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SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY
NOTIFICATION

The 25th September, 2023

No.5834/L.A.— The following Bill, which has been introduced in the Odisha Legislative Assembly on the 25th September, 2023 is here with published under rule-68 of the Rules of Procedure and Conduct of Business in the Odisha Legislative Assembly for general information

THE ODISHA GOODS AND SERVICES TAX (AMENDMENT) BILL, 2023.

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-fourth 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, 2023.

(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.

2. In Section 2 of the Odisha Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), with effect from 1st day of October, 2023,—

(a) after clause (80), the following clauses shall be inserted, namely:—

'(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;

(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;';

(b) after clause (102), the following clause shall be inserted, namely:—

'(102A) "specified actionable claim" means the actionable claim involved in or by way of—

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming;';

(c) in clause (105), the following proviso shall be inserted at the end, namely:—

"Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money

or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;"

(d) after clause (117), the following clause shall be inserted, namely:—

‘(117A) "virtual digital asset shall have the same meaning as assigned to it in clause (47A) of Section 2 of the Income-tax Act, 1961;’.

43 of 1961

Amendment
of
Section 10.

3. In Section 10 of the principal Act, —

(a) in sub-section (2), in clause (d), the words "goods or" shall be omitted;
and

(b) in sub-section (2A), in clause (c), the words "goods or" shall be omitted.

Amendment
of Section 16.

4. In Section 16 of the principal Act, in sub-section (2),—

(a) in the second proviso, for the words "added to his output tax liability, along with interest thereon", the words and figures "paid by him along with interest payable under section 50" shall be substituted; and

(b) in the third proviso, after the words "made by him", the words "to the supplier" shall be inserted.

Amendment
of
Section 17.

5. In Section 17 of the principal Act,—

(a) in sub-section (3), in the *Explanation*, for the words and figure "except those specified in paragraph 5 of the said Schedule", the following shall be substituted, namely:—

"except,—

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule."; and

(b) in sub-section (5), after clause (f), the following clause shall be inserted, namely:—

"(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013;".

18 of 2013

Amendment
of
Section 23.

6. In Section 23 of the principal Act, for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

"(2) Notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.".

Amendment
of
Section 24.

7. In Section 24 of the principal Act, with effect from 1st day of October, 2023—

(a) in clause (xi), the word "and" occurring at the end, shall be omitted; and

(b) after clause (xi), the following clause shall be inserted, namely: —

"(xia) every person supplying online money gaming from a place outside India to a person in India; and"

Amendment
of
Section 30.

8. In Section 30 of the principal Act, in sub-section (1),—

(a) for the words "the prescribed manner within thirty days from the date of service of the cancellation order:", the words "such manner, within such time and subject to such conditions and restrictions, as may be prescribed." shall be substituted; and

(b) the proviso shall be omitted.

Amendment
of
Section 37.

9. In Section 37 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details."

Amendment
of Section 39.

10. In Section 39 of the principal Act, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return."

Amendment
of
Section 44.

11. Section 44 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return."

Amendment
of Section 52.

12. In Section 52 of the principal Act, after sub-section (14), the following sub-section shall be inserted, namely:—

"(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement."

Amendment
of
Section 54.

13. In Section 54 of the principal Act, in sub-section (6), the words "excluding the amount of input tax credit provisionally accepted," shall be omitted.

Amendment
of Section 56.

14. In Section 56 of the principal Act, for the words "from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax", the words "for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed", shall be substituted.

Amendment
of Section 62.

15. In Section 62 of the principal Act, in sub-section (2),—

(a) for the words "thirty days", the words "sixty days" shall be substituted;
and

(b) the following proviso shall be inserted, namely:—

"Provided that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under sub-

section (1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of Section 50 or to pay late fee under section 47 shall continue."

Amendment
of
Section 109.

16. For Section 109 of the principal Act, the following section shall be substituted, namely:—

"Constitution of
Appellate
Tribunal and
Benches
thereof.

109. Subject to the provisions of this Chapter, the Goods and Services Tax Tribunal constituted under the Central Goods and Services Tax Act, 2017 shall be the Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority under this Act."

Omission of
Section 110
and 114.

17. Sections 110 and 114 of the principal Act shall be omitted.

Amendment
of
Section 117.

18. In Section 117 of the principal Act,—

(a) in sub-section (1), for the words "State Bench or Area Benches", the words "State Benches" shall be substituted; and

(b) in sub-section (5), in clauses (a) and (b), for the words "State Bench or Area Benches", the words "State Benches" shall be substituted.

