E:** Procedure for recovery of Tax.