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State Goods and Services Tax Department
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File No. SGST/667/2024-EID3

Circular No. 18/2024

Sub: Kerala State Goods & Services Tax Department – Kerala Flood Cess-
Non-filing of returns- Adjudication- instructions issued-reg:

Ref: 1. Kerala Finance Act, 2019

2. Kerala Flood Cess Rules, 2019

3. Notification SRO No. 436/2019 dated 29/06/2019

1. The Government of Kerala, with the approval of the GST Council, introduced the Kerala flood Cess through the Kerala Finance Act, 2019. This was implemented to address the reconstruction, rehabilitation and compensation needs arising from the massive floods that occurred in the State of Kerala in August 2018. The flood Cess was levied for two years from 1st August 2019 to 31st July 2021 on intra-state Business-to-Consumer (B2C) transactions of goods or services or both. Additionally, supplies between taxpayers registered in Kerala, not in furtherance of business, are also subject to the levy of Kerala Flood Cess. The rate of Kerala Flood Cess is set at 0.25% for the supply of goods subject to SGST of 1.5% and at 1% for the supply of goods or services, or both, attracting SGST of more than 2.5%.
2. However, it is found that many of the taxpayers liable to remit the Kerala Flood Cess as per Kerala Flood Cess rules has not filed the monthly KFC returns in Form KFC-A or remitted the Cess amount till date.
3. As per the provisions of Kerala Flood Cess Rules, action against the return defaulters are to be initiated in accordance with the provisions of KSGST Act 2017 as provided under Sub Rule(7) of Rule 3 of Kerala flood Cess Rules, 2019. The relevant portion of the said rule is reproduced below:
The provisions of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017) and Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017), and the rules made thereunder, including those relating to definitions, authorities, assessment, audits, non-levy, non-filing of return, short levy, interest, appeals, recovery of tax, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of cess leviable

under sub-rule (1) of rule 2, as they apply in relation to the levy and collection of tax on the intra-State supplies under the said Act or the rules made thereunder.

4. Hence, in order to streamline the adjudication process against non-filers of Kerala flood Cess returns and short payment of Kerala flood Cess, the following instructions are issued;
 - a. In the case of non-filing of Kerala flood Cess returns and/or short payment of Kerala flood cess through the returns filed, the proper officers of taxpayer service vertical shall issue notices to the taxpayers under their jurisdiction and adjudication is to be done in accordance with provisions of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017) and Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) as stipulated in Sub Rule (7) of Rule 3 of Kerala Flood Cess rules, 2019.
 - b. As there is no back-end functionality for adjudication process with respect to Kerala Flood Cess, Common portal cannot be used at any stage (for the purpose of issuing intimations, notices or orders) of adjudication and all such process shall be done manually.
 - c. While issuing communication to the taxpayers, it shall be ensured that all the communications shall contain a computer generated reference number (RFN) as per the instructions in the Circular No 14/2023 dtd 22.7.2023.
 - d. It shall be mentioned in the Notices that, Kerala Flood Cess payments shall be made through the e-treasury portal as per the method specified in the trade circular 18/2023 and no payments shall be made through GST DRC 03 (through GSTN common portal).
 - e. Detailed Guidance Note on issuance of notices/ adjudication with regard to Kerala flood Cess is attached as Annexure-1. The proper officers shall comply with the instructions in the Guidance Note while preparing notices and adjudication.
5. Difficulties faced, if any, in the implementation of this circular may be informed at the earliest.



AJIT PATIL I A S
COMMISSIONER

To
All concerned



Annexure-1

Office of the Commissioner

State Goods and Services Tax Department

Government of Kerala

SGST/667/2024-EID3

18-10-2024

RECOVERY OF KERALA FLOOD CESS – GUIDANCE NOTE

Statutory Framework

Section 14 of the Kerala Finance Act 2019, establishes the statutory framework for “The Kerala Flood Cess”. Subsection (4) of Section 14 of the Act stipulates that the provisions outlined in The Kerala State GST Act 2017 and the rules made thereunder, with necessary modifications, apply to the administration of “The Kerala Flood Cess” within the state.

Rule 8 of the Kerala Flood Cess Rules 2019, along with Section 50 of the Kerala State Goods and Services Tax (SGST) Act 2017, levy of interest, at the rate of 18% per annum, on any outstanding Kerala Flood Cess amount.

Important Instructions

- a. The Taxpayer Services vertical should ensure that the remittance of the demands raised as part of adjudication/assessment with respect to Kerala Flood Cess are made through the e-Treasury portal (<https://etreasury.kerala.gov.in>) by selecting “State Goods and Services Tax Department” under “Departmental Receipts” option. The Head of Accounts against which Kerala Flood Cess remittances are to be made are facilitated in the e-treasury portal as follows:

0040-00-800-89-01-00-00-N-V Collections

0040-00-800-89-02-00-00-N-V Penalty

0040-00-800-89-03-00-00-N-V Interest

- b. Kerala Flood Cess payments should never be made through FORM GST DRC 03.

