

CIRCULAR No.5 /05

Sub: Kerala Value Added Tax Act, 2003(30 of 2004) –
salient features

The Kerala Value Added Tax Act, 2003(30 of 2004) was passed by the Kerala Legislative Assembly in 2003. It received the assent of the President of India on the 10th December, 2004 and was published in the Kerala Gazette Extra ordinary dated As per notification issued in G.O.(P) No.19/05/TD dated 9th February, 2005 and published as SRO.139/2005 in the Kerala Gazette Extraordinary No.315 dated 9th February 2005, the Act came into force with effect from the 1st day of April 2005. By section 7 of the Kerala Finance Act, 2005(10 of 2005), which has been published in the Kerala Gazette Extraordinary No.579 dated 18-3-2005, several amendments have been made in the Kerala Value Added Tax Act mainly to incorporate the various decisions taken by the Empowered Committee of State Finance Ministers from 2003 onwards. The salient features of the Act are discussed below:

2. Section 2 of the Act defines important terms. Terms which were defined under the Kerala General Sales Tax Act, 1963(15 of 1963) and with which the officers are familiar are not discussed here.
 - (i) “Agriculturist” is defined as a person who cultivates land personally for the purpose of agriculture. Company, firm, society including a co-operative society or association of individuals is specifically excluded from the purview of the term.
 - (ii) “Capital goods” means plant, machinery, equipments including pollution/quality control, lab and cold storage equipments used in manufacture, processing, packing or storage of goods in the course of business excluding such goods and civil structures as may be notified. As per notification SRO. NO.324/2005 dated

31st March, 2005, the following items have been kept outside the purview of the term capital goods:

1. Air conditioners
 2. Civil structure and immovable goods or properties.
 3. Vehicles other than goods delivery vehicles.
 4. Office furniture and fixtures and fittings, and office equipments.
 5. Elevators (lift).
 6. Computers other than those used for the purpose in normal business.
 7. All kinds of cranes, earth movers, JCB, Excavators, Road rollers, concrete mixing machine and other similar machinery used in connection with supply of labour and services.
 8. Building materials and fixtures used in construction activities.
 9. Capital goods purchased prior to the date of commencement of the Act.
- (i) “Importer” means a person who obtains or brings any goods from any place outside the state or country whether as a result of purchase or otherwise for the purpose of business.
- (ii) “Input tax” means the tax paid by one registered dealer to another registered dealer on the purchase of goods in the course of business for resale or manufacture of taxable goods or for the execution of works contract or for use as containers or packing material of taxable goods in the state.
- (iii) “Manufacture “ means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and include any process incidental or ancillary to such activities but does not include any process or mode of manufacture as may be prescribed.
- (iv) “Output tax” means the tax charged or chargeable under the act by a registered dealer and includes reverse tax.
- (v) “Reverse tax” means that portion of input tax of any goods for which credit has been availed of but such goods remain unsold at the closure of business or are

used subsequently for any goods other than resale or manufacture of taxable goods or for execution of works contract or use as containers or packing materials of taxable goods within the state.

Eg. (1). A dealer in paint buys paint intended for sale and claim input tax credit in respect of the tax paid on purchase. Later he uses a portion of the paint purchased for painting his own residential building. In respect of the quantity of paint so appropriated for personal purposes he is not eligible for input tax credit and the input tax credit already availed of in relation to the quantity so appropriated would be “reverse tax” in the return period in which such appropriation is made.

(2) A dealer is having goods worth Rs. five lakhs at the closure of his business. Input tax already claimed in respect of such goods will be reverse tax.

(3) Stock worth Rs. ten lakhs in the possession of a dealer is destroyed by fire or otherwise or is damaged and cannot be resold. The input tax already claimed in respect of such goods will be reverse tax.

Rule 15 lays down the procedure for calculation of reverse tax.

(vi) “Turnover” includes even the proceeds of sale by a Company or Firm registered under the Companies Act, 1956 and Indian Partnership Act, 1932 respectively of agricultural produce.

(vii) “Zero rate sale” means the sale of any goods on which no tax is chargeable but in relation to which input tax credit or refund of input tax paid is admissible.

3. Sections 3 and 4 are identical to sections 3 and 4 of the KGST Act and describe the authorities under the Act and also provide for the appointment of officers and the Appellate Tribunal. Section 5 provides for the appointment of the Settlement Commission.

4. Section 6 is the charging section.

a. Under sub-section (1), the liability to tax is on every dealer whose total turnover for a year is not less than ten lakh rupees on his sales or purchase of goods as provided in the Act. This limit is not, however, applicable to importers, casual traders and agents of non-resident dealers who will have to pay tax whatever be their turnover.

