No.C1.150/05/CT

Office of the Commissioner
Commercial Taxes
Thiruvananthapuram
Dated:28..01..06

CIRCULAR No.05/06

Sub:- The Kerala Value Added Tax (Amendment) Act, 2005 the Kerala Value Added Tax (Amendment) ordinance, 2005 – and the KVAT (Amendment) Rules,2005, salient features- reg:

Ref:- 1. Circular No. 5/2005 dated. 04.04.05
2. Circular No.1/2006 dated 04.01.06

The Kerala Value Added Tax Act, 2003 (in this circular referred to as the parent Act) has been amended by the Kerala Value Added Tax (amendment) Act, 2005 (Act 39 of 2005).The bill as passed by the legislative Assembly received the assent of the Governor on the 28th day of August, 2005 and has been published as per notification No. 13275/Leg.A2/2005/Law dated. 28.08.2005 in the Kerala Gazette Extraordinary No. 2006dated 28th August 2005. In the light of these amendments the Kerala Value Added Tax Rules, 2005 have also been amended as per SRO No.1122 published in extraordinary gazette No.2827 Dated.31.12.'05

2. The salient features of the amendment Act and Rules are discussed below:

2.01 The amendment Act takes effect from 01.04.2005. But as per section 24 of the Act where the rate of tax in respect of any goods has been enhanced as a result of the amendments, such enhancement shall be applicable only from the date of such amendment. Where the rate of tax is reduced (w.e.f 01.04.2005) and the selling dealer had collected tax at the higher rate, which was applicable on the date of such sale, such collection shall be deemed to have been validly collected and the selling dealer shall be liable to pay the tax so collected to government. So where a dealer had purchased any such goods after paying tax at the higher rate, he will be eligible for input tax credit inrespect of such tax paid at the higher rate. But where there is no change in the rate of tax because of this amendment and the selling dealer had collected tax at a rate higher than that applicable to such goods, such collection will be illegal and the buying dealer will not be eligible for input tax credit for the amount paid in excess of the applicable rate.

2.02 By section 2 of the Amendment Act, section 2 of the parent Act has been amended, (a) Amendments to the definitions of the terms "awarder", "contractor" and "prevailing market price", are intended to make the provisions clear.

(b) The definition of the term "capital goods" has been amended to make the term applicable to goods of the description given in clause (x) of section 2 of the parent Act, the value of which exceeds such value to be prescribed. By clause (ab) of Rule 2 of the KVAT Rules, the limit has been fixed as five lakh rupees. This does not mean that

goods of the description given in clause (x) of section 2 of the parent Act the value of which is five lakhs rupees or less will not be eligible for input tax credit. As per clause (xxiii) of the parent Act, as substituted by the Amendment Act, "input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business and includes the tax paid on the purchase of materials for the research and development in relation to any goods. The tax paid on the above goods will also come under the definition of the term "input tax" and will be eligible for input tax credit under sub-section (1) or sub-section (3) of section 11, as the case may be.

(c) The definition of the term "importer" has been amended to restrict its application to a dealer who brings taxable goods from outside the State only.

(d)The definition of the term "turnover" has been amended .-

(i) to treat the sale proceeds of agricultural produces of a society (including a co-operative society) or association of individuals, whether incorporated or not, as turnover

Where a dealer holding a rubber plantation enters into a contract with another person for the slaughter tapping and sale of rubber trees, the agreed amount would include receipt for the sale of rubber latex and also that of the rubber tree. Where the contract is silent about the prices of rubber latex and trees, the assessing authority (including the audit officers) shall apportion the amount in the ratio 40 :60, 40 % being the proceeds of rubber latex and 60 % that of the rubber trees.

(ii) to provide that discount allowed on the price in respect of any sale will be excluded from turnover only if the discount is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount.

(iii) to provide that cess leviable under the Rubber Act, 1947 shall form part of the turnover of rubber.

Where a dealer sells rubber, the seller cannot collect the cess amount from buyer since cess will be actually paid only by the manufacturers. But the cess amount will be notionally included in the turnover. The seller will have to collect the tax on the cess amount from the buyers. So in the sale bill relating to the sale of 1000 Kg. of rubber, the invoice bill be as follows.

Rubber 1000 Kg @ Rs.50	:	50000
VAT 4%	:	2000
Tax @ 4% on cess (100 x 1.5)	:	60
Total	:	52060

But, while filing the return, the dealer will have to include the cess amount Rs.1500/- also in the total turnover. The total turnover will be Rs.52060 + Rs.1500 = Rs.53560/- and the taxable turnover will be Rs.53560 – 2060 = Rs.51500/-.

(iv) to provide that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.

Eg:- Dealer 'X' purchases Cement @ Rs.300/- per bag from dealer 'Y'. He sells the cement @ Rs.280/- per bag, but receives an amount of Rs.30/- per bag from "Y" or any other person. The amount of Rs. 30/- per bag will form part of the turnover of 'Y'.

Rule 9 has been amended –

(1) To provide that the amount for which goods included in the fourth schedule are sold by a dealer shall not be included in the total turnover.

(2) To provide that in the case of annual maintenance contract the turnover shall be calculated as follows: -

a)where the goods transferred in the execution of the contract are ascerta-inable from the accounts of the dealer:	Purchase value of the goods + G.P conceded by the dealer (this shall not however exceed the total amount of the contract).
(b) where the details are not so ascerta-inable:	50 % of the amount of the contract

(3) To provide for the computation of turnover in respect of works contract (this is being discussed separately)

(4) To provide that the deduction from the total turnover in respect of amounts allowed as discount shall be that allowed in respect of sales effected during the period to which the return relates and is allowed as per the regular practice in the trade.

The rule does not permit a dealer to revise the claim of deduction in respect of discount made during a return period subsequently so as to enhance the discount.

Rule 10 relating to computation of taxable turnover has also undergone substantial changes which are as follows:-

(a) Where a principal claims deduction from the total turnover in respect of turnover on which agent has paid tax or vice versa, the agent or the principal, as the case may be, has to obtain a declaration in Form No. 25F from the other party.

(b) Deduction is allowed in respect of amount for which used motor vehicle is purchased in the state subject to the following conditions.-

(i) the used motor vehicle is one which was originally registered under the Motor Vehicles Act, 1988 (Central Act 59 of 1988)

(ii) tax was paid under the Act or under the Kerala General Sales Tax Act, 1963 (15 of 1963) in respect of the sale of such vehicle at the time of registration.

(iii) the dealer claiming such deduction has not collected output tax on the entire sale price of such used motor vehicle.

(c) Where a dealer purchases medicines from a dealer who has paid tax on MRP on such goods, exemption is available to the buying dealer. The dealer claiming such exemption has to furnish the declaration prescribed under clause (k) of Rule10.

2.03 By section 3 of the Amendment Act, Section 6 of the principal Act has been amended. The following are the amendments made in section 6.

(1). Sub-section (1) has been amended –

(a) to make dealers in jewellery of gold, silver, and platinum group metals or silver articles, contractors, State and Central Government, Govt. of Union terrortry and any department of such government, Local Authorities and autonomous bodies liable to tax irrespective of total turnover.

(b) To provide that the liability to pay tax shall be on the taxable turnover

(c) To authorize Government to notify list of goods taxable @12.5 percent. The list is being separately notified.

(d) To substitute clause (f) of sub-section (1) of section 6. As per this amendment, the rate of tax applicable to the goods involved in the execution of works contract, where the transfer is not in the form of goods but in some other form shall be-

(i) where the goods incorporated in the work are separately ascertainable, at the rates applicable to the goods; and

(ii)where the goods incorporated in the work are not separately ascertainable, at the rate of 12.5 per cent at all points of sale;"

In order to attract clause (i) above it is not necessary that the goods incorporated in the work should be physically identifiable even after the completion of work. What is required is only that the dealer's account should disclose the details of purchase and appropriation of each item of goods which are appropriated to the works contract. Rule 9 has been amended to provide that the turnover in relation to a works contract in which the transfer of property in goods take place not in the form of goods, but in some other forms, shall be the value of goods at the time of incorporation in the works contract. Sub-rule (3) of Rule 9, as substituted by the amendment rules, lays down the procedure for arriving at the value of the goods transferred in the execution of works contract. Where the goods are incorporated in the work after processing, expenses the incurred for processing the materials to convert them to the form in which they are incorporated in to the contract shall also be added to the purchase value of the goods.

