

Fourteenth Kerala Legislative Assembly
Bill No. 48

THE KERALA FINANCE BILL, 2017

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Bill No. 48

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BILL

to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2017-2018.

Preamble.—WHEREAS, it is expedient to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2017-2018;

BE it enacted in the Sixty-eighth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Kerala Finance Act, 2017.
2. *Amendment of Act 17 of 1959.*—In the Kerala Stamp Act, 1959 (17 of 1959),—

(1) in section 2,

(a) in clause (e), for the words “an adhesive or impressed stamp”, the words and symbols “an adhesive, impressed or e-stamp” shall be substituted;

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

“(ea) “e-stamp” means an electronically generated impression issued by the Government of Kerala for this purpose to denote the payment of stamp duty;”;

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

“(pa) “Registering Officer” means the officer appointed under section 6 of the Registration Act, 1908 (Central Act XVI of 1908);”;

(d) in clause (qq),—

(i) for the words “mark, seal or endorsement”, the words and symbols “mark, seal, endorsement, impression or e-stamping” shall be substituted;

(ii) for the words “adhesive or impressed stamp” the words and symbols “adhesive, impressed or e-stamp” shall be substituted.

(2) in section 10, in clause (b) of sub-section (2), after the words "impressed stamps", the words and symbol "or e-stamps" shall be inserted.

(3) after section 10A, the following section shall be inserted, namely:—

"10B. *Appointment of Central Record Keeping Agency.*—The Government may, by notification in the Official Gazette, appoint the Department of Treasuries as Central Record Keeping Agency which shall have such duties and functions as may be prescribed, regarding issue of e-stamps.

(4) after section 12, the following section shall be inserted, namely:—

"12A. *Defacement of e-stamp.*—(1) Any e-stamp in an instrument shall be defaced through online computer verification system by the Registering Officer or any other officer authorized by the Government, in such manner as may be prescribed, so that the same cannot be used again.

(2) Any instrument bearing an e-stamp which has not been defaced, so far as such stamp is concerned be deemed to be unstamped.";

(5) in section 13,—

(a) in the marginal heading, after the words "impressed stamps", the words and symbol "or e-stamps" shall be inserted;

(b) in the existing provision, after the words "impressed stamp", the words and symbol "or e-stamp" shall be inserted;

(6) in section 47, after the words "impressed stamps" the words and symbol "or e-stamps" shall be inserted;

(7) after clause (a) of sub-section (2) of section 69, a new clause (aa) shall be inserted, namely:—

"(aa) the manner of payment of stamp duty and refund thereof by e-payment".

3. *Amendment of Act 15 of 1963.*—In the Kerala General Sales Tax Act, 1963 (15 of 1963), in section 23B,—

(a) in sub-section (3), for the words and figures "28th February, 2017", the words and figures "31st December, 2017" shall be substituted;

(b) in sub-section (4), for the words and figures "28th February, 2017", the words and figures "31st December, 2017" shall be substituted;

(c) after sub-section (8), the following sub-section shall be inserted namely:—

"(9) If the applicant had filed option in 2016-17 but failed to remit the entire amount as per this section, the amount paid under the earlier option shall be treated as amount paid under the new option."

4. *Amendment of Act 32 of 1976.*—In the Kerala Tax on Luxuries Act, 1976 (32 of 1976), for section 10B, the following section shall be substituted, namely:—

"10B. *Reduction of arrears in certain cases.*—(1) Notwithstanding anything contained in this Act or rules made thereunder or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under this Act relating to the period up to and including 31st March 2011, may opt for settling the arrears on payment of the principal amount of tax in arrears and thirty per cent of penalty amount, by availing a complete reduction of the interest on the tax amount and interest on the penalty amount.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968, (15 of 1968) reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1), the assessing authorities shall withdraw the revenue recovery proceedings against such assessee which will then be binding on the revenue authorities and such assessee shall not be liable for payment of any collection charges.

(3) The assessee shall withdraw all the cases pending before any appellate or revisional authority, tribunal or courts for opting for settling the arrears under this section.

(4) All arrears including tax and penalties pertaining to a year shall be settled together under this section.