- i. Goods included in the first schedule to the Act are completely exempted from tax. Goods included under this category includes Agricultural implements, Aquatic feed, poultry feed and cattle feed, Books meant for reading (Account books , note books etc. will come under 4% category), Journals and periodicals, Cotton and silk yarn in hank (Yarn in cones will be outside the purview of this), Curd, Lussi, Buttermilk & separated milk, Fishnet & Fishnet fabrics, Life saving medicines, Organic manure, Sugar, Tobacco and Textiles, 21 products of Khadi and Village Industries Commission (at the point of sale by the manufacturing unit whose annual turnover does not exceed Rs.twenty five lakhs), Products of Kudumbasree units whose annual turnover does not exceed twenty five lakh rupees etc..
- ii. Goods included in the second schedule are taxable at the rate of 1%. Items included in this schedule include jewellery of gold, silver and platinum group metals, rice, wheat, paddy etc.
- iii. Goods included in the third schedule are taxable at the rate of 4%. Items included in this schedule include medicines, I.T goods included in list A of the schedule, industrial inputs included in list B of the schedule, declared goods other than sugar, Tobacco and textiles (Sugar, Tobacco and Textiles will continue to be exempted under the frist schedule. In the case of transfer of right to use any goods, tax is levied at the rate of four percent irrespective of the schedule in which the goods fall. In the case of medicines the Hon'ble Minister for Finance has announced in the Assembly that a system of payment of tax on the MRP will be introduced. The amendment therefor is expected shortly.
- iv. Goods included in the Fourth schedule are totally outside the purview of the Act. Petrol, High Speed Diesel, Aviation Turbine Fuel, Other motor Spirits, Liquor, Ganjz and Opium are included in this schedule. None of the provisions of this Act will therefore be applicable to those goods and they will

continue to be under the provisions of the Kerala General Sales Tax Act. The sale proceeds of those goods will not be turnover for the purposes of the VAT Act.

- v. Goods, which are not included in any of the schedules to the Act, are taxable at the rate of 12.5%.

Tax is levied at all points of sale or transfer as the case may be. In the case of transfer of goods involved in the execution of works contract where the transfer is in the form of goods, tax will be levied at the rate applicable to the goods under the second or third schedule or at the rate of 12.5%, as the case may be. Where the transfer of goods takes place not in the form of goods but in some other form, tax will be levied at the rate of 12.5%.

- b. Sub-section (2) provides for the levy of purchase tax. Tax is levied under this sub-section where a dealer purchases taxable goods from any person other than a registered dealer. But no tax will be leviable under this sub-section where the seller is a registered dealer even if he is not liable to tax by reason of his turnover being below the taxable limit. Even though the general turnover limit for attracting tax liability is ten lakh rupees, a dealer will be liable to pay purchase tax under sub-section (2) if his total turnover for an year is not less than five lakh rupees.

Eg. A registered dealer A purchases rubber from an agriculturist.

The dealer becomes liable to tax under section 6(2) if his

total turnover is not less than five lakh rupees. If the turnover of dealer A is less than five lakh rupees, he does not become liable to tax under section 6(2). Where another dealer B purchases such rubber from dealer A, he does not become liable to tax under section 6(2) even though the goods has not suffered tax at the hands of dealer A.

- c. Sub-section (5) provides for payment of presumptive tax. The following conditions should be fulfilled if a dealer wants to opt for payment of presumptive tax:

- i. the annual turnover of the dealer should not exceed fifty lakh rupees;
- ii. he should not be an importer or have first taxable sale of goods;
- iii he should not be liable to purchase tax under sub-section (2) of section 6;

The rate of presumptive tax is 1% on the taxable turnover of the dealer. The Hon'ble Minister for Finance has announced in the Legislative Assembly that the rate will be reduced to 0.5%. The amendment to the Act to achieve this is expected shortly.

Illustration:- (1) A dealer having a turnover of forty five lakh rupees in respect of goods included in the First schedule and four lakhs in respect of taxable goods covered by the VAT Act. All his purchases are from registered dealers within the state only. He will be eligible to opt for presumptive tax and will be liable to pay tax @1% on Rs.4 lakhs.

(2) A dealer having a turnover of Rs.30 lakhs in respect of goods included in the first schedule and Rs.ten lakhs in respect of taxable goods purchased from registered dealers within the state. He had effected purchases of taxable goods for Rs.ten thousand from unregistered dealers. Since he becomes liable to tax under section 6(2) in respect of the purchases amounting to Rs.ten thousand he will not be eligible for presumptive tax under section 6(5).

No form has been prescribed for filing option for payment of presumptive tax. A person getting newly registered (including those who are registered dealers under the KGST Act) who wants to opt for presumptive tax can exercise the option by filing the application for registration in form No. 1A. Rules 9 and 10 deals with computation of total and taxable turnover respectively.

5. Section 7 provides that if a dealer allows any trade discount in terms of quantity in goods in relation to any sale effected by him, the quantity so allowed as trade discount shall be deemed to be a sale by the dealer who allow such discount or incentive and a purchase by the dealer who receives such trade discount or incentive and that such sale shall form part of the sale in relation to which such trade discount or incentive is allowed.

Illustration: Dealer **A** sells 100 television sets to another dealer **B** for Rs.15 lakhs and allows a trade discount of five television sets without charging any amount additionally. The five television sets given as trade

discount will also be deemed to be a sale by **A** to **B**. But since **A** has not charged any amount additionally for these 5 television sets, the turnover of **A** in respect of this transaction will be only Rs.15 lakhs. But if it is proved subsequently that the dealer had realized any amount from **B** towards the price of these five television sets either through debit notes or in any other form, that amount will be added to the turnover in respect of the above sale by **A**. But as far as **B** is concerned, the quantity purchased will be 105 units and not 100 units. When **B** effects sales he will have to account for the sales of all these 105 units, unless he allow quantity discount in the above manner.