Eg: 1. Dealer "A" undertakes retreading of tyres entrusted to him by the customers. For the purpose of execution of the contract "A" purchases tread rubber, chemicals etc. "A" keeps separate detailed accounts of each item purchased and appropriated to the contract. Since the materials are appropriated to the contract without any transformation, the turnover in respect of the contract would be the total of the turnover in respect of the tread rubber, chemicals etc arrived at by adding gross profit to the purchase value of those items and the turnover of tread rubber and chemicals will be taxed at the rate applicable to each.

Eg: 2. A printing press `P' undertakes the printing of books for an amount of Rs. 50 lakhs for book publisher `B'. The entire paper required for the purpose is supplied by B and the value thereof is not included in the contract amount of Rs. 50lakhs. P uses ink for Rs. 8 lakhs and other chemicals for Rs. two lakhs for the printing. P keeps correct account of ink and the chemicals used. The gross profit conceded by P is ten percent. The taxable turnover of P will be 110 % of Rs. 10 lakhs ie Rs. 11 lakhs. Since ink and the chemicals used are taxable @ 4%, the entire taxable turnover of Rs. 11 lakhs will be taxed @ 4 %. This will be payable even if the printed material is an item included in the first schedule.

But if the contractor supplies the entire materials required for executing the contract, what the contractor supplies will be a finished product and the entire contractual receipt will be the turnover of the contractor for the sale of goods and the contract will cease to be a works contract. The liability in such cases will depend on the taxability of the output (printed material).

If the turnover cannot be arrived at in accordance with clause (a) of sub-rule (3), as substituted, the turnover in respect of works contract may be arrived at after deducting the labour and other charges from the total contract amount following the procedure laid down under clause (b) of the said sub-rule.

Eg: 3- In example 2, P does not keep any accounts for the purchase of ink and chemicals, but only have details of amount received, the turnover of `P' will be arrived at as follows:

Contract receipt : Rs. 50 lakhs
Labour (maximum percentage
allowable under Rule 9)-30 % : Rs. 15 ,,
Turnover of works contract : Rs. 35 ,,
This will be taxed @ 12.5 %.

In cases where the contract is supply and installation of any machinery, equipment or any other system, where the goods involved are transferred in the knocked down condition (un assembled form) and skill and labour employed for installation is only incidental to the supply of such goods, no amount need be allowed deduction as labour charges, vide the explanation under sub-rule (4) of Rule 9. As per sub-clause (ii) of clause (f) of sub-section (1) of section 6 newly substituted, where the goods incorporated in the work are not so separately ascertainable, the rate of tax will be 12. 5 %.

(e) New provisos have been added to sub-section (1).-

(i) The first proviso so inserted provides that where the sale is to the Administrator, Union Territory of Lakshadweep, Laccadive Co-operative Marketing Federation, Kozhikode or the Lakshadweep Harbour Works and registered dealers certified by the Administrator, Union Territory of Lakshadweep, the tax payable under clause (d) of sub-section (1) of section 6 shall be at the rate of four per cent, subject to such conditions as may be

prescribed. Rule 12C newly inserted requires every dealer who claims reduction in rate of tax under this proviso to obtain a declaration in form No. 42 signed and sealed by the buyer along with copy of the shipping bill duly attested by the port authorities.

(ii) The second proviso newly inserted provides that a bar attached hotel, as defined under explanation to clause (c) of section 8 or a dealer in petroleum products shall be liable to pay tax under this sub-section if his total turnover under this Act and the total turnover under the Kerala General Sales Tax Act, 1963 (15 of 1963) together is not less than the limit specified under this sub-section. The turnover under the KGST Act will be reckoned only for the purpose of deciding whether a bar attached hotel is liable to tax under section 6(1). The said turnover will not be included in the total turnover of the dealer for any other purpose since sub-section (3)of section 6 newly inserted specifically provide that goods specified in the fourth schedule shall be out side the purview of the Act. The proviso newly inserted to sub-rule(1) of rule 9 also specifically provides that the amount for which goods included in the fourth schedule are sold by a dealer shall not be included in the total turnover. So, even though a dealer in petroleum products will be liable to tax in respect of the petroleum products covered by the KVAT Act even if the total turnover in respect of such goods is below Rs. 10 lakhs, provided his total turnover under the VAT Act and total turnover under the KGST Act taken together is above the taxable limit prescribed under Section 6(1). But, if the turnover in respect of petroleum products covered by the VAT Act is Rs. 20 lakhs and the turnover of petroleum products in the fourth schedule to which the provisions of the KGST Act are applicable comes to Rs. 50 lakhs, such dealer will not become ineligible to opt for the payment of presumptive tax under sub-section (5) of section 6 merely for the reason that his total turnover under the VAT Act and that under the KGST Act together comes to more than Rs. 50 lakhs. Since the total turnover under VAT Act is only Rs. 20 lakhs, the dealer will be eligible for payment of presumptive tax under section 6(5) provided the other conditions stipulated under that sub-section are full filled.

(iii) The third proviso stipulates that where the total turnover of a dealer, other than an importer or casual trader or agent of a non-resident dealer or dealer in jewellery of gold, silver and platinum group metals and silver articles, or contractor, exceeds ten lakhs rupees for the first time during the course of an year, such dealer shall be liable to pay tax under sub-section(1) only on the turnover in excess of ten lakh rupees; but he shall be liable to pay tax irrespective of the total turnover in any subsequent year :

Eg:- The total turnover of a dealer (other than the category mentioned in the proviso) for the year 2005-06 is only Rs. 6 lakhs. Since this is below the taxable limit, he is exempt from tax. If his total turnover during the year 2006-07 reaches Rs. 10 lakhs during July 2006, he will not be liable to tax for the turnover upto Rs. 10 lakhs. If his total turnover for the year 2006-07 is Rs. 20 lakhs, he will be liable to tax only on Rs. 10 lakhs ie. the turnover in excess of Rs. 10 lakhs. But during the year 2007-08, even if his total turnover is below Rs. 10 lakhs, he will be liable to tax on the entire taxable turnover, irrespective of the total turnover.

(iv) The fourth proviso stipulates that in respect of works contracts executed under the Sampurna Gramin Rosghar Yojana or the beneficiary committees using the Member of Parliament/Member of Legislative Assembly Funds or Natural Calamity Relief Funds or Sarva Siksha Abhiyan Funds, where the total amount in respect of individual contract does not

exceed ten lakhs rupees, the tax payable under clause (f) of sub-section (1) shall be only four per cent.

(v)A fifth proviso has been inserted by the Kerala VAT Amendment ordinance 2005.As per this where the sale is to or by the military, Naval, Air force and NCC Canteen and the Canteen stores department , tax payable under clause (a) or (d) of sub-section (1) of section 6 shall be half the rate applicable to such goods. This is subject to conditions and restrictions prescribed. Sub-rule (3) of Rule 12C provides that every dealer who makes any sale of goods to any Military, Naval, Air Force or NCC Canteen and Canteen Stores Department under the fifth proviso to sub-section (1) of section 6 shall obtain a declaration in **form No. 45** duly signed and sealed by the buyer and produce, on demand, for verification by any authority under the Act.

(2) A new sub-section (1A) has been inserted as per which -

(a) where a dealer whose total turnover for a year is below the limit specified in sub-section (1) collects tax under section 30 on his sales, he shall, whatever be his total turnover for the year, be liable to pay tax under sub-section (1) on the taxable turnover for the year.

(b) Where the sale of any goods is exempted at the point of sale by any dealer, such dealer is given an option to collect and pay tax on his sales.

Eg:- 1. The total turnover of a dealer for the year 2005-06 is Rs. 7 lakhs. In the normal course he is not liable to tax. But, if he collects tax on his sale, he shall be liable to tax irrespective of the total turnover.

Eg:- 2.In the case of Khadi and Village Industrial Units the 21 items coming under item 55 of the first schedule is exempt when the sale is made by the manufacturing units approved by the Kerala Khadi and Village Industries Board. The industrial units which are eligible for exemption can opt for payment of tax in respect of the sale of such goods.

The option to be filed by such dealers is in **Form No. 1F**. Rule 10A provides that where the dealer files the application in **Form No 1F** and the assessing authority acknowledges the receipt of such application, the option shall be deemed to have been accepted.