Amendment
of
Section 118.

19. In Section 118 of the principal Act, in sub-section (1), in clause (a), for the words "National Bench or Regional Benches", the words "Principal Bench" shall be substituted.

Amendment
of
Section 119.

20. In Section 119 of the principal Act,—

(a) for the words "National or Regional Benches", the words "Principal Bench" shall be substituted; and

(b) for the words "State Bench or Area Benches", the words "State Benches" shall be substituted.

Amendment
of
Section 122.

21. In Section 122 of the principal Act, after sub-section (1A), the following sub-section shall be inserted, namely:—

"(1B) Any electronic commerce operator who—

- (a) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (b) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (c) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher."

Amendment
of
Section 132.

22. In Section 132 of the principal Act, in sub-section (1),—

(a) clauses (g), (j) and (k) shall be omitted;

(b) in clause (f)-

(i) for the words, brackets and letters "clauses (a) to (k)", the words, brackets and letters "clauses (a) to (f) and clauses (h) and (i)" shall be substituted;

(ii) in sub-clauses (iii), for the words "any other offence", the words, brackets and letters "an offence specified in clause (b)" shall be substituted; and

(iii) in sub-clause (iv), the words, brackets and letters "or clause (g) or clause (j)" shall be omitted.

Amendment
of
Section 138.

23. In Section 138 of the principal Act,—

(a) in sub-section (1), in the first proviso,—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of Section 132;"

(ii) clause (b) shall be omitted;

(iii) for clause (c), the following clause shall be substituted, namely:—

"(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of Section 132;" and

(iv) clause (e) shall be omitted.

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than twenty-five percent. of the tax involved and the maximum amount not being more than one hundred percent. of the tax involved."

Insertion of
new
Section 158A.

24. After Section 158 of the principal Act, the following section shall be inserted, namely:—

"Consent
based
sharing of
Information
furnished by
taxable
person.

158A. (1) Notwithstanding anything contained in Sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of sub-section (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—

(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;

(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68; and

(c) such other details as may be prescribed.

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of—

(a) the supplier, in respect of details furnished under clauses (a),(b) and (c) of sub-section (1); and

(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return."

Amendment of
Schedule III
and
Retrospective
exemption to
certain
activities and
transactions in
Schedule III to
the Odisha
Goods and
Services Tax
Act, 2017.

25. (1) In Schedule III to the principal Act,—

(a) in paragraph 6, for the words "lottery, betting and gambling", the words "specified actionable claims" shall be substituted with effect from 1st day of October, 2023.

(b) paragraphs 7 and 8 and the *Explanation* 2 thereof (as inserted *vide* Section 32 of Odisha Act 18 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.

(2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

Transitory
provision.

26. The amendments made under section 2, 7 and 25(1)(a) of this Act shall be without prejudice to provisions of any other law for the time being in force, providing for prohibiting, restricting or regulating betting, casino, gambling, horse racing, lottery or online gaming.

STATEMENT OF OBJECTS AND REASONS

The Odisha Goods and Services Tax Act, 2017 was enacted with a view to make provisions 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 restriction on opting to pay tax under composition levy through e-commerce operator, restriction on availment of ITC in respect of certain transactions, time limit for furnishing of statement by an e-commerce operator, manner of computation of period of delay for calculation of interest on delayed refunds, relaxation on certain criminal offences 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, 2023, inter alia, provides for the following, namely:—

- (a) to insert new clauses 80A, 80B, 102A and 117A in Section 2 of the OGST Act so as to define the expressions "online gaming", "online money gaming", "specified actionable claim" and "virtual digital asset" respectively;
- (b) to insert a proviso in clause 105 of Section 2 of the OGST Act, so as to provide clarity regarding "supplier" in case of supply of "specified actionable claim";
- (c) to amend clause (d) of sub-section (2) and clause (c) of sub-section (2A) in Section 10 of the Odisha Goods and Services Tax Act so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the composition levy;
- (d) to amend second and third provisos to sub-section (2) of Section 16 of the OGST Act to align the said sub-section with the return filing system provided in the said Act;
- (e) to amend Explanation to sub-section (3) of Section 17 of the OGST Act so as to restrict availment of input tax credit in respect of certain transactions specified in clause (a) of paragraph 8 of Schedule III of the said Act, as may be provided by rules, by including the value of such transactions in the value of exempt supply;