6. Section 8 provides for the payment of compounded tax. The following categories of dealers are eligible for payment of tax at compounded rates:

- a. Works contractors
- b. Mechanized granite metal crushing units
- c. Dealers in cooked food and beverages
- d. Video cassette or CD lending libraries

In respect of items (ii) and (iv) the scheme of compounded tax is the same as those existed under the KGST Act. In the case of works contractors the rates are as follows:

- i. Where the contractor is not an importer or having first taxable sale : 2% of the whole contract amount (irrespective of the nature of contract)

(b) In other cases: 6% of the whole contract amount. The Hon'ble Minister for Finance has announced in the Legislative Assembly that the rate will be reduced to 4%. The amendment to the Act to achieve this is expected shortly.

The rate under item (b) above will not be available to electrical, refrigeration or air conditioning contracts or contracts relating to supply and installation of plant, machinery, rolling shutters, cranes, hoists, elevators (lifts), escalators, generators, generating sets, transformers, weighing machines, air conditioners and air coolers, deep freezers, laying of all kinds of tiles (except brick tiles), slabs and stones (including marbles). Section 8 does not prohibit a works contractor from opting for the payment of presumptive tax under sub-section (5) of section 6 if he is otherwise eligible.

In the case of cooked food and beverages the rate of compounded tax is one per cent of the taxable turnover. The benefit is not, however, available to a dealer supplying cooked food or beverages to any airline

service company or institution or shipping company for serving in air craft, ships or steamer or served in air craft, ship, and steamer, bar attached hotel or star hotel.

7. Section 10 provides for deduction of tax at source by awarder. Every awarder is expected to deduct the actual tax payable by a contractor from every payment made by him to the contractor, including advance payments and remit it to Government within five days of such deduction. The deduction will be on the basis of a declaration given by the contractor. But the awarder will have to obtain from the contractor quarterly certificates issued by the assessing authority showing the liability of the contractor. However, before making the final payment the awarder will have to obtain a liability certificate in respect of the contractor from the assessing authority.
8. (i) Section 11 provides for granting input tax credit. Input tax credit is the process of deduction of input tax from the output tax.
 - (ii) Input tax credit is available only to a registered dealer other than a dealer paying presumptive tax or compounded tax in respect of the tax paid on the purchases of goods within the state intended:
 1. for resale;
 2. for use in manufacture of taxable goods for sale;
 3. for use in the execution of works contract;
or
 4. for use as containers or as packing materials of taxable goods in the state for sale.
 - (iii) The following categories of dealers are not eligible to claim input tax credit:
 - > unregistered dealer;
 - > dealers paying presumptive tax/compounded tax;
 - > dealers whose certificate of registration is suspended (on the purchases made during the period of suspension);
 - > dealers whose certificate of registration is cancelled;
 - > dealers who are exempted from payment of tax (dealers whose total turnover is below the taxable limit/dealers whose product is exempt from tax)
 - > dealers who transfer the right to use the goods purchased.

(iv) The following purchases also do not qualify for input tax credit:

- > from an un-registered dealer;
- > from a dealer paying presumptive tax/compounded tax;
- > of goods from outside the state;
- > of goods used in the manufacture/processing/packing of goods outside VAT/ exempted from tax;
- > of goods used as fuel in motor vehicles or as stores;
- > from a dealer whose certificate of registration is suspended/cancelled.;
- > not supported by tax invoice in the prescribed form in which the tax is separately charged.

(v) Where a VAT dealer is selling the goods through his selling agents, the selling agent will not be eligible for input tax credit where the principal has claimed input tax credit or vice versa. Input tax credit will also not be allowable in respect of the purchase of goods which remain as closing stock at the time of closure of business or in respect of the purchase of goods used in the manufacture of other goods and the manufactured goods remain as closing stock at the time of closure of business.

(vi) In respect of capital goods also input tax credit is allowable. But input tax credit will be allowed only from the date of commencement of commercial production using the capital goods or from the date from which such capital goods are put to use whichever is earlier. Input tax credit will be allowed in thirty-six equal monthly installments commencing from the dates specified above. No input tax credit will be allowed in respect of capital goods purchased prior to 01.04.05.

(vii) Sub-section (13) of section 11 provides for allowing input tax credit to a registered dealer in respect of tax paid under the KGST Act on the goods held as opening stock on the date of coming into force of the Act. Input tax credit will be allowed subject to the conditions specified under sub-sections (4) to (7) of section 11 and also the conditions stipulated in rule 12. Goods in respect of which bills were issued and entrusted to a carrier prior to 01.04.05 but delivered to the dealer's claiming input tax credit on or after 01.04.05 will be treated as goods purchased prior to 01.04.05 for the purpose of sub-

section (13). Where a dealer submits the statements and other records as stipulated in rule 12, the dealer will be permitted to avail of input tax credit in respect of the opening stock commencing from the return for the month of May 2005 onwards in three equal monthly installments. The assessing authorities receiving the applications for allowing the input tax credit and the statements and other documents shall verify the claim with reference to the records of the dealer for the preceding two years. If any inconsistency is noticed in the claim or if the opening stock value of the goods appears to be inflated or if the dealer had been in the habit of showing accumulation of closing stock, the assessing authority shall report the details to the intelligence wing and the Deputy Commissioner (VAT Audit) for appropriate action.

