

Kerala Building Tax Act, 1975

7 of 1975

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An Act to provide for the levy of a tax on buildings

Preamble. ?WHEREAS, it is expedient to provide for the levy of ["a tax on buildings and luxury tax on certain residential buildings"]

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:?

1. Short title, extent and commencement :-

(1) This Act may be called the Kerala Building Tax Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 1st day of April, 1973.

2. Definitions :-

In this Act, unless the context otherwise requires,?

8 ["(a) Appointed day means such date as the Government may for the purpose of this Act, specify by notification in the Gazette.".]

(b) "appellate authority" means an appellate authority appointed under section 4;

(c) "assessee" means a person by whom building tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the building tax payable by him.

(d) "assessing authority" means an assessing authority appointed under section 4;

(e) "building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

Explanation 1.?In the case of buildings constructed for providing housing accommodation for workers and their families residing in plantations, in pursuance of section 15 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) or buildings constructed under the Government of India Subsidised Housing Scheme for industrial workers, each part of a building providing or intended to provide accommodation for a worker or

a worker and his family shall be deemed to be a separate building.

Explanation 2.?Where a building consists of different apartments or flats owned by different persons, and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building;

[*****]

(g) "local authority" means a municipal corporation or a municipal council or a township committee or a panchayat or a cantonment board; 10 [or a District council;]

["(g a) Luxury tax means a luxury tax charged under Section 5A;";]

["(h) major repair or improvement in respect of a building means a repair or improvement as a result of which the plinth area of the building is increased.".]

(i) "owner" includes a person who for the time being is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so received the rent or be entitled to receive it if the building or part thereof were let to a tenant;

(j) "prescribed" means prescribed by rules made under this Act.

["(k) plinth area means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together: Provided that in the case of a building referred to in the Explanation 2 to clause (e), the plinth area shall be calculated separately.

(l) residential building means a building or any other structure or part thereof built exclusively for residential purpose including outhouses or garages appurtenant to the building for the more beneficial enjoyment of the main building but does not include hotels, boarding places, lodges and the like.".]

3. Exemptions :-

(1) Nothing in this Act shall apply to ?

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

(b) buildings used principally for religious, charitable or educational purposes or as factories or workshops.

Explanation.? For the purposes of this sub-section, "charitable purpose" includes relief of the poor and free medical relief.

(2) If any question arises as to whether a building falls under sub-section [or under section 3A] (1), it shall be referred to the Government and the Government shall decide the question after giving the interested parties an opportunity to present their case.

(3) A decision of the Government under sub-section (2) shall be final and shall not be called in question in any court of law.

3A. Power to make exemption :-

(1) xxx xxx xxx

(2) The Government may, if they consider it necessary so to do, by notification in the Gazette, make exemption from the payment of building tax either wholly or partly in respect of any building or buildings constructed utilizing the grant of the Central Government or the State Government, where such grant is not less than twenty-five per cent of the total cost of construction of the building and such building is intended for such purposes as may be prescribed subject to the condition that the building tax if any, already paid shall not be refunded or otherwise adjusted.

3B. Misuse of exemption by the assessee :-

Where any building which has been exempted from payment of building tax under the provisions of this Act, is found to be used in any manner which would nullify the eligibility for exemption, the owner shall be liable to be assessed and to pay building tax under this Act together with penal interest at the rate of 12% per annum from the date of completion of construction of the building:

Provided that no such assessment shall be made without giving the assessee a reasonable opportunity of being heard.

4. Authorities :-

(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be assessing authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(3) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with discretion of the appellate authority in the exercise of its appellate functions.

5. Charge of building tax :-

(1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as "building tax") based on the plinth area at the rate specified in the Schedule on every building the construction of which is completed on or after the appointed day."]

(2) In the case of any building, the construction of which is completed prior to the appointed day but the assessment of which has not been initiated or completed or against which appeal or revision has been filed, building tax shall be assessed on the basis of the plinth area at the rate specified in the Schedule." ;]

(3) Where any major repair or improvement is made on or after the appointed day to a building constructed before the said date building tax shall be payable at the rate referred to in sub-section (1) on the additional plinth area of the building resulting from such repair or improvement.

(4) Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.

(5) Where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on to the plinth area of the main building and the building tax assessed accordingly:

Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that building.