(5) An assessee who intends to opt for payment of arrears under sub-section (1) shall submit an application to the assessing authority on or before 30th June, 2017.

(6) The arrears for the purpose of settlement under this section shall be calculated as on the date of submission of application.

(7) On receipt of an application under sub-section (5), the assessing authority shall determine the amount of tax and other amounts due from the assessee under sub-section (1) and shall intimate the same to the assessee, and thereupon the assessee shall remit the amount in equal monthly instalments on or before 31st December, 2017:

Provided that an assessee who opts to settle his arrears under sub-section (1) has remitted any amount relating to the arrears for obtaining a stay voluntarily or by way of an order or decree or judgment passed by any court or tribunal or appellate authority and if the case is pending before such authority, the amount so paid shall be treated as that paid under this option.

(8) There shall not be any refund subsequently for the amount settled under this scheme, under any circumstances.

5. *Amendment of Act 15 of 1991.*—In the Kerala Agricultural Income Tax Act, 1991 (15 of 1991) for section 37C, the following section shall be substituted, namely:—

“37C. *Reduction of arrears in certain cases.*—(1) Notwithstanding anything contained in this Act or rules made thereunder or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under this Act relating to the period up to and including 31st March 2011, may opt for settling the arrears on payment of the principal amount of tax in arrears and thirty per cent of the penalty amount by availing a complete reduction of the interest on the tax amount and on the penalty amount;

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 (15 of 1968), reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1), the assessing authorities shall withdraw the revenue recovery proceedings against such assesseees which will then be binding on the revenue authorities and such assesseees shall not be liable for payment of any collection charges.

(3) The assessee shall withdraw all the cases pending before any appellate or revisional authority, tribunal or courts for opting under this section.

(4) All arrears including tax and penalties pertaining to a year shall be settled together under this section.

(5) An assessee who intends to opt for payment of arrears under sub-section (1) shall submit an application to the assessing authority on or before 30th June, 2017.

(6) The arrears for the purpose of settlement under this section shall be calculated as on the date of submission of the application.

(7) On receipt of an application under sub-section (5), the assessing authority shall determine the amount of tax and other amounts due from the assessee under sub-section (1) and shall intimate the same to the assessee, and thereupon the assessee shall remit the amount in equal monthly instalments on or before 31st December, 2017:

Provided that an assessee who opts to settle his arrears under sub-section (1) has remitted any amount relating to the arrears for obtaining a stay voluntarily or by way of an order or decree or judgment passed by any court or tribunal or appellate authority and if the case is pending before such authority, the amount so paid shall be treated as that paid under this option.

(8) There shall not be any refund subsequently for the amount settled under this scheme, under any circumstances.”

6. *Amendment of Act 30 of 2004.*—In the Kerala Value Added Tax Act, 2003 (30 of 2004),—

(1) in section 6, in sub-section (1), after the nineteenth proviso, the following provisos shall be inserted, namely:—

“Provided also that the sale of packing materials by a registered dealer to an exporter for the purpose of use in the packing of exported goods shall be exempted from tax for the period up to 31st March, 2016, subject to the condition that the sale has been supported by ‘H’ Forms issued under the Central Sales Tax Act, 1956 (Central Act 74 of 1956), by such exporting dealer and tax, if any, paid shall not be refunded:

Provided also that the rate of tax on works contract of supply and installation of solar energy devices, equipments and plants shall be one per cent from 1st April, 2013 and tax, if any, paid at higher rate shall not be refunded.

Provided also that the goods specified in item (1) of serial number 134 of List A of the Third Schedule shall be exempted from tax for the period from 20th December, 2014 to 31st March, 2015.”;

(2) in section 24, in sub-section (1).

