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LAW DEPARTMENT

NOTIFICATION

The 5th November, 2016

No.11100-I-Legis-27/2015/L.—The following Act of the Odisha Legislative Assembly having been assented to by the Governor on the 3rd November, 2016 is hereby published for general information.

ODISHA ACT, 11 OF 2016

THE ODISHA ELECTRICITY (DUTY) AMENDMENT ACT, 2016

AN ACT FURTHER TO AMEND THE ODISHA ELECTRICITY (DUTY) ACT, 1961.

BE it enacted by the Legislature of the State of Odisha in the Sixty-seventh Year of the Republic of India, as follows :—

Short title. 1. This Act may be called the Odisha Electricity (Duty) Amendment Act, 2016.

Amendment of section 2. 2. In section 2 of the Odisha Electricity (Duty) Act, 1961 (hereinafter referred to as the principal Act),— Odisha Act, 14 of 1961.

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

“(i) in case of undertaking or licensee or persons engaged in the business of supplying electricity to consumers or persons engaged in generating electricity, such officer or authority as may be appointed by such undertaking, licensee or persons, as the case may be, in this behalf;”;

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

“(b) “auxiliary consumption” means the consumption of energy by auxiliary equipments of the generating station, which is used for the purpose of operating plant and machinery including switch yard of the generating station and the transformer losses within the generating station:

Provided that such consumption shall not include energy consumed for supply of power to Housing Colony and other facilities at the generating station and the energy consumed for any construction work at the generating station;”;

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

“(c) “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, 2003 or any other law for the time being in force and includes any person whose premises are, for the time being, connected for the purpose of receiving electricity in connection with the works of a licensee, the Government or such other person, as the case may be, and also includes such person who generates such energy for his own use or consumption including auxiliary consumption;”;

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

“(d-i) “energy charges” means charges as specified in the licensees’ tariff, approved by the Odisha Electricity Regulatory Commission constituted under the Odisha Electricity Reform Act, 1995 which is payable by the consumer on the basis of actual or evaluated consumption of energy, as the case may be;”;

Odisha
Act, 2 of 1996.

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

“(e) “licensee” means licensee as defined in clause (39) of section 2 of the Electricity Act, 2003;”;

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(f) clause (e-1) shall be omitted;

(g) in clause (h), for the words, comma and figure "Indian Electricity Act, 1910", the words, comma and figure "Electricity Act, 2003" shall be substituted.

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Amendment
of section 3.

3. In the principal Act, for section 3, the following section shall be substituted, namely :—

"3.(1) Subject to the provisions of this Act, there shall be levied and paid to the State Government with effect from the date of the commencement of the Odisha Electricity (Duty) Amendment Act, 2016, a duty (hereinafter referred to as the electricity duty), —

(a) at such percentum not exceeding fifteen percentum on the energy charges as the State Government may, by notification, specify, from time to time, on the energy consumed by a consumer, a consumer in respect of energy supplied to him free of cost by a licensee or by any person who generates such energy or any person to whom the energy is supplied through open access or any other category of consumers to whom energy is supplied by any special agreement between the consumer and the licensee approved by the Odisha Electricity Regulatory Commission, other than a licensee who consumes energy in its own premises and any person, not being a licensee who generates such energy for his own use or consumption;

(b) at such rate not exceeding two rupees per unit as the State Government may, by notification, specify, from time to time, on the energy consumed by a licensee in its own premises and any person, not being a licensee who generates such energy for his own use or consumption :

Provided that different rates of electricity duty may be levied for different categories of consumer or consumption:

Provided further that where energy consumed is billed by the licensee or any person on the basis of evaluated energy consumption—

- (i) on minimum charges;
- (ii) in case of defective meters; and
- (iii) in case of un-metered supply,

there shall be paid electricity duty on the same number of units as is arrived at by the licensee or the person for the purpose of payment of energy charges and at the rate applicable to the category to which the consumer belongs as specified by notification issued under this sub-section :

Provided also that in case of consumption, where there is defective meter or no meter, or there has been non-maintenance of record and non-submission of return under section 6 by the generating plant, the Inspecting Authority, by taking into account all relevant materials and after giving the generating plant an opportunity of being heard, shall make the assessment of the electricity duty to the best of his judgement and determine the electricity duty payable by such generating plant on the basis of such assessment.

