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SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY
NOTIFICATION

The 27th November, 2024

No. 7046/LA — The following Bill, which has been introduced in the Odisha Legislative Assembly on the dated 27th November, 2024 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 (SECOND AMENDMENT) BILL,2024.

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-fifth 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 (Second Amendment) Act, 2024.

(2) It shall be deemed to have come into force on the 29th day of October, 2024.

Amendment of section 9.

2. In the Odisha Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), in section 9, in sub-section (1), with effect from the 1st day of November, 2024, after the words “alcoholic liquor for human consumption”, the

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7 of 2017.

words “and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption” shall be inserted.

Amendment
of section 10.

3. In section 10 of the principal Act, in sub-section (5), with effect from the 1st day of November, 2024, after the words and figures “section 73 or section 74”, the words, figures and letter “or section 74A” shall be inserted.

Insertion of
new section
11 A.

4. After section 11 of the principal Act, with effect from the 1st day of November, 2024, the following section shall be inserted, namely:—

“Power not to
recover
Goods and
Services Tax
not levied or
short-levied
as a result of
general
practice.

11A. Notwithstanding anything contained in this Act, if the Government is satisfied that—

(a) a practice was, or is, generally prevalent regarding levy of State tax (including non-levy thereof) on any supply of goods or services or both; and

(b) such supplies were, or are, liable to,—

(i) State tax, in cases where according to the said practice, State tax was not, or is not being, levied, or

(ii) a higher amount of State tax than what was, or is being, levied, in accordance with the said practice;

the Government may, on the recommendation of the Council, by notification in the *Odisha Gazette*, direct that the whole of the State tax payable on such supplies, or, as the case may be, the State tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the state tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.”.

Amendment
of section 13.

5. In section 13 of the principal Act, in sub-section (3), with effect from the 1st day of November, 2024,—

(i) in clause (b), for the words “by the supplier:”, the words “by the supplier, in cases where invoice is required to be issued by the supplier; or” shall be substituted;

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

“(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:”; and

(iii) in the first proviso, after the words, brackets and letter “or clause (b)”, the words, brackets and letter “or clause (c)” shall be inserted.

Amendment
of section 16.

6. In section 16 of the principal Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later:

Provided that no refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had sub-sections (5) and (6) been in force at all material times.”.

Amendment of
section 17.

7. In Section 17 of the principal Act, in sub-section (5), in clause (i), with effect from the 1st day of November, 2024, for the words and figures “Sections 74, 129 and 130”, the words and figures “Section 74 in respect of any period up to Financial Year 2023-24” shall be substituted.

Amendment of
Section 21.

8. In section 21 of the principal Act, with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 30.

9. In section 30 of the principal Act, in sub-section (2), after the proviso, with effect from the 1st day of November, 2024, the following proviso shall be inserted, namely:—

“Provided further that such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed.”.

Amendment
of Section 31.

10. In Section 31 of the principal Act, in sub-section (3), with effect from the 1st day of November, 2024,—

- (a) in clause (f), after the words and figure “of Section 9 shall”, the words “, within the period as may be prescribed,” shall be inserted; and
- (b) after clause (g), the following *Explanation* shall be inserted, namely:—

‘*Explanation*.—For the purposes of clause (f), the expression “supplier who is not registered” shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.’

Amendment
of Section 35.

11. In Section 35 of the principal Act, in sub-section (6), with effect from the 1st day of November, 2024, after the words and figures “section 73 or section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 39.

12. In Section 39 of the principal Act, for sub-section (3), with effect from the 1st day of November, 2024, the following sub-section shall be substituted, namely:—

“(3) Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in such form and manner and within such time as may be prescribed:

Provided that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.”.

Amendment
of Section 49.

13. In Section 49 of the principal Act, in sub-section (8), in clause (c), with effect from the 1st day of November, 2024, after the words and figures “section 73 or section 74”, the words, figures and letter “or section 74A” shall be inserted.

Amendment
of Section 50.

14. In Section 50 of the principal Act, in sub-section (1), in the proviso, with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 51.