(3)Sub-section (2) of section 6 has been substituted. There is no change regarding the tax liability of a dealer buying taxable goods from any person other than a registered dealer. A new provision has been incorporated in section 6(2) whereby tax liability is attracted where taxable goods are purchased from any registered dealer other than a dealer liable to tax under the Act and the goods are despatched to any place outside the state otherwise than by way of sale in the course of interstate trade or export. But the maximum rate leviable under this clause shall not exceed four per cent. The liability under this sub-section will be attracted only if the total turnover of the dealer is Rs. 5 lakhs or more.

Eg:- 1. A dealer makes purchases of rubber worth Rs. 2.5 lakhs from growers and sells the rubber for Rs. 3 lakhs. His total turnover is therefore Rs.5.5 lakhs . Since the total turnover is not less than Rs. 5 lakhs, he is liable to purchase tax under section 6(2) on the

purchase value of Rs. 2.5 lakhs. But since his total turnover is only Rs. 5.5 lakhs he is not liable to pay tax on the sales turnover of rubber.

Eg.2 Dealer 'X' purchases pepper for Rs. 1 lakh from a registered dealer "Y" whose total turnover is less than Rs. 10 lakhs. Since the turnover of "Y' is less than Rs. 10 lakhs 'Y' is not liable to tax on the sale of pepper amounting to Rs. 1 lakh made to 'X'. 'X' sends the pepper purchased by him to Karnataka by way of stock transfer. 'X' is liable to pay purchase tax on Rs. 1 lakh, being the purchase effected from a dealer not liable to tax @ 4 %.

However , where a dealer running an industrial unit also runs a non business organisation, clause (a) of sub section (2) of section 6 will not be attracted in respect of the purchases of goods made for the purpose of the non-business organisation.

Eg:- A charitable institution runs an orphanage and also an industrial undertaking, the profit of which are utlised for running the orphanage. In respect of any purchase made from unregistered dealers for the purpose of the industrial undertaking section 6(2) will be attracted. But where such purchases is for the purpose of the orphanage (materials for preparing food for the inmates etc) section 6(2) will not be attracted. VAT paid on purchases made for the use of such orphanage will not be eligible for input tax credit against the output tax of the industrial undertaking.

(4) Sub-section (5) of section 6 has been substituted. The sub-section permits a registered dealer whose total turnover for a year is below fifty lakh rupees, to pay (as his option) tax at the rate of half per cent of the turnover of sale of taxable goods as presumptive tax instead of paying tax under sub-section (1). But the following categories of dealers cannot opt for payment of presumptive tax:

(a) an importer; or

(b)a dealer making any sale in the course of

interstate trade or commerce or export; or

(c) a dealer registered under the Central Sales Tax

Act,1956(Central Act 74 of 1956); or

(d) a dealer effecting first taxable sale of goods within the State; or

(e) a dealer covered by sub-section (1A); or

(f) a contractor,

The term "first taxable sale" is defined to mean the sale of taxable goods effected by a registered dealer immediately after the import of such goods into the State or its manufacture in the State as the case may be, but shall not include the sale of goods in respect of which tax under section 5 or under sub-section (4) of section 59 of the Kerala General Sales Tax Act 1963 (15 of 1963) had been paid and which are held as opening stock on the date of coming into force of the Act. This definition is applicable only for the purposes of sub-section (5) of section 6 and also section 8 ie where a dealer registered under the KGST Act, as on 31.03.05 was holding only stock of goods which had suffered tax under the KGST Act and sells the goods after 01.04.05, he will not be treated as making a "first taxable sale" for the purpose of sub-section (5).

This provision is also made applicable to a dealer holding stock of goods purchased interstate if the entire goods purchased interstate are sold and tax under section 6(1)is paid on such sales and the dealer gets his CST Registration cancelled. In such cases the dealer will be eligible to opt for payment of presumptive tax from the beginning of the quarter subsequent to that in which the interstate purchased goods are sold out and the CST registration is cancelled. However, if the turnover of dealer during the previous year whether under the KGST Act or under this Act had exceeded fifty lakh rupees, he will not be eligible to opt for payment of presumptive tax

Eg**:-** 1. On 01.04.05 dealer 'A' was having a stock worth Rs.1 lakh of goods purchased interstate. His total turnover under the KGST Act during 2004-05 was Rs. 40 lakhs. Even though the total turnover for the year 2004-05 did not reach Rs. 50 lakhs, he is not eligible to opt for payment of presumptive tax because of the holding of stock of goods purchased interstate. Suppose he disposes of the entire stock of interstate purchased goods by the 15th of Oct. 2005,and also gets his CST Registration cancelled by that date, he will be eligible to opt for presumptive tax w.e.f 1st day of Jan. 2006, provided the other conditions of sub-section (5) section 6 are satisfied.

Eg: 2. The total turnover of a dealer under the KGST Act during the year 2004-05 was Rs. 60 lakhs. He does not have CST registration, nor does he make any import of taxable goods. He expects to have only a turnover of Rs. 40 lakhs during 2005-06. He will not be eligible to opt for payment of tax under section 6(5) for the year 2005-06.

The prohibition on dealers registered as VAT dealers from opting for payment of presumptive tax unless his total turnover continues to be below Rs. 50 lakhs consecutively for 3 years has been taken away. So a dealer who has been registered as a VAT dealer can change over to the presumptive tax category if he satisfied the requirement of sub-section(5)of section 6. However such permission may be granted only from the beginning of the next quarter.

(5) A new sub-section (7) has been inserted where by-

(1). any authorised retail or wholesale distributor dealing exclusively in rationed articles namely, rice, wheat and kerosene under the Kerala Rationing Order, 1966 shall not be liable to pay tax on the turnover of such goods;

(2) sale of any industrial inputs, plant and machinery including components, spares, tools and consumables in relation thereto to any industrial unit situated in any Special Economic Zone in the State for use in the manufacture of other goods shall be exempt from tax. Special Economic Zone means a Special Economic Zone approved and notified as such by the Central Government and includes an existing Special Economic Zone.

Rule 12C (2)newly inserted, stipulates that any dealer who makes a sale to an industrial units in any special economic zone has to declaration in Form No. 43 from the buyer. The declaration so obtained need not be filed along with return but the same should be available with the dealer for verification as when an demanded.

2.04 Section 8 of the principal Act has been amended by section 4 of the amendment Act. As per the amended provisions the following are the schemes for payment of compounded tax:

(1) works contract-

(a) 2 % of the whole contract amount subject to the following conditions :

(i) The contractor does not have CST registration

(ii) He is not having first taxable sale

(iii) Purchase tax under section 6(2), if any, has to be paid

(iv) Does not apply to works contract in which transfer of materials is in the form of goods

(b) 4 % of the whole contract amount, subject to the following conditions:

(i) 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 frozen laying of all kinds of tiles (except brick tiles) slabs and stones (including marble) are not eligible. But, if any of these work is executed as part of a composite contract for construction of building, the contract will be eligible for compounding at the rate of 4 %, vide explanation III to clause (a) of section 8.

(ii) Does not apply to works contract in which transfer of materials is in the form of goods.

Compounding at 2 % will be available even to works contract made in-eligible for compounding at the rate of 4% if the contract satisfies the conditions stipulated under item (1) of clause (a) of section 8. The term "whole contract amount" will not include amount for which sub-contract is given, if the sub-contractor is a registered dealer and the contractor claiming deduction furnishes a certificate in **Form No. 20 H.**There may be cases where the entire contract may be given as sub-contract for a lesser amount. This has to be viewed in the same manner as the case of a dealer(A) entering into contract with another dealer(B) for the supply of goods for an amount(Rs.1 lakh) and in order to comply with the terms of that contract placing orders with a third dealer(C) for the supply of goods at a lower price(say Rs.80,000/-) directly to the ultimate buyer(B). Two sales are involved, one by the first supplier(C) to the intermediary dealer(A) and the second sale by the intermediary dealer(A) to the ultimate buyer(B). Both sales will be taxable, the intermediary dealer (A) being liable to tax on the profit margin (Rs.20,000/-) only. This principle will equally apply to the case of a Works Contractor in the light of the decision of the Hon'ble Supreme Court in second Gannon Dunkerley's case (88 STC 204), where the court held that a works contractor stands in the same footing as that of a trader, with respect to the goods transferred in the execution of works contract. The principal contractor will be liable to tax on the margin taken by him to the extent it relates to the transfer of goods involved in the execution of such contract.

