

THE KERALA FINANCE BILL, 2009

A BILL

to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2009-2010.

Preamble.- WHEREAS, it is expedient to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2009-2010.

BE it enacted in the Sixtieth Year of the Republic of India as follows:-

1. *Short title and commencement.-* (1) This Act may be called the Kerala Finance Act, 2009.

(2) Sub-sections (1)(i), (2) and (5) to (9) of section 4, sub-sections (1), (2) and (5) to (7) of section 5, sub-sections (1) to (5) and (7) to (15) of section 6 and sub-sections (1), (2), (15) to (19) and (25)(iv) (b) of section 7 shall come into force on such date as the Government may, by notification in the Gazette, appoint and the remaining provisions shall come into force on the 1st day of April, 2009.

2. *Amendment of Act 11 of 1957.-* In the Kerala Surcharge on Taxes Act, 1957 (11 of 1957), after section 3A, the following section shall be inserted, namely:-

“3B. Reduction of arrears in case of public sector undertakings.- (1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee which is a public sector undertaking and which is in arrears of tax or any other amount due under this Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:-

(a) a complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon; and

(b) in the case of public sector undertakings which are running in profit, reduction in fifty percent of the principal amount; and

(c) in the case of public sector undertakings which are running at loss, a reduction in seventy-five percent of the principal amount:

Provided that public sector undertakings, the landed property of which are likely to be sold in execution of any judgment, decree or order of any court, tribunal or other authority shall not be eligible to opt under this scheme.

(2) A public sector undertaking which wishes to opt for payment of arrears under sub-section (1) shall make an application to the assessing authority in the prescribed form before 30th June, 2009, or on such date as may be notified by the Government.

(3) On receipt of an application under sub-section (2), the assessing authority shall verify the same and shall intimate the amount to the assessee, and thereupon they shall remit twenty five percent of the amount within 15 days of receipt of the intimation and the balance amount in three equal monthly instalments starting from the subsequent month.

(4) If the assessee commits any default in payment of the instalments, the reduction allowed under sub-section (1) is liable to be revoked.

(5) No action under sub-section (4) shall be taken without giving notice to the assessee.

(6) If the amount settled under this provision has been the subject matter of an appeal or revision, such appeal or revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the assessee shall pay such enhanced amount with interest thereon, in accordance with the provisions of this Act.”.

3. *Amendment of Act 17 of 1959.*- In the Kerala Stamp Act, 1959 (17 of 1959), in sub-section (1) of section 9, after clause (b), the following clause shall be inserted, namely:-

“(c) provide for compounding of duties payable on the instruments referred to the Collector or called for by him under sections 45A, 45B or 45C at such rate and for such period as may be specified by the Government.”.

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

(1) in section 2,-

(i) clause (i) shall be omitted;

(ii) in clause (xvii), the words “and includes ethanol blended petrol” shall be added at the end;

(2) in section 3,-

(i) in sub-section (2), the words “Appellate Assistant Commissioners” shall be omitted;

(ii) the proviso to sub-section (3) shall be omitted;

(3) in section 17,-

(i) for the fourth proviso to sub-section (6), the following proviso and Explanation shall be substituted, namely:-

“Provided also that the assessment relating to the years up to and including the year 2004-05 pending as on 31st March, 2009 shall be completed on or before the 31st day of March, 2010.

Explanation:- For the purpose of the above proviso, it is clarified that the extension of time granted for completion of assessments is applicable in all cases where regular assessments have not been completed before the date fixed for completion of assessment in the respective years.”;

(ii) in sub-section (8),-

(a) for the first proviso, the following proviso shall be substituted, namely:-

“Provided that all such assessments or re-assessments pending as on 31st March, 2009 shall be completed on or before 31st March, 2010.”;

(b) for the third proviso, the following proviso shall be substituted, namely:-

“Provided also that all such modified assessments or modified reassessments or remanded assessments pending as on 31st March, 2009 shall be completed on or before 31st March, 2010.”;

(4) after section 23B, the following section shall be inserted, namely:-

“23BA. Reduction of arrears in respect of public sector undertakings.- (1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee which is a public sector undertaking and which is in arrears of tax or any other amount due under this Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:-

(a) a complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon; and

(b) in the case of public sector undertakings which are running in profit, reduction in fifty percent of the principal amount; and

(c) in the case of public sector undertakings which are running at loss, reduction in seventy-five percent of the principal amount:

Provided that public sector undertakings, the landed properties of which are likely to be sold in execution of any judgment, decree or order of any court, tribunal or other authority shall not be eligible to opt under this scheme.