15. In Section 51 of the principal Act, in sub-section (7), with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 54.

16. In section 54 of the principal Act, with effect from the 1st day of November, 2024,—

- (a) in sub-section (3), the second proviso shall be omitted; and
- (b) after sub-section (14) and before the *Explanation*, the following sub-section shall be inserted, namely:—

“(15) Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.”.

Amendment
of Section 61.

17. In section 61 of the principal Act, in sub-section (3), with effect from the 1st day of November, 2024, after the words and figures “section 73 or section 74”, the words, figures and letter “or section 74A” shall be inserted.

Amendment
of Section 62.

18. In section 62 of the principal Act, in sub-section (1), with effect from the 1st day of November, 2024, after the words and figures “section 73 or section 74”, the words, figures and letter “or section 74A” shall be inserted.

Amendment
of Section 63.

19. In section 63 of the principal Act, with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 64.

20. In Section 64 of the principal Act, in sub-section (2), with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or section 74A” shall be inserted.

Amendment
of Section 65.

21. In Section 65 of the principal Act, in sub-section (7), with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 66.

22. In section 66 of the principal Act, in sub-section (6), with effect from the 1st day of November, 2024, after the words and figures “Section 73 or section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment
of Section 70.

23. In section 70 of the principal Act, after sub-section (1), with effect from the 1 st day of November, 2024, the following sub-section shall be inserted, namely:—

“(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.”.

Amendment of Section 73.

24. In section 73 of the principal Act, with effect from the 1st day of November, 2024,—

(i) in the marginal heading, after the words “Determination of tax”, the words and figures “, pertaining to the period up to Financial Year 2023-24,” shall be inserted; and

(ii) after sub-section (11), the following sub-section shall be inserted, namely:—

“(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.”.

Amendment of Section 74.

25. In Section 74 of the principal Act, with effect from the 1st day of November, 2024,—

(i) in the marginal heading, after the words “Determination of tax”, the words and figures “, pertaining to the period up to Financial Year 2023-24,” shall be inserted;

(ii) after sub-section (11) and before Explanation 1, the following sub-section shall be inserted, namely:—

“(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.”; and

(iii) the *Explanation 2* shall be omitted.

Insertion of new Section 74A.

26. After Section 74 of the principal Act, with effect from the 1st day of November, 2024, the following section shall be inserted, namely:—

“Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.

74A. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher; and

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within

the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of State tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder; and

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded; and

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

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

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

(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 this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.”.

Amendment of
Section 75.

27. In Section 75 of principal Act, with effect from the 1st day of November, 2024,—

(a) in sub-section (1), after the word and figures “Section 74”, the words, brackets, figures and letter “or sub-sections (2) and (7) of Section 74A” shall be inserted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of Section 74A.”;

(c) for sub-section (10), the following sub-section shall be substituted, namely:—

“(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of Section 73 or in sub-section (10) of Section 74 or in sub-section (7) of Section 74A.”;

(d) in sub-section (11), after the word and figures “section 74”, the words, brackets, figures and letter “or sub-section (7) of section 74A” shall be inserted;

(e) in sub-section (12), after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted; and

(f) in sub-section (13), after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Amendment of
Section 104.

28. In Section 104 of the principal Act, in sub-section (1), in the Explanation, with effect from the 1st day of November, 2024, after the word and figures “Section 74”, the words, brackets, figures and letter “or sub-sections (2) and (7) of Section 74A” shall be inserted.

Amendment of
Section 107.

29. In Section 107 of the principal Act, with effect from the 1st day of November, 2024,—

(a) in sub-section (6), in clause (b), for the word “twenty-five crore rupees”, the word “twenty crore rupees” shall be substituted; and

(b) in sub-section (11), in the second proviso, after the words and figures “section 73 or section 74”, the words, figures and letter “or section 74A” shall be inserted.

Amendment of
Section 112.