Eg. 1. Company `C' entrusts the construction of a Commercial building complex for Rs.10 crores to `W', a works contractor. `W' in turn entrusts the entire work to a Sub-Contractor `S' for Rs.8 crores. There is no contract between `C' and `S'. When the construction

is completed, `S' transfers the goods involved in the work not to `C' direct, but to `W', who in turn will transfer the goods involved to `C' after taking a profit. If the transfer value of the goods involved in the execution of the works contract by the sub contractor `S' is Rs.6 crores, `S' will collect tax on Rs.6 crores from `W'. On getting the work executed by `S', `W' transfers the goods to `A', after taking a profit. Since the profit works out to 25 % [(10-8) x 100/8] the sales turnover of `W' in respect of his sale to `C' will be 125 % of Rs.6 crores ie Rs.7.25 crores. `W' will have to charge tax on Rs.7.25 crores and take input tax credit for the tax paid to `S'.

Eg. 2. If in the above example, both contractors opt for payment of compounded tax, `W' will be entitled, under Explanation II to clause (a) of section 8, to deduct the amount given as Sub-contract (provided `S' is a registered dealer liable to tax) and pays tax on Rs.2 crores. `S' will pay compounded tax on Rs.8 crores.

As per the amendments made in Rule 11, a contractor can file a single option in respect of two or more contracts. The option is to be filed within thirty days from the date on which the contract is concluded.

(c) Compounding at the rates specified under sub-section (7) or (7A) of section 7 of the KGST Act .

Under the KGST Act, three different rates were prescribed for payment of compounded tax in respect of works contract:

Civil Contract – 2 %

Other contracts-

(1) Where the contract amount did not exceed Rs. 50 lakhs : 5%

(2) Others: 70 % of the rate specified under the fourth schedule to the KGST Act.

As per item (iii) of clause (a) of section 8 newly inserted, any contractor who had opted for payment of tax in accordance with the provisions of sub-section (7) or sub-section (7A) of section 7 of the Kerala General Sales Tax Act, 1963 (15 of 1963) in respect of any works contract prior to the date of coming into force of this Act, part of which remains to be executed on such date, such contractor may continue to pay tax in respect of the transfer of goods involved in the unexecuted portion of such contracts, at the rate specified in sub-section (7) or sub-section (7A) of the said Act. Sub-section (8) of section 7 of the KGST Act, permits a Rule a contractor to opt for compounding either by making an application to the assessing authority or by making an express provision in the agreement for the contract. So,if any contractor opts for compounding by any of these methods, he will be eligible for payment of compounded

tax under item (iii) of clause (a) of section 8. Since the rate under the KGST Act is adopted, Addl. Sales Tax will also apply to such rates, ie in the case of civil contract the rate of tax will be 2 % + 15 % of 2 % (ie. 2.3 %). No purchase tax under section 6(2) will be payable by such contractors. This category of contractors also have to file an option for compounding in accordance with Rule 11.

Eg:- 1. A contractor enters into a contract for Centralised Air conditioning of a new building for Rs. 10 lakhs. He purchases the entire materials required for the work from VAT dealers in Kerala He does not have CST registration. He is eligible for payment of compounded tax at 2 %.

2. In the above contract he purchases materials taxable at the rate of 4 %, worth Rs. 10,000/- from un-registered dealers. He will be eligible for payment of compounded tax and his tax liability will be 2 % of Rs. 10 lakhs + 4 % of Rs. 10,000/- .

3. If in example 1 the contractor brings part of the goods from outside the state, he will not be eligible for compounding at the rate of 2% but he can opt for payment of compounded tax @ 4 % under item (ii) of clause (a) of section 8.

4. A contractor 'X' enters into a contract for construction of a building complex for Rs. 5 crores. The contract involves all types of works including Electrification, Air-conditioning, providing lifts, laying of tiles etc. He brings part of the goods required for the work from outside the state against C Form. There is no sub-contract. Sand and bricks required for the work are purchased from un-registered dealers. The contractor will be eligible for opting for the payment of compounded tax at the rate of 4 %. No tax under section 6(2) will be payable on the purchase of sand and bricks.

5. If in example 4, contractor 'X' gives the works relating to Air conditioning, installation of lifts, electrification and laying of tiles, marble etc., to another contractor 'Y' as sub-contract for Rs. 2 crores, contractor 'X' will be eligible for opting for compounding for an amount of Rs. 3 crores (Rs.5 crores- Rs. 2 Crores) provided contractor 'Y' is a registered dealer liable to tax and 'Y' furnishes a certificate in **Form No. 20H** to 'X'. But 'Y' will not be eligible for opting for payment of compounded tax in respect of the amount of Rs. 2 crores; he will have to pay tax in accordance with clause (f) of sub-section (1) of section 6.

6. A contractor "C" had entered into a contract with the Kerala P.W.D for the construction of office complex for Rs. 3 crores. The agreement for the contract entered into with the Kerala P.W.D had stipulated that the dealer would be paying compounded tax under section 7 of the KGST Act. The work was started on 15th of March, 2005 and is continued during the year 2005-06. The work is expected to be completed by the end of June 2006. He purchases materials like sand and bricks from un-registered dealer. He is holding CST registration and brings electrical goods , tiles, marbles etc. from outside the state against C form. The contractor will be eligible to continue payment of compounded tax @ 2.3 %. No purchase tax under section 6(2) will be payable on the purchases made from un-registered dealers.

(2) Cooked food:- Clause (c) of section 8 relating to compounding of tax in respect of cooked food has been amended. Two different schemes have been provided for, for the payment of compounded tax in respect of cooked food:

(i) Item (i) of clause (c) prescribes a rate of 0.5% of the turnover of cooked food and beverages prepared by the dealer. This is not available to the following categories of dealers:

(a) dealers supplying cooked food or beverages to airline service company or institution or shipping company for serving in air craft, ships or steamer ;

(b)dealers serving cooked food in air craft, ship, steamer, bar attached hotel or star hotel

The term "Bar attached hotel" has been defined by the Explanation under item (i) of clause (c). However, hotel or restaurant (other than star hotel) which is licensed to serve only beer has been taken out of the purview of the term "Bar attached hotel". So in respect of cooked food served in beer parlour (not being a star hotel) also payment of compounded tax @ 0.5% can be permitted.

(ii) Item (ii) of clause (c) newly inserted permits bar attached hotels (excluding star hotels of or above three star, club or heritage hotel) to pay compounded tax. For the purposes of this item, the turnover of cooked food served by the eligible categories of dealers is calculated at 15% of the turnover of foreign liquor estimated under section 7 of the KGST Act. Under section 7 of the KGST Act bar attached hotels are permitted to pay turnover tax on foreign liquor at compounded rates. For this purpose the turnover of foreign liquor is estimated at 140% of the purchase value of liquor where the Bar attached hotel is situated within the area of a Municipal corporation or a municipality and at 135% of such purchase value where the Bar attached hotel is situated in any other place. A dealer opting for payment of compounded tax will have to pay 12.5% on the turnover of cooked food as estimated above. Government is authorised to prescribe any conditions or restrictions for granting the permission to pay the compounded tax. As per sub-rule (5) of Rule 11 newly inserted, where a bar attached hotel which became eligible for the payment of compounded tax as per the new amendment had collected tax during the period prior to the date on which the application for payment of compounded tax is submitted, in excess of the compounded tax payable for the period, the tax collected in excess of the compounded tax payable for the period will have to be paid over to Government. Where the actual turnover of the bar hotel on cooked food is more than 15 % of the turnover of foreign liquor calculated as above under section 7 of the KGST Act, the dealer will have to pay tax on the actual turnover conceded by it.

E.g. A bar attached hotel in Thiruvananthapuram having two star status purchased foreign liquor for Rs.50 lakhs from the Kerala State Beverages Corporation during the month of September 2005 and opted for payment of turnover tax at the compounded rate under section 7 of the KGST Act. He also opted to pay compounded tax on cooked food under section 8 of the KVAT Act. The amount of compounded tax payable by the dealer in respect of cooked food will be as follows:

Purchase value of foreign liquor : Rs.50 lakhs
Turnover of foreign liquor estimated
for the purpose of turnover tax U/s.7
of the KGST Act.(140% of Rs.50 lakhs): Rs.70 lakhs

Turnover of cooked food estimated
Under S.8 of the KVAT Act (15% of
Rs.70 lakhs) : Rs.10.5 lakhs

Tax payable under section 8 : @12.5%of Rs.10.5lakhs

But, if the actual turnover of the bar attached hotel during September is Rs.15 lakhs, the dealer will be liable to pay tax @ 12.5% on the entire fifteen lakh rupees.