- (f) to amend sub-section (5) Section 17 of the OGST Act so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013;
- (g) to amend Section 23 of the OGST Act so as to provide overriding effect relating to persons not liable for registration to the said section over sub-section (1) of Section 22 and Section 24 of the said Act with effect from the 1st day of July, 2017;
- (h) to insert a new clause in Section 24 of the Act, to provide for mandatory registration of the person for supplying online money gaming, from a place outside India to a person in India.
- (i) to amend Section 30 of the OGST Act so as to amend the earlier provision for application of revocation of cancellation of registration which was to be made within 30 days from the date of service of cancellation order. Now the Government has been empowered to prescribe the manner, time, condition and restrictions in respect of such application;
- (j) to insert a new sub-section (5) in Section 37 of the OGST Act so as to provide a time limit of three years up to which the details of outward supplies under sub-section (1) of the said Section for a tax period can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions;
- (k) to insert a new sub-section (11) in Section 39 of the OGST Act so as to provide a time limit of three years up to which the return for a tax period can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions;
- (l) to insert a new sub-section (2) in Section 44 of the OGST Act so as to provide a time limit of three years up to which the annual return under

- sub-section (1) of the said Section for a financial year can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions;
- (m) to insert a new sub-section (15) in Section 52 of the OGST Act so as to provide a time limit of three years up to which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for an operator or a class of operators, subject to certain conditions and restrictions;
 - (n) to amend sub-section (6) of Section 54 of the OGST Act by removing reference to the provisionally accepted input tax credit so as to align the same with the present scheme of availment of self-assessed input tax credit as per sub-section (1) of Section 41 of the said Act;
 - (o) to amend Section 56 of the OGST Act so as to provide by rules the manner of computation of period of delay for calculation of interest on delayed refunds;
 - (p) to amend Section 62 of the OGST Act so as to extend the time period to 60 days for a taxpayer to file a valid return after being served with an assessment order. Further, there will be an additional late fee of Rs.100 per day for each day of delay beyond 60 days. Once the return has been furnished, the assessment order shall be deemed to be withdrawn;
 - (q) to amend section 109 of the OGST Act so as to make provision for Goods and Services Tax Appellate Tribunal constituted under the CGST Act, 2017 to be the Appellate Tribunal under the OGST Act for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority;
 - (r) to omit Section 110 of the OGST Act which prescribes qualification, appointment, condition of service etc. of the President and Members of GST Appellate Tribunal and Section 114 regarding financial and administrative power of the State President;

- (s) to amend Sections 117, 118 and 119 of the OGST Act so as to align the provisions consequent upon amendment of Section 109 of the Act. It has been proposed to create Principal Bench and State Benches instead of Area Benches or National Benches or Regional Benches of the Appellate Tribunal;
- (t) to insert a new sub-section (1B) in Section 122 of the OGST Act so as to provide for penal provisions applicable to electronic commerce operators in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers;
- (u) to amend sub-section (1) of Section 132 of the OGST Act so as to decriminalize offences specified in clauses (g), (j) and (k) of the said sub-section and to increase the monetary threshold from one hundred lakh rupees to two hundred lakh rupees for launching prosecution for the offences under the said Act, except for the offences related to issuance of invoices without supply of goods or services or both;
- (v) to amend first proviso to sub-section (1) of Section 138 of the OGST Act so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act. It further seeks to amend sub-section (2) so as to rationalise the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding;
- (w) to insert a new Section 158A in the OGST Act so as to provide for the manner and conditions for sharing of the information furnished by the registered person in his application for registration or in his return filed or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be provided by rules, on the common portal with such other systems, as may be notified;
- (x) to substitute "specified actionable claim" in paragraph 6 of Schedule III of the Act, for the present entries "lottery, betting and gambling", so as to provide clarity regarding taxability of actionable claims involved in or by way of casinos, horse racing and online gaming; and

(y) to amend Schedule III of the OGST Act to give retrospective applicability to paragraphs 7 and 8 and the *Explanation* 2 to the said Schedule with effect from the 1st day of July, 2017.

4. The Bill seeks to achieve the above objectives.

BIKRAM KESHARI ARUKHA

[Member in-Charge]

DASHARATHI SATAPATHY

OSD-CUM-SECRETARY

ODISHA LEGISLATIVE ASSEMBLY