

CIRCULAR No.3 / 2009

Sub:- Kerala Finance Bill, 2009-10 – Operational instructions for implementation of the provisions of the bill – reg.

PART – A : KGST Act, 1963

I. Extension of time for completion of assessments: Section 17 of the KGST Act, 1963 - Period for completion of pending assessment including reassessment and modified assessment extended by an year.

II. Amnesty Scheme announced for Public Sector Undertakings

1. Section 23BA of the KGST Act, 1963 & Section 3B of the Surcharge on Taxes Act, 1957 (New provision) - Clause 2 and clause 4(4)of Kerala Finance Bill, 2009 read with Para 202 of Budget Speech for 2009-10 provides settlement of outstanding arrears of public sector undertakings relating to the period ending on 31st March, 2005. Intention of the legislature is reflected in Para 202 of the Budget Speech, 2009. It reads as follows:

“An amount of Rs.1936 crores has been pending as arrears from various public sector undertakings for years. Interest and penalty due from such PSUs will be completely waived. Profit making PSUs can settle their arrears by paying 50% of the principal amount. Sick PSUs need to pay only 25% of the principal amount. PSUs which are likely to be dispossessed of their property will not be entitled to this scheme. An application has to be filed before 30-06-2009 to avail themselves of the benefit under the scheme. The conditions in the present amnesty scheme will apply.”

Going by the said para, it is made clear that the facility for settlement of arrears is available to **all outstanding arrears under S.T, C.S.T, A.S.T & Surcharge.**

2. Accordingly, all public sector undertakings owned by Government of Kerala, in arrears relating to the period ending on 31st March, 2005 can opt for the scheme. All interest and penalties stands waived. In case of profit making units, 50% of the principal amount and for units in loss 25% of the principal amount alone is need to be paid.
3. The financial position of the P.S.U. as on 31-03-2009 may be considered to determine whether a P.S.U. is in loss.
4. Demands relating to any period ending on 31st March, 2005 can be settled under this scheme. It is not necessary that the demands should be created before the said period.
5. In the case of a public sector undertaking, whose landed property is likely to be sold in execution of any judgment, decree or order of any Court, Tribunal or other authorities shall not be eligible to opt under this scheme.
6. The PSU shall file an application in the prescribed form annexed hereunder as Annexure-I before the assessing authority on or before 30.06.09.
7. Only those PSUs who opt for settling all their outstanding arrears under the Acts for a full year shall be eligible to apply under this scheme.
8. On receipt of an application, respective assessing authority shall verify the correctness of the arrear position stated by the PSU with reference to

assessment records and relevant registers, and intimate the amount payable under this section within 15 days, in Annexure II.

9. On receipt of the said intimation, the PSU shall pay 25% of the said amount within 15 days, and the balance in 3 equal monthly installments commencing from the subsequent month.
10. While fixing the liability, under the scheme care must be taken to see that proper credit has been given to all tax remittances made. In the case of missing credits for want of challans, certificates issued by the respective banks would be sufficient proof of remittance of tax.
11. If the dealer defaults in making the payment as per the permission given in Annexure II, the reduction granted shall be revoked by an order in writing by the assessing authority after giving the PSU an opportunity of being heard.
12. All Assessing Authorities shall maintain a register in Annexure III containing details of arrears settled under the said section. The collection details shall be reported separately in the monthly diaries. The Deputy Commissioners shall give periodic progress report of the settlement of arrears under the said section to the Commissioner fortnightly.
13. All assessing authorities are directed to intimate the PSUs concerned within their jurisdiction regarding the scheme on or before 30th April, 2009.
14. All supervisory officers shall see that the above instructions are strictly complied with.

Annexure - I

(To be submitted in Duplicate)

Application

For settlement of arrears of Public Sector Undertakings, 2009-10.