- (i) in clause (c), for the words "three years" the words "four years" shall be substituted;
- (ii) for the fourth proviso, the following proviso shall be substituted, namely:—

"Provided also that the period for rejection of return and completion of assessments including those subjected to extension under section 25B which expires on 31st March, 2017, shall be extended up to 31st March, 2018.";

(3) in section 25, in sub-section (1).—

- (i) for the words "five years", the words "six years" shall be substituted;
- (ii) for the third proviso, the following proviso shall be substituted, namely:—

"Provided also that the period for proceeding to determine any assessment including those subjected to extension under section 25B which expires on 31st March, 2017, shall be extended up to 31st March, 2018.";

(4) for section 25E, the following section shall be substituted, namely:—

25E. Special provision for assessment and payment of tax for presumptive dealers.—(1) Notwithstanding anything contained in this Act or rules made thereunder or in any judgment, decree or order of any court, tribunal or appellate or revisional authority or any assessment orders or penalty orders issued under this Act, the dealers who have opted to pay tax under sub-section (5) of section 6 and with regard to whom unaccounted purchases have been detected by the assessing authority for the period up to 31st March, 2016, may opt to settle their cases by paying tax at,—

- (i) half per cent on the turnover of taxable goods, if the total turnover determined is, within the total turn over limit specified under sub-section (5) of section 6;
- (ii) one per cent on the turnover of taxable goods, for the total turnover determined in excess of the total turnover limit specified under sub-section (5) of section 6 and up to rupees one crore, in addition to the tax due under clause (i) above;

- (iii) two per cent on the turnover of taxable goods, for the total turnover determined above rupees one crore, in addition to the tax due under clauses (i) and (ii) above,
- and on payment of such tax, all penalties and interest including penalty under sub-section (7) of section 22, shall stand waived.

Explanation:—Notwithstanding anything contained in clause (ii) of section 2 of the Act, for the purpose of this section, 'total turnover determined' shall be the total turnover obtained by adding unaccounted purchases detected or declared with five per cent gross profit to the total turnover declared as per the returns filed.

(2) For settling the cases under sub-section (1), the dealer shall file option before the assessing authority on or before 30th June, 2017, along with the evidence regarding withdrawal of cases, if any, pending before any court, tribunal or appellate or revisional authority.

(3) Such option and settlement shall cover all the financial years in which unaccounted purchases have been detected.

(4) The assessing authority shall intimate the dealer, the amount to be paid under sub-section (1), within fifteen days from the date of receipt of the option.

(5) Thirty per cent of the amount due under this scheme shall be paid within fifteen days from the date of receipt of the intimation under sub-section (4) and the balance amount shall be paid on or before 31st December, 2017 in equal instalments.

(6) Without prejudice to the provisions of this section, the Commissioner may issue such instructions to the assessing authorities and the dealers for the effective implementation of the scheme.

(7) Any dealer who opts for this scheme shall obtain Tax payers Identification Number (TIN) under this Act with effect from 1st April, 2016.

(8) No further action under any of the provisions of this Act shall be initiated by the assessing authority with regard to the unaccounted purchases settled by the dealer under this section or other irregularities in accounts which resulted from such unaccounted purchases, and no appeal or revision shall lie against the amount so settled under this section.

(9) Dealers who have opted to pay tax under sub-section (5) of section 6 and with regard to whom unaccounted purchases have not been detected by the assessing authority for the period up to 31st March, 2016, may also voluntarily declare such unaccounted purchases, and opt for the scheme mentioned in sub-section (1), and on doing so, no further action under this Act shall be initiated against such dealers with regard to the same.

(10) Dealers who opted to settle their cases under this section in 2016-17, but had failed to make payments may also opt to settle their cases under this section, and the amounts, if any, paid earlier shall be adjusted towards the amount to be paid under this section, provided that no refunds shall be allowed.

(11) There shall not be any refund subsequently for the amount settled under this Scheme, under any circumstance”;

(5) after section 25E, the following section shall be inserted, namely:—

“25F. *Special provisions for assessment and payment of tax for certain work contractors.*—Notwithstanding anything contained in this Act or rules made thereunder or in any judgment, decree or order of any court, tribunal or appellate authority, works contractors who have opted for and paid compounded tax under clause (a) of section 8 of the Act for the years up to 2014-15 in respect of works relating to installation of kitchen cabinet, aluminium fabrication and air conditioning plants in which the transfer of materials is in the form of goods and if all the purchases for executing such contracts are from within the State, may pay an additional tax of two per cent on the whole contract amount, and on payment of such tax, no further proceedings under this Act, including any assessment or penalties shall lie against such contractors.”;