- (viii) Where the input tax credit to which a dealer has become eligible in a month is more than the output tax payable for the month, the excess input tax credit available to the dealer will be carried over to the subsequent return period for being set off against the output tax for that return period and so on till the end of the year. If at the end of the year there is excess input tax credit such excess credit will be carried forward to the subsequent year. If at the end of the subsequent year also the input tax credit carried forward from the previous year the amount of input tax credit so remaining unadjusted will be refunded to the dealer at the end of the second year.

Illustration: At the end of the year 2005-2006 there is an input tax credit of Rs.five lakhs remaining unadjusted. This will be carried forward to the year 2006-2007. If the total output tax for the year 2006-'07 is only Rs.4.5 lakhs, an amount of Rs.fifty thousand will be refunded at the end of the year 2006-'07. On the other hand, if the output tax for the year 2006-'07 is greater than or equal to Rs.Five lakhs, no refund will be admissible.

9. Section 12 provides for special rebating in respect of purchase tax paid under sub-section(2) of section 6 and also the entry tax paid under section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994(15 of 1994). Special Rebating is allowed when the goods in respect of which purchase tax is paid is subsequently resold or used in the manufacture of taxable goods for sale or used in the execution of works contract or used as containers or packing materials of taxable goods in the state. Since payment of the tax in respect of which special rebating is

claimed is a pre-condition for availing the special rebate, in the case of purchase tax under section 6(2), special rebate can be claimed by a dealer only in the month in which the tax is actually paid and not in the month in which the purchase is made. Where the purchase is made in April 2005, the tax in respect of such purchase becomes payable only along with the return for April to be filed on or before the tenth of May. Special rebate in respect of such purchase can be claimed only in the return for the month of May to be filed in June.

10. Section 13 provides for refund of input tax. Refund is provided for where the goods in respect of which input tax is paid or the taxable goods manufactured out of such goods is sold in the course of export or sold in the course of interstate trade or sent outside the state. Where the goods or the manufactured goods are sent outside the state other wise than by way of interstate trade or export, the refund of input tax will be limited to any amount paid in excess of 4%. Input tax for the purposes of this section would include purchase tax paid under section 6(2), tax paid under the KGST Act in respect of goods held as opening stock on 1-4-2005 in respect which input tax credit is allowed under section 11(13) and also the entry tax paid under section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994. The term "Sale in the course of Export" has the same meaning as under section 5 of the CST Act, 1956.

Illustration: 1. Dealer A in Thrissur makes a sale of goods purchased by him in the State from a VAT dealer to an exporter B in Kochi and files all the documents required by the CST Act and rules. A's sale to B will be exempt as being a sale in the course of export under Article 286 of the Constitution read with section 5(3) of the CST Act and dealer A will be eligible for refund of the input tax paid in respect of the goods which are sold to the exporter.

2. Dealer C purchases goods taxable @12.5% for Rs.one lakh after paying input tax of Rs.12500. C sends the goods to his principal D outside the State. C will be eligible for refund of Rs.8500, i.e. the input tax paid by him in excess of 4%.

Rules 46 and 47 prescribe the procedures for allowing refund in the case of interstate sale/stock transfer and sales in the course of export respectively. While in the case of input tax credit under section 11 the dealers claim the set off at the time of filing the returns and pay the tax

after deducting the input tax credit, in the case of refund under section 13, refund will be allowed only after pre-verification of the genuineness of the claim by the assessing authority. However, refund will be allowed without pre-verification in cases where the dealer claiming refund furnishes bank guarantee as provided under the above rules. Where the dealer submits all the documents required by the rules in support of the claim, the assessing authority has to issue the refund order within three month from the date of submission of the application and the other records. In case of delay interest will be payable by the department which may be recoverable from the officers causing the delay.

However, where any amount is due to any dealer as refund under this section, the assessing authority is free to adjust such amount due as refund towards any tax or other amount due from the dealer under the VAT Act, the KGST Act, CST Act or the Kerala Tax on Entry of Goods into Local Areas Act, as the case may be.

11. Section 14 provides for the reimbursement of tax collected from any foreign diplomatic mission or consulate, U.N or other international body or any consular or diplomatic agent of any mission or the U.N. or such other body. The reimbursement will be made within two weeks from the submission of an application in the form prescribed under Rule 49 along with the invoice or bill evidencing collection of the tax.

12 (a) Section 15 and section 16 deals with registration of dealers. The provisions are identical to the provisions under the KGST Act. Rule 17 prescribes the procedures for granting registration. The turnover limit for compulsory registration is two lakh rupees (Casual traders, importers and agents of non-resident dealers will be liable for registration irrespective of the turnover. The Hon'ble Minister for Finance has announced in the Assembly that the turnover limit will be raised to five lakh rupees. So registration need not be insisted upon in the case of dealers, other than casual traders, importers and agents of non-resident dealers, whose annual turnover is less than five lakh rupees.

(b) In the case of a dealer applying for registration as a presumptive tax dealer no security will be insisted upon and the registration will be granted as expeditiously as possible, once the dealer furnishes the documents prescribed under sub-rules (7) and (8) of rule 17.