(2) Every notification issued under sub-section (1) shall, as soon as it is published, be laid before the Legislative Assembly for a period of fourteen days which may be comprised in one or more sessions.

(3) Notwithstanding anything contained in the foregoing sub-sections, no electricity duty shall be levied and paid in respect of energy generated by a plant having a capacity not exceeding fifty KVA.

(4) The State Government may, by notification, subject to such condition and exception, exempt any industry from payment of electricity duty to such extent and for such period as may be specified in the notification.”.

Amendment
of section 5.

4. In the principal Act, in section 5,—

(a) In sub-section (1),—

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

“(a) where the energy is supplied by a licensee or person, by such licensee or person;”;

(ii) clause (b) shall be omitted;

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

“(c) where the energy is generated by a person for his own use or consumption, by such person:”; and

(iv) in the second proviso, after the words “per annum” and before the words “on the amount”, the words “after expiry of the prescribed period” shall be inserted;

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

“Provided that where any consumer makes any part payment of his dues so payable to the licensee or the appointed authority, the electricity duty and the interest, if any, so payable shall be paid, by the licensee or appointed authority in proportion on the amount so paid:

Provided further that the amount of electricity duty so payable to the State Government by the licensee or appointed authority shall be first adjusted towards the interest, if any, then the arrear and then the current electricity duty;”;

(c) in sub-section (3), for the words and figure “under section 10” and for the words, figures and bracket “under sub-section (1) of section 24 of the Indian Electricity Act, 1910”, respectively, the words and figures” under sections 10 and 10-A” and the words, comma and figures” “under section 56 of the Electricity Act, 2003” shall be substituted.

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Insertion of new section 5- A.

5. In the principal Act, after section 5, the following section shall be inserted, namely:—

Liability in case of transfer.

5-A.(1) Where a licensee or person or consumer, liable to pay electricity duty under this Act, transfers his business or property, whole or in part, by sale, lease or license or hire or in any other manner whatsoever, such licensee or person or consumer and the person to whom such transfer is made, shall jointly and severally be liable to pay electricity duty and interest, if any, due from such licensee, person or consumer, whether such duty including interest, if any, have been determined before or after such transfer.

(2) In case of closed unit where supply of electricity is disconnected and such unit is subsequently transferred by way of sale or lease or license or hire by order of any Authority or otherwise, supply of electricity shall not be reconnected until arrear electricity duty is cleared in whole.

(3) Where a liquidator or receiver has been appointed in a liquidation proceeding, he shall be liable for payment of electricity duty including the arrear and the interest, if any, which the Company would have been liable to pay under this Act:

Provided that where there are more than one liquidator, the obligations and liabilities attached to the liquidator shall be attached to all liquidators jointly and severally:

Provided further that when any private Company is wound up and any electricity duty including any arrear and the interest, if any, determined under this Act on the Company for any period, whether before or during the course of or after its liquidation, cannot be recovered, then every person who was a Director of such Company, except the Directors nominated by the Government, if any, if he was a Director during the period for which the electricity duty or arrear or interest is due shall be jointly and severally liable for payment of such dues unless he proves that such liability cannot be attributed to his willful neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company."

Amendment of section 6.

6. In the principal Act, in section 6, in sub-section (1), —
- (a) in the opening portion, for the words "If the State Government so direct by a general or special order a licensee", the words "A licensee or a person" shall be substituted; and
 - (b) after item (iii), the following item shall be inserted, namely :—
 - "(iii-a) the amount of electricity charges billed for various consumers category wise;"

Amendment of section 7.

7. In the principal Act, in section 7, for sub-section(1), the following sub-section shall be substituted, namely:—
- " (1) The Chief Electrical Inspectors and Electrical Inspectors appointed under section 162 of the Electricity Act, 2003 shall respectively, be, not below rank of Chief Engineer(Electrical) of the State Government and not below the rank of Executive Engineer(Electrical) of the State Government and shall be deemed to be the Inspecting Officers for the purpose of this Act."

Amendment
of section 8.

.8. In the principal Act, in section 8,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely :—

“Dispute resolution”.