(6) The building tax shall be payable by the owner of the building.
Explanation.- For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.

5A. Charge of luxury tax :-

(1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax of two thousand rupees annually on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after the 1st day of April, 1999.

(2) The luxury tax assessed under this Act shall be paid in advance on or before the 31st day of March, every year.

6. Determination of plinth area :-

The plinth area of a building for the purposes of this Act, shall be the plinth area of the building as specified in the plan approved by the local authority or such other authorities as may be specified by Government in this behalf and verified by the assessing authority in such manner as may be prescribed.

Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose shall not be taken into account for determining the plinth area of that building.

7. Return of completion, etc., of building :-

(1) The owner of every building the construction of which is completed, or to which major repair or improvement is made on or after the appointed day shall furnish to the assessing authority a return in the prescribed form within the prescribed period along with a copy of the plan approved by the local authority or such other authorities as may be specified by the Government in this behalf and verified in the prescribed manner and containing such particulars as may be prescribed.

(2) xxx xxx xxx

(3) If the assessing authority is of opinion that any person is liable to furnish a return under sub-section (1), then, notwithstanding anything contained in that sub-section, it may serve a notice upon that person requiring him to furnish within such period, not being less than thirty days from the date of service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and containing such particulars as may be specified in the notice.

(4) The assessing authority may, if it is satisfied that it is necessary so to do, extend the date for the furnishing of the return under this section.

8. Return after due date and amendment of return :-

If any person has not furnished a return within the time allowed by or under section 7, or having furnished a return under that section discovers any omission or wrong statement therein, he may furnish

a return or a revised return, as the case may be, at any time before the assessment is made.

9. Assessment :-

(1) If the assessing authority is satisfied that a return made by an owner under section 7 or section 8 is correct and complete, it shall assess the amount payable by him as building tax [or luxury tax] on the basis of the return.

(2) If the assessing authority is not so satisfied, it shall serve a notice on the assessee either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

(3) The assessing authority, after hearing such evidence as the assessee may produce and such other evidence as it may require on any specified point and after conducting such inquiries or inspection as it may consider necessary, shall, by order in writing, assess the amount payable by him as building tax.

(4) For the purpose of making an assessment under this Act, the assessing authority may serve on any person who has made a return under subsection (1) of section 7 or section 8 or upon whom a notice has been served under sub-section (3) of section 7, a notice requiring him to produce or cause to be produced on a date specified in the notice such records or other documents as the assessing authority may require.

(5) If any person fails to make a return in response to any notice under sub-section (3) of section 7, or fails to comply with the terms of any notice issued under sub-section (2) or sub-section (4) of this section, the assessing authority shall assess the amount payable by the person as building tax to the best of its judgment.

10. Notice of demand :-

When any building tax is due in consequence of any order passed under or in pursuance of this Act, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

11. Appeals :-

(1) Any assessee objecting to the amount of building tax assessed under section 9 or denying his liability to be assessed under this

Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority against the assessment or against such order:

Provided that no such appeal shall lie unless the building tax has been paid.

(2) An appeal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appeal shall be presented within a period of thirty days from the date of service of the notice of demand relating to the assessment or the date of service of the order, as the case may be, but the appellate authority may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting it within the said period, provided however that no such appeal shall be admitted after a period of six months from the date of service of the notice of demand relating to the assessment or the date of service of the order, as the case may be.

(4) The appellate authority shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing and make or cause to be made such further inquiry as it thinks fit.

(5) At the hearing of the appeal the assessing authority shall also have a right to be heard.

(6) In disposing of an appeal, the appellate authority may, subject to the provisions of section 12,?

a. in the case of an order of assessment,?

(i) confirm, reduce, enhance or annul the assessment;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

b. in the case of any other order, confirm, cancel or vary such order.

(7) The appellate authority shall, on the conclusion of the appeal, communicate the orders passed by it to the assessee and the assessing authority.

(8) The orders passed by the appellate authority shall, subject to the provisions of sections 13 and 14, be final and shall not be liable to be questioned in a court of law.

12. Reference to District Court :-

(1) The appellate authority may, if it is satisfied either suo motu or on application by any party to an appeal under section 11 that the decision on the appeal involves a question of law, draw up a

statement of the case and refer it to the District Court.

