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GOVERNMENT OF KERALA
Law (Legislation-A) Department
NOTIFICATION

No. 5012/Leg. A2/2008/Law. Dated, *Thiruvananthapuram*, 29th July, 2008,
7th Sravana 1930.

The following Act of the Kerala State Legislature is hereby published for General information. The Bill as passed by the Legislative Assembly Received the assent of the Governor on the 28th day of July, 2008.

By order of the Governor,

V. G. KUMARI GIRJA,
Special Secretary (Law).

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33/2842/2008/DTP.

ACT 21 OF 2008

THE KERALA FINANCE ACT, 2008

An Act to give effect to certain financial proposals of the Government of Kerala for the Financial year 2008-2009.

Preamble.—WHEREAS, it is expedient to give effect to certain financial proposals of the Government of Kerala for the Financial year 2008-2009;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Finance Act, 2008.

(2) Save as otherwise provided in this Act,—

(a) clause (b) of sub-section (6), sub-section (16), sub-section (17), sub-section (20), item (iii) and serial No. 60 inserted by item (iv) of clause (a) of sub-section (22) of section 5 shall be deemed to have come into force on the 1st day of April, 2005;

(b) 3rd proviso to clause (ii) of sub-section (3) of section 5 shall be deemed to have come into force on the 24th day of April, 2007;

(c) items (v), (vi) and (vii) of clause (b) of sub-section (22) of section 5 shall be deemed to have come into force on the 22nd day of October, 2007;

(d) the remaining provisions of this Act shall be deemed to have come into force on the 1st day of April, 2008;

2. *Amendment of Act 11 of 1957.*—In the Kerala Surcharge on Taxes Act, 1957 (11 of 1957), in section 3,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The tax payable under sub-sections (1) and (2) of section 6 of the Kerala Value Added Tax Act, 2003 (30 of 2004), other than declared goods as defined in section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall, in the case of national or multi-national companies functioning in the State as retail chains or direct marketing chains who import not less than fifty per cent of their stock from outside the State or country and not less than seventy-five

per cent of whose sales are retail business, and whose total turnover exceeds five crore rupees per annum, but excluding such class of dealers of certain commodities, which may be notified by the Government from time to time, be increased by a surcharge at the rate of ten per cent, and the provisions of the Kerala Value Added Tax Act, 2003 (30 of 2004) shall apply in relation to the said surcharge as they apply in relation to the tax payable under the said Act.

Explanation I:— For the purpose of this section big retail chains and direct marketing chains mean retail sales outlets or part of retail sales outlets of companies which share a registered business name or commercial name by way of franchisee agreements or otherwise with standardized sales, purchase and promotional activities.

Explanation II:— For the purpose of this section ‘retail business’ shall mean sales to persons other than registered dealers.”;

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

“(2) Notwithstanding anything contained in sub-section (1) of section 22 of the Kerala General Sales Tax Act, 1963 and in sub-section (1) of section 30 of the Kerala Value Added Tax Act, 2003, no dealer referred to in sub-sections (1) and (1A) shall be entitled to collect the surcharge payable under the said sub-sections.”;

(c) in sub-section (3), for the word, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “sub-sections (1) and (1A)” shall be substituted;

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

“3A. *Reduction of arrears in certain cases.*—(1) Notwithstanding anything contained in this Act, or in any Judgement, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of surcharge 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 surcharge amount, and complete reduction of the interest on the surcharge 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 surcharge 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 surcharge 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 surcharge amount, and 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 assesseees which will then be binding on the revenue authorities and such assesseees shall not be liable for payment of any collection charges.

(3) An assessee who wishes to opt for payment of arrears under the 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 the Government.

(4) On receipt of an application under sub-section (3), the assessing authority shall workout the actual amount of surcharge 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 amount settled under this provision has been 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 surcharge payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the surcharge payable under this Act is enhanced, the dealer shall pay such enhanced amount, with interest thereon, in accordance with the provisions of this Act.”.

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

(1) in section 17,—

(a) for the fourth proviso to sub-section (6), the following proviso shall be substituted, namely:—

“Provided also that the assessment relating to the years up to and including the year 2003-04 pending as on 31st March, 2008 shall be completed on or before the 31st day of March, 2009.”;

(b) in sub-section (8),—

(i) for the first proviso, the following proviso shall be substituted, namely:—

“Provided that all such assessments or re-assessments pending as on 31st day of March, 2008 shall be completed on or before the 31st day of March, 2009.”;

(ii) for the third proviso, the following proviso shall be substituted, namely:—

“Provided also that all such modified assessments or modified re-assessments or remanded assessments pending as on the 31st day of March, 2008 shall be completed on or before the 31st day of March, 2009.”;

(2) in section 17D, in clause (E) of sub-section (2), the following shall be added at the end, namely:—

“and in cases where the returns are not acceptable, the following criteria may be adopted for determining their tax liability namely:—

(i) in case where the dealer had compounded the offence under section 47, or penalty under section 45A or section 29A has been levied, the assessment may be completed on an addition proportionate to the period of suppression with reference to the quantum of suppression detected, limiting the tax effect on such addition to a maximum of three times of the compounding fee paid or tax effect of suppression detected, whichever is higher, and in case where a pattern of suppression has not been established, to an amount equal to the suppression detected.