1. Name and address of the Public Sector Undertaking
2. R.C. Number
3. Details of arrears.

Sl. No.	Assmt. year	Order		Outstanding demands				Collected tax	Under which Act
				Tax		Penalty			
		No.	Date	Amount	Interest	Amount	Interest		

4. Appeal/Revision/Court cases if any pending details

Sl No	Assmt Year	Order		Amount	Appellate authority with whom pending	Appeal / Revision No	Present Stage	Remarks
		No.	Date					

5. Details of charges on the assets of the PSU:

Name of the financial institution / Government Department / other institution	Particulars of the property under charge (extent, survey no., village and estimated market value)	Amount	Remarks

DECLARATION

All the details furnished above are true and correct.

Place:
Signature
Date :

Name and Address of
Authorized Signatory.

Annexure II

(To be prepared in Duplicate)

**INTIMATION OF PAYMENT OF ARREARS UNDER THE AMNESTY SCHEME
2009-10**

Name of office
Reg. No.

To

Sri / M/s.....

On a consideration of the application dated/2009 filed by you for settlement of the outstanding arrears you have been found eligible. Accordingly, you are hereby permitted to settle the arrears as detailed hereunder:

Sl. No	Year	Principal Amount due	Principal Amount payable
Total			

Twenty five percent of the above amount amounting to Rs...../- shall be remitted within fifteen days on receipt of this intimation and the balance in three equal monthly installments @ Rs.... /- starting from the month of...../2009.

In case of default or in case any information furnished in Annexure - I is found to be false, this permission is liable to be revoked.

Place
Date
Signature

(Seal)

Name and designation
of Assessing Authority

Annexure III

**Register of Settlement of Arrears under the Amnesty Scheme {For PSU}
2009-10.**

[To be maintained by the assessing authority]

Sl. No.	Name of dealer with RC No.	Year	Principal tax amount		Interest on principal tax amount due, waived as per this scheme	Penalty waived as per this scheme	Interest on penalty waived as per this scheme	Amount payable as per this scheme	Payment details
			Due	waived as per this scheme					

PART – B: KVAT Act, 2003

I. Presumptive Dealers

A new proviso has been inserted in sub-section (5) of section 6 of the Act which prescribes simplified system of tax payment by the presumptive dealers whose total turnover in a year is below rupees twenty lakhs. The provision reads as under;

“Provided also that dealers covered under this sub-section whose total turnover for a year is below rupees twenty lakhs, shall pay a lump-sum amount of rupees three thousand annually as presumptive tax, and the payment shall be at the rate of rupees seven hundred and fifty per quarter along with a statement as may be prescribed. Such dealers shall also file an annual declaration as may be prescribed.”;

In order to give effect to the scheme, following instructions are issued

1. Total turnover of the previous year conceded in the annual return is the basis for eligibility under this provision.
2. Switchover will be permitted from April, 2009 only.
3. A dealer obtaining registration during the current year can avail this scheme provided the anticipated annual turnover is below Rs.20 lakhs and that the dealer will be allotted a PIN number on completing the registration procedure.
4. In any of the quarter during the current financial year, if the total turnover of a dealer reaches Rs.20 lakhs or above, the dealer shall pay tax as if he is a regular presumptive dealer on such turnover exceeding Rs.20 lakhs or above. The dealer shall file Form 10D (presumptive tax returns) from the quarter onwards when his turnover attains rupees twenty lakhs in addition to the lump sum amount due for the quarter.
5. The prescribed declaration shall be filed along with the instrument on or before the due dates on which the presumptive returns are due.
6. The dealer shall file the Form 10D (presumptive tax returns) from the quarter onwards when his turnover exceeds rupees twenty lakhs.
7. The quarterly statement mentioned in the subsection shall be in the following format;

DECLARATION

[For payment of tax under fifth proviso to section 6(5)]

Name and address of the dealer
address
PIN.....

VAT Office

(1) I am enclosing herewith the receipt / cheque / challan / demand draft no..... dated..... for rupees seven hundred and fifty as presumptive tax for the quarter ending..... for the year.....

(2) My sales turnover for this quarter is Rs.....(in words).....