30. In Section 112 of the principal Act,—

(a) with effect from the 1st day of August, 2024, in sub-section (1), after the words “from the date on which the order sought to be appealed against is communicated to the person preferring the appeal”, the words “; or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later.” shall be inserted;

(b) with effect from the 1st day of August, 2024, in sub-section (3), after the words “from the date on which the said order has been passed”, the words “; or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later,” shall be inserted;

(c) with effect from the 1st day of November, 2024, in sub-section (6), after the words, brackets and figure “after the expiry of the period referred to in sub-section (1)”, the words, brackets and figure “or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3)” shall be inserted; and

(d) with effect from the 1st day of November, 2024, in sub-section (8), in clause (b),—

(i) for the words “twenty per cent.”, the words “ten per cent.” shall be substituted; and

(ii) for the words “fifty crore rupees”, the words “twenty crore rupees” shall be substituted.

Amendment of
section 122.

31. In Section 122 of the principal Act, with effect from the 1st day of October, 2023, in sub-section (1B), for the words “Any electronic commerce operator

“who”, the words and figures “Any electronic commerce operator, who is liable to collect tax at source under section 52,”- shall be substituted.

Amendment of
Section 127.

32. In Section 127 of the principal Act, with effect from the 1st day of November, 2024, after the words and figures “Section 73 or Section 74”, the words, figures and letter “or Section 74A” shall be inserted.

Insertion of new
section 128A

33. After Section 128 of the principal Act, with effect from the 1st day of November, 2024, the following section shall be inserted, namely:—

“Waiver of interest
or penalty or both
relating to demands
raised under
section 73, for
certain tax periods.

128A. (1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

(a) a notice issued under sub-section (1) of Section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of Section 73 has been issued; or

(b) an order passed under sub-section (9) of Section 73, and where no order under sub-section (11) of Section 107 or sub-section (1) of Section 108 has been passed; or

(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of Section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided that where a notice has been issued under sub-section (1) of Section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of Section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of Section 112 or an appeal is filed by an officer of state tax under sub-section (1) of Section 117 or under sub-section (1) of Section 118 or where any proceedings are initiated under sub-section (1) of Section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.”.

Amendment of
Section 171.

34. In Section 171 of the principal Act, with effect from the 27th day of September, 2024,—

(a) in sub-section (2), the following proviso and *Explanation* shall be inserted, namely:—

“Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation.—For the purposes of this sub-section, “request for examination” shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.”; and

(b) the *Explanation* shall be renumbered as Explanation 1 thereof, and after *Explanation* 1 as so renumbered, the following Explanation shall be inserted, namely:—

‘*Explanation 2.*—For the purposes of this section, the expression “Authority” shall include the “Appellate Tribunal”.’.

Amendment of
Schedule III.

35. In Schedule III to the principal Act, after paragraph 8 and before *Explanation* 1, with effect from the 1st day of November, 2024, the following paragraphs shall be inserted, namely:—

“9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that

the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.”.

Repeal and savings.

36. (1) The Odisha Goods and Services Tax (Amendment) Ordinance, 2024 is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), anything done or any action taken under the Ordinances so repealed shall be deemed to have been done or taken under this Act.

Odisha Ordinance
No 01 of 2024

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. Certain difficulties were noticed during implementation of certain provisions of the OGST Act, 2017 such as there were ambiguity regarding appropriate rate of tax on certain goods or services due to different interpretations. GST is not levied or levied at a lower rate on goods or services as a result of such ambiguity. Ambiguity is noticed regarding interpretation of time of supply in cases where the invoice is required to be issued by the recipient of services in cases covered under Reverse Charge Mechanism. There was lack of clarity regarding restriction on grant of refund of un-utilised input tax credit or tax paid in cases where the goods exported out of India are subjected to export duty. Similarly different time limits were prescribed for issuing notice and order under section 73 and 74 of the OGST Act, 2017. There is heavy burden on trade and industry pertaining to the quantum of pre-deposit in case of filing of appeals against the orders passed by the adjudicating authorities. Similarly, difficulties are being faced by the tax payers in filing of appeal due to non-operationalization of the GST Appellate Tribunal. A large number of tax payers were seeking relief from interest and penalties as well as denial of Input Tax Credit due to delay in filing of returns.