(3)A new clause (e) has been inserted in section 8 to provide for payment of compounded tax in respect of medicines and drugs at the rate of 4% on the maximum retail price of such goods. The provision is applicable only to dealers who are either importers or manufacturers of medicines and drugs who are not entitled to any deferment of tax under section 32. The term "maximum retail price" is defined to mean the maximum price printed on the package of the goods at which such goods may be sold to the ultimate consumer.

Where a registered dealer purchases medicines and drugs from another dealer who has opted for payment of compounded tax or from another registered dealer and compounded tax had been paid on an earlier sale, such dealer shall be exempt from payment of tax under section 6(1) on the sale of such goods. But he will be entitled to recover from the buyer the tax which he had paid at the time of purchase of such goods. Where a dealer selling medicines and drugs in respect of which compounded tax is paid under this clause also sells other goods, for which he is entitled to opt for the payment of presumptive tax under section 6(5), then the turnover of medicines and drugs in respect of which compounded tax has been paid on M.R.P. will be excluded from the total turnover for determining his eligibility for opting for the payment of presumptive tax.

> E.g.: Dealer X has a turnover of 60 lakhs rupees in respect of medicines and drugs which he had purchased from dealer Y who had paid tax on the M.R.P of such goods. X also has a turnover of forty lakh rupees in respect of taxable goods other than medicines and drugs, in respect of which he is the second or subsequent seller in the State. In respect of the turnover of Rs.60 lakh X will be exempt from paying any tax. This turnover will not also be reckoned for the purpose of determining his eligibility for opting for payment of presumptive tax. Since the turnover of goods other than medicines and drugs is only forty lakh rupees, X will be entitled to opt for payment of presumptive tax and his tax liability will be only 0.5% of Rs.40 lakhs.

An invoice for medicines and drugs in respect of which compounded tax is paid under section 8(e) has to be issued in Form No.8H. Separate formats have been prescribed for the bills to be used by (i) the dealer who actually pays the compounded tax on M.R.P. , (ii) the stockiest or

wholesaler who sells goods to a retailer and does not collect any tax (except recovery of the tax paid at the earlier stage) and (iii) the retailer who sells the goods to the ultimate consumer. Even though the particulars to be furnished by the different categories are prescribed in the same form, each category need include only the particulars as applicable to them in the bill to be issued by them. Medicines, held by any dealer as opening stock on 01.04.05 and those purchased within the State prior to the date on which the KVAT (Amendment) Act, 2005 (39 of 2005) was notified, had not suffered tax on MRP. In respect of such medicines, the second or subsequent sellers will have to pay VAT as those sales are not exempted under the proviso to clause (e). The assessing authority shall, while scrutining the returns, ensure that dealers do not claim exemption in respect of medicine coming under the above category.

All categories of dealers who have been brought under the scheme of payment of compounded tax are permitted to file the application in Form No.1D within 30 days from the date on which the amendment rule is notified. Where any dealer who is permitted to pay compounded tax is also liable to pay tax under section 6(2) of the Act, but fails to pay the said tax,(dealers covered y clause (a)(i),c(i) and (e) of section 8) the assessing authority can cancel the permission already granted for payment of compounded tax.

2.05 By section 5 of the Amendment Act, section 10 of the Principal Act has been amended –

(i) to provide that the awarder shall pay the tax deducted by him from the contractor on or before he fifth day of the month succeeding the month in which deduction is made.

(ii)To provide that in respect of works contract executed under the Sampurna Gramin Rosgar Yojana or by the Beneficiary committees using the M.P./M.L.A.Funds or the Natural Calamity Relief Fund or Sarva Shikshan Abhiyan Funds where the total amount of individual contracts does not exceed ten lakh rupees, the maximum amount deductible under the section shall be limited to 4% of the whole contract amount. It is immaterial whether the contractor is registered or not. Contractors are, however, liable to register and pay tax irrespective of turnover.

2.06 Section 6 has amended section 11 of the Principal Act. Following are the changes made:

(i)Sub-section (5) has been amended--

(a) to deny input tax credit in respect of tax paid on motor vehicles where such motor vehicle is sold as a used motor vehicle. But where the motor vehicle is purchased as a used motor vehicle and sold as used motor vehicle, input tax credit will be allowable on the tax paid on the purchase of such used motor vehicle. However, where the used motor vehicle purchased is one which was purchased as a new motor vehicle in the state and tax was paid under the KGST Act or under the KVAT Act on its sales at that time, and the used motor is resold, the purchase value of the used motor vehicle will be deducted in calculating the taxable turnover of the dealer.

Eg:-Company XYZ had purchased a motor car for Rs. Five lakhs in 2003 after paying tax under the KGST Act. The vehicle was registered under the Motor Vehicles Act in Kerala. The company sold the vehicle in September 2005 to "A", a VAT dealer, for Rs. 3 lakhs and collects Rs. 12,000/- as VAT. Company XYZ will not be eligible for any input tax credit in respect of the tax paid on the purchase of new vehicle against the tax payable on the sale of used car. "A" resells the vehicle, after reconditioning, for Rs. 3.5 lakhs. While calculating the taxable turnover of "A", the purchase value will be deducted from the sales turnover of "A" ie the taxable turnover of "A" will be Rs. 3.5 lakhs- Rs.3 lakhs = 0.5 lakhs. ie "A" will have to collect tax @ 4 % only on Rs.50,000/-. In that case no input tax credit will be allowed for the VAT paid by "A" to company XYZ. But if "A" is found to have collected tax on the entire amount of Rs. 3.5 lakhs @ 4 %, the purchase value will not be deducted as above. But in that case "A" will be eligible to claim input tax credit for Rs. 12,000/- ie the VAT paid by "A" to company XYZ.

(b) to add an explanation to sub-section (5) to provide that the term "stores" shall not include spare parts and tools in relation to any goods for which the provisions of section 11 apply, i.e. while for "stores" no input tax credit will be admissible, input tax credit will be allowable in respect of the tax paid on the purchase of tools and spares of goods which qualify for the benefit of input tax credit. So, if the tools and spares relate to any goods which do not come under the definition of capital goods (items excluded as per notification SRO.324/2005), no input tax credit will be allowable in respect of the tools and spares in relation to such goods also.

(ii)Sub-section (6) has been amended –

(a) to provide that if there is excess input tax after setting off against the output tax payable for a return period and any other amount due under the KVAT Act, the excess amount of input tax can be set off against the CST payable for the period and the balance alone will be carried over to the next return period. If a dealer is having only interstate sales and no arrears outstanding against him, the input tax paid by the dealer can be set off against the CST payable by him.

(b) to provide for the refund of excess input tax remaining unadjusted at the end of the year.

(iii)Sub-section (9) has been amended to provide that a dealer claiming input tax credit in respect of any purchase need only keep the invoice (showing tax collection separately in such invoice) with him. The invoices have to be produced for verification only when any authority requires it.

(iv)Sub-section (13) has been substituted to provide for input tax credit in respect of tax paid under the KGST Act or under Kerala Tax on Entry of Goods into Local Areas Act, 1994 on goods held as opening stock as on 01.04.05. The term "input tax" for the purposes of section 13 includes the following-

(1) tax paid by one registered dealer under the KGST Act to another such dealer

(2) where the goods are liable to tax under the KGST Act at the point first purchase or last purchase or under section 5A, the tax paid by the dealer claiming input tax credit on purchases; and

(3)tax paid by the dealer under the Entry Tax Act.

This will be available in respect of goods purchased by the dealer during the period from 01.04.04 to 31.03.05 in the following cases:

(a) the goods held as opening stock are sold or used in the manufacture of taxable goods or in the execution of works contract or used as container or packing materials for the packing of taxable goods in the state for sale.

(b)used in the manufacture of taxable goods or as packing materials for the packing of taxable goods and the manufactured or packed goods are held as opening stock.

(c)used in the manufacture of taxable goods and are held as opening stock on 01.04.05 as working process.