(2) A public sector undertaking which wishes to opt for payment of arrears under sub-section (1) shall make an application to the assessing authority in the prescribed form before 30th June, 2009, or on such date as may be notified by the Government.

(3) On receipt of an application under sub-section (2), the assessing authority shall verify the same and shall intimate the amount to the assessee, and thereupon they shall remit twenty five percent of the amount within 15 days of receipt of the intimation, and the balance amount in three equal monthly instalments starting from the subsequent month.

(4) If the assessee commits any default in payment of the instalments, the reduction allowed under sub-section (1) is liable to be revoked.

(5) No action under sub-section (4) shall be taken without giving notice to the assessee.

(6) If the amount settled under this provision has been the subject matter of an appeal or revision, such appeal or revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the assessee shall pay such enhanced amount with interest thereon, in accordance with the provisions of this Act.”;

(5) section 34 shall be omitted;

(6) in section 36, in sub-section (1), the words and figures “section 34 or” shall be omitted;

(7) in section 37,-

(i) in sub-section (1), the words “other than an Appellate Assistant Commissioner” shall be omitted;

(ii) in sub-section (2), the words “the Appellate Assistant Commissioner or” shall be omitted;

(8) in section 39,-

(i) for sub-sections (1) and (2), the following sub-sections shall respectively be substituted, namely:-

“(1) Any person objecting to an order affecting him passed by an appropriate authority under sub-section (6) or sub-section (7) of section 14, section 14A, sub-section (2) or sub-section (3) or sub-section (4) or sub-section (4A) of section 17, sub-section (1) or sub-section (2) of section 19, sections 19A, 19B, 19C, 26, 29, 29A, 30, 30A, or an order passed by a lower authority under section 43 and section 45A and any person objecting to an order passed by the Deputy Commissioner under sub-section (1) of section 35, may within a period of sixty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

(2) All appeals together with the interlocutory applications, if any, pending for disposal before any appellate authority under this Act as on the date of commencement of this provision shall stand transferred to the Appellate Tribunal and the Appellate Tribunal shall consider the same as if it is an appeal filed before it.”;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:-

“(2A) No appeal under this section shall be entertained unless at the time of presenting the appeal, the assessee has furnished satisfactory proof of payment of tax due on the turnover admitted by him.

(2B) The authority by whom the order appealed against had been passed or any officer empowered by the Government in this behalf, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1), may file within thirty days of receipt of the notice, a memorandum of cross objections, which shall be considered by the Appellate Tribunal while disposing of the appeal.”;

(9) in section 45A, in sub-sections (1) and (3), the words “or the Appellate Assistant Commissioner” shall be omitted.

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

(1) in section 2, clause (a) shall be omitted;

(2) in section 3,-

(i) sub-section (2) shall be omitted;

(ii) the proviso to sub-section (3) shall be omitted;

(3) in section 4,-

(i) in the proviso to sub-section (1), the words “and to the retiring rooms and dormitories in the railway stations, managed by Indian Railways” shall be added at the end;

(ii) sub-section (5) shall be omitted;

(4) in section 5A, in sub-section (3), the following proviso shall be inserted, namely:-

“Provided that the last date for filing an application under this section for the year 2008-09 shall be 15th March, 2009.”;

(5) section 7 shall be omitted;

(6) in section 7A,-

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

“(1) Any person aggrieved by an order of assessment made or a penalty levied under section 6, sub-sections (7) and (8) of section 12A, sub-section (8) of section 13 or section 17A may within sixty days from the date on which the order was served on him, appeal against such order, for the annulment or modification of the assessment or penalty to the Appellate Tribunal in such manner as may be prescribed:

Provided that the Appellate Tribunal may admit an appeal presented after the expiry of the said period if it is satisfied that the appellant has sufficient cause for not presenting the appeal within the said period.”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:-

“(5) All appeals together with interlocutory applications, if any, pending for disposal before any Appellate Authority under this Act as on the date of commencement of this provision shall stand transferred to the Appellate Tribunal and the Appellate Tribunal shall consider the same as if it is an appeal filed before it.”;

(7) in section 8, in sub-section (3), for the word and figure “section 7”, the word, figure and letter “section 7A” shall be substituted;