(ii) in case where tax evaded cannot be quantified, the assessment may be completed on an addition equal to five per cent of the taxable turnover conceded by the dealer as per his returns or accounts, subject to tax effect of a minimum of five thousand rupees and a maximum of one lakh rupees.

(iii) in case where statutory forms and/declarations in support of a claim of concessional rate of tax or exemption have not been filed or are partially filed, or where the forms have been misused, the assessment may be completed by disallowing such claims, to the extent of the defect in such forms, assessing it under this Act.

(iv) in case of contracts where option for compounding under the provision contained in section 7 of this Act, as it then existed have been filed, and where returns and tax deduction certificate issued by the awarder have been produced, assessment may be completed accepting the awarder's certificate.

(v) in case of contracts in respect of which tax is paid under section 5 of this Act, and where returns and statement of accounts have been filed, but the returns are found to be incorrect or incomplete, assessments may be completed determining additional tax payable at twenty per cent of the tax payable subject to a minimum of ten thousand rupees:

Provided that the amnesty scheme envisaged in section 23B shall also be applicable to assessment completed as per this section.”;

(3) after section 23AA, the following section shall be inserted, namely:—

“23B. *Reduction of arrears in certain cases.*— (1) Notwithstanding anything contained in this Act, or in any Judgement, 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 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; and

(e) in cases where principal amount has already been remitted prior to coming into force of section 55C 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 dealers which will then be binding on the revenue authorities and such dealers shall not be liable for payment of any collection charges.

(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 30th September, 2008, 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 workout the actual amount of tax and other amounts due from the dealer under sub-section (1) and shall intimate the amount to the dealer, and thereupon the dealer 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 starting from the subsequent month.

(5) If the dealer 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 dealer.

(7) If the amount settled under this provision has been 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.”;

(4) in section 34, in sub-section (1),—

(a) after the words, brackets and figures “under sub-section (6) or sub-section (7) of section 14” the words, figure and letter “under section 14 A” shall be inserted;

(b) after the words and figure “under section 43” the words, figure and letter “and section 45A” shall be inserted.

4. *Amendment of Act 32 of 1976.*—In the Kerala Tax on Luxuries Act, 1976 (32 of 1976),—

(1) in section 2,—

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

“(de) ‘hospital’ includes a nursing home, therapy centre, rejuvenation or recuperation centre, nature care or cure centre, ayurvedic cure or care centre, sidha centre or any other treatment centre, personal care centre and beauty treatment centre, by whatever name called.”;

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

“(df) ‘home stay’ means an accommodation provided in a residential building or house or apartments or part thereof, with three rooms or above, where any person can stay for comfort or pleasure for consideration.”;

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

“(fb) ‘luxury provided in a hospital’ means accommodation for residence for use of amenities and services provided in a hospital the rate of charges of which, excluding charges of food, medicine and professional services, is one thousand rupees per day or more.”;

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

“(fc) ‘luxury provided in a home stay’ means residential accommodation for the use of amenities and services provided in a home stay and the daily rate of charges of which is rupees one thousand or more.”;

(e) in clause (h), after the word “auditorium” wherever it occurs, the words and symbol “home stay, hospital” shall be inserted;

(2) in section 4,—

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

“(1) Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called the ‘luxury tax’, in respect of any luxury provided,—

(i) in a hotel, house boat, hall, auditorium or kalyanamandapam or including those attached to hotels, clubs, kalyanamandapam and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition;

(ii) by cable operators;

(iii) in a hospital ; and (iv) in a home stay:

Provided that the sub-section shall not apply to halls and auditorium located within the premises of ‘places of worship’ owned by such institutions.”;

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

“(e) in respect of a hospital, for charges of accommodation for residence for use of amenities and services, at the rate of ten per cent per room where the gross charges, excluding charges of food, medicine and professional services, is one thousand rupees per day or more.”;

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

“(f) in respect of a home stay, for charges of accommodation including use of amenities and services provided at the rate of half per cent where the daily rate of gross charges is rupees one thousand or more.”;