Since input tax credit is given in respect of tax paid under KGST Act in order to prevent cascading and to pass on the benefit on this input tax credit to the consumer, the dealers availing the input tax credit in respect of the opening stock were expected to refix the cost of the goods held as opening stock after deducting the tax suffered under the KGST Act computed in the manner specified in Rule 12 and then apply VAT on the value of the goods as so refixed. But it is seen that many of the dealers applied the VAT rate on value of the goods inclusive of the tax paid under the KGST Act and claimed input tax credit under 11(13) read with Rule 12. This will result in unjust enrichment. In order to prevent this, a proviso has been inserted under sub-section (13) of section 11 to disallow input tax credit in such cases. Where any dealer has already availed of input tax credit in respect of the opening stock in such cases, the input tax credit so availed shall become reverse tax.

Eg:-A commodity taxable @ 12 % (+AST 15%) valued at Rs. 1000/- was bought by a dealer from another registered dealer in Kerala prior to 01.04.2005 and was holding it in opening stock. Assuming that the G.P.realised on sales was 10 %, the sale price prior to 01.04.2005 and that after 01.04.05, considering the input tax credit allowed under section 11(13), ought to be as follows:

Pre-VAT

Value of goods on purchase	: 1000	
KGST paid (13.8%)	: 138	
		: 1138
G.P (10%)		: 113.80
Sale value prior to 01.04.05	: 1251.80	

Post VAT

Purchase price inclusive of tax :	Rs. 1138.00		
Less ITC for KGST Paid	: Rs. 138.00		
Value exclusive of tax	: Rs. 1000.00		
G.P. 10 %	: Rs. 100.00		
			1100.00
VAT 12.5 %		Rs.	137.50

Rs. 1237.50

Instead, if the dealer is found to have charged Rs. 1251.50 as the price of such goods after 01.04.2005, it is clear that the input tax credit claimed by the dealer has not been fully passed on to the consumer and is a case for invoking the said proviso. An amount of Rs. 14.30 would be reverse tax. If the dealer has charged VAT @ 12.% % on Rs. 1251.80, the entire input tax credit of Rs. 138.00 availed of by the dealer under section 11(13) would be reverse tax. Where on verification of Form No. 25A it is found that the above method has been followed by the dealer, the claim of input tax credit, to that extent will be disallowed.

The assessing authorities, the Intelligence wing, Investigation wing and Audit Assessment wing will verify the claims of input tax credit under sub-section (13) of section 11 to see whether any dealer has irregularly claimed input tax credit which is liable to be disallowed under the proviso to sub-section (13) and take steps to demand the reverse tax due from such dealers.

In order to claim input tax credit under this sub-section it is not necessary that the bills in the possession of the dealer claiming input tax credit should evidence collection of tax separately Rule 12 lays down the procedure for calculation of input tax paid under the KGST Act in respect of the goods in cases where the dealer claming input tax credit had made the purchase from a first seller and the bills show tax collection separately and also cases where the purchases are from a second or subsequent seller and the price shown in the invoice is inclusive of the tax suffered on the goods at the point of first sale. The explanation inserted under sub-rule (1) of Rule 12 provides that where the goods are supported by bills issued by dealers registered under the KGST Act, the amount of tax computed under sub-rule (3) of Rule 12 shall be deemed to have been shown separately in the bill for the purposes of sub-section (13) of section 11.

There may be cases where bills might have been issued prior to 01.04.05 and goods might have reached the buyer on or after 01.04.05. Similarly there will be cases where bills had been issued prior to 01.04.04 and goods reached the dealer claiming input tax credit after such date. In order to handle such situations, Rule 12 has been amended to insert an explanation to sub-rule (1) to the effect that –

(a) goods in respect of which bill/invoice was issued to the selling dealer prior to 01..04..04 shall not be deemed to have been purchased within one year preceding the date of coming to force of the Act, even if the goods actually reached the buyer on or after such date and that

(b) goods in respect of which bill/invoice was issued by the selling dealer prior to 01.04.05 shall be deemed to have been physically available with the buyer on the day preceding the date of commencement of the Act, even though the goods actually reached the buyer on or after 01.04.05.

Dealers who become eligible for input tax credit in the light of the amendments made in sub-section (13) of Section 11 by the amendment Act can file the application in Form No. 25A or revised application in **Form No.25A** within thirty days from the date of publication of the

KVAT (Amendment) Rules, 2005. They will be permitted to claim input tax credit in respect of such goods in three equal monthly instalments commencing from the month subsequent to the month in which the application/revised application in Form 25A is submitted. In the case of other dealers ie those who were eligible for input tax credit on opening stock even prior to the Amendment Act, application submitted in Form No. 25A had to be submitted, latest by 15th of May 2005. By the amended rules, application in Form 25A submitted till 31.07.05 in such cases would be considered for allowing input tax credit. But dealers who had submitted **Form No. 25A** on or before 31.05.05 can directly claim input tax credit in three equal monthly instalments. But in the case of dealers who had submitted the application after 31.05.05, but on or before 31.07.05, input tax credit can be claimed only after getting the claim of input tax credit made in **Form No. 25A** filed approved by the assessing authority. The Hon'ble Minister (Finance) has announced that all dealers will be permitted to file application in Form No. 25A on or before the 31st day of January 2005. Amendment to the rules for the purpose will be issued in due course. Pending amendment of the rules, the applications will be accepted input tax credit will be allowed under sub-section (13) following the procedure mentioned above. Dealers who had submitted application in the old Form No.25A within the original time limit will not, however, be required to submit application in the new form no.25A prescribed by the amendment Rules except in cases where such dealers prefer additional claims based on the Amendment Act.

Granting of input tax credit in three instalments does not mean that each instalment can be set off only during the respective month and whatever input tax credit remaining unadjusted would lapse on the expiry of the month. Where an instalment of input tax credit accrues to the dealer in a month, the amount will get the same tratment as an input tax credit normally/accruing to the dealer on the purchase made during the month. Whatever input tax credit not fully set-off will be dealt with in accordance with sub-section (6) of section 11.

Eg:- Dealer "X" gets eligibility for input tax credit for an amount of Rs. 4,50,000/- in respect of opening stock held by him on 01.04.05 (The dealer can claim this in three instalments in the returns for the months of May, June and July, 2005 or in any subsequent three months within the financial year 2005-06.

In May 2005, the dealer purchased goods for Rs. 10 lakhs after paying input tax of Rs. 40,000/- and sold goods for Rs. 20 lakhs, collecting output tax of Rs. 80,000/-. Input tax credit will be allowed as follows:

A.Input tax credit on opening stock eligible
for set-off during may 2005. Rs.1,50,000.00

B.Input tax credit in respect of purchase effected
during May 2005. Rs. 40,000.00

C.Total input tax credit (A+B) Rs. 1,90,000.00

D.Output tax for May 2005 Rs. 80,000.00

E.Balance input tax credit carried over
to June 2005 under section 11(6) (C-D) Rs. 1,10,000.00

The input tax credit so carried over will be added to the input tax credit in respect of the purchases made during June 2005 and the second instalment of input tax credit of Rs. 1,50,000/- due for the month of June 2005. The total of these three will be the input tax credit for June 2005 and will be treated in the same manner as done in May 2005.

2.07 Section 7 of the Amendment Act has amended section 12 of the principal Act. As per the amended provision, special rebate will be allowed in respect of purchase tax paid under section 6(2) or entry tax paid, on any goods, if such goods are intended for resale or for use in the manufacture of taxable goods or in the execution of works contract or use as containers or as packing materials for the packing of taxable goods in the state. In respect of capital goods, special rebate is allowed over a period of three years. In other words, once the purchase tax and entry tax paid qualify for special rebate under section 12, they are given the same treatment as given to input tax under section 11. Where purchase tax is payable in respect of any goods under section 6(2) and such goods are sold in the State or interstate or used in the manufacture of goods in the same month in which it is purchased, the purchase tax payable in respect of such goods will qualify for special rebate under section 12 during the same month itself,provided liability is created in respect of the purchase tax.

Eg:- 1. Dealer 'X' purchases rubber worth Rs. 5 lakhs during September 2005 from agriculturists and sells the same goods for Rs. 5.25 lakhs during the same month. His tax liability for the month of September 2005 will be as follows, assuming that he did not have opening credit of input tax and no closing stock on 30th September 2005:

Tax credit		Tax liability	
Special Rebate	Rs. 20000/-	Purchase Tax. U/s 6(2)	Rs.20000/-
		Output tax	Rs. 21000/-
Total Tax credit	Rs. 20000/-	Total liability	Rs.41000/-
		Tax payable	Rs. 21000/-

2. Dealer 'Y' purchases 20 tones of rubber for Rs. 10 lakhs during September, 2005 from agriculturists and sells 10 tones within the state during the same month for Rs.5.25 lakhs. In respect of the 10 tones sold in September 'Y' will be eligible for special rebate during September itself and he will be required to pay the purchase tax in respect of 10 tones of rubber held as closing stock as on 30th September, 2005. For the purchase tax paid in respect of 10 tones of rubber held as closing stock, the dealer will be entitled for special rebate in the month of October 2005. His tax liability for the month of September 2005 will be as follows.