(8) in section 10, the existing section shall be renumbered as sub-section (1) and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

“(2) Where any proprietor, dealer or any other person has failed to include any charges or any other amount taxable under this Act with respect to any luxury provided in any return filed or where any charges or any other amount taxable under this Act or tax due has escaped assessment, interest under sub-section (1) shall accrue on the tax due on such charges or other amount or tax with effect from such date on which the tax would have fallen due for payment, had the proprietor, dealer or any other person included such charges or other amount taxable under this Act or tax in the return relating to the period to which such charges or other amount relates.”;

(9) the existing section 10A shall be renumbered as section 10AA and before section 10AA as so renumbered, the following section shall be inserted, namely:-

“10A. *Recovery of tax.*- (1) Any amount of tax, penalty, interest and any other amount payable by any person under this Act and remaining unpaid shall be the first charge on the property of such person and may be recovered as an arrear of public revenue due on land.

(2) Government may, by notification in the Gazette, appoint any assessing authority under this Act to exercise the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the recovery of arrears under this Act.

(3) Notwithstanding anything contained in any other law for the time being in force, an officer appointed under sub-section (2) shall be deemed to be a Collector within the meaning of clause (c) of section 2 of the Kerala Revenue Recovery Act, 1968 (15 of 1968).”;

(10) for section 17B, the following section shall be substituted, namely:-

“17B. Composition of offences. - (1) The assessing authority or other officer or authority authorized by the Government in this behalf may accept from any person or proprietor who has committed or is reasonably suspected of having committed an offence in contravention of the provisions of this Act, by way of compounding of such offence,-

(a) where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable, a sum of money equal to the amount of tax so payable subject to a minimum of rupees five hundred and maximum of rupees four lakhs; and

(b) in other cases, a sum of money not exceeding ten thousand rupees.

(2) On payment of such amount under sub-section (1), no further penal or prosecution proceedings shall be taken against such person or proprietor in respect of that offence.”.

6. *Amendment of Act 15 of 1991.-* In the Kerala Agricultural Income Tax Act, 1991 (15 of 1991),-

(1) in section 2, clause (5) shall be omitted;

(2) in section 24, in sub-section (1), clause (d) shall be omitted;

(3) in section 25, the proviso to sub-section (1) shall be omitted;

(4) in section 27, in sub-section (1), the words and brackets “the Deputy Commissioner (Appeals)” shall be omitted;

(5) in section 29, the words and brackets “or the Deputy Commissioner (Appeals)”, wherever they occur, shall be omitted;

(6) after section 37B, the following section shall be inserted, namely:-

“37C. Reduction of arrears in certain cases.- (1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under this Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:-

(a) in the case of demands relating to the period up to and including 31st March, 1991, a reduction of twenty five percent for the principal tax amount, and complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon;

(b) in the case of demands relating to the period from 1st April, 1991 to 31st March, 1996, a complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon;

(c) in the case of demands relating to the period from 1st April, 1996 to 31st March, 2000, a reduction of ninety-five percent of the interest on the tax amount and for the amount of penalty and interest thereon;

(d) in the case of demands relating to the period from 1st April, 2000 to 31st March, 2005, a reduction of ninety percent of the interest on the tax amount and for the amount of penalty and interest thereon;

(e) in cases where principal amount has already been remitted prior to coming into force of section 91A of the Act, a reduction of ninety percent of the interest amount.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assesseees which will then be binding on the revenue authorities and such assesseees shall not be liable for payment of any collection charges.

(3) An assessee who wishes to opt for payment of arrears under this section shall make an application to the assessing authority in the prescribed form before 30th June, 2009, or on such date as may be notified by the Government.

(4) On receipt of an application under sub-section (3), the assessing authority shall verify the same and shall intimate the amount to the assessee, and thereupon the assessee shall remit twenty-five percent of the amount within 15 days of receipt of the intimation, and the balance amount in three equal monthly instalments from the subsequent month.

(5) If the assessee commits any default in payment of the instalments the reduction granted under sub-section (1) is liable to be revoked.

(6) No action under sub-section (5) shall be taken without giving notice to the assessee.