(2) If the District Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the question raised thereby, the court may refer the case back to the appellate authority to make such additions thereto or alterations therein as the court may direct in that behalf.

(3) The District Court, upon the hearing of any such case, shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the court to the appellate authority which shall pass orders on the appeal in conformity with such judgment.

(4) For the purposes of this section, "District Court" means the District Court having jurisdiction over the area in which the building in respect of which building tax has been levied is situate.

13. Power of revision of the District Collector :-

(1) The District Collector may, either suo motu or on application by any person aggrieved, call for and examine the record of any order passed by the appellate authority or the assessing authority and may pass such order in reference thereto as he thinks fit: Provided that no such order shall be passed under this sub-section without notice to the party who may be affected by the order:

Provided further that the District Collector shall not call for and examine the record of any order passed by the assessing authority?

a. if the period of thirty days specified for presentation of appeal under sub-section (3) of section 11 has not expired; or

b. if an appeal against that order is pending before the appellate authority:

Provided also that no order passed on the basis of a reference under section 12 to the extent covered by the answer to such reference shall be subject to revision by the District Collector.

(2) the District Collector shall not suo motu revise an order under sub-section (1) if that order has been passed more than three months previously.

(3) An application under sub-section (1) by an aggrieved party shall be made before the expiry of thirty days from the date on which the order in question was communicated to him.

(4) No application for revision under sub-section (1) by an aggrieved party shall lie unless fifty per cent of the building tax has been paid.

14. Power of revision of the Government :-

The Government may, on application by any person aggrieved, call for and examine the record of any order passed by the District Collector suo motu under section 13, for the purpose of satisfying themselves as to the propriety or regularity of such order and pass such order in reference thereto as they think fit:

Provided that the Government shall not revise any order under this section after the expiry of sixty days from the date on which that order was communicated to the applicant:

Provided further that an order to the prejudice of any person shall not be passed under this section unless that person has been given a reasonable opportunity to show cause against such order.

15. Rectification of mistakes :-

(1) The appellate authority or the revisional authority may, at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may, at any time within three years from the date of any assessment or order passed by it, or its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or order, as the case may be, and shall, within the like period, rectify any such mistake which has been brought to its notice by an assessee: Provided that no such rectification shall be made which has the effect of enhancing an assessment or reducing a refund unless the assessee has been given a reasonable opportunity of being heard in the matter.

(2) Where any such rectification has the effect of reducing the assessment, the assessing authority shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment or reducing a refund, the assessing authority, shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable; and such notice of demand shall be deemed to be issued under section 10 and the provisions of this Act shall apply accordingly.

16. xxx xxx xxx :-

xxx xxx xxx

17. Power to take evidence on oath, etc :-

The assessing authority, the appellate authority and the revisional authority shall, for the purpose of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely:?

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents;
- (c) issuing commissions.

18. Payment of building tax :-

(1) Any amount specified as payable in a notice of demand under section 10, or an order under section 11 or section 13 or section 14 shall be paid in such number of instalments, within such time, at such place and to such person, as may be prescribed, and any assessee failing so to pay shall be deemed to be in default.

(2) Issue of completion certificate or assignment of building number or door number shall be done by the local authority on production of satisfactory proof of remittance of the entire amount of building tax 33 [or luxury tax] due in respect of that building:

Provided that where the Government consider it necessary so to do for the promotion of tourism, they may, by notification in the Gazette, provide for such additional number of instalments as maybe specified in the notification for the payment of building tax in respect of the building the construction of which is completed on or after the 1st day of march, 1993, and in such areas as may be specified and having such specifications as may be prescribed in this behalf.

19. Mode and time of recovery :-

(1) When building tax [or luxury tax] is not paid on the due date, the arrears of the tax shall bear interest at the rate of six per cent per annum from the date of default.

(2) The arrears of building tax [or luxury tax] and the interest, if any, thereon shall be a first charge on the building in respect of which it is payable, and notwithstanding anything contained in any other law, the claim for such arrears and interest shall have precedence over the claim for any tax levied by a local authority, and such amount shall be recoverable under the law for the time being in force relating to the recovery of arrears of public revenue

due on land.

20. Refunds :-

(1) If any person satisfies the assessing authority that the amount of building tax paid by him exceed the amount with which such person is properly assessable under this Act, he shall be entitled to a refund of such excess.