Tax credit Tax liability

Special Rebate Rs.20000/- Purchase Tax
U/s.6(2) Rs. 40000/-
Out put taxRs. 21000/-

Total tax credit Rs.20000/- Total tax liability Rs. 61000/-
Tax payable Rs. 41000/-

Since in the case of purchase of goods attracting tax under section 6(2),special rebate will be allowed only in respect of the quantity sold within the state or interstate or used in manufacture, the quantitative details of such goods disposed of indifferent manner may be also be obtained along with the return.

A new rule, rule 12A, has been made to provide for determination of input tax credit or special rebate where inputs are used in relation to taxable and exempted transactions. As per this rule where during the return period taxable goods are used partly in relation to taxable transaction and partly in relation to exempted or non-taxable transaction, the input tax credit or special rebate to which the dealer has become entitled to during such return period will be apportioned between taxable and exempted or non-taxable transactions in the ratio of the taxable and exempted turnover during the period in which the input tax credit or special rebate or refund is claimed.

Eg:- During October 2005, dealer "A" had purchased inputs for Rs.15 lakhs paying input tax of Rs. 60,000/- He uses the goods in the manufacture of taxable and non-taxable goods and disposed them of as follows:

Local sales of non-taxable goods	Rs. 2 lakhs
Local sales of taxable goods	Rs. 5 lakhs
Interstate sale of taxable goods	Rs. 2 lakhs
Export sale	Rs. 5 lakhs
Stock transfer to other states	Rs. 6 lakhs

The input tax of Rs. 60,000/- will be apportioned among various transactions as follows:

Input tax in relation to non-taxable goods :60000 X 1/10= Rs. 6000/-

Input tax in relation to local sale of taxable goods :60000 X ¼ = Rs.15000/-

Input tax in relation to interstate sale of Taxable goods :60000 X 1/10 = Rs.6000/-

Input tax in relation to export : 60000 X ¼ = Rs. 15000/-

Input tax in relation to goods sent as Stock transfer : 60000 X 3/10 = Rs.18000/-

Since input tax was paid @ 4 % in the case of stock transfer the dealer will not be eligible for any input tax refund. In the case of Local sale of non-taxable goods, no input tax credit will be available. So no input tax will be allowed for an amount of Rs. 24000/- (Rs.18000+ Rs.6000).

In the case of local sale of taxable goods and interstate sale of taxable goods, input tax credit can be availed of under sub-section (1) of section 11 read with sub-section (6) thereof. In the case of export, zero rating is allowed. "Zero rate sale" is defined to mean 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. Further the proviso to sub-section (2) of section 13 provides that the dealer claiming refund shall not, claim input tax credit on such purchase for any return. So, the law does not prohibit claiming of input tax credit in respect of input tax in relation to goods exported. But if a dealer claims refund under section 13, no input tax credit should have been availed of by the dealer for the tax for which input tax credit is availed of. While examining claims of refund, the authority concerned should verify the invoices shown in **Form No 21J** with reference to the purchases for which input tax credit had been examined in the return and satisfy itself that input tax credit and refund are not claimed for the same purchase.

However where goods are disposed of in different ways (local sales, interstate sale, export sale, stock transfer), the quantitative details thereof should be separately noted in the stock register maintained under Rule 58(1)(vi). By the amendment made to rule 58, manufacturers are not required to maintain daily production account; but only a monthly production account in addition to the stock register mentioned under sin-rule(1)(vi) thereof.

2.08 By section 8 of the amendment Act section 13 of the principal Act has been amended. The following are the changes made in section 13 and also in rules 46 and 47 relation to refund of input tax.

(i).In the case of export, refund of input tax is provided for even if the goods purchased are used in the manufacture of goods included in the first schedule or are used as containers or as packing materials of such goods and such manufactured goods are sold in the course of export.

Eg:- 1. ABC Co. , a manufacturer of agricultural implements falling under item 1 of the first schedule, purchases iron and steel and other materials required for manufacture of such goods from within the State after paying input tax and exports the products out of the territory of India. The company is eligible for refund of the input tax paid even though the product is exempt from tax under the Act.

2. If the above example, ABC Company sells the product to an exporter 'Z' to comply with the terms of an anterior contract for export, the sale by the manufacturing company to exporter 'Z' is a sale in the course of export covered by sub-section (3) of section 5 of the CST Act and is exempt. ABC Company is also deemed to be an exporter and is eligible for refund of input tax paid under sub-section (2) of section 13.

(ii)Every dealer claiming refund of input tax under sub-section (2) of section 13 has to submit the documents along with the application for refund in Form No. 21C prescribed under Rule 47. The period of submission of the application and documents has been extended from 3 months to one year. In order to prove export instead of bill of lading the exporter's copy or

export promotion copy of the shipping bill, duly certified by customs authorities, has to be furnished. In the case of export falling under section 5(3) of the CST Act, where the exporter is within the state, instead of **form No. 21G**, form H prescribed under the Central Sales Tax Registration and Turnover Rules, 1957 has to be obtained from the exporter. So, irrespective of whether the exporter is within the state or outside the state, declaration in **Form H** will have to be furnished. Certificate to be furnished by the assessing authority in **Form No. 21J,** to be obtained from the dealer who had collected the tax in respect of which refund is claimed, has been modified. As per the amended form the assessing authority is required only to certify that the selling dealer who had issued the certificate in **Form No. 21J** has included all the sales covered by the declaration in the statements furnished along with the return for the period concerned. Detailed instructions regarding refund have been separately issued (Circular No.1/06 dated 04.01.06). Where the dealer claims the refund of input tax without previous verification, the dealer has to furnish security, under sub-rule (4) of Rule 47. The amendment made to sub-rule(4) permits a dealer claiming refund to furnish security in any of the manner specified in clauses (a), (b), (c)or (f) of sub-rule (2) of Rule 19. The assessing authority issuing the refund can not insist that the dealer claiming refund should furnish the security in a manner to be fixed by him.

In the case of input tax paid on capital goods application for claiming input tax credit has to be submitted within 30 days from the date of commencement of commercial production or from the date on which the same is put to use, which ever is later. But in the case of capital goods used in relation to goods included in the first schedule, refund of input tax has become admissible w.e.f 01..04..05 in the light of the amendment Act. So application for claiming input tax credit in respect of capital goods used in relation to goods included in the first schedule for the period prior to 01.01.06 shall be entertained till the end of January, 2006.

(iii)In the case of interstate sale or stock transfer, refund will be available if input tax is paid in respect of any goods and such goods are either sent outside the state or used or consumed in the manufacture of taxable goods or used as containers or as packing materials of such manufactured goods and such manufactured goods are sent outside the state, subject to the condition that in cases where the goods purchased or the manufactured or packed goods are sent out side the state by way of stock transfer or for commission sales, refund will be restricted to any amount paid \in excess of 4 %. In the case interstate trade or stock transfer, the documents prescribed under Rule 46 have to be submitted along with the application in **Form No. 21 B** for claiming refund. The requirement to furnish proof of crossing state's border has been dispensed with. But a declaration in **Form No. 44** obtained from the consignee has to be submitted. It is noticed that some of the assessing authorities insist on production of C form along with the application to prove interstate sale. But, as per the second proviso to sub-rule (1) of Rule 12 of the CST (Registration and Turnover) Rules,1957, as amended by the CST (Registration and Turnover) third amendment Rules, 2005 issued as per notification GSR 588(E) Dt. 16..09..05,[(2005) 13 KTR (statutes) 859], a single declaration in form C can cover all transactions of sale which take place during a quarter of a financial year between the same two dealers. Further as per sub-rule (7) as substituted, declaration in Form C or Form F or the certificates in Form E1 or E2 are permitted to be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates. The prescribed authorities are given power to extend the time for sufficient reasons. So, insisting on

production of C form or F form as a condition precedent for allowing refund of input tax will be contrary to the provisions of the CST (Registration and Turnover)Rules,1957

2.09 Section 9 of the amendment Act amends section 15 of the principal Act. The following are the changes made:

(i)The turnover limit for compulsory registration is enhanced from Rs. 2 lakh to Rs. 5 lakhs

(ii)In the case of dealers registered under the KGST Act as on 31..03.05, compulsory registration will be required under the VAT Act only where the total turnover under the KGST Act during 2004-05 was not less than the limits specified under sub-section (1) of section 15.