(7) If the amount settled under this provision has been the subject matter of an appeal or revision, such appeal or revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the dealer shall pay such enhanced amount with interest thereon, in accordance with the provisions of this Act.”;

(7) in section 43, in the Explanation, the words and brackets “the Deputy Commissioner (Appeals) or” shall be omitted;

(8) in section 71, the words “the Appellate Assistant Commissioner” shall be omitted;

(9) section 72 shall be omitted;

(10) in section 74,-

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

“(a) an order passed by the Agricultural Income Tax Officer or the Inspecting Assistant Commissioner.”;

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

“(2) No appeal under this section shall be admitted unless at the time of presenting the appeal, the assessee has paid the tax due on the agricultural income admitted by him.”;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:-

“(4) On receipt of notice that an appeal against his order has been preferred the assessing authority or an officer authorised in this behalf by the Government may within thirty days of the receipt of the notice, file a memorandum of cross objections and the Appellate Tribunal shall consider the same while disposing of the appeal.”;

(iv) in sub-section (6), the words, brackets and figures “except in the case of an appeal referred to in sub-section (2) or a memorandum of cross objections referred to in sub-section (4)” shall be omitted;

(v) in the Explanation to sub-section (7), the words, brackets and figure “appeal or” and “under sub-section (2)” shall be omitted;

(vi) sub-section (8) shall be omitted;

(vii) after sub-section (13), the following sub-section shall be inserted, namely:-

“(14) All appeals together with the interlocutory applications, if any, pending for disposal before the appellate authority on the date of commencement of this provision shall stand transferred to the Appellate Tribunal and the Appellate Tribunal shall consider the same as if it is an appeal filed before it.”;

(11) in section 75,-

(i) in sub-section (1), the words and brackets “other than a Deputy Commissioner (Appeals)” shall be omitted;

(ii) in sub-section (2), the words and brackets “the Deputy Commissioner (Appeals) or” shall be omitted;

(12) in section 76,-

(i) in sub-section (1), the words and brackets “including a Deputy Commissioner (Appeals)” shall be omitted;

(ii) in sub-section (2), the words and brackets “the Deputy Commissioner (Appeals) or” shall be omitted;

(13) in section 78A, item (a) and the entries against it shall be omitted;

(14) in section 79,-

(i) in sub-section (1), the words and brackets “the Deputy Commissioner (Appeals)” shall be omitted;

(ii) in sub-section (5), the words and brackets “the Deputy Commissioner (Appeals)” shall be omitted;

(15) section 96 shall be omitted.

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

(1) in section 2, clause (xvii) shall be omitted;

(2) in section 3,-

(i) in sub-section (3), the words and brackets “Deputy Commissioner (Appeals)” shall be omitted;

(ii) the proviso to sub-section (4) shall be omitted;

(3) in section 6,-

(i) in sub-section (5), after the fourth proviso, the following proviso shall be inserted, namely:-

“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.”;

(ii) in sub-section (7), in sub-clause (a) the word “exclusively” shall be omitted;

(4) in section 8, -

(i) in clause (a), -

(a) for sub-clause (ii), the following sub-clause shall be substituted, namely:-

“(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.”;

(b) after the fourth proviso, the following proviso shall be inserted, namely:-

“Provided also that notwithstanding anything contained in this Act, in cases of works which commenced prior to 1st April, 2008 and which remains partly unexecuted as on 1st April, 2008, the contractor shall pay tax at the rates as it existed prior to 1st April, 2008 till the completion of work, or up to 31st March, 2009, whichever is earlier.”;

(c) the existing Explanation shall be renumbered as Explanation 1, and after the Explanation as so renumbered, the following Explanation shall be inserted, namely:-

“*Explanation 2:-* Notwithstanding anything contained in any other Act, a dealer who had surrendered his registration and unused declaration forms under the Central Sales Tax Act, 1956 (74 of 1956), before the assessing authority on or before 31st March, 2008 and who does not have any closing stock of materials purchased interstate as on 31st March, 2008 or who pays tax on such closing stock at scheduled rates, shall be eligible for paying compounded tax under sub-clause (i) of this clause, for the year 2008 -2009.”;

(ii) in clause (b),-

(a) in sub-clause (i), for the letters, figures and words “Rs.50,000 per annum”, the letters, figures and words “Rs. 40,000 per annum” shall be substituted;

(b) in sub-clause (ii), for the letters, figures and words “Rs.1,60,000 per annum”, the letters, figures and words “Rs.1,50,000 per annum” shall be substituted;

(c) in sub-clause (iii), for the letters, figures and words “Rs.3,20,000 per annum”, the letters, figures and words “Rs.3,00,000 per annum” shall be substituted;