(6) after section 31, the following section shall be inserted, namely:—

“31A. *Reduction of arrears in certain cases.*- (1) Notwithstanding anything contained in this Act or rules made thereunder or in any judgment, decree or order of any court, tribunal or appellate authority, any assessee who is in arrears of tax or any other amount due under this Act or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) relating to the period up to and including 31st March, 2011, may opt for settling the arrears on payment of the principal amount of the tax in arrears and thirty per cent of the penalty amount by availing a complete reduction of the interest on the tax amount and on the penalty amount.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968, (15 of 1968) reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have

been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assessee which will then be binding on the revenue authorities and such assessee shall not be liable for payment of any collection charges.

(3) The assessee shall withdraw all the cases pending before any appellate or revisional authority, tribunal or courts for opting under this section.

(4) All arrears including tax and penalties pertaining to a year shall be settled together under this section.

(5) An assessee who intends to opt for payment of arrears under sub-section (1) shall submit an application to the assessing authority on or before 30th June, 2017.

(6) The arrears for the purpose of settlement under this section shall be calculated as on the date of submission of application.

(7) On receipt of an application under sub-section (5), the assessing authority shall determine the amount of tax and other amounts due from the dealer under sub-section (1) and shall intimate the same to the dealer, and thereupon the dealer shall remit the amount in equal monthly instalments on or before 31st December, 2017:

Provided that an assessee who opts to settle his arrears under sub-section (1) has remitted any amount relating to the arrears for obtaining a stay voluntarily or by way of an order or decree or judgment passed by any court or tribunal or appellate authority and, if the case is pending before such authority, the amount so paid shall be treated as that paid under this option.

(8) There shall not be any refund subsequently for the amount settled under this scheme, under any circumstances.”;

(7) in section 55, in sub-section (1),—

- (i) for the words, brackets and figures “other than those under section 16, section 19, sub-sections (8) and (9) of section 44, section 49, section 67, section 68, section 69 and section 70” the words, brackets and figures “other than those under sub-section (3), sub-section (8) or sub-section (9) of section 16 and sub-section (8) of section 19” shall be substituted;

- (ii) in the first proviso, for the figures and words "48, 70A and 72", the figures and words "48, 49, 67, 69, 70, 70A and 72" shall be substituted;

(8) in section 57, in sub-section (1), after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that where an order of the assessing authority which has become appealable under section 55 with effect from 1st April, 2017 by virtue of the Kerala Finance Bill, 2017, is pending as revision under this section, such revision shall stand transferred to the Deputy Commissioner (Appeals) or Assistant Commissioner (Appeals) as the case may be, and such authority shall consider the same as if it is an appeal filed before it.";

(9) in section 60, in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that where an order of the assessing authority which has become appealable under section 55 with effect from 1st April, 2017 by virtue of the Kerala Finance Bill, 2017, and on which the Deputy Commissioner had passed orders under section 57 and revision against such orders are pending under section 59, such revision shall stand transferred to the appellate tribunal and the tribunal shall consider the same as if it is an appeal filed before it.";

(10) after section 96, the following section shall be inserted, namely:—

*"96A. Framing Special schemes for speedy disposal of assessment and reassessment.—*For the speedy disposal of assessments and re-assessments, the Government may by notification in the Official Gazette, frame special scheme outlining the structure, functions, procedure and the manner to initiate and complete assessments under this Act under a fast-track mode."

DECLARATION UNDER THE KERALA PROVISIONAL COLLECTION OF REVENUES ACT, 1985 (10 OF 1985)

It is hereby declared that it is expedient in the public interest that all the provisions of this Bill shall have effect on and from the 1st day of April, 2017 under the Kerala Provisional Collection of Revenues Act, 1985 (10 of 1985).

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to amend the following enactments to give effect to the financial proposals of the Government of Kerala for the financial year 2017-2018 as announced in paras 241, 269 to 280 of the Budget Speech 2017 - 2018, namely:—

1. The Kerala Stamp Act, 1959 (17 of 1959);
2. The Kerala General Sales Tax Act, 1963 (15 of 1963);
3. The Kerala Tax on Luxuries Act, 1976 (32 of 1976);
4. The Kerala Agricultural Income Tax Act, 1991 (15 of 1991)
5. The Kerala Value Added Tax Act, 2003 (30 of 2004).