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

“4E. *Registration of Hospitals.*—Every hospital having not less than five rooms to be rented for accommodation of patients for treatment or otherwise for which gross charges excluding charges for food, medicine and professional services is one thousand rupees or more per room, shall get itself registered with such authority and in such manner as may be prescribed, and the application for registration shall be accompanied by a registration fee of rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.”;

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

“4F. *Registration of home stays.*—Every proprietor of a home stay where the daily charges of accommodation including other amenities provided is rupees one thousand or more, shall get his home stay registered with such authority and in such manner as may be prescribed and the application for registration shall be accompanied by a registration fee of rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.”;

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

“10A. *Further mode of recovery.*—(1) The assessing authority may, at any time, or from time to time, by notice in writing, a copy of which shall be forwarded to the proprietor at his last address known to the assessing authority,

require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) who holds or may subsequently hold money for or on account of the proprietor, to pay to the assessing authority, either forthwith, if the money has become due or is so held, or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by the proprietor in respect of arrears of tax, fee or penalty, or the whole of the money when it is equal to or less than the arrears of tax, fee or penalty.

(2) The assessing authority may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) Any court, officer or other person making any payment in compliance with a notice under this section, shall be deemed to have made the payment under the authority of the proprietor, and the receipt by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.

(4) Any court or person, other than an officer of the Government, making any payment to the proprietor after receipt of the notice referred to in this section, shall be liable to the assessing authority to the extent of the payment made, or to the extent of the liability of the proprietor, for the amount due under this Act, whichever is less.

(5) Where any court or person, other than an officer of the Government, to which or to whom a notice under this section is sent, objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the proprietor, or that such court or person does not hold any money for or on account of the proprietor, then nothing contained in this section shall be deemed to require such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay the assessing authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as if it were an arrear of public revenue due on land.

Explanation: For the purposes of this section, the amount due to a proprietor or money held for or on account of a proprietor by any court, officer or other person shall be computed after taking into account such claims if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be, lawfully subsisting.”;

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

“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 assesseees which will then be binding on the revenue authorities and such assesseees 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 workout 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.”.

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

(1) in section 2, after clause (xv), following clause shall be inserted, namely:—

“(xva) ‘declared goods’ mean goods declared by section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) to be of special importance in inter-state trade or commerce.”;

(2) in section 4, in sub-section (1), after the words “as many other members as they think fit” the words “and such additional Appellate Tribunals, as they think fit, with such members” shall be inserted;

(3) in section 6, in sub-section (1),—

(i) for the seventh proviso, the following proviso shall be substituted, namely:—

“Provided also that where sale of goods other than petroleum products, manufactured in the State is to Railways, Kerala State Electricity Board,

Kerala State Road Transport Corporation or Kerala Water Authority, the tax payable under clause (d) above shall, subject to such conditions and restrictions as may be prescribed, be at four per cent.”;

(ii) after the seventh proviso, the following provisos shall be inserted, namely:—

“Provided also that sculptural statues of national leaders and social reformers shall be exempted from tax payable under clauses (e) and (f) of sub-section (1) of section 6:

Provided also that the tax payable under clause (f), in respect of transfer of declared goods not in the form of goods but in some other form, shall be at the rate prescribed under the respective Schedules:

Provided also that the rate of tax on the sale of used motor vehicles shall be at 0.5 per cent and that no tax is payable under sub-section (2):

Provided also that, in respect of cinematographic films, turnover relating to sale of “copyright” under clause (a) and transfer of right to use under clause (c) shall be exempted.”;

(4) in section 8,—

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

“(a) (i) any works contractor not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and who is not an importer may, at his option, instead of paying tax in accordance with the provisions of the said section, pay tax at three per cent of the whole contract amount;

(ii) any works contractor not falling under clause (i) above may, at his option, instead of paying tax in accordance with the provisions of the said sections, pay tax at eight per cent of the whole contract amount:

Provided that notwithstanding anything contained in sub-clause (ii) above, the compounded tax payable by any works contractor under this clause in respect of works contracts awarded by Government of Kerala, Kerala Water Authority or Local Authorities shall be four per cent of the whole contract amount:

Provided further that the provisions of this clause shall not apply to any works contract in which the transfer of material is in the form of goods:

Provided also that notwithstanding anything contained elsewhere in this Act, a works contractor who intends to pay tax at compounded rate in accordance with this clause in respect of all works undertaken by him during a year, may, instead of filing separate application for compounding for individual works, file a single option for payment of tax under this clause before 30th day of April of the year to which the option relates, subject to eligibility:

Provided also that in the case of any work covered under the above provisos which remains unexecuted fully or partly at the end of the year, the contractor shall continue to pay tax in respect of such works in accordance with the provisions of this clause.