(d) in sub-clause (iv), for the letters, figures and words “Rs.7,50,000 per annum”, the letters, figures and words “Rs.10,00,000 per annum” shall be substituted;

(e) after the existing proviso, the following proviso shall be inserted, namely:-

“Provided further that dealers with a single crusher other than cone crusher shall pay rupees twenty-five thousand only per annum as tax under this clause.”;

(f) for the Explanation, the following Explanation shall be substituted, namely:-

“*Explanation:-* For the purpose of this clause, primary crushers shall also be reckoned for the purpose of computation of compounded tax, and the rate applicable to primary crushers shall be at fifty percent of the aggregate of the tax payable on secondary crushers.”;

(iii) in clause (c),-

(a) in sub-clause (i), the following Explanation shall be inserted, namely:-

“Explanation:- Cooked food for the purpose of this clause shall include sweets prepared and served in the restaurants and hotels.”;

(b) in sub-clause (ii), for the words “cigarettes and soft drinks”, the words “cigarettes, soft drinks and other goods” shall be substituted;

(iv) in clause (f),-

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:-

“(i) any dealer in ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at,-

(a) one hundred and fifteen percent, in case their annual turnover for the above goods for the preceding year was rupees ten lakhs or below;

(b) one hundred and twenty percent, in case their annual turnover for the above goods for the preceding year was above rupees ten lakhs and upto rupees forty lakhs;

(c) one hundred and thirty-five percent; in case their annual turnover for the above goods for the preceding year was above rupees forty lakhs and upto rupees one crore; and at

(d) one hundred and fifty percent; in case their annual turnover for the above goods for the preceding year exceeded rupees one crore;

of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.”;

(b) for Explanation 2, the following Explanation shall be substituted, namely:-

“*Explanation 2:-* Where during any such preceding year, the dealer had not transacted business for any period in that financial year, the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable or the turnover conceded, as the case may be, for the period during which such dealer had transacted business.”;

(c) in Explanation 3, for the words “previous to the year in which the option relates”, the words “to which the option relates” shall be substituted;

(d) for Explanation 4, the following Explanation shall be substituted, namely:-

“*Explanation 4:-* Where a dealer has not opted to pay compounded tax with respect to a new branch opened in 2008-09, the compounded tax payable for such branch for the year 2008-09 shall be notionally fixed as the average of the compounded tax paid for the principal place and branches in that year and if the new branch opened is the first branch, the compounded tax payable for it shall be the same as that payable for the principal place of business.”;

(e) in Explanation 5, the last sentence shall be omitted;

(f) after Explanation 6, the following Explanation shall be inserted, namely:-

“Explanation 7.- Tax payable as conceded in the accounts includes the tax payable on suppressed turnover subsequently detected also.”;

(5) in section 11, in the proviso to sub-section (5), for the words and figures “31st March, 2007”, the words and figures “30th June, 2009” shall be substituted;

(6) in section 16, in sub-section 2, for the existing proviso, the following provisos shall be substituted, namely:-

“Provided that registration shall be deemed to have been granted with effect from the date of commencement of business irrespective of the date of application, for the purposes of,-

(a) paying tax under sub-section (5) of section 6, subject to eligibility, and

(b) opting for payment of tax under section 8 for the relevant years subject to eligibility:

Provided further that new dealers applying for registration and existing dealers having registration may avail this benefit subject to the condition that they shall pay tax under the respective provisions along with interest and will not be entitled for any refunds relating to the period prior to filing of application for registration.”;

(7) in section 20, for sub-section (2A), the following sub-section shall be substituted, namely:-

“(2A) Every dealer registered under this Act and every others required to file their returns under this Act shall file their returns as well as purchase and sale list through electronic filing in addition to the hard copy to be filed along with the returns:

Provided that the Commissioner may, in the interest of tax administration, exempt such class or classes of dealers or others as may be prescribed, from electronic filing of returns and the stipulation regarding hard copy of returns prescribed under this sub-section.”;

(8) in section 22, -

(i) in sub-section (1), after the existing proviso, the following proviso shall be inserted, namely:-

“Provided further that where the filing of an incorrect return is due to the detection of any suppressed turnover as admitted by the dealer and such offence compounded under section 74, the turnover conceded in the revised return shall include the actual suppressed turnover detected.”;

(ii) in sub-section (5), after the words, figures and brackets “sub-section (1) of section 20” the words, figures and brackets “or under sub-section (2) of this section” shall be inserted;