(c) In the case of dealers already registered under the provisions of the KGST Act who apply for registration under the VAT Act, submission of application will be required, but no security or registration fee under sub-section (1) of section 16 will be insisted upon. Only the fee for renewal of registration will be insisted upon in such cases. However, where a security had already been furnished under the KGST Act, that may be converted as a security under the provisions of this Act. But where a registration is granted to such dealers under this Act and the assessing authority has reasons to believe that the dealer is likely to make default in payment of tax or other amount due under the Act, the authority will be fully justified in demanding security or additional security as the case may be in accordance with the provisions of section 17 read with rule 19. All assessing authorities shall forward the security already furnished by dealers to the VAT Officers before 15.04.05 for getting the security converted as above. The application to be submitted by such registered dealers shall be in Form No. 1 where the dealer has to pay tax under section 6(1) (i.e. VAT dealer) and in form No.1A where the applicant is eligible for payment of tax under section 6(5). Where the turnover of the applicant for the year 2004-05 was above the limit prescribed under section 6(5) he will not be eligible for payment of presumptive tax.

(d) In the case of dealers carrying on business, who have submitted applications for registration under the KGST Act, where enquiry under section 14 of the KGST Act has been completed, decision on such application will be taken immediately. If registration is to be granted under the KGST Act, such dealers will also be permitted to apply for registration in accordance with the proviso to sub-section (1) of section 16. If the application for registration is rejected for valid reasons, such dealers will not be permitted to apply for registration under the VAT Act such dealers may not be treated as dealers covered by the proviso to sub-section (1) of section 16. They may, if necessary, apply afresh for registration and such cases may be decided on merits and the registration fee payable in such cases will be that prescribed under sub-section (1) of section 16.

(e) The following procedures will be followed in granting registration under the Act:

- i) The applications for registrations will be received by the assessing authorities (including Assistant Commissioners) themselves. They will process the applications and if they are in order send them to the Inspecting Assistant Commissioner of the area.
 - ii) In the case of applications received from Commercial Tax Officers, the Commercial Tax Officer attached to the office of the Inspecting Assistant Commissioner will scrutinize the applications and issue the registration certificate.
 - iii) In the case of applications received from dealers in the Special Circles, the Inspecting Assistant Commissioner concerned will issue the registration certificate.
 - iv) Separate series of registration numbers will be adopted for VAT dealers and dealers opting for presumptive tax /compounded tax.
 - v) The series to be adopted for each office will be communicated from this office shortly. All assessing authorities will forward the R.C. files relating to the dealers already registered under the KGST Act to the VAT officers before 15.04.05.
- 13 Section 17 deals with furnishing of security. The various forms of security are prescribed under Rule 19. The provisions are generally identical to the related provisions under the KGST Act. Rule 19, however stipulates that where a security is furnished in the form a Bond in Form.6, the sureties should be solvent enough for the amount assured. Rule 19 further stipulates that where a person who stood as surety desires to withdraw from the bond, he has to intimate the dealer and the assessing authority in advance and the withdrawal shall be operative only from the date on which a fresh security is furnished by the dealer concerned.
- 14 Section 18 deals with suspension of registration. Rule 20 prescribes the procedures to be followed in the case of suspension of registration. Rule stipulates issue of notice to the dealer before suspension of registration. Further where a registration is suspended the matter has to be published in newspapers and also in the website of the department. The suspension will take effect only from the date of publication.

Since input tax credit under section 11 will be denied to a dealer buying goods from a dealer whose registration is suspended, Deputy Commissioners should ensure that this provision is scrupulously followed.

- 15 Section 19 deals with issue of permits. The provision is identical to the provisions of section 15 of the KGST Act. Rule 21 prescribes the procedures.
- 16 Section 20 deals with filing of returns. Rule 22 prescribes the forms and the procedures for submission of returns. In the case of a VAT dealer monthly return is prescribed. Even though for availing of input tax credit original tax invoice is to be furnished, such original invoice need not be submitted along with the return. They need be furnished only at the time of audit. Along with the return the dealers are expected to submit only the documents prescribed under sub-rules (3) and (6). Rule 23 prescribes the procedures for filing of return by casual traders and rule 24 prescribes the procedures for the submission of quarterly return. Quarterly return is applicable in the case of dealers paying presumptive tax, those dealing exclusively in goods exempted from tax and also by works contractors. Where a cheque presented along with the return is dishonored, the assessing authority has to follow the procedure prescribed under rule 28 to restrain the dealer from availing of the cheque facility for a period of six months or such further time as may be fixed by the authority.
- 17 Section 21 deals with self-assessment. Where return is submitted under Rule 22 along with the documents prescribed, the assessing authority receiving the return shall conduct a preliminary scrutiny to verify whether the return complies with the requirements of the Act and the rules. The scrutiny at this stage will be limited to the correctness of the entries and the conformity of the documents submitted to the entries made in the return. If the entries tally the officer shall issue an acknowledgement to the dealer. Once the officer acknowledges the receipt of the return, the assessment is deemed to have been completed. No separate intimation regarding assessment is required.(Rule 36)
- 18 Section 22 provides that where the return is found to be prima facie incorrect, the officer shall reject the return. Where the return is submitted in person, the officer need not accept such defective return. Where it is received through post or through

electronic means, the assessing authority shall give an intimation regarding rejection of return, within fifteen days from the date of receipt of the return. Where the return is submitted in electronic form, the officer shall follow the procedure prescribed under sub-rule (4) of rule 34. Where the dealer does not file a return or fails to submit a corrected return even after receipt of the notice mentioned under rule 35, the officer shall estimate the turnover and complete the assessment for the return period to the best of its judgment. It should, however, be ensured that in every case where best judgment is resorted to, the estimate is based on some valid data to be gathered by the assessing authority. The previous returns filed by the dealer, information on the business transactions of the dealer gathered from other sources etc., check post data etc. may form the basis of such estimate. In no case should the estimate be based on surmises and assumptions of the authority concerned.