(3) My purchase turnover for this quarter is Rs.....(in words).....

Date :
Place:

Name and signature of
the dealer or authorized signatory

II. Works Contract

A new provision has been introduced in the Finance Bill, 2009 where by dealers having CST registration can opt for payment of tax under Sec. 8(a)(ii). The provision reads as follows:-

“(ii) any works contractor not falling under clause (i) above may, at his option, instead of paying tax in accordance with the provisions of the said section, shall pay tax at three percent of the contract amount after deducting the purchase value of goods excluding freight and gross profit element consigned into the State on stock transfer or purchased from outside the State and for the purchase value of goods so deducted shall pay tax at the scheduled rate applicable to such goods.”

- 1) As per this provision compounding can be opted for the whole contract amount of a project.
- 2) As far as the goods brought or purchased from outside the State, the dealer has to pay tax on its **purchase value** at the schedule rate applicable to the goods.
- 3) In computing the purchase value of the goods brought into the State, **the freight and gross profit element need not be taken into account.**
- 4) From the total contract amount, the purchase value of goods mentioned above has to be deducted and tax paid on the amount at 3%.
- 5) The tax on the goods brought or purchased from outside the State has to be paid along with the quarterly returns due.

Computation example

Transaction Details

Total contract receipts for the year 2009-10	: Rs.10 crores
Interstate purchase of declared goods - (excluding freight & Gross Profit)	: Rs.1 Crore (4%)
Interstate purchase of other goods - (excluding freight & Gross Profit)	: Rs.2 Crores (12.5%)
Local purchase of building materials from regd. Dealers	: Rs.1 Crore (12.5%)
Local purchase of building materials from unregd. Dealers (sand & bricks)	: Rs.10 lakhs (4%)

Compounded Tax Computation

Description	Turnover / Contract receipts	Deductions
Total contract receipts for the year 2009-10	10,00,00,000	
Interstate purchase of declared goods (excluding freight & Gross Profit)		1,00,00,000
Interstate purchase of declared goods (excluding freight & Gross Profit)		2,00,00,000
Balance contract receipts taxable 3%	7,00,00,000	
Compounded Tax Due @ 3% (Rs.7,00,000 x 3/100)	21,00,000	
Compounded Tax Due on Interstate purchase turnover of 4% goods (Rs.1,00,00,000 x 4/100)	4,00,000	
Compounded Tax Due on Interstate purchase turnover of 12.5% goods (Rs.2,00,00,000 x 12.5/100)	25,00,000	
Total compounded tax due	50,00,000	

- 6) On going works which were compounded at 3% during 2008-09 and the contractor obtains CST registration afresh during the current year can also avail the benefit of compounding system of payment under this provision.

- 7) In the case of works contractors who had surrendered CST certificate on or before 31-03-2008, can pay compounded tax at 3% during 2008-09. If they had closing stock of materials purchased interstate or brought from outside the state, tax should be paid at the schedule rate applicable to such goods.
- 8) On going work contracts as on 1st April, 2008 shall be dealt with as follows:-
- the work should be commenced during 2007-08
 - this work should have been compounded under Sec.8(a)(i)&(ii)
 - if so, they are eligible for option and remit the tax at the rate applicable during 2007-08 till completion or upto 31st March, 2009 whichever is earlier.
- 9) No change has been made in the provisions relating to compounding in the case of Govt. Contractors.

III. Metal Crushers

Section 8(b) of the KVAT Act, 2005 - Compounded rate of metal crushers have been revised as shown below under Sec.8(b).

1	For each crushing machine of size not exceeding 30.48 cm x 22.86 cm	Rs.40,000 per annum
2	For each crushing machine of size exceeding 30.48 cm x 22.86 cm but not exceeding 40.64 x 25.40 cm	Rs.1,50,000 per annum
3	For each crushing machine of size exceeding 40.64 x 25.40 cm	Rs.3,00,000 per annum
4	Cone crusher	Rs.10 lakhs per annum
5	Single crusher irrespective of Jaw size (other than cone crusher)	Compounded tax payable is Rs.25,000 per annum
6	Primary crushers	Compounded tax payable is 50 % of the aggregate of tax payable on secondary crushers

It is made clear that the compounded tax of primary crushers is the 50% of aggregate compounded tax payable in respect of secondary crushers.