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 2 of the Bill which proposes to insert a new section 10B in the Kerala Stamp Act, 1959 (17 of 1959) seeks to empower the Government to appoint the Department of Treasuries as the Central Record Keeping Agency by notification in the Official Gazette and to prescribe the duties and functions of the same with regard to issue of e-stamps.

2. Sub-clause (4) of clause 2 of the Bill which proposes to insert a new section in the Kerala Stamp Act, 1959 (17 of 1959), seeks to empower the Government to prescribe the manner in which any e-stamp in an instrument shall be defaced through online computer verification system by the Registering Officer or any other Officer authorised by the Government.

3. Sub-clause (7) of clause 2, which proposes to insert a new clause after clause (a) of sub-section (2) of section 69 in the Kerala Stamp Act, 1959 (17 of 1959), seeks to empower the Government to prescribe the manner of payment of stamp duty, and refund thereof by e-payment.

4. Sub-clause (10) of clause 6 of the Bill which proposes to insert a new section 96A in the Kerala Value Added Tax Act, 2003, (30 of 2004) seeks to empower the Government to frame special scheme, outlining the structure functions, procedure and the manner to initiate and complete assessment under the Act for the speedy disposal of assessments and re-assessment.

5. The matters in respect of which notifications are to be issued or rules are to be made are either administrative in nature or matters of procedure and are of routine nature. Further, the rules after they are made, will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

DR.T. M. THOMAS ISAAC.

(a) according to the provisions herein contained; or

(b) when no such provision is applicable thereto, as the Government may by rules direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instrument- the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps the number of stamps which may be used.

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¹¹[10A. *Deduction of stamp duty by a member of a stock exchange or commodity exchange or intermediary thereof.*—(1) A member of a stock exchange or commodity exchange or intermediary thereof who issues a contract note or memorandum in respect of purchase or sale of goods or stock or security in this State at first instance of any such transaction which is ultimately concluded in the State shall deduct the stamp duty payable thereon.

(2) The stamp duty deducted for any calendar month under sub-section (1) shall be remitted into the Government treasury on or before the seventh day of succeeding month and if the stamp duty so deducted is not remitted in time, it shall be remitted with interest at the rate of twelve per cent per annum from the date of default.

(3) Any default in the deduction of stamp duty under sub-section (1) or failure to remit the stamp duty under sub-section (2) shall be punishable with fine which may extend to fifty thousand rupees.]

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12. *Cancellation of adhesive stamps.*—(1) (a) Who even affixes any adhesive stamp to an instrument chargeable with duty which has been executed by any person shall when affixing such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initial or the name or initials of his firm with the true date of his so writing or in any other effectual manner.

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13. *Instruments stamped with impressed stamps how to be written.*—Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

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47. *Allowance for spoiled stamps.*—Subject to such rules as may be made by the Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made, within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned namely:—

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

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69. *Power to make rules.*—The Government may, by notification in the Gazette, make rules to carry out generally the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may be made for regulating—

(a) the supply and the sale of stamps and stamped papers.

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EXTRACT FROM THE RELEVANT PORTIONS OF THE
KERALA GENERAL SALES TAX ACT, 1963
(15 OF 1963)

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23B. *Reduction of arrears in certain cases.*—(1) Notwithstanding anything contained in this Act or in any judgment, decree or order of any Court, Tribunal or Appellate Authority, an assessee who is in arrears of tax or any other amount due under this Act or the Central Sales Tax Act, 1956 (Central Act 74 of 1956) relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing a complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon:

Provided that nothing in this section shall apply to a public sector undertaking under the control of Government of India.”;

(3) A dealer who wishes to opt for payment of arrears under sub-section (1) shall make an application to the assessing authority in the prescribed form before 28th February, 2017 or on such date as may be notified by the Government.