(9) in section 24, in sub-section (1), in clause (c), for the words “two years”, the words “three years” shall be substituted;

(10) in section 40, after the existing proviso, the following proviso shall be inserted, namely:-

“Provided further that auctioneers acting as agents and effecting auction sale shall maintain in such manner, as may be prescribed, the details of such goods received for auction, sold in auction and those returned to the owners of such goods without effecting auction.”;

(11) in section 42, in sub-section (1), the following proviso shall be inserted, namely:-

“Provided that a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), may in lieu of the statement and certificate mentioned above, submit a copy of the audited statement of accounts and certificate issued by the Registrar of Co-operative Societies on or before 31st day of December of the year succeeding to the year to which annual return relates.”;

(12) in section 44, in sub-section (6), for the words “sixty days”, the words “one hundred and eighty days” shall be substituted;

(13) in section 47, in sub-section (16), for the words “in the public auction”, the words “in public auction or by public sale” shall be substituted;

(14) in section 49, after sub-section (8), the following sub-section shall be inserted, namely:-

“(8A) Notwithstanding anything contained in this Act, the goods so confiscated under this section can be disposed of by public auction or by public sale, if the Commissioner feels that compelling circumstances exist to do so.”;

(15) section 55 shall be omitted;

(16) in section 56, in sub-section (2), the words and brackets “Deputy Commissioner (Appeals) or” shall be omitted;

(17) in section 58,-

(i) in sub-section (1), the words and brackets “other than that of the Deputy Commissioner (Appeals)” shall be omitted;

(ii) in sub-section (2), the words and brackets “the Deputy Commissioner (Appeals) or” shall be omitted;

(18) in section 59, in sub-section (1), the words, brackets and figures “the Deputy Commissioner (Appeals) under section 55” shall be omitted;

(19) in section 60,-

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

“(1) Any person aggrieved by any order issued or proceedings recorded other than those under sub-section (3), sub-section (8), or sub-section (9) of section 16, sub-section (8) of section 19 passed by an authority empowered to do so, or any officer empowered by the Government in this behalf may within a period of sixty days from the date on which the order was served on him, in the manner prescribed, appeal against such order to the Appellate Tribunal.”;

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

“(1A) All appeals together with the interlocutory applications, if any, pending for disposal before any appellate authority under this Act as on the date of commencement of this provision shall stand transferred to the Appellate Tribunal and the Appellate Tribunal shall consider the same as if it is an appeal filed before it.”;

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

“(2) On receipt of notice that an appeal against his order has been preferred the assessing authority or any other officer authorised by the Government in this behalf may within thirty days of receipt of the notice, file a memorandum of cross objections and the Appellate Tribunal shall consider the same while disposing of the appeal.”;

(20) in section 67, in the proviso to sub-section (1), for the words “one year”, the words “three years” shall be substituted;

(21) after section 70A, the following section shall be inserted, namely:-

“70B. *Penalty for commercial use of goods brought from outside the State declaring it as for own use.*- Any person bringing goods from outside the State declaring it as for own use and has used the goods so brought otherwise than for own use, shall, without prejudice to any other provisions in this Act, be liable to pay by way of penalty, an amount not exceeding thrice the amount of tax due on such goods.”;

(22) in section 74, in sub-section (1), for the words ‘two lakhs’, the words ‘four lakhs’ shall be substituted;

(23) after section 74, the following section shall be inserted, namely:-

“74A. *Voluntary disclosure of unaccounted transactions.*- (1) Any dealer who had failed to include or suppressed any turnover or taxable turnover in the return filed upto 31st March, 2008 shall be permitted to disclose voluntarily such suppressed turnover to the assessing authority on or before 30th June, 2009.

(2) Such dealers shall file a revised return along with tax due thereon and a statement admitting such non-inclusion or suppression in the returns already filed.

(3) Interest and penalty on the tax due on the suppressed turnover shall be waived in the case of such dealers.