For eg.- If a dealer is having one primary crusher having jaw size of 40.64 cm x 25.40 cm and four secondary crushers having jaw size of not exceeding 30.48 cm x 22.86 cm (1 No.); exceeding 30.48 cm x 22.86 cm but not exceeding 40.64 x 25.40 cm (1 No.); exceeding 40.64 x 25.40 cm (2 Nos.).

Compounded tax payable on secondary crushers - Rs.40,000/- + Rs.1,50,000 + Rs.6,00,000 = Rs.7,90,000/-

Compounded tax payable on primary crusher - 50% of Rs.7,90,000/- = Rs.3,95,000/-

In this case, if the dealer is having two primary crushers, then also the compounded tax payable is Rs.3,95,000/-, provided the number of secondary crushers remaining the same.

IV. Cooked food

1. Cooked Food in Restaurants & Hotels - Section 8(c)(i) of the KVAT Act, 2003 – It is clarified that sweets prepared and served in restaurants and hotels shall be treated at par with the cooked food for the purpose of compounding.
2. Cooked Food in Bar Hotels - Section 8(c)(ii) of the KVAT Act, 2003 - Tax paid on all VAT suffered goods shall be taken into account for arriving the compounded tax payable under the Act. If the dealer had already opted compounding during 2007-08 and paid compounded tax during the previous year (2008-09), the compounded tax payable for 2009-10 shall be at 115% of the compounded tax paid for the previous year plus 115% of the tax paid on VAT suffered goods.

V. Gold Compounding

Section 8(f) of the KVAT Act, 2003 –

1. A new slab based system of compounding, depending upon the turnover of 2008-09 is introduced as under:

(a)	Turnover upto 10 lakhs	115 %
(b)	Turnover above 10 upto 40 lakhs	120 %
(c)	Turnover above 40 upto 1 crore	135 %
(d)	Turnover above 1 crores	150%

The option for compounding is available only in respect of turnover relating to ornaments or wares or articles of gold, silver or platinum group metals

2. All the branches must compulsorily be compounded.
3. For branch / branches not compounded during 2008-09, the compounded tax payable is to be arrived at on the basis of average tax paid by principal place of business and the branches opted compounding during 2008-09.
4. For new branches intended to be opened during 2009-10, the compounded tax payable on such branch / branches should be worked out at the average tax payable in respect of the principal place of business and branches together. In a case where the dealer is having only a principal place of business and that the said dealer intends to open a new branch, the additional compounded tax payable shall be same as that of the principal place of business.
5. It is made clear that tax payable as conceded in the accounts will include the tax payable on suppressed turnover detected.

VI. Input Tax Credit

Section 11 of the KVAT Act, 2003 – A purchasing dealer can avail the facility of input tax credit, provided his seller pays differential tax [i.e., on account of misclassification / rate of tax disputes / statutory clarifications etc.] and issues debit notes. This facility will be available upto 30th June, 2009.

VII. Simplified procedure for VAT Registration

1. Section 16 of the KVAT Act, 2003 - A new provision has been introduced in the Finance Bill, 2009-10 in-order to give effect to the validity of registration from date of commencement of business for limited purpose in-order to facilitate the dealer for opting compounding under sec.8 of the Act and also for payment of tax under sec 6(5). They shall pay tax due under the said sections with interest and that no refund of tax or other amount shall be allowed. Existing dealers can also avail this benefit. It is made clear that all ITC claims should be entertained only from the date of filing of valid application of registration before the assessing authority.