3. In order to overcome such difficulties, on the recommendations of the GST Council, the Central Government vide Finance (No. 2) Act, 2024 (No. 15 of 2024) have amended sections 9, 10, 13, 16, 17, 21, 30, 31, 35, 39, 49, 50, 51, 54, 61, 62, 63, 64, 65, 66, 70, 73, 74, 75, 104, 107, 109, 112, 122, 127, 140, 171, Schedule III and inserted new section 11A, 74A and 128A in the CGST Act, 2017.

4. As the Odisha Legislative Assembly was not in session, it was felt necessary to amend corresponding sections/Schedule of the OGST Act' 2017 through promulgation of an Ordinance under clause (1) of article 213 of the Constitution of India. As per article 213(2)(a), an ordinance shall be laid before the Legislative Assembly of the State and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature. Thus, an ordinance must be replaced by an act of legislature within six weeks of reassembly of the State Legislature. As per Memo No. LM-66/2024-6285(227)/LA dated 30th October, 2024 of Odisha Legislative Assembly, the second session of the 17th Assembly will commence from 26th November, 2024. Therefore, the aforesaid ordinance is to be replaced with the proposed Odisha Goods and Services Tax (Second

Amendment) Bill, 2024.

5. The proposed Bill provides for the following, namely :—

(i) to amend sub-section (1) of Section 9, so as to not to levy state tax un-denatured Extra Neutral Alcohol (ENA) or Rectified Spirit (RS) used for manufacture of alcoholic liquor for human consumption. Alcoholic liquor for human consumption is presently out of the purview of GST. However, there was no clarity as to whether the raw material for preparation of alcoholic liquor for human consumption such as ENA/RS would also be out of the ambit of GST or not. When used for Industrial purpose, ENA/RS is taxable under GST. Section 9(1) of the OGST Act,2017 empowers the Government to levy and collect GST on taxable supply of goods, services or both except alcoholic liquor for human consumption. It is proposed to add “un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption” in order to keep it out of ambit of GST.

(ii) to insert a new section 11A, so as to empower the Government to regularise non-levy or short levy of state tax where it is satisfied that such non-levy or short levy was a result of ambiguity in law or overlapping entry of goods or services, leading to confusion regarding appropriate rate of tax etc. Earlier clarifications through circulars were being issued which had no legal backing. There is no specific provision under GST law empowering the State Government to not recover GST not-levied or short-levied as a result of any ambiguity or general practice.

(iii) to amend sub-section (3) of Section 13, so as to specify the time of supply of services in cases where the invoice is required to be issued by the recipient of services under reverse charge mechanism. It will bring parity in provisions enshrined at Section 31(3) on issuance of invoice by the recipient of the services under reverse charge mechanism. Generally, the supplier of goods or services is liable to pay GST. However, in specified cases, the liability may be cast on the recipient under the reverse charge mechanism(RCM). Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. Sub-Section (3) of Section 13 of the OGST Act provides for determination of time of supply of services in cases where tax is to be paid on reverse charge mechanism by the recipient of the services. Clause (b) of section 13(3) of the Act links time of supply with the date of issue of invoice by the supplier. However, there is no provision in Section 13(3) for recipient of services to issue tax invoice. Whereas, clause (f) of Section 31(3) prescribes that in cases where the supplies are received from the unregistered persons, the tax is to be paid on reverse charge basis by the recipient with issuance of invoice by the recipient. In order to bring parity between the said sections, suitable

amendment has been proposed in Section 13(3) to provide for a specific provision for covering the cases where the invoice is required to be issued by the recipient of services in case of RCM supplies.

(iv) to insert new sub-sections (5) and (6) in Section 16. Section 16(4) provides the time limit within which Input Tax credit can be availed. Initial years of GST were adversely affected by Covid 19. The taxpayers were unaware that delay in filing of return beyond the due date could lead to denial of ITC which have been availed in such delayed return filing. Now it is proposed to carve out an exception to provide relief to the tax payers in availing ITC for the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, if such availment has been made up to 30th November, 2021. The aforesaid amendments are proposed to be made retrospectively from 1st July, 2017 for benefit of the taxpayers. Further, it is proposed that where the tax has already been paid or the input tax credit has been reversed, no refund of the same shall be admissible.