(4) On receipt of an application under sub-section (3), the assessing authority shall verify the same and intimate the amount due to the assessee and thereupon the assessee shall remit the amount in lump sum or in three equal instalments on or before 28th February, 2017.

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(8) If a dealer is continuing business the commencement of the Kerala Value Added Tax Act, 2003 (30 of 2004) he shall get himself registered thereunder before filing option for payment of arrears under sub-section (1).”.

EXTRACT FROM THE RELEVANT PORTIONS OF THE
KERALA TAX ON LUXURIES ACT, 1976
(32 OF 1976)

“10B. *Reduction of arrears in certain cases.*—(1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under the Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:

(a) in the case of demands relating to the periods up to and including 31st March, 1991, a reduction of twenty-five per cent for the principal tax amount, and complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon,

(b) in the case of demands relating to the period from 1st April, 1991 to 31st March, 1996, a complete reduction of the interest on the tax amount, and for the amount of penalty and interest thereon,

(c) in the case of demands relating to the period from 1st April, 1996 to 31st March, 2000, a reduction of ninety-five per cent of the interest on the tax amount, and for the amount of penalty and interest thereon,

(d) in the case of demands relating to the period from 1st April, 2000 to 31st March, 2005, a reduction of ninety per cent of the interest on the tax amount, and for the amount of penalty and interest thereon.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement

under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assessee which will then be binding on the revenue authorities and such assessee shall not be liable for payment of any collection charges

(3) An assessee who wishes to opt for payment of arrears under this section shall make an application to the assessing authority in the prescribed form before 30th September, 2008, or on such date as may be notified by Government.

(4) On receipt of an application under sub-section (3) the assessing authority shall work out the actual amount of tax and other amounts due from the assessee under sub-section (1) and shall intimate the amount to the assessee, and thereupon the assessee shall remit twenty-five per cent of the amount within 15 days of receipt of the intimation, and the balance amount in three equal monthly instalments from the subsequent month.

(5) If the assessee commits any default in payment of the instalments the reduction granted under sub-section (1) is liable to be revoked.

(6) No action under sub-section (5) shall be taken without giving notice to the assessee.

(7) If the arrears settled under this provision is already a subject matter of appeal or revision, such appeal and revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the dealer shall pay such enhanced amount, with interest thereon, in accordance with the provisions of this Act.”

EXTRACT FROM THE KERALA AGRICULTURAL
INCOMETAX ACT, 1991
(15 OF 1991)

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"37C Reduction of arrears in certain cases.—(1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under this Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates.—

(a) in the case of demands relating to the period up to and including 31st March, 1991, a reduction of twenty-five per cent for the principal tax amount, and complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon,

(b) in the case of demands relation to the period from 1st April, 1991 to 31st March, 1996, a complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon,

(c) in the case of demands relating to the period from 1st April, 1996 to 31st March, 2000, a reduction of ninety-five per cent of the interest on the tax amount and for the amount t of penalty and interest thereon.

(d) in the case of demands relating to the period from 1st April, 2000 to 31st March, 2005, a reduction of ninety per cent of the interest on the tax amount and for the amount of penalty and interest thereon,

(e) in cases where principal amount has already been remitted prior to coming into force of section 91A of the Act, a reduction of ninety per cent of the interest amount.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assessee which will then be binding on the revenue authorities and such assesses shall not be liable for payment of any collection charges.

(3) An assessee who wishes to opt for payment of arrears under this section shall make an application to the assessing authority in the prescribed form before 30th June, 2009, or on such date as may be notified by the Government

(4) On receipt of an application under sub-section (3), the assessing authority shall verify the same and shall intimate the amount to the assessee, and thereupon the assessee shall remit twenty-five per cent of the amount within 15 days of receipt of the intimation, and the balance amount in three equal monthly instalments from the subsequent month

(5) If the assessee commits any default in payment of the instalments the reduction granted under sub-section (1) is liable to be revoked

(6) No action under sub-section (5) shall be taken without giving notice to the assessee

(7) If the amount settled under this provision has been the subject matter of an appeal or revision, such appeal or revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the dealer shall pay such enhanced amount with interest thereon, in accordance with the provisions of this Act",