The aforementioned instructions, should be prominently highlighted in SGST/667/2024-EID3 I/264478/2024 all the correspondences (intimations, notices or orders) with the taxpayers chargeable with Kerala Flood Cess.

- c. The Common Portal should not be used at any stage (for the purpose of issuing intimations, notices or orders) of the adjudication in respect of Kerala Flood Cess.

STEP 1

In cases where a taxpayer with outstanding dues pertaining to Kerala Flood Cess, has either failed to make any payments or has made payments that are insufficient compared to the actual amount owed, despite issuance of Trade Advisory, the Proper Officer may proceed to issue an intimation in DRC01A.

The aforementioned notice shall be served through email, registered post, or local delivery, ensuring proper acknowledgment of receipt (Section 169 of Kerala SGST Act, 2017.)

Upon receipt of the aforementioned notice, if the taxpayers,

1. file any pending monthly and annual Flood Cess returns, discharging their outstanding Flood Cess liability in full with 18% interest and 15% penalty

OR

2. furnishes satisfactory explanation to the Proper Officer, which is accepted thereafter, all the proceedings in respect of the said case shall be deemed to be concluded.

STEP 2

Show Cause Notice under Section 74(1):

In instances where a taxpayer with outstanding Kerala Flood Cess dues, did not make any payments or if the amount paid fell short of the amount actually payable or furnished no explanation or made unsatisfactory explanation, despite the intimation in DRC01A, then the proper Officer shall proceed to issue Show Cause Notice (SCN), under Section 74(1), in respect of such amount not paid or short paid. Detailed split up of the total outstanding dues (Flood cess, Interest and Penalty) should be shown separately in the SCN.

Upon receipt of the Show Cause Notice, served under Section 74 (1), a taxpayer chargeable with Kerala Flood Cess:

- a. Can make payments thereof **through the e-Treasury portal (<https://etreasury.kerala.gov.in>), in the designated Head of Account** and intimate the Adjudicating Authority, within 30 days from the date of issuance of such notice.

[If a taxpayer with outstanding Kerala Flood Cess dues, upon receipt of a Show Cause Notice (SCN), remits the Flood Cess along with 18% interest and a penalty equivalent to 25% of said Cess, and duly notifies the Adjudicating Authority, then upon receipt of such intimation, the Adjudicating Authority shall issue a letter thereby concluding the proceedings concerning the aforementioned Show Cause Notice (SCN), in accordance with Section 74(8).]

OR

- b. can make representation, against such Show Cause Notice (SCN), before the Adjudicating Authority.

Personal Hearing and Adjournments:

As per Section 75(4) an opportunity of hearing shall be granted to the person chargeable with Kerala Flood Cess, where a request is received or where any adverse decision is contemplated under Section 74(9). Personal hearing can be adjourned for reasons to be recorded in writing, when sufficient cause is shown by the person

chargeable with Kerala Flood Cess. Such adjournments can be granted for a maximum of three times.

STEP 3

In instances where, the taxpayer chargeable with Kerala Flood Cess, upon receiving a Show Cause Notice (SCN), fails to settle the outstanding Kerala Flood Cess dues, inclusive of applicable interest and penalty, or makes an insufficient payment, or fails to provide a satisfactory explanation within 30 days of the issuance of SCN, then the Adjudicating Authority, after considering the representation, if any, filed by the said taxpayer, and after providing an opportunity for personal hearing as provided under Section 75(4) shall determine:

- i. The Kerala Flood Cess
- ii. Interest due from such person (Rule 8 of The Kerala Flood Cess Rules, 2019 and Section 50 of the Kerala SGST Act, 2017) and SGST/667/2024-EID3 I/264478/2024
- iii. Penalty equivalent to outstanding Kerala Flood Cess (Rule 9 of Kerala Flood Cess Rules, 2019 and Section 74 of the Kerala SGST Act, 2017)

and shall issue the Order in Original under Section 74 (9),

The Order in Original issued by the Adjudicating Authority shall be a detailed speaking order, explicitly articulating all pertinent facts and the rationale underlying the decision in accordance with Section 74. The outstanding Kerala Flood Cess dues, encompassing Flood Cess, Interest and Penalty shall be distinctly delineated in the Order. Additionally, the order shall prominently state that the payment of Flood Cess dues is to be made through the e- treasury portal (<https://etreasury.kerala.gov.in>), in the designated Head of Account.

Upon receipt of the Order in Original under Section 74 (9), as aforementioned, a taxpayer with outstanding Kerala Flood Cess dues,

- Can settle the same, with a penalty of 50% of the outstanding Flood Cess, if the option is exercised within one month of Order

- After one month, this facility for reduced penalty ceases.

In both the cases, interest at the rate of 18% per annum is applicable.

STEP 4

In accordance with Rule 142(6) of the Kerala State GST Rules 2017, the Order in Original issued by the Adjudicating Authority under Rule 142(5) shall serve as the notice for recovery.

In instances where the outstanding Kerala Flood Cess dues have been recovered in arrears and remitted to the Kerala Treasury by Recovery Officer, then he is obligated to intimate the matter to the concerned Taxpayer Services Division accordingly.



COMMISSIONER