(v) to amend clause (i) of sub-section (5) of Section 17, so as to restrict non-availability of input tax credit in respect of tax paid under section 74 only for demands made up to FY 2023-24. Consequent upon insertion of a new Section 74A which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to the FY 2024-25 onwards, it has been proposed to amend clause (i) of sub-section (5) of Section 17, so as to restrict non-availability of input tax credit in respect of tax paid under section 74 only for demands made up to FY 2023-24. It also proposes to remove reference to sections 129 and 130 because there is no provision of payment of tax in case of confiscation or seizure but penalty only, with effect from 1st January, 2022.

(vi) to insert a new proviso in sub-section (2) of Section 30, so as to empower the State Government to prescribe conditions and restrictions for revocation of cancellation of registration.

(vii) to amend clause (f) of sub-section (3) of Section 31, so as to empower the State Government to prescribe the time period for issuance of invoice by the recipient in case of supplies covered under reverse charge mechanism. It will bring parity in provisions enshrined at Section 13(3) on time of supply by the recipient of the services under reverse charge mechanism.

(viii) to substitute sub-section (3) of Section 39, so as to mandate the Tax Deducting Authority to file monthly return, irrespective of whether any actual deduction has been made in the said month or not.

(ix) to insert a new sub-section (15) in Section 54 and delete the second proviso to sub-section (3) of Section 54, so as to provide that no refund of unutilised input tax credit or of integrated tax shall be allowed in cases of zero-rated supply of goods where such goods are subjected to export duty.

(x) to insert a new sub-section (1A) in Section 70, so as to enable an authorised representative to appear on behalf of the summoned person.

(xi) to insert new sub-section (12) in Section 73 and sub-section (12) in Section 74, so as to restrict the applicability of the said sections for determination of tax pertaining to the period up to FY 2023-24. As a new Section 74A is proposed to be inserted for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to the FY 2024-25 onwards, applicability of Section 73 and 74 has been restricted accordingly up to FY 2023-24 only.

(xii) to insert a new Section 74A, so as to provide for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to the FY 2024-25 onwards. Different time limits have been specified for issuing demand notice as well as Demand orders under sections 73 and 74 of the CGST/OGST Act. Section 73 covers cases wherein fraud, suppression, willful misstatement etc. are not involved. The time limit for issuance of Demand order under section 73 is 3 years from the date of filing of Annual Return and the time limit of issuing Demand Notice is atleast 3 months prior to issue of Demand Order. Section 74 covers cases involving fraud or willful misstatement etc. wherein the time limit for issuance of Demand order is 5 years from the date of filing of Annual Return and the time limit of Demand Notice is atleast 6 months prior to issue of Demand Order. For FY 2023-24, the date of filing of Annual Return is 31st December,2024. Due to prescription of different time limits for issuing demand notices under sections 73 and 74, revenue can be lost on account of the demand getting time-barred, when cases initially covered under section 74 are subsequently found to be covered under section 73, as charges of fraud, willful misstatement, etc. are not found substantiated. This is due to shorter time limit prescribed under section 73 in comparison to section 74. To avoid such revenue loss, there should be uniform limitation period for issuing demand notices and orders under both type of cases said above. Further, the time available for issuance of Adjudication Order under sections 73 and 74 of the OGST Act of 3 months and 6 months from the date of issue of Demand Notice respectively is not sufficient in complex cases, to provide opportunity of being heard legally and for verification of documents by the Authority or adjudicating officer. Accordingly, amendments are proposed with effect from FY 2024-25.

(xiii) to make consequential amendments in section 10(5), 21, 35(6), 49(8), 50(1), 51(7), 61(3), 62(1), 63, 64(2), 65(7), 66(6),75, 104(1),107 and 127, so as to incorporate a reference to the proposed new section 74A where there is reference to section 73 or 74.

