



Public Information Officer
Odisha Legislative Assembly

THE ODISHA GOODS AND SERVICES TAX (AMENDMENT) BILL, 2021.

A

BILL

**FURTHER TO AMEND THE ODISHA GOODS AND SERVICES TAX ACT,
2017.**

BE it enacted by the Legislature of the State of Odisha in
the Seventy-second Year of the Republic of India as follows:—

Short title and
commencement

1.(1) This Act may be called the Odisha Goods and Services
Tax (Amendment) Act, 2021.

(2) Save as otherwise provided, the provisions of this Act shall
come into force on such date as the State Government may, by
notification, appoint:

Provided that different dates may be appointed for different
provisions of this Act and any reference in any such provision to the
commencement of this Act shall be construed as a reference to the
coming into force of that provision.

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Amendment
of section 7.

2. In the Odisha Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely:—

Odisha Act 7
of 2017.

“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter-se shall be deemed to take place from one such person to another.”.

Amendment
of section 16.

3. In the principal Act, in section 16, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

Amendment
of section 35.

4. In the principal Act, sub-section(5) of section 35 shall be omitted.

Amendment
of section 44.

5. In the principal Act, for section 44, the following section shall be substituted, namely:—

44. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the

“Annual return



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financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.

Amendment
of section 50.

6. In the principal Act, in section 50, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”.

Amendment
of section 74.

7. In the principal Act, in section 74, in Explanation 1, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted.

Amendment
of section 75.

8. In the principal Act, in section 75, in sub-section (12), the following Explanation shall be inserted, namely:—

‘Explanation.—For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect



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of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Amendment
of section 83.

9. In the principal Act, in section 83, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing, attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”

Amendment
of section 107.

10. In the principal Act, in section 107, in sub-section (6), the following proviso shall be inserted, namely:—

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”

Amendment
of section 129.

11. In the principal Act, in section 129, —

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”

(ii) sub-section (2) shall be omitted;



(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;

(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words “No penalty” shall be substituted; and

(v) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

Amendment of
section 130.

12. In the principal Act, in section 130, —

(i) in sub-section (1), for the words and comma “Notwithstanding anything contained in this Act, if ”, the word “Where” shall be substituted;

(ii) in sub-section (2), in the second proviso, for the words, brackets and figures “amount of penalty leviable under sub-section (1) of section



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129", the words "penalty equal to hundred per cent. of the tax payable on such goods" shall be substituted; and

(iii) sub-section (3) shall be omitted.

Amendment
of section 134.

13. In the principal Act, in section 134, the following proviso shall be inserted, namely:—

"Provided that nothing contained in chapter XXXVI of the Code of Criminal Procedure, 1973 shall apply to any offence punishable under the Odisha Goods and Services Tax Act, 2017".

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Odisha Act 7 of
2017.

Amendment
of section 151.

14. In the principal Act, for section 151, the following section shall be substituted, namely:—

"Power to call
for
information.

151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein."

Amendment
of section 152.

15. In the principal Act, in section 152,—

(i) in sub-section (1),—

(a) the words "of any individual return or part thereof" shall be omitted; and

(b) after the words "any proceedings under this Act", the words "without giving an opportunity of being heard to the person concerned" shall be inserted; and

(ii) sub-section (2) shall be omitted.

Amendment of
Schedule II.

16. In the principal Act, in Schedule II, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.



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STATEMENT OF OBJECTS AND REASONS

The Odisha Goods and Services Tax Act, 2017 (the Act) was enacted with a view to make a provision for levy and collection of tax on *intra-State* supply of goods or services or both by the State Government.

2. The new tax regime had faced certain difficulties like mandatory audit requirement, interest on gross tax liability, mandatory requirement to file return in FORM GSTR-9C, large-scale misuse of the input tax credit, fraud involving the detention of vehicles carrying goods or conveyances, frivolous Appeals etc.

In order to overcome such difficulties, it is proposed to amend the Odisha Goods and Services Tax Act, 2017.

3. The proposed Odisha Goods and Services Tax (Amendment) Bill, 2021, *inter alia*, provides for the following, namely:—

(i) to amend section 7 of the OGST Act, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

(ii) to amend section 16 of the OGST Act so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

(iii) to omit sub-section (5) of section 35 of the OGST Act so as to remove the mandatory requirement of getting annual accounts audited and submission of copy of the audited annual accounts and the reconciliation statement.