- 19 Section 23 provides for audit. Dy. Commissioner (Audit Assessment) will be the designated officer specified under section 23. Detailed manual is being separately issued on VAT audit. Till the audit manual is ready, the Dy. Commissioner (Audit Assessment) and the audit officers working under his directions shall take instructions from the Commissioner regarding the procedures to be followed in Audit. Procedure for audit visit is laid down under rule 37.
- 20 Section 24 deals with audit assessment in cases where any irregularity is found in audit. The procedure for the assessment is prescribed under rule 39. Where the irregularity found on audit relates to one return period only, and does not disclose any pattern of suppression, the best judgment assessment will be restricted to one return period. Where the irregularity detected is the failure to prove the claim of input tax credit or refund claimed the best judgment assessment will be limited to the disallowance of the claim of input tax credit or refund as the case may be. Where suppression of taxable turnover is detected and a pattern of suppression is established, the best judgment assessment shall be in respect of all the return periods to which the pattern is applicable. Where the best judgment assessment is done after the expiry of the year in which the return periods fall, the assessment shall be made by a single order. But where the return periods fall under two different

years, separate assessments will have to be completed for each year.

- 21 Section 25 deals with assessment of escaped turnover. This corresponds to section 19 of the KGST Act. However, the procedure prescribed under rule 39 will be followed in the case of assessment under section 25 also.
 - 22 Section 26 deals with protective assessment. This provision is identical to section 19C of the KGST Act.
 - 23 Section 27(assessment of legal representatives), section 28(Liability of firms), Section 29(Dissolution of firms or discontinuance of business) are identical to the provisions under the KGST Act.
 - 24 Section 30 deals with collection of tax. Only registered dealers are permitted to collect tax. But unlike the KGST Act, all registered dealers are not authorized to collect tax. Dealers who, even though registered, are not liable to tax under sub-section (1) of section 6 and dealers paying presumptive tax or compounded tax are also not permitted to collect tax.
25. Section 31 deals with payment and recovery of tax. Where any tax or other amount is demanded, the authority concerned has to allow not less than fifteen days to the dealer to make the payment. But this is not applicable in the case of casual traders. Interest on delayed payments has been reduced to 12% simple interest. Related rules are Rules 51, 52, 53 and 54. Rule 51 allows the assessing authority to grant not more than six monthly installments for the payment of any amount demanded on the request of the dealer. Where the request of a dealer is rejected he should be given a reasonable opportunity of being heard.
26. Section 32 authorizes the Government to order, by notification, to defer payment of the whole or any part of the tax payable by any industrial unit in respect of which exemption in respect of the tax payable under the KGST Act, 1963 or the Kerala Surcharge on Taxes Act, 1957 had been granted under the industrial policy of the State. But the exemptions or concessions, if any, granted under notification SRO.1730/93 to industrial units will continue. As per Notification SRO.321 /2005 dated 31-3-2005, the period of deferment and the amount of tax to be deferred shall not exceed the un availed portion of the period and quantum sanctioned to the unit under the earlier notifications. The unit, which wants to avail of this deferment, has to

apply to the Deputy Commissioner of the District concerned (in the case of SSI Units) or to the Dy. Commissioner (General) as the case may be. The amount so deferred shall not attract any interest till the period of deferment is over. Thereafter the amount deferred shall be repaid with 12% interest in sixty equal monthly installments. The amount to be deferred under this section will be the net tax payable by the dealer in accordance with Rule 16.

27. Section 33 which authorizes Government to appoint, by notification any Assistant Commissioner to exercise the functions of a Collector under the Kerala Revenue Recovery Act, 1968 corresponds to section 23AA of the KGST Act. Procedures to be followed in such cases will be the same as communicated in circular No. C1-57179/97/TX dated 10-12-'98 (No.32/98/TX)

28. Section 34(Recovery of penalty), section 35(Further mode of recovery), section 36(Recovery of tax when business is transferred), section 37 (restrictions on transfer of assets), Section 38(Tax payable to be first charge on the property) and section 39(Liability of directors of a Private Company) corresponds to section 24, 25, 26, 26A, 26B and 26C respectively of the KGST Act.

29. Section 40 deals with maintenance of true and correct accounts by dealers. Rule 58 prescribes the various accounts and records to be maintained. Purchase register should contain the details of purchase price and input tax and the sales register should contain the details of sale price and output tax separately. The rule also prescribes the format of the invoices/bills to be issued by various categories of dealers, manufacturers, VAT dealers, presumptive tax/compounded tax dealers etc. This format will not be mandatory for a period of three months from the date of implementation of the rules, but the invoice/bill issued should contain the particulars prescribed. Similarly the number and format of other forms (Delivery note etc.) are also being changed. Until such time the forms are printed, the dealers will be permitted to use the forms prescribed under the KGST Act so as to ensure smooth movement of goods. By notification No. 323/2005 dt.31.03.05 the following forms prescribed under the KGST Rules 1963 have been permitted to be used for a period of 3 months from 01.04.05.