EXTRACT FROM THE RELEVANT PORTIONS OF THE
KERALA VALUE ADDED TAX ACT, 2003

(30 OF 2004)

6. *Levy of tax on sale or purchase of goods.*—(1) Every dealer whose total turnover for a year is not less than ten lakh rupees] and every importer or casual trader or agent of a non-resident dealer, or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or any autonomous body, [or any multi-level marketing entity, their distributor and/or agent engaged in multi-level marketing] whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover,—

(a)	**	**	**	**
	**	**	**	**
(f)	**	**	**	**

Provided that where the sale is to the Administrator, Union Territory of Lakshadweep, Laccadive Co-operative Marketing Federation, Kozhikode or the Lakshadweep Harbour Works and registered dealers certified by the Administrator, Union Territory of Lakshadweep, the tax payable under clause (d) shall be at the rate of Five per cent, subject to such conditions as may be prescribed:

**	**	**	**
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Provided also that the rate of tax on the sale of disposable plates and cups made of styrofoam for the financial years 2013-14 and 2014-15 shall be at five per cent.”;

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24. *Audit assessment.* (1) Notwithstanding anything contained in any other provision of this Act, if any dealer:

(a) is found on audit of his books of accounts other records or otherwise, to have submitted incorrect or incomplete return for any return period; or

(b) fails to make available any accounts or other records required by the audit officer for audit in the business place of the dealer; or

(c) fails to prove the claim of input tax credit, special rebate or refund claimed, the audit officer may, at any time within three years from the last date of the year to which the return relates, after, conducting such enquiry as he may deem necessary, reject the returns of such return periods and complete the assessments to the best of judgement:

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Provided also that the period for the completion of assessments including those subjected to extension under section 25B which expires on 31st March, 2015 shall be extended up to 31st March, 2016.

** ** ** **

25. *Assessment of escaped turnover.*—(1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made there from, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

Provided further that where the escapement is due to the applicability of incorrect rate of tax, no assessment under this sub-section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee:

Provided also that the period for the completion of assessments including those subjected to extension under section 25B which expires on 31st March, 2015, shall be extended up to 31st March, 2016.

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25E. *Special provision for assessment and payment of tax for presumptive dealers.*— (1) Notwithstanding anything contained in this Act or rules made thereunder or in any judgement, decree or order of any court, tribunal or appellate or revisional authority or any assessment orders or penalty orders issued under this Act, the dealers who have opted to pay tax under sub-section (5) of section 6 and with regard to whom unaccounted purchases have been detected by the assessing authority for the period up to 31st March, 2016, may opt to settle their cases by paying tax at the scheduled rates on such unaccounted purchases with an addition of 5% gross profit and on payment of such tax, all penalties and interest including penalty under sub-section (7) of section 22, shall stand waived and it shall be subject to the following conditions, namely:—

- (a) Any dealer who opt for this scheme shall obtain Tax payers Identification Number (TIN) under this Act with effect from 1st April, 2016;
- (b) All pending cases in any Forum shall be withdrawn and evidence to that effect shall be produced before the assessing authority;
- (c) Such option and settlement shall cover all the financial years, in which unaccounted purchases have been detected; and
- (d) such further condition, if any, as may be specified:

Provided that dealers who have opted to pay tax under sub-section (5) of section 6 and with regard to whom unaccounted purchases have not been detected by the assessing authority for the period up to 31st March, 2016, may also voluntarily declare their unaccounted purchases, and opt for the scheme mentioned in sub-section (1), and on doing so, no further action under this Act shall be initiated against such dealers with regard to the same.

(2) For settling the cases under sub-section (1), the assessee shall file option before the assessing authority within three months from the date of declaring the scheme:

Provided that in cases where no notice or orders has been issued by the assessing authority, regarding the unaccounted purchases detected by such authority mentioned in sub-section (1), the assessing authority shall intimate the dealer regarding the cases pending against him, to enable him to file option under the scheme.

(3) On receipt of the option, the assessing authority shall intimate by order, the details of the evidence before him and the amount of tax to be paid, calculated in accordance with sub-section (1).