(iii) Any contractor, State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or autonomous body is made liable for registration irrespective of the turnover limit

(iv)If a dealer who is not liable to take out registration under sub-section (1) voluntarily takes out registration, he becomes liable to pay tax on his sales or purchases whatever be his total turnover.

2.10 By section 10 of the Amendment Act, section 16 of the principal Act has been amended-

(i) To modify the quantum of registration fee payable in tune with the enhancement of the turnover limit for registration.

(ii)To provide that where a dealer liable to get registered under the VAT Act is also liable to get registered under the KGST Act, he will be required to pay only one registration fee taking into account the total turnovers both under the VAT Act and the KGST Act. State and Central Governments, governments of Union Territory, Local Authorities and Autonomous Bodies have to submit the application for registration in **Form ID**. No documents specified in Rule 17(8)are to be submitted. Autonomous bodies will, however, have to pay the registration fee and submit the chalan receipt along with the application form. As per the amendment made to sub-rule (31) of Rule 17, where a presumptive tax dealer anticipates his turnover to reach the limit of Rs. 50 lakhs or otherwise becomes ineligible for presumptive tax, the dealer has to submit an application in **Form I** well in advance, since such dealers will have to pay tax under section 6(1) from the day following the date on which his turnover reaches the limit of Rs.50 lakhs.

2.11 By Section 11 of the Amendment Act, a new sub-section (4) has been inserted under section 17 to provide that where a dealer had already furnished any security in connection with registration under the KGST Act, it will be deemed to be security furnished under the provisions of the VAT Act also.

2.12 By Section 12 of the Amendment Act, Section 22 of the Principal Act has been amended-

(i) To provide for provisional acceptance of payment made along with a return even if a return is rejected under sub-section (1) of section 22

(ii) To provide that for the purposes of section 22 and section 21, a return shall be deemed to have been received when the assessing authority acknowledges the receipt of the return in the manner prescribed.

Rule 34 prescribes the methods by which the receipt of return has to be acknowledged. Amendments made to Rule 22 prescribe the documents to be submitted along with the return filed. Dealers an required to file statement of sales invoice showing the VAT separately. In the case of purchase statement also the VAT Collection may be required to be furnished separately. Sub-rule (4A) of Rule 22 permits a dealer to file revised return where the dealer detects any omission or mistake in the return already submitted. The time limit for filing revised return is within two months from the last day of the relevant return period or within one month from the date on which the amendment rules are notified, whichever is later. Where the revised return increases the tax liability of the dealer, interest under section 31(5) and penal interest at twice the normal interest will be payable. In the case of sales return, the dealer can claim deduction in respect of turnover and output tax in relation to such sales return in the month in which the dealer issues credit note (vide amendment) to Rule 59) provided it is within the time limit prescribed. But if the sales return is after the expiry of the year in which the sale was made deduction has to be claimed in the last month of that year.

2.13 By section 13, sub-section (6) of section 23 of the principal Act has been substituted. As per the substituted provisions where a dealer fails to make available any books of accounts for audit or fails to prove the correctness of the stock statement, goods , turnover, input tax credit, or refund claimed, input tax credit or refund claim not proved shall be disallowed and where the correctness of the stock statement or turnover is not proved, the assessment for the corresponding period is liable to be completed to the best of judgment. The best judgment assessment completed will be subject to the restrictions contained in Rules 38 and 39.

2.14 By section 13A, sub-section (1) of Section 24 of the Principal Act has been amended to fix a time limit of 2 years from the last date of the concerned year for completion of the audit assessment and to permit a dealer to file a revised return and pay the balance tax along with interest under section 31(5) and thrice the interest as settlement fee. By the second proviso newly inserted, the time limit of 2 years for completion of audit assessment is made in-applicable in cases where the claim of input tax credit rebate or refund is on the basis of any bogus or forged documents or where the claim is other wise fraudulent.

2.15 By section 14 of the amendment Act, section 25 of the Principal Act has been amended. The section is made applicable even when any input tax credit or special rebate is wrongly availed of. In the case of escapement of tax due to the application of incorrect rate of tax, the dealer has been given an option to file a revised return and pay the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

2.16 By section 15, section 30 of the principal Act has been amended. The following are the changes made.

(i)dealer in medicine and drugs who opt for payment of compounded tax under section 8(e) are permitted to collect tax.

(ii) Where commodities subject to price control are sold, the dealer is permitted to recoup the tax paid at the time of purchase provided the price fixed under the concerned law is not inclusive of such tax.

(iii) a dealer is permitted to collect tax on any goods which is exempted only at the point of sale by such dealer. On such collection of tax, he will be liable to tax in respect of such goods.

(iv)A new sub-section (4) has been inserted to provide that where a registered dealer who is not liable to tax collects tax on the sale of any taxable goods, he shall be liable to tax even if his total turnover is below the limit specified under sub-section (1) of section 6.

2.17 By section 16, sub-section (1) of section 32 has been substituted. As per the substituted provisions any exemption granted in respect of any tax payable by industrial units under the KGST Act or under the Surcharge on Taxes Act under the industrial policy of the State shall have operation only till 31..03..05. Government have been given power to order any deferment of the whole or part of the tax payable by such industrial units which shall not exceed the un-availed portion of exemption. The tax so deferred is to be repaid in the manner prescribed over a period of 5 years. The notification already issued under this section (SRO 321/05 Dt. 31.03.05) will continue to be operative.

2.18 By section 16A and Section 17 of the amendment Act, sections 48 and 49A respectively have been amended to correct certain mistakes.

2.19 By section 17A , section 53 of the principal Act has been substituted. As per the substituted provisions government has been given power to prescribe the form, manner and time for filing of return by banks. Accordingly the Rule 31 has been amended prescribing quarterly return in Form No. 11 B. It is noticed that no effective steps have so far been taken to make the banks file the return. The Dy. Commissioners, Dy. Commissioner (Int)s and the Commercial Investigation Wing shall take urgent steps to obtain the returns and to process them and make use of the materials to protect the interest of revenue.

2.20 By section 18, section 55 of the principal Act has been amended to remove inconsistency between the provision of sub-section (3) of section 22 and sub-section (1) of section 55.As per the amended provision, an appeal against the assessment completed under sub-section (3) of section 22 can be entertained only if the entire tax assessed is paid.

2.21 By Sections 19 and 20, sections 67 and 71 respectively of the Principal Act have been amended to make bogus claim of special rebate also a specific offence under the respective section.

2.22 By section 21, section 74 of the Principal Act has been amended to rectify certain mistakes.

2.23 By section 22, section 98 of the principal Act has been amended

(i)To enable the initiation of any proceeding under the KGST Act for the assessment, levy collection and recovery of tax etc., under the said Act

(ii)To provide that any right, title, obligation or liability already acquired, accrued or incurred under the KGST Act shall remain unaffected. But this is subject to Section 32.

iii)To permit the transfer of appeal, revision or other proceedings pending before any authority under the KGST Act to the appropriate authority under VAT Act for disposal.

(iv)To authorise Government to issue a notification under section 10 of the KGST Act to be applicable for a period prior to 01.04.05.

2.24 By section 23, the first, second and third schedules have been substituted. Rule of interpretation of the schedules have also been incorporated in the Act as appendix to the Act. All officers are directed to go through the rules of interpretation also while interpreting any entry in any of the schedules.

2.25 Section 24 is the validation provision. According to this, where the rate of tax in respect of any goods is enhanced as a result of the amendment., such enhanced rate of tax shall be applicable only from the date of the amendment (28..08..05). Where the rate is reduced it is shall be deemed to have come into force on the 1st day April 2005. But if the dealer has collected tax at higher rate such collection shall be deemed to be a valid collection and tax collected at the higher rate will have be paid over to Government.

3.All Deputy Commissioners shall acknowledge the receipt of the circular and obtain acknowledgement from their subordinates.

Sd/
COMMISSIONER

/Approved for Issue/

Deputy Commissioner(General)

To

All Officers