(4) The provisions under this section shall not be applicable to cases already detected by any authority under this Act.”;

(24) in section 86, in sub-section (1), after clause (d), the following clause shall be inserted, namely:-

“(e) a member of the Institute of Company Secretaries of India within the meaning of section 2(2) of the Company Secretaries Act, 1980 (Central Act 56 of 1980)”;

(25) in section 94,-

(i) in the marginal heading, for the word “Commissioner”, the word “Authority” shall be substituted;

(ii) in sub-section (1), after the words “shall be decided by”, the words “an authority consisting of three Deputy Commissioners nominated by” shall be inserted;

(iii) in sub-section (2),-

(a) for the word “Commissioner”, the word “authority” shall be substituted;

(b) the following sentence shall be added at the end, namely:-

“Commissioner may considering the fact in issue decide whether such orders have prospective operation only.”;

(iv) in sub-section (5),-

(a) for the words “by the Commissioner”, the words “by the authority” shall be substituted;

(b) the words and brackets “including Deputy Commissioner (Appeals)” shall be omitted;

(v) after sub-section (5), the following sub-sections shall be inserted, namely:-

“(6) If no unanimous decision is arrived at by the authority, the matter shall be referred to the Commissioner who shall decide the same as if the application is filed before him.

(7) If the order passed by the authority mentioned in sub-section (1) is found to be prejudicial to the revenue; the Commissioner may exercise his powers of suo-moto revision, and may cancel, amend or vary such order:

Provided that no order shall be passed under this sub-section, until the party is given an opportunity of being heard.

(8) Where the Authority/Commissioner finds on a representation made to it by any officer or otherwise, that an order passed by it was obtained by the applicant by fraud or mis-representation of facts, it may, by order, declare such order to be *void ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such order had never been made.”;

(26) in section 98, in sub-section (2), the following proviso shall be inserted, namely:-

“Provided that, notwithstanding anything contained in sub-section (2), the dealer who had paid tax on such stock under this Act shall not be liable to pay any tax under the Kerala General Sales Tax Act, 1963. But such dealer shall be liable to pay interest for such belated payments under the provisions of this Act.”.

(27) in the SCHEDULES,-

(a) in the First Schedule,-

(i) in serial No.7, in the entries against it in column (2), after the words ‘brushes’, the words “including mops” shall be inserted;

(ii) after serial No.27 in column (1) and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:-

“27A. Khadi sliver/roving xxxx”;

(iii) in serial No.35, in the entries against it in column (2), after the words ‘palm jaggery’, the words “and its products” shall be inserted;

(iv) after serial No.38 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:-

“38A. Products of screw pine xxxx”;

(b) in the Second Schedule, in serial number (1), after item (6) and the entries against it in columns (2) and (3), the following items and entries shall respectively be inserted, namely:-

“(7) Articles of goldsmiths’ or silversmiths’ wares and parts thereof of precious metals or of metal clad with precious metal.	7114
(8) Other articles of precious metal or of metal clad with precious metals	7115
(9) Silver, semi-manufactured	7106.92
(10) Gold, semi-manufactured	7108.13.00
(11) Waste and scrap of precious metals	7112
(12) Gold coins	***”;

(c) in the Third Schedule,-

(i) in serial No. 3, in item (1), after sub-item (i) and the entries against it in columns (2) and (3), the following sub-item and entries shall respectively be inserted, namely:-

“(j) Composite Panel xxxx”;

(ii) serial No. 4 in column (1) and the entries against it in columns (2) and (3) shall be omitted;

(iii) in serial No.7, in the entries against it in column (2), for the words and symbols “Bakery products, sweets, confectionery”, the words and symbols “Bakery products excluding biscuits and confectionery, sweets,” shall be substituted;

(iv) in serial No.18, after item (5) and the entries against it in columns (2) and (3), the following item and entries shall respectively be inserted, namely:-

“(5A) Cement paving blocks xxxx”;

(v) in serial number 51A, item (9) and the entries against it in column (2) shall be omitted;

(vi) in serial No.55, in the entries in column (2), after the words “annual turnover”, the words “of this item” shall be inserted;

(vii) in serial number 59A, in the entries in column (2), after the words “veterinary science”, the words “and spares and parts thereof” shall be inserted;

(viii) after serial number 75 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:-

“75A. Kitchen Stands (plastic coated) xxxx.”;

(ix) after serial number 79 and the entries against it in columns (2) and (3), the following serial number and entries shall respectively be inserted, namely:-

“79A. Light Emitting Diode Lamps xxxx.”;

(x) in serial No.83, for item (19) and the entries against it in columns (2) and (3), the following item and entries shall respectively be substituted, namely:-

“(19)All kinds of machinery for printing and allied activities, including book binding, gathering, saddle stitching, paper cutting, paper folding, perforating machines.”;

(d) in List A, in serial number 144, in the entries in column (2), after the word “kattadi”, the word “silveroak” shall be inserted.