(iv) to amend section 44 of the OGST Act so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further empowers the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.



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(v) to amend section 50 of the OGST Act so as to charge interest on net cash liability retrospectively with effect from the 1st July, 2017.

(vi) to amend section 74 of the OGST Act so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.

(vii) to amend section 83 of the OGST Act so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

(viii) to insert a new proviso in sub-section (6) of section 107 of the OGST Act so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five percent. of the penalty has been paid by the appellant.

(ix) to amend section 129 of the OGST Act so as to prescribe the matters relating to detention, seizure and release of goods and conveyances in transit.

(x) to amend section 130 of the Act, so as to prescribe penalty for confiscation of goods or conveyances in transit.

(xi) to amend section 134 through insertion of a proviso which provides for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 to offences punishable under the Odisha Goods and Services Tax Act, 2017

(xii) to amend section 151 of the OGST Act so as to empower the jurisdictional commissioner to call for information from any person relating to any matters dealt with in connection with the Act.

(xiii) to amend sub-section (1) of section 152 of the OGST Act so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

(xiv) to omit paragraph 7 of Schedule II to the OGST Act, with



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retrospective effect from the 1st day of July, 2017, consequent to the amendments made in section 7.

4. The Bill seeks to achieve the above objectives.

NIRANJAN PUJARI

Member-in-Charge



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ANNEXURE

EXTRACT TAKEN FROM THE ODISHA GOODS AND SERVICES TAX ACT, 2017
(ODISHA ACT 7 OF 2017)

* * * * *
Scope of supply. 7.(1) For the purposes of this Act, the expression "supply" includes ---

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

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CHAPTER III
LEVY AND COLLECTION OF TAX

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CHAPTER-V
INPUT TAX CREDIT

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Eligibility and 16(1) * * * * *
conditions for
taking input tax
credit.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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CHAPTER-VIII
ACCOUNTS AND RECORDS

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Accounts and other records. 35(1) * * *

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

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CHAPTER-IX
RETURNS

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Annual Return.

44.(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.



Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of central tax shall be deemed to be notified by the Commissioner

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

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CHAPTER-X

PAYMENT OF TAX

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Interest on delayed payment of tax.

50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council.

Provided that the interest on tax payable in



respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

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CHAPTER-XV DEMANDS AND RECOVERY

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Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

74(1) *

- (11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section, —

(i) the *expression* “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay



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penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

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General provisions relating to determination of tax. 75(1)* * *

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

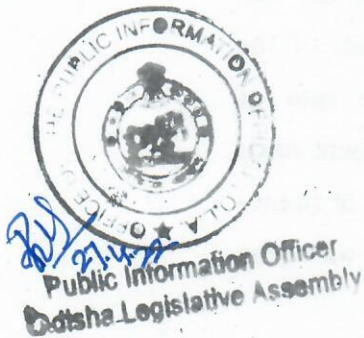
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CHAPTER-XIX
OFFENCES AND PENALTIES

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Provisional attachment to protect revenue in certain cases. 83(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

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APPEALS AND REVISION

Appeals to
Appellate
Authority .

107 (1) *

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty five crore rupees, in relation to which the appeal has been filed.

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CHAPTER XIX
OFFENCES AND PENALTIES

Detention, seizure
and release of
goods and
conveyances in
transit.

129(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per-cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per-cent of the value of goods or twenty five thousand rupees, whichever is less, where the



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owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per-cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per-cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the



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owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer.

* * * *

Confiscation of goods or conveyances and levy of penalty. 130(1) Notwithstanding anything contained in this Act, if any person –

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to



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penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

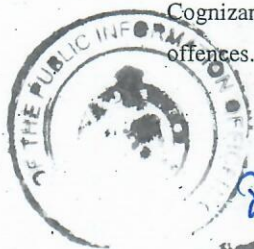
Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

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Cognizance of offences.

134. No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.



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CHAPTER XXI
MISCELLANEOUS

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Power to collect statistics.

151.(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.

Bar on disclosure of information.

152.(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in



section 151.

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

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SCHEDULE II
ACTIVITIES OR TRANSACTIONS TO BE
TREATED AS SUPPLY OF GOODS OR SUPPLY OF
SERVICES

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7. Supply of Goods

The following shall be treated as supply of goods, namely:--

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

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