Explanation:—For the purpose of this clause “whole contract amount” shall not include the amount paid to sub-contractors for execution of the portion of works contract if the sub-contractor is a registered dealer liable to tax under sub-section (1) or sub-section (1A) of section 6, and the contractor claiming deduction in respect of such amount furnishes certificates in such form as may be prescribed.”;

(b) in clause (c), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) Any bar attached hotel, not being a star hotel of and above three star or a club or a heritage hotel may, at its option, instead of paying tax in accordance with the provisions of section 6, but subject to such conditions and restrictions as may be prescribed, pay tax at one hundred and twenty five per cent of the tax paid or payable under this Act, in respect of the highest turnover of cooked food and beverages prepared by them, and packaged water, aerated water, cigarettes and soft drinks purchased from registered dealers, for the previous three consecutive years, immediately preceding the year to which the option relates:

Provided that the dealers who have paid compounded tax during the previous year shall pay tax at one hundred and fifteen per cent of the compounded tax paid and one hundred and fifteen per cent of the tax paid on packaged water, aerated water, cigarettes and soft drinks purchased from registered dealers.

Explanation:—For the purpose of this clause “bar attached hotel” shall mean a hotel or restaurant or club or any other place, which is licensed under the Foreign Liquor Rules to serve foreign liquor falling under Serial Number 2 of the Fourth Schedule, but shall not include any hotel or restaurant, not being a star hotel, which is licensed to serve only beer.”;

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

“(f) (i) any dealer in ornaments or wares or articles of gold, silver or platinum group metals may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at one hundred and fifty per cent of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.

Explanation 1:— Where a dealer had not transacted any business for the last three years consecutively, the highest tax paid or payable for the year during the year or years he transacted business shall be considered for the above purpose.

Explanation 2:— Where during any such preceding year the dealer had not transacted business for any period in that financial year, the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable for the period during which such dealer had transacted business.

Explanation 3:— Dealers opting for payment of tax under this clause shall pay compounded tax in respect of all their branches existing in the year previous to the year in which the option relates.

Explanation 4:— Where a dealer has not transacted business in a new branch for any period in that financial year the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable for the period during which such dealer had transacted business.

Explanation 5:— Where a dealer opens a new branch in the current year, the additional compounded tax payable under this clause in respect of such branch shall be the average of the tax payable by him in respect of his principal place of business and all branches. Such dealers will be permitted to continue to pay compounded tax under this clause even if they do not opt for paying tax under this clause for the new branch.

Explanation 6:— Where a dealer has opted for payment of tax under this clause for the first time in 2007-08 and the tax payable in 2006-07 as per return or accounts is less than the output tax, the tax payable under this clause for 2007-08 shall be notionally redetermined on the basis of output tax for determining the tax liability for 2008-09:

Provided that a dealer who opts for payment of tax under this clause may collect tax on the sales at the rate not exceeding the rate prescribed for the commodity under this Act, but where the tax so collected during the year is in excess of the tax payable for the year under this clause, the tax collected in excess shall be paid over to Government in addition to the tax payable under this clause.

(ii) The assessing authority, for valid and sufficient reasons, such as shifting of place of business, holding of stock exceeding double the quantity held in the previous year, furnishing of false information, suppression of relevant information, failure to furnish such information demanded, may refuse permission to pay tax under this section and cancel the permission if any granted:

Provided that no orders under this sub-clause shall be issued without giving the dealer an opportunity of being heard and without prior approval of the District Deputy Commissioner.

(iii) Notwithstanding anything contained in sections 55 or 60 of this Act, orders under sub-clause (ii) shall be appealable only to the Appellate Tribunals.

(iv) In case where permission has been cancelled, the amount, if any paid based on the permission, shall be apportioned against the output tax due of the dealer.

(v) Where a dealer had paid tax under this clause for the previous year, the tax payable for the succeeding year under this clause shall be one hundred and fifteen per cent of such tax paid during the previous year and in case of dealers covered under Explanation 6 of this clause, one hundred and fifteen per cent of the tax so re-determined.”;

(5) in section 10, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) For the purpose of sub-section (1), the contractor may produce a liability certificate in relation to such works contracts from the assessing authority showing the tax liability or tax remittance, as the case may be, of the contractor in relation to the work.

(2A) In cases where a liability certificate has been produced as per sub-section (2), payment shall be effected to a works contractor, on the basis of the said certificate; and,—

(i) in case of work awarded by Government of Kerala, Kerala Water Authority or Local Authorities, after deducting four per cent of the amount paid as per the works contract; and

(ii) in other cases—

(a) after deducting eight per cent of the amount paid as per the works contract in the case of contractors registered under this Act.