- i) Declaration in form No. 18A
- ii) Delivery note in form No. 26
- iii) Certificate of ownership in form No. 27A

- iv) Transit pass in form No. 27C
- v) Permit in form No. 29
- vi) Notice in form No. 50
- vii) Form of summons in form No. 51

In the case of sales return credit notes are to be issued. Rule 59 prescribes the format of credit notes and debit notes. Deduction will be allowed in respect of sales return only if such sales return is supported by credit notes in the prescribed form. The period of retention of accounts and other records is five years from the expiry of the year to which the assessment relates or two years from the date of disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceedings under the Act connected with such assessment appeal or revision, whichever is later. Rule 62 makes the dealer obtaining any statutory forms from the assessing authority to ensure safe custody of such forms. In cases of loss of any such forms the dealer has to follow the procedure prescribed under rule 62. The Deputy Commissioners have been vested with the power to invalidate such lost forms in accordance with the procedure laid down in the said rule.

30. Section 44 deals with the power of officers to order production of accounts and of inspection of business places and residential accommodation. Rules 63 and 64 lays down the procedures. Even though officers have been vested with the power of inspection and search, it is to be borne in mind that the stem of VAT works on the system of self-assessment, which reposes confidence on dealers. While every care has to be taken to ensure that unscrupulous dealers do not defraud revenue, it is equally important to ensure that in the process of preventing fraud no avoidable harassment is caused to honest dealers. Inspections and searches should therefore be based on proper investigations. Every assessing authority should keep track of the activities of the dealers under its jurisdiction. Every officer of the Intelligence Wing proceeding for inspection or search should keep proper record of the investigations conducted by him and the details gathered through such investigations, which should be available for scrutiny by senior officials, if necessary.

31. Section 45 provides for the purchase of goods to prevent under valuation. This section corresponds to section 28 A of the KGST Act.

Rule 65 stipulates that before ordering the purchase of the goods the person from whom the goods are purchased should be given an opportunity of being heard.

32. Section 46 and section 47 provides for establishment of check post and checking of goods in transit. These sections correspond to sections 29 and 29A of the KGST Act. Related rules are rules 66 and 67. The minimum value of goods for which documents as prescribed have to be carried has been raised to one thousand rupees. Permit for a notified goods is in Form No. 7C. In cases attempt of evasion of tax is suspected in respect of goods under transport, the officer inspecting the vehicle/ vessel has to issue notice to the person in charge to prove the bonafides of the transport. If the officer is satisfied as to the bonafides of the transport, he can release the goods. The rules offer certain special facilities to a dealer holding an electronic identity card. If on the basis of a mobile alert received by such a dealer or on the basis of a telephonic information received from the officer in charge of the notified area, such dealer intimates such officer using the e-mail I.D. furnished by the dealer or the one allotted to the dealer along with the Electronic Identity Card issued to him that the consignment in respect of which such information is received by him is bogus or that it does not relate to him or that the name of the consignor or consignee, as the case may be, shown in the documents accompanying the consignment is not genuine, such officer shall treat the goods as not covered by the documents prescribed, or the consignment as bogus and proceed accordingly under the rules.

33. Section 48 corresponds to section 30B of the KGST Act and deals with the issue of transit pass. Sub-section (4) of the section has been substituted by the Kerala Finance Act, 2005. As per the substituted provision, where goods are transported into the state from another state and there are no proper records as prescribed by section 46 or where the particulars furnished in the documents are found to be false or the consignor or purchaser noted in the documents are found to be bogus or where the transporter fails to prove the genuineness of the documents, it can be presumed that the goods have been sold in the state by the consignor or the person in charge of the goods or the transporter or the owner or the person in charge of the vehicle or the person in charge of the goods or all of them and they shall be jointly and severally liable to pay tax on such sales.

34. Section 49 and 50 deals with confiscation of goods and vehicles and corresponds to section 30E of the KGST Act. The relevant rules are rules 69 and 70
35. Section 49A empowers an officer conducting any inspection, search or seizure under the Act to seek police assistance in case of necessity and thereupon the police office is bound to render necessary assistance. The relevant rule is rule 99.
36. Section 51 (Possession and submission of records by owners of vehicles and vessels), 52 (Submission of returns by forwarding agency), section 53 (Submission of returns by Banks) correspond to section 31, 32 and 33 of the KGST Act.
37. Section 54 provides for furnishing of details by warehousemen and banks when so required by officers for the purposes of any proceeding under the Act.
38. Sections 55 to section 60 deals with appeals and revisions before various authorities including the Appellate tribunal. The procedures are generally similar to those available under the KGST Act. But in the case of an appeal filed against a best judgment completed against a dealer who failed to file return, the appeal will be entertained only if the entire tax assessed is paid. Rules 76 and 77 deals with abatement of proceedings in case of death of appellant/respondents while proceedings are pending before the authorities. Rule 77 deals with setting aside of abatement. Section 61 deals with settlement of cases by the Settlement Commission. Sections 62, 63 and 64 deals with appeals and revisions before the High Court.
39. Section 65 prescribes the fees for various interlocutory petitions filed before various authorities under the Act.
40. Section 66 authorises any authority under the Act to rectify any error apparent from the face of the record of such proceedings. While section 43 of the KGST had restricted application, section 66 of the VAT Act has wide application.
41. Section 67 deals with the power of the authorities under the Act to levy penalty for violation of the various provisions of the Act. The following acts or omissions on the part of any person have also been

made specific offences apart from those which were covered by section 45A of the KGST Act:

1. making any bogus claim of input tax credit or refund;
2. continuing business during the period of suspension of registration;
3. failure to surrender unused statutory Forms and declarations after cancellation of registration;
4. failure to stop any vehicle or vessel when required to do so;
5. abetting the commission of any offence.