(b) for sub-section (1), the following sub-sections shall be substituted, namely:—

“ (1) The Chief Electrical Inspector, Electrical Inspector or Deputy Electrical Inspector as may be authorized by the State Government within the local limit as may be specified in that behalf shall have the powers to decide all disputes relating to the liability for payment of the electricity duty or exemption therefrom:

Provided that in case of any dispute relating to exemption of electricity duty as an incentive under different Policy Resolutions of the State Government, such dispute shall be referred to the Secretary to Government, Energy Department, whose decision shall be final.

(1-a) Any person, aggrieved by the order passed by the authority referred to in sub-section (1), may prefer an appeal accompanied with such fee as may be prescribed, before,—

(a) the Principal Chief Electrical Inspector, where the order is passed by the Chief Electrical Inspector;

(b) the Chief Electrical Inspector, where the order is passed by the Electrical Inspector; and

(c) the Electrical Inspector, where the order is passed by the Deputy Electrical Inspector,

within one month from the date of the order passed under sub-section (1) and the decision in appeal under this sub-section shall be final subject to appeal, if any, preferred under sub-section (2):

Provided that no appeal shall be admitted unless the appellant makes a deposit of fifty per centum of the amount disputed.”;

(c) in sub-section (2), for the words, figure and bracket "under sub-section(1)", the words, figure and bracket "under sub-section (1-a)" shall be substituted.

Insertion of new section 10- A.

9. In the principal Act, after section 10, the following section shall be inserted, namely:—

"Special mode of recovery.

10-A. (1) Notwithstanding anything contained in section 10, any sum due on account of electricity duty and interest, if any, if not paid within the prescribed time by the licensee, consumer or appointed authority, as the case may be, (hereinafter referred to as the defaulter), Government or any officer authorized in writing in this behalf, may by notice in writing, a copy of which shall be forwarded to the defaulter concerned at his last address, require any person from whom any money is due or may become due to the defaulter or any person who holds or may subsequently hold any money for or on account of such defaulter, to pay into Government Treasury, in the manner specified in the notice issued under this sub-section, either forthwith or upon the money becoming due or being held or at or within the time specified in the notice, so much of the money as is sufficient to pay the electricity duty along with the interest, if any, due from the defaulter as payable under this Act.

(2) The Government or any officer so authorized may, at any time or from time to time, amend or revoke any notice issued under sub-section(1) or extend the time for making the payment in pursuance of such notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the defaulter and the receipt from the Government Treasury shall constitute a good and sufficient discharge of the liability of such person to the defaulter to the extent of the amount specified in the receipt.

(4) Any person discharging liability to the defaulter after service of the notice under sub-section (1) on him shall, if the liability is discharged in any manner other than that required under the said notice, be personally liable to the Government to the extent of the liability so discharged or to the extent of the liability of the defaulter for the electricity duty due under this Act alongwith the interest if any, as payable, whichever is less.

(5) Where a person on whom a notice is served under sub-section(1) proves to the satisfaction of the Government or any officer so authorized that the money demanded or any part thereof was not due to the defaulter or that he did not hold any money for or on account of the defaulter, at the time the notice was served on him, or that the money demanded or any part thereof is not likely to become due to, or to be held for or on account of, the defaulter, then nothing contained in this section shall be deemed to require such person to pay into Government Treasury any such money or part thereof, as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable to the Government under sub-section (4) shall, if it remains unpaid, be recoverable in the same manner as provided under section 10 :

Provided that nothing in this section shall operate to affect any action taken or that may have been taken or prevent any action that may be or is being taken under section 10 for recovery from the defaulter the amount due from him.”.

Amendment
of section 11.

10. In the principal Act, section 11 shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Save as provided under sub-section (1), if any person, engaged in generating energy for his own use or consumption or to supply power to any person free of charges or to supply power to any person through open access, evades or attempts to evade the payment of electricity duty whether by maintaining false records or by submitting false returns or by concealing the energy consumed by it or by any other means, such person shall, in addition to electricity duty payable under this Act, be liable to pay by way of fine not exceeding one thousand rupees for each day of delay, from the date of detection but the same shall not exceed a sum of one lakh rupees:

Provided that no action under this sub-section shall be taken without affording such person a reasonable opportunity of being heard.”.

By Order of the Governor
B. P. ROUTRAY
Principal Secretary to Government