(4) Thirty per cent of the amount shall be paid within fourteen days from the receipt of the order under sub-section (2) and the balance in twelve equal monthly instalments or in lump sum at his option, and the last date for fulfilment of payment under this section shall be the date of payment of the twelfth instalment.

(5) Without prejudice to the provisions of this section or notice made thereunder, the Commissioner may issue such instructions to the assessing authorities and the dealers for the effective implementation of the scheme.

(6) No further action under any of the provisions of this Act shall be invoked by the assessing authority with regard to the unaccounted purchases settled by the dealer under this section or other irregularities in accounts, which resulted from such unaccounted purchases, and no appeal or revision shall lie against the amount so settled under this section.

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31. *Payment and recovery of tax.*—(1) Every dealer liable to pay tax under this Act for any return period shall pay tax within such period, as may be prescribed.

(2) In the case of a dealer from whom any tax or other amount is demanded shall pay tax in such manner and in such instalments, if any, and within such time, as may be specified in the notice of demand, not being less than fifteen days from the date of service of the notice:

Provided that the time limit of fifteen days for a notice under this sub-section shall not apply to casual traders.

(3) If default is made in payment under sub-section (2), the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act.

(4) Any tax or any other amount due under this Act from a dealer or any other person may, without prejudice to any other mode of recovery, be recovered,

(a) as if it were an arrear of land revenue;

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as such dealer or other person has, in regard to the payment of such tax or other amount, as the case may be, complied with an order by any of the authorities to whom he has appealed or applied for revision, under the provisions of this Act.

[(5) If the tax or any other amount assessed or due under this Act is not paid by any dealer or any other person within the time prescribed therefore in this Act or in any rule made thereunder and in other cases within the time specified therefore in the notice of demand, the dealer or the other person, shall pay simple interest at the rate of twelve per cent per annum and in the case of tax collected by dealers from persons who had purchased goods from him, at the rate of thirty six per cent per annum} on the tax or other amount defaulted.

(6) Where any dealer has failed to include any turnover of his business in any return filed or where any turnover or tax has escaped assessment, interest under sub-section (5) shall accrue on the tax due on such turnover or tax with effect from such date on which the tax would have fallen due for payment, had the dealer included the turnover or tax in the return relating to the period to which such turnover relates.

(7) WHEREAS, a result of any order in appeal or revision or in any other proceedings, the tax or any other amount due under this Act is finally settled, the interest leviable under sub-section (5) shall be on the amount as finally settled and the period during which the collection of tax or other amount is stayed by any Court or any other authority shall not be excluded in computing the period for calculating interest under the said sub-section.

(8) WHEREAS, a result of any order in appeal or revision or any rectification under section 66 any dealer or other person is not liable to pay the tax or any other amount, the levy of interest for the non-payment of such tax or other amount shall be cancelled and if any amount of such interest has been collected, it shall be refunded to the dealer or other person as the case may be, in such manner as may be prescribed.

(9) WHEREAS, a result of any order in appeal or revision or any rectification under section 66, any tax or any other amount due from any dealer or other person, has been reduced, the interest levied for the non-payment of such tax or other amount shall be proportionately reduced and if any amount of interest in excess of such reduced interest has been collected, such excess shall be refunded to the dealer or other person, as the case may be.

(10) The provisions of the Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1967 (23 of 1967), shall apply for all proceedings in relation to the recovery of any amount due under this Act.

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55. *Appeals to the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals).*—(1) Any person aggrieved by any order issued or proceedings recorded " other than those under section 16, section 19, sub-sections (8) and (9) of section 44, section 49, section 67, section 68, section 69 and section 70" passed by an authority empowered to do so under this Act not being an authority above the rank or an Assistant Commissioner may, within a period of thirty days from the date on which the order was served on him, appeal against such order,

(i) to the Deputy Commissioner (Appeals) , if the order was passed by an authority of the rank of an Assistant Commissioner; and

(ii) to the Assistant Commissioner (Appeals), if the order was passed by an authority of the rank of a Commercial Tax Officer:

Provided that orders passed under sections 48, 70A and 72 shall be appealable only to the Deputy Commissioner (Appeals):