(b) after deducting ten per cent of the amount paid as per the works contract in the case of other contractors:

Provided that the awarder shall not insist from the contractor, not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) any certificate issued by the assessing authority showing the tax liability or tax remittances, as the case may be, of the contractor, in relation to the contract, if he has opted for payment of tax in accordance with the proviso to sub-clause (i) of clause (a) of section 8.”;

(6) in section 11, in sub-section (3),—

(a) in the third proviso, for the words “in excess of the rate specified under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)”, the words “in excess of four per cent” shall be substituted:

(b) in the fifth proviso, the following shall be added at the end, namely:—

“but the amount covered under credit notes issued by a supplier that do not affect the input tax credit already availed of or on account of reimbursement of any expenses incurred by the dealer shall not be reckoned for the purpose of assessment under this Act.”;

(c) after the fifth proviso, the following provisos shall be added, namely :—

“Provided also that no input tax credit shall be allowed where any dealer, with a view to evade payment of tax or in order to claim any inflated input tax credit or refunds under this Act, purchases goods from a sister concern of the dealer and where the sale consideration in respect of which has been influenced by such relationship, and there has been no physical transfer of the goods covered by the invoice:

Provided also that the purchase in respect of which input tax credit availed is made from a sister concern of the dealer and there is actual physical transfer of the goods involved, and the dealer availing input tax credit sells such goods at a price lower than the price for which it was purchased, the input tax credit allowable in respect of such goods shall not exceed the output tax due on such goods.

Explanation.— For the purpose of above provisos, ‘sister concern’ means a business run by a proprietorship or partnership, association of persons or a company which is controlled by the dealer, or by a person whom the dealer controls, or by a person who is controlled by the same person who controls the dealer:

Provided also that notwithstanding anything contained elsewhere in this Act, planters including companies or firms or society, including a co-operative society or association of individuals, whether incorporated or not, shall not be entitled to input tax credit on purchases of fertilizers, pesticides etc.,”;

(7) in section 12, in sub-section (1), in the third proviso, for the words, brackets and figures “in excess of the rate specified under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)”, the words “in excess of four per cent” shall be substituted;

(8) in section 13, in sub-section (2), in the second proviso, for the words “in excess of the rate specified under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)”, the words “in excess of four per cent” shall be substituted;

(9) after section 15A, the following sections shall be inserted, namely:—

“15B. *Special drive for registration.*—Notwithstanding anything contained anywhere in this Act, dealers who had voluntarily applied for registration under the Act for the period from 15th December, 2007 to 31st March, 2008 would be entitled to,—

(a) get registration with effect from the date of commencement of business irrespective of the date of application;

(b) claim input tax credit on their purchases covered under bills/ invoices of registered dealers within the State from the date of commencement of business; and

(c) pay tax under sub-section (5) of section 6, subject to eligibility, or pay tax under section 8 for the relevant years subject to eligibility and filing application for compounding along with the registration application: Provided that such dealers shall be liable to pay interest on all dues and will not be entitled for any refund relating to the period prior to filing of registration application.

15C. *Registration of industrial Units.*—(1) Any person who intends to establish an industrial unit may get himself registered under this section.

(2) Every application for registration of an Industrial Unit shall be supported by a certificate in the prescribed form issued by the Director of Industries and Commerce, the Kerala State Industrial Development Corporation or the Kerala Financial Corporation.

(3) A provisional registration certificate shall be issued to the applicant within seven days from the date of application.

(4) The form of application, form of provisional registration certificate, the fee for registration, the conditions and the authority empowered to issue such certificates shall be such as may be prescribed.

(5) The provisional registration certificate issued under this section shall facilitate the holder for procurement of all materials for construction and establishment of the Industrial Unit, including raw materials for trial production in such quantity as may be specified in such certificate.

(6) Every holder of a provisional registration certificate, shall before starting commercial production in the Industrial Unit, get himself registered under section 15.”;

(10) after section 20, the following section shall be inserted, namely :—

“20A. *Condonation of Delay.*—The Deputy Commissioners having jurisdiction over the area may, for valid and sufficient reasons, to be recorded in writing, condone delay,—

(a) in applying for any refund under this Act and Rules made there under,

(b) in filing options under section 8 of this Act upto 31st December, 2008 for the years 2005-06, 2006-07 and 2007-08:

Provided that the time limit for completion of any assessment under this Act shall be extended by a further period of three years from the date of condoning such delay, under this section.”;

(11) in section 22, after sub-section (6), the following sub-sections shall be inserted, namely:—

“(7) Where on scrutiny of returns or verification of accounts in any proceedings under this Act, in respect of dealers paying tax under sub section (5) of section 6, it is found that the amount of tax, if any, paid by such dealer is less than the amount of tax he is liable to pay on finalising such proceedings, the assessing authority shall direct the dealer to pay difference of tax between the amount of tax already paid and that fixed in such proceedings, together with thrice the amount of such difference as penalty.