(2) The appellate authority in the exercise of its appellate powers or the revisional authority in the exercise of its revisional powers, if satisfied to the like effect, shall cause a refund to be made by the assessing authority of any amount found to have been wrongly paid or paid in excess.

21. False statements in declaration :-

If any person makes a statement in a verification mentioned in section 7 or sub-section (2) of section 11 which is false and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code (Central Act 45 of 1860).

22. Failure to furnish return :-

(1) If any person fails without reasonable cause or excuse to furnish in due time any return specified in sub-section (1) or subsection (3) of section 7, the assessing authority, the appellate authority or the revisional authority may impose a penalty which may extend to five rupees for every day during which the default continues.

(2) The penalty imposed under sub-section (1) may be recovered in the same manner as arrears of building tax.

23. Power of inspection :-

(1) The assessing authority or any officer authorised by the assessing authority, the appellate authority or the revisional authority in this behalf [either suo moto or on application by the assessee] may, after due notice, at any time between sunrise and sunset, enter any building for the purpose of collecting particulars relating thereto or for taking measurements of the building or any repairs or improvements or any constructions or additions or combinations and may require the owner of the building or any other person in charge or in occupation of the building to produce

for inspection any book, register or record kept therein and ask for any information relating to the building or the repairs or improvements or the constructions or additions or combination, as the case may be, and the owner of the building or other persons in charge or occupation shall be bound to afford facilities for taking measurements and for such inspection, and to furnish such information as is available with him.

(2) Any person who obstructs the assessing authority or other officer authorized in the exercise of the powers conferred on it or him by subsection (1) shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

24. Prosecutions :-

(1) A person shall not be proceeded against for an offence under section 21 or section 23 except at the instance of such officer as may be authorized by the Government in this behalf.

(2) Before instituting proceedings against any person under subsection (1), the officer authorized under that sub-section shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The officer authorized under subsection (1) may, either before or after the institution of proceedings, compound any such offence other than an offence under section 23.

25. Manner of service of notice :-

(1) A notice or requisition under this Act may be served on the person therein named, either by post or as if it were a summons issued by a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) Any such notice or requisition may, in the case of a firm, Hindu undivided family or Aliyasanthana family or branch or Marumakkathayam tarwad or tavazhi or a family to which the provisions of the Kerala Nambudiri Act, 1958 (27 of 1958), apply, be addressed to any member of the firm or to the Manager, Ejaman or Karanavan, or any adult member of the family, tarwad, tavazhi or branch and, in the case of any other association of persons, be addressed to the principal officer thereof.

26. Power to make rules :-

(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for?

["(a) the determination of plinth area of the buildings and the plinth area of major repairs and improvements to the buildings.".]

(b) the form of returns under section 7 and the manner in which they shall be verified;

(c) the form of the notice of demand mentioned in section 10;

(d) the mode and manner of payment of building tax;

(e) the powers and duties of authorities and officers under this Act and the relations of the authorities to each other;

(f) the conditions of service of the assessing authorities and appellate authorities;

(g) the form in which appeals under this Act shall be presented and the manner in which they shall be verified;

(h) the form of application under section 12 or section 13 or section 14;

(i) the form of the notice of demand mentioned in sub-section (3) of section 15;

(j) the manner in which and the authority to whom application for refund shall be made and the procedure to be followed in respect of such applications; and

(k) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. Bar of suits etc., in courts :-

No suit shall be brought in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any authority or officer for anything in good faith done or intended to be done under

this Act.

28. Computation of period of limitation :-

In computing the period of limitation prescribed for any appeal under this Act, the date on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

29. Building tax not to be taken into account in fixing fair rent :-

For the avoidance of doubt, it is hereby declared that in fixing the fair rent of a building under section 5 of the Kerala building (Lease and Rent control) Act, 1965 (2 of 1965), the rent control court shall not take into consideration the building tax that is payable in respect of the building under the provisions of this Act.

30. Removal of difficulties :-

If any difficulty arises in giving effects to the provisions of this Act, the Government, as occasion may require, may be order do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty.

31. Repeal and saving :-

The Kerala Building Tax Ordinance, 1974 (16 of 1974), is hereby repealed

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.