- Another salient features declared in para 233 of the Budget Speech, 2009 is to dispense with the licence from the local authorities as a condition precedent for granting registration under the VAT Act. They need to produce the licence of the local authority within a year.

VIII. e-Filing

Section 20 of the KVAT Act, 2003 - Statutory backing is provided for compulsory e-Filing by amending Sec. 20 of KVAT Act.

IX. Revised Return Procedure

Section 22 of the KVAT Act, 2003 - An amendment was introduced in Sec.22 of the Act, whereby a dealer can revise the incorrect return filed by him incorporating the suppressed turnover detected on inspection and admitted by him. The Intelligence Officer shall ensure that the suppression spread over to different periods has been fully taken into account for arriving suppressed turnover and the consequential tax effect while invoking Sec.74 of the Act.

X. Extension of time for Audit Assessment

Section 24 of the KVAT Act, 2003 - Section 24 has been amended to extend the period of audit assessments by an year.

XI. Vapas / Withdrawn Stock

Section 40 of the KVAT Act, 2003 - A new provision has been introduced in Sec.40 of the KVAT Act, 2003 where by statutory liability is cast on auctioneers to maintain accounts of goods received for auction / sold in auction and those returned to owners without effecting auction. The format of the accounts of to be maintained by the cardamom auctioneers is prescribed as under. The officers are hereby directed to inform the changes in Sec.40 to the persons concerned in their jurisdiction.

Details of Cardamom returned (VAPAS / Withdrawn Stock)

Name & address of the Owner of cardamom pooled	Date of pooling and Lot number	Quantity originally pooled	Documents produced at the time of pooling	Quantity returned (VAPAS)	Name, address & signature of person who taken by back cardamom	Date on which the goods are returned	Documents accompanying the VAPAS consignments	Remarks
1	2	3	4	5	6	7	8	9

When cardamom pooled by agriculturists are taken back as 'VAPAS' from auction centres, statutory Form 16 should accompany such consignments and countersigned by the auctioneer. It must be ensured that the extend shown in column no.3 of Form 16 is duly filled-up by the agriculturist. Field formation is instructed to enforce the procedure described above.

XII. Miscellaneous

- Section 47 & 49 of the KVAT Act, 2003 - Section 47 & 49 has been amended to validate the public sale of confiscated goods.
- Section 70B of the KVAT Act, 2003 - A new provision namely Sec.70B introduced so as to enable the Department to impose penalty on those who brought goods from outside the state for own use and uses the same for other purpose. The penalty to be levied is three times of the tax due.
- Section 74 of the KVAT Act, 2003 - The maximum compounding fee payable under Sec.74 has been increased to Rs.4 lakhs.

XIII. Voluntary Disclosure Scheme

Section 74A of the KVAT Act, 2003 - e-Filing introduced in the State as enabled one to one cross matching a hassle-free. However, inflated stocks are

being brought down in the accounts of certain dealers. Certainly, these dealers have acquired such stock from the profit earned out of unaccounted transactions. In order to give them a fair hand of self policing, a new Voluntary Disclosure Scheme has been proposed as Sec.74A in the Kerala Finance Bill, 2009. The salient features of the scheme are as follows:

1. The scheme is applicable to the cases covered under VAT Act.
2. It is intended to declare voluntarily the suppressed turnover and declare tax. Thereby enjoy the immunity from penalty prosecution and interest due under the Act.
3. The suppressed turnover has reference to aggregate turnover in all goods of a dealer including purchase turnover.
4. Commencement date of VDS-2009 is on 01/04/2009 and termination date is – 30/06/2009.
5. The **eligibility criteria** are -
 - a) the beneficiary under the scheme must be a dealer (PIN / TIN)
 - b) the dealer has failed to include or suppressed any turnover or taxable turnover in the return filed up to 31.03.2008.
 - c) such a dealer will be permitted to disclose suppressed turnover voluntarily before the assessing authority.
 - d) the period of voluntary disclosure scheme will be from 01.04.2009 to 30.06.2009.
6. Who can file declaration ?
 - a) a dealer shall file a declaration with tax due for the period/periods to which the suppression / omission relates.
 - b) the revised return shall be accompanied by a statement admitting the non-inclusion / suppression of the turnover in the return / returns period/periods already filed.
 - c) revised annual return / returns shall be filed for each assessment year.
7. Interest and penalty based on the admission of the dealer shall be waived.
8. The relief declared under the scheme shall not be applicable to cases initiated / detected / proceeded by the intelligence formation or action initiated by any authority under the Act.
9. The intention of the Legislature declared in para 239 of the budget speech for 2009-10 is to voluntarily rectify omissions in the accounts of the dealers during the previous years and to avoid penal consequence.
10. Hence, it is made clear that accounts of the dealer opting voluntary disclosure scheme shall not be called for by the assessing officers for verification.
11. Procedure to be followed :-
 - a) The simple procedure is to accept the statement of the dealer, cross verify the same with the revised return, check the tax rate / tax due and the tax paid by him. Thereafter, issue proceedings.
 - b) The proceeding under the scheme shall be submitted to the Inspecting Asst. Commissioner in the case of Commercial Tax Officer and Deputy Commissioner in respect of Asst. Commissioner (Assessment) for approval.
 - c) The controlling officer shall render a decision on approval immediately on submission of the proceedings.
 - d) The turnover declared under VDS shall be treated as confidential.
 - e) The tax due portion shall be worked out on sales. If purchase turnover is disclosed under the scheme. For working out sales from the said

purchases gross profit prevalent in the trade and actual freight has to be taken into account.

XIV. Relief to avoid double taxation

Section 98 of the KVAT Act, 2003 - For avoiding double taxation, a proviso has been inserted in Sec.98 where by, if the goods taxable at point of last purchase, held as closing stock as on 31.03.05, has been disposed of during the VAT period, tax need not be paid again under the KGST on such closing stock, provided VAT with interest from 01.04.05 to has been paid till the date of such disposal.

XV. Changes in the rate structure of certain commodities

Sl. No	Commodity	Rate
1	Mops	0
2	Khadi Sliver/Roving	0
3	Plam jaggary products	0
4	Products of Screw pine	0
5	Article of Gold/silver other ornaments including gold coins	1
6	Aluminium composite panel	4
7	Cement paving blocks	4
8	Annual turnover of hand made soap upto 2 crores alone	4
9	Spares and parts of medical equipments	4
10	Kitchen stands (plastic coated)	4
11	LED Lamps	4
12	All kinds of machineries for printing and allied activities.	4
13	Silveroak	4
14	Biscuits and confectioneries whether sold under registered trade mark or otherwise will henceforth be taxable at	12.5

PART - C : KERALA TAX ON LUXURIES Act, 1976

XVI. Railway retiring rooms & dormitories

Section 4(1) of the KTL Act - Railway retiring rooms and dormitories are exempted from the purview of luxury tax retrospectively. Hence, all Assessing Authorities are directed not to take coercive action against the railways for realization of luxury tax.

XVII. Interest

Section 10 of the Act, a new provision has been introduced in the KLT Act, to levy interest in respect of luxury tax due which has not been included in the return filed or escaped assessments from the date on which such luxury tax ought to have been due.

XVIII. R.R. Powers to Inspecting Asst. Commissioners

Section 10A of the Act, a new provision has been introduced in the KLT Act, granting R.R. powers to Inspecting Asst. Commissioner. Notification will be issued shortly.

XIX. Composition of offence

Section 17B of the Act - Composition of offences - A new provision has been introduced to compound the offence under the Act at par with the Section 74 of the KVAT Act, subject to a minimum payment of Rs.500/- and maximum of Rs.4 lakhs and in other cases a sum not exceeding Rs.10,000/-. Once offence is compounded on payment of compounding fee under sub-section (1) of Sec.17B of the Act no penal or prosecution proceedings shall be initiated for the same offence.

Sd/-
COMMISSIONER