(8) No proceeding made under sub-section (7) shall be completed without affording the dealer an opportunity of being heard.”;

(12) in section 30, in sub-section (2) for the words, brackets, figures and letters “compounded tax under clause (a) to clause (d) of section 8”, the words, brackets, figures and letters “tax under clause (a) of section 8 by those undertaking works of Government of Kerala, Kerala Water Authority and Local Authorities, and under clause (b), clause (c) (ii) and clause (d) of section 8 shall be substituted.;

(13) in section 40, the following proviso shall be added, namely:—

“Provided that dealers shall be permitted to use electronic billing and accounting subject to such restrictions and conditions as may be prescribed.”;

(14) in section 44,—

(i) in sub-section (9), after the words “opportunity of being heard”, the words “confiscate such goods and” shall be inserted;

(ii) after sub-section (9), the following sub-section shall be inserted, namely:—

“(10) If any officer, in the course of any inspection or search of any business place, building or any other place finds that goods are stored in

undeclared godown” such stock shall be treated as stock outside the regular books of accounts of the dealer:

Provided that godowns in respect of which prior written intimation had been given to the registering authority by the dealer shall not be treated as undeclared godowns.”;

(15) in section 46,—

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

“(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may by notification in the Gazette notify such areas, hereinafter referred to as the notified area, and may direct setting up of check posts at such place or places, and define the boundaries of such notified area and may demarcate such boundaries by means of barriers or otherwise for the purpose of regulating the passage of goods across the notified area.”;

(b) in sub-section (3), after clause (d), the following clause shall be inserted, namely:—

“(e) Where goods are imported into the State through coastal cargo, through air and through the Railways, the importer or clearing agents, by

whatever name called, shall, on arrival of such goods, furnish a declaration before the Commercial Tax Officer having jurisdiction over the place of import, as may be prescribed. While transporting such goods within the State or across the State, the transporter/person in charge of the vehicle/vessel shall keep a copy of such declaration duly acknowledged by the concerned authority and shall be produced for verification by any authority under this Act.”;

(16) in section 47, in sub-section (16), after the word “seize” the words “and confiscate” shall be inserted.;

(17) in section 74, in sub-section (1), after clause (a), the following proviso shall be inserted, namely:—

“Provided that the maximum compounding fee collectable against a single offence spread over several return periods in a financial year shall be two lakh rupees.”;

(18) after section 79A, the following section shall be inserted, namely:—

“79B. *Bar against Revision of returns.*—Notwithstanding anything contained elsewhere in this Act, where a case of tax evasion has been detected and proceedings have been initiated against such evasion, the dealer shall not be permitted to revise the returns in respect of the return period covered in the penal proceedings until such proceedings are finalised.”;

(19) in section 86, in sub-section (1), in the *Explanation*, after the words “he is appearing” the following words shall be inserted, namely:—

“or part-time employee holding Diploma in Sales Taxation issued by the Centre for Taxation Studies.”;

(20) in section 93, in sub-section (1), after the words “Schedule to this Act” the words “either prospectively or retrospectively” shall be inserted . ;

(21) in section 94, the. proviso shall be omitted.;

(22) in the Schedule,—

(a) in the First Schedule,—

(i) in serial No. 12B, the entries against it in column (3) shall be omitted.;

(ii) after serial No. 35, in column (1) and the entries against it

in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“35A. Paper bags *****”;

(iii) after serial No. 41 in column (1) and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“41A. Recharge coupons. *****”;

(iv) after serial No. 59 in column (1) and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“60 Prasadam and sale of goods received as offerings from devotees by the Devaswom Boards. *****”;

61 Products such as Chalk, umbrella and books (binding) manufactured by Kerala Federation of Blind at the point of sale by them. *****”;

(b) in the Third Schedule,—

(i) in serial number 3, after item (37) and the entries against it in columns (2) and (3), the following items and entries shall respectively be inserted, namely:—

“ (38) aldrops, pulley and clamps *****

(39) Hangers (of all types) *****”;

(ii) in serial number 13, after sub-item (h) of item (3) and the entries against it in columns (2) and (3), the following *Note* shall be inserted, namely:—

“*Note:* sub-item (h) shall be deemed to have come into force on the *1st* day of April, 2005.”;

(iii) in serial No. 19A, for the entries against it in columns (2) and (3) the following entries shall be substituted, namely:’-:”