(xiv) to amend sub-section (6) of Section 107, so as to reduce the maximum amount of pre-deposit for filing appeal before the Appellate Authority from rupees twenty-five crores to rupees twenty crores in state tax.

(xv) to amend sub-sections (1) and (3) of Section 112, so as to empower the Government to notify the date for filing appeal before the GST Appellate Tribunal and provide a revised time limit for filing appeals or application before the GST Appellate Tribunal, retrospectively with effect from 1st August, 2024. It also seeks to amend sub-section (6) of the said section so as to enable the Appellate Tribunal to admit appeals filed by the department within three months after the expiry of the specified time limit of six months. Further, it seeks to amend sub-section (8) of the said section to reduce the maximum amount of pre-deposit for filing appeals before the Appellate Tribunal from existing twenty percent to ten percent of the tax in dispute and also to reduce maximum amount payable as pre-deposit from rupees fifty crores to rupees twenty crores in state tax.

(xvi) to amend sub-section (1B) of Section 122, so as to restrict the applicability of the said sub-section to electronic commerce operators (ECO), who are required to collect tax at source under section 52 of the Act, to remove ambiguity existing in the said section. Earlier there was no requirement of mandatory registration for unregistered persons supplying goods through ECO up to threshold turnover for registration. Composition taxpayers were also allowed to make supplies of goods through ECO. Later, Penal provisions U/s. 122 (1B) was brought in for imposing penalty if any Electronic Commerce Operator allows supply of goods or services through its platform by an unregistered person or allows inter-state supply of goods/services through it by a person not eligible to make interstate supply, or fails to furnish the correct details outward supply in the statement U/s.52(4). Clarity was required on the applicability of the above penal provisions in respect of ECOs who are not required to collect tax at source (TCS) from suppliers U/s. 52 of the Act. TCS refers to tax which is collected by the ECO when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. The price for the product or services is collected by the ECO from the consumer and passed on to the actual supplier after deducting its commission. The responsibility has been imposed on the ECO to collect 'tax' at a rate of 1% from the supplier. There are ECOs who are required to collect TCS in respect of supply being made through their platform and other ECOs who do not collect any price in respect of supply being made through their platform and are not required to collect TCS. Due to existence of penal provisions U/s. 122 (1B), all of the above types of ECOs were being penalised. It is proposed that ECOs who are required to collect tax at source

(TCS) are only to be penalised for non-compliance of the conditions, retrospectively with effect from 1st October, 2023 (i.e. the date from which section 122(1B) of OGST Act, 2017 has come into effect).

(xvii) to insert a new section 128A, so as to provide for conditional waiver of interest and penalty in respect of demand notice and orders issued under section 73 for FY 2017-18, 2018-19 and 2019-20, except the demand notices in respect of erroneous refund. Further, it is proposed that in cases where interest and penalty have already been paid in respect of any demand for the said financial years, no refund shall be admissible for the same.

(xviii) to amend sub-section (2) of section 171, so as to empower the Government to notify the date from which the National Anti-Profiteering Authority shall not accept any application for anti-profiteering cases. An *explanation* is also proposed to be inserted so as to include the reference of “Appellate Tribunal” in the expression “Authority” under the said section to enable the Government to notify “GST Appellate Tribunal” to act as an Authority to handle antiprofiteering cases.

(xix) to amend **Schedule III** to the OGST Act, so as to provide that activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements shall be treated as neither supply of goods nor supply of services, provided that the lead insurer pays the tax liability on the entire amount of premium paid by the insured.

It also proposes to provide that the services by the insurer to the re-insurer, for which the ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, shall be treated as neither supply of goods nor supply of services, provided that tax liability on the gross reinsurance premium inclusive of reinsurance commission or the ceding commission is paid by the reinsurer.

4. The Bill seeks to achieve the above objectives.

MOHAN CHARAN MAJHI

MEMBER -IN-CHARGE

DASHARATHI SATAPATHY

OSD-CUM-SECRETARY

ODISHA LEGISLATIVE ASSEMBLY