* * *

DECLARATION UNDER THE KERALA PROVISIONAL COLLECTION OF REVENUES ACT, 1985 (10 OF 1985)

It is hereby declared that it is expedient in the public interest that all the provisions of this Bill except sub-clauses (1)(i), (2) and (5) to (9) of clause 4, sub-clauses (1), (2) and (5) to (7) of clause 5, sub-clauses (1) to (5) and (7) to (15) of clause 6 and sub-clauses (1), (2), (15) to (19) and (25)(iv) (b) of clause 7 shall have effect from the 1st day of April, 2009 under the Kerala Provisional Collection of Revenues Act, 1985 (10 of 1985).

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to amend the following enactments to give effect to the financial proposals of Government of Kerala for the financial year 2009-2010 as announced in paras 197, 198, 202 to 204, 206 to 212, 214, 216 to 229, 234 to 252 and 259 in the Budget Speech 2009 - 2010, namely:-

1. The Kerala Surcharge on Taxes Act, 1957 (11 of 1957)
2. The Kerala Stamp Act, 1959 (17 of 1959)
3. The Kerala General Sales Tax Act, 1963 (15 of 1963)
4. The Kerala Tax on Luxuries Act, 1976 (32 of 1976)
5. The Kerala Agricultural Income Tax Act, 1991 (15 of 1991)
6. The Kerala Value Added Tax Act, 2003 (30 of 2004)

FINANCIAL MEMORANDUM

Sub-clause (25) of clause 7 of the Bill proposes to amend section 94 of the Kerala Value Added Tax Act, 2003, to empower the Commissioner to constitute an authority consisting of three Deputy Commissioners nominated by him to decide disputes and to issue clarifications. The expenditure required for this purpose from the Consolidated Fund of the State cannot be estimated with any degree of accuracy at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Clause 2 of the Bill proposes to insert a new section 3B to the Kerala Surcharge on Taxes Act, 1957, which seeks to empower the Government to prescribe the form for making an application to opt for settling the arrears by availing reductions in the case of public sector undertakings.

2. Sub -clause (3) of clause 4 of the Bill proposes to insert a new section 23BA to the Kerala General Sales Tax Act, 1963, which seeks to empower the Government to prescribe the form for making an application to opt for settling the arrears by availing reductions in the case of public sector undertakings.

3. Sub-clause (8) of clause 4 of the Bill proposes to amend section 39 of the Kerala General Sales Tax Act, 1963, which seeks to empower the Government to prescribe the manner in which the appeal against the order of the assessing authority has to be filed before the Appellate Tribunal.

4. Sub-clause (6) of clause 5 of the Bill proposes to amend section 7A of the Kerala Tax on Luxuries Act, 1976, which seeks to empower the Government to prescribe the manner in which the appeal against the order of assessment of the assessing authority has to be filed before the Appellate Tribunal.

5. Sub-clause (6) of clause 6 of the Bill proposes to insert a new section 37C to the Kerala Agricultural Income Tax Act, 1991, which seeks to empower the Government to prescribe the form for making an application to opt for settling the arrears by availing reductions.

6. Sub-clause (3) of clause 7 of the Bill proposes to amend section 6 of the Kerala Value Added Tax Act, 2003, which seeks to empower the Government to prescribe a statement to be filed along with the record of payment of quarterly tax and also to prescribe the details in the annual declaration which has to be filed before the authorities by the dealers.

7. Sub-clause (7) of clause 7 of the Bill proposes to amend section 20 of the Kerala Value Added Tax Act, 2003, which seeks to empower the Government to prescribe the manner for exemption of such class or classes of dealers or others from electronic filing of returns.

8. Sub-clause (10) of clause 7 of the Bill proposes to amend section 40 of the Kerala Value Added Tax Act, 2003, which seeks to empower the Government to prescribe the manner in which the details of goods received for auction, sold in auction and those goods returned to the owners without effecting auction.

9. Sub-clause (19) of clause 7 of the Bill proposes to amend section 60 of the Kerala Value Added Tax Act, 2003, which seeks to empower the Government to prescribe the manner in which the appeal against the order of the assessing authority has to be filed before the Appellate Tribunal.

The matters in respect of which rules are to be made are either administrative in nature or matters of detail. Further, the rules, after they are made, will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

Dr. T. M. THOMAS ISSAC.