“(1) Cashew kernel including roasted and salted *****

(2) Cashew soup, cashew vita, cashew powder and cashew bits *****”;

(iv) after serial number 30 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“30A. Cooked food other than those served to any airline service company or institution or shipping company for serving in aircraft, ship or steamer or served in aircraft, ship, steamer, bar attached hotels and star hotels. *****”;

(v) after serial number 38 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“38A. Generator *****”;

(vi) after serial number 59 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“59A. All medical and diagnostic equipments and Hospital instruments, apparatus, appliances, tools and aids used exclusively in medical,

surgical, dental, physiotherapy and veterinary
sciences *****;

(vii) for serial” number 69 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be substituted, namely:—

“69 IT Products

- (1) Word processing machines, Electronic typewriters.—
 - (a) Word processing machines 8469.00.10
 - (b) Electronic typewriters 8469.00.20
- (2) Microphones, multimedia speakers, headphones etc.—
 - (a) Microphones 8518.10.00
 - (b) Multimedia speakers 8518.22.00
 - (c) Headphones etc. 8518.30.00
- (3) Telephone answering machines 8519.50.00
- (4) Discs, tapes, solid state non-volatile storage devices, “Smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37 8523
- (5) IT software of any media 8523.80.20
- (6) Transmission apparatus other than apparatus for radio or T. V. broadcasting
 - (a) Base stations 8517.61.00
 - (b) Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus 8517.62
- (7) Radio communication receivers, Radio Pagers
 - (a) Radio pagers 8527.99.11
 - (b) Demodulators 8527.99.12
 - (c) Other 8527.99.19
- (8) Aerials, antennas and parts 8529.10
- (9) LCD Panels, LED panels and parts
 - (a) LCD Panels / LED Panels 8531.20.00
 - (b) Parts 8531.90.00
- (10) Electrical capacitors, fixed, variable and parts
 - (a) Electrical capacitors, fixed, variable 8532
 - (b) Parts 8532.90.00
- (11) Electronic calculators 8470.10.00
- (12) Electrical resistors 8533
- (13) Printed Circuits 8534.00.00
- (14) Switches, connectors, relays for up to 5 amps 8536.10.10
- (15) DATA/Graphic Display tubes, other than Picture tubes and parts

(a) Colour	8540.40.00
(b) Black and White or other monochrome	8540.50.00
(c) Other	8540.60.00
(16) Diodes, transistors and similar semi-conductor devices	8541
(17) Electronic Integrated Circuits and Micro-assemblies	8542
(18) Signal Generators and parts	
(a) Signal Generators	8543.20
(b) Parts	8543.90.00
(19) Optical fibre cables made-up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors	8544.70
(20) Optical fibre and optical fibre bundles, cables, other than those of heading 8544.70	9001.10.00
(21) Liquid Crystal devices, flat panel display devices and parts	
(a) Liquid Crystal devices, flat panel display devices	9013.80.10
(b) Parts	9013.90
(22) Computer systems and peripherals, Electronic diaries, Printers and Monitors	
(a) Computer systems and peripherals	8471
(b) Electronic diaries	8470.90.10
(c) Printers	
(i) Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network	8443.31
(ii) Other, capable of connecting to an automatic data processing machine or to a network	8443.32
(iii) Parts and accessories of goods of sub-headings 8443.31 and 8443.32	
(a) Ink cartridges, with print head assembly	8443.99.51
(b) Ink spray nozzle	8443.99.52
(c) Other	8443.99.59
(d) Monitors	
(i) Cathode Ray Tube Monitors of a kind solely or principally used in an automatic data processing system of heading 8471	8528.41.00
(ii) Other Monitors of a kind solely or principally used in an automatic data processing system of heading 8471	8528.51.00
(iii) Parts suitable for use solely or	

	principally with the apparatus under 8528.41 and 8528.51	8529.90.90
(23)	Cathode ray oscilloscopes, spectrum analysers, signal analysers—	
	(a) Cathode ray oscilloscopes	9030.20.00
	(b) Spectrum analysers	9030.33
	(c) Signal analysers	
(24)	Parts and Accessories of HSN 84.69, 84.70 & 84.71	8473
(25)	DC Micromotors, Stepper motors of 37.5 watts—	
	(a) Micro motors	8501.10.11
	(b) Stepper motors	8501.10.12
(26)	Parts of HSN 85.01	8503
(27)	Uninterrupted power supply	8504.40
(28)	Permanent magnets and articles	8505
(29)	Electrical apparatus for line telephony or line telegraphy—	
	(a) Line telephone sets with cordless hand sets	8517.11
	(b) Telephones for cellular networks or for other wireless networks	8517.12
	(c) Other	8517.18
	(d) Videophones	8517.62.90
	(e) Facsimile machines	
	(i) capable of connecting to an automatic data processing machine or to a network	8443.32.60
	(ii) not capable of connecting to an automatic data processing machine	8443.39.70
	(f) Teleprinters	8443.32.90
	(g) Attachments for telephones	8517.69.70
	(h) Subscriber end equipment	8517.69.50
	(i) Set top boxes for gaining access to the internet	8517.69.60
(30)	Parts of HSN heading No. 8517	8517.70";
	(viii) in serial No. 83,—	