42. Section 68 deals with penalty for default of payment of tax. The maximum amount of penalty leviable under this section is the amount of the tax or other amount in arrears. This, being a discretionary power of the assessing authority, should be invoked only in deserving cases.

43. Section 69 deals with imposition of penalty on transporting agencies and contract carriages transporting any goods without any records prescribed under the Act. This section corresponds to section 45B of the KGST Act.

44. Section 70 provides for imposition of penalty by an officer not below the rank of an assessing authority on any person who prevents or obstructs survey, inspection, search of any shop or vehicle or vessel etc. The maximum amount of penalty leviable under this section is twenty five thousand rupees.

45. Section 71 deals with prosecution for various offences. This section corresponds to section 46 of the KGST Act. Section 73 provides for prosecution for abetment.

46. Section 72 deals with penalty for illegal collection of tax. This corresponds to section 46 A of the KGST Act.

47. Section 74 deals with composition of offences. The following offences cannot be compounded:

- i. continuing business during the period of suspension of registration;
- ii. prevention or obstruction of survey, inspection, entry, search, checking of tax invoices or seizure by an officer empowered under the Act;

iii. prevention or obstruction of any vehicle or vessel or of goods transported otherwise or seizure of goods by an officer in charge of a check post.

In these cases the only course open to punish the wrong doer is filing a prosecution, since under clause (j) of sub-section (1) of section 67 penalty can be levied only where the person has acted in contravention of any of the provisions of the Act or the rules for the punishment of which there is no express provision in the Act for payment of penalty or for punishment.

48. Section 83 provides that a micro film of a document or the reproduction of the image or images embodied in such micro film or a facsimile copy of a document; or a statement contained in a document and included in a printed material produced by a computer if the conditions mentioned in sub-section (2) are satisfied in relation to the statement and the computer in question, shall also be deemed to be a document for the purposes of this Act and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

49. Section 84 provides that certain records produced before court by the prosecution shall be presumed to be genuine unless the contrary is proved, subject to the conditions laid down in that section.

50. Section 85 prohibits disclosure of particulars produced before commercial tax authorities. This section is identical to section 54 of the KGST Act. Exception to the general rule includes disclosure of information to an officer of Government of India or the Government of any State or Union Territory where such disclosure is on the basis of the decision of the Empowered Committee.

51. Section 86 corresponds to section 55 of the KGST Act and describes the persons who are entitled to represent any person who is required to appear before authorities under the Act. Any employee authorized under this section shall be a full time employee of the person concerned.

52. Section 88 lays down the various procedures for service of notice to any person under the provisions of the Act. Sending by FAX, e-mail etc has also been included as the modes of service of notice.

53. Section 94 deals with the power of the Commissioner to issue clarification. Corresponding rule is rule 78.

54. Section 98 provides that from the date of commencement of the VAT Act, the KGST Act, 1963 shall have application only in respect of the goods included in the Fourth schedule to the Act. As per sub-section (2) goods taxable under the KGST Act at the point of last purchase in the state, which are held as closing stock on the date preceding the date of coming into force of the VAT Act shall be deemed to have acquired the quality of last purchase under the provisions of the KGST Act on such date and tax levied accordingly section 59 of the KGST Act has also been amended by inserting a new subsection (4) fixing the rate of tax on such goods at the rate of 4 %. Since sub-section (4) starts with a non-obstinate clause, the provisions of section (5) of the KGST Act relating to levy of Addl. Sales Tax will not apply to the said tax. Sub-section (3) of this section authorises the government to permit the use of the Registration number issued under the provisions of the KGST Act and of any form prescribed under the rules till the thirtieth day of June 2005. Until the notifications under this section are issued, the officers will allow the use of the KGST Registration number, delivery note etc. by the dealers for the purposes of the VAT Act.

55. The schedule to the VAT Act has been substituted by the Kerala Finance Act, 2005. HSN (Harmonized System of nomenclature) code numbers have been given against majority of commodities. The general approach regarding classification of commodities is to include items under main heading and include different items coming under the main heading as sub-items. Where under any entry a sub item "Other" appears, that has to be interpreted with reference to the other items included under that entry.

56. The Joint Commissioners and the Deputy Commissioners in all wings of the department will discuss the various provisions of the VAT Act and the Rules and also this circular in the conferences of the officers working under them and issues if any faced by them in the implementation of the Act will be promptly brought to the notice of the undersigned for taking immediate remedial measures. The officers concerned shall forward a copy of the minutes of such meetings also to this office.

57. The Joint Commissioners and all Deputy Commissioners shall acknowledge receipt of this circular.

COMMISSIONER