(a) for item (19) and the entries against it in columns (2) and (3), the following item and entries shall respectively be substituted, namely:—

“(19) all kinds of printing machinery and parts thereof *****”;

(b) for item (27) and the entries against it in columns (2), and (3), the following item and entries shall respectively be substituted, namely:—

“(27) Lathes and its parts. *****”;

(c) for item (28) and the entries against it in columns (2) and (3), the following item and entries shall respectively be substituted, namely:—

“(28) Machine tools and parts thereof 8456, 8459, 8460,
8461, 8462, 8463,
8464, 8465, 8466,
8467”;

(ix) after serial number 86 and the entries against it in columns (2) and

(3), the following serial number and entries shall respectively be inserted, namely:—

“86A. Municipal Solid Waste Management Equipment and Plant *****”;

(x) after serial number 103 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“103A. Rain guarding compounds *****”;

“(xi) after serial No. 103A and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“103B. Rat traps *****”;

(xii) in serial number 105, after item (32) and the entries against it in columns (2) and (3), the following item and entries shall respectively be inserted, namely:—

“(33) Rugs, mats and carpets made of handloom and cotton *****”;

(xiii) in serial number 117, for the entries in column (2), the following entries shall be substituted, namely:—

“SIM cards.”;

(xiv) after serial number 127 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:•

“127 A. Tarpaulin including silpaulin . *****”;

“(xv) after serial No.129 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“129A. Toy balloons *****”

(xvi) serial number 136 and the entries against it in coloumn (2) shall be omitted;

(c) In List A,—

(i) after serial No. 91, and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:—

“91A. Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of kind used as raw material in industry; other preparations based on odoriferous substance, of kind used for the manufacture of beverages. 3302”;

(ii) after serial number 167A, Veneer sheets for plywood 4408, the following *Note* shall be inserted, namely:—

“*Note:* serial number 167 A shall be deemed to have come into force on the 1st day of April, 2005”;

(iii) in serial number 174,—

(a) in item (1), for sub-item (c) and the entries against it in columns (2) and (3), the following sub-item and entries shall respectively be substituted,

namely:—

“Insulated ware 3923.10.30”;

(b) in item (6), for sub-item (c) and the entries against it in columns (2) and (3), the following sub-item and entries, shall respectively be substituted, namely:—

“(c) Sacks of paper *****”.

6. *Levy and Collection of Cess.*—(1) There shall be levied and collected from dealers a Cess at the rate of one per cent on the tax payable by them under sections 6 and 8 of the Kerala Value Added Tax Act, 2003 (30 of 2004) and section 5 and section 7 of the Kerala General Sales Tax Act, 1963 (15 of 1963), to be called the Social Security Cess, to fulfill the commitment of the Government to provide and finance a comprehensive social security scheme.

(2) Notwithstanding anything contained in sub-section (1) no Cess shall be levied in respect of declared goods as defined in section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(3) The Government may, after due appropriation made by the Legislature by law in this behalf, utilise such sums of money of the Social Security Cess for the purposes specified in sub-section (1).

(4) The provisions of section 30 of the Kerala Value Added Tax Act, 2003 (30 of 2004) and section 22 of the Kerala General Sales Tax Act, 1963 (15 of 1963) shall be applicable for the collection of Cess as per sub-section (1).

(5) The provisions regarding the assessment, input tax credit, special rebate and recovery in the Kerala Value Added Tax Act, 2003 and assessment and recovery in the Kerala General Sales Tax Act, 1963 shall *mutatis mutandis* apply to Cess under this section.

7. *Validation.*—Notwithstanding anything contained in the Kerala General Sales Tax Act, 1963 (15 of 1963) and the Kerala Value Added Tax Act, 2003 (30 of 2004), during the period from 1st April, 2008 to the date of publication of this Act, during which the declared provisions contained in the Kerala Finance Bill, 2008 (Bill No. 178 of the XII Kerala Legislative Assembly) were in force, anything done or any action taken by virtue of the said provisions of the said Bill shall be deemed to have been validly done or taken under this Act and no action shall lie against any dealer or authority on the ground of short levy or refund of excess tax, and tax collected or paid by a dealer, if any, shall be paid over to the Government.