

Kerala General Sales Tax (Amendment) Act, 1978**21 of 1978**

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Kerala General Sales Tax (Amendment) Act, 1978**21 of 1978**

An Act further to amend the Kerala General Sales Tax Act, 1963. Whereas it is expedient further to amend to Kerala General Sales Tax Act, 1963, for the purposes hereinafter appearing; Be it enacted in the Twenty-ninth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala General Sales Tax (Amendment) Act, 1978.

(2) It shall be deemed to have come into force on the 1st day of April, 1978.

2. Amendment Of Section 2 :-

In section 2 of the Kerala General Sales Tax Act, 1963 (15 of 1963) (hereinafter referred to as the principal Act),

(1) in clause (viii),

(i) sub-clause (a) shall be omitted;

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

(e) a person who, whether in the course of business or not, sells

(i) goods produced by him by manufacture, agriculture, horticulture or otherwise; or

(ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale.;

(2) after clause (xvi), the following clause shall be inserted, namely:

(xvi) person includes

(i) an individual;

(ii) a joint family;

(iii) a company:

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not ;

(vi) The Central Government or the Government of Kerala or the Government of any other State or Union Territory in India;

(vii) a local authority;

(viii) every artificial juridical person not falling under any of the preceding sub-clauses;;

(3) in clause (xxi), after Explanation (1A), the following Explanation shall be inserted, namely:

Explanation (1B).A transfer of property in trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale by the person entitled to make such transfer, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, shall be deemed to be a sale for the purposes of this Act.;

(4) to clause (xxvi), the following Explanation shall be added, namely:

Explanation.-Notwithstanding anything contained in any other provision of this Act, in the case of goods which are taxable at the point of last purchase in the State by a dealer liable to tax under section 5, and which are held as closing stock on the last day of any financial year, the amount for which such goods were purchased by the dealer shall be deemed also to be a part of his total turnover for the subsequent year or each of the subsequent years until such goods are either sold by him in the State or such purchase acquires the character of last purchase in the State in the hands of such dealer, and in case such purchase acquires the character of last purchase in the State in the hands of such dealer, the turnover in respect of such purchase shall be liable to tax in the year in which the purchase acquires the character of last purchase;.

3. Amendment Of Section 3 :-

In section 3 of the principal Act, after sub-section (3), the following subsections shall be inserted, namely:

(1) The Board of Revenue or the Deputy Commissioner may, by order in writing,

(a) transfer any case or cases relating to any assessee or class of assesses pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or

(b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case or cases relating to any assessee or class of assesses.

(2) Where any case is transferred to an assessing authority under clause (a) of subsection (4), such assessing authority may deal with the case either de novo or from the stage at which it was transferred..

4. Amendment Of Section 5 :-

In section 5 of the principal Act,

(a) in subsection (2), for the words two thousand five hundred rupees, the words "ten thousand rupees shall be substituted;

(b) in subsection (3), the following Explanation shall be inserted at the end, namely:

Explanation.-For the purposes of this subsection, component part means an article which forms an identifiable constituent of any finished product, which along with others goes to make up the finished product and which is identifiable visually and is separable

by a mechanical process and not by a chemical process, provided the identity of such article is not lost by separation.;

(c) in subsection (4), for the words at the rate of four per cent of his taxable turnover in respect of the goods other than those specified in the First or Second Schedule, the words on his taxable turnover in respect of such goods shall be substituted.

5. Amendment Of Section 5A :-

In section 5A of the principal Act, in the proviso to subsection (2), for the words two thousand five hundred rupees, the words ten thousand rupees shall be substituted.

6. Amendment Of Section 13 :-

In subsection (2) of section 13 of the principal Act, for the words two thousand five hundred rupees, the words ten thousand rupees shall be substituted.

7. Amendment Of Section 14 :-

In section 14 of the principal Act,

(a) after subsection (2), the following subsection shall be inserted, namely:

(2A) Where it appears necessary to the prescribed authority so to do for the proper realisation of the tax payable under this Act, it may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of the registration certificate a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified.;

(b) in subsection (4), for the words security for the proper payment of tax, the words, brackets, figure and letter security, or if the dealer has already furnished any security in pursuance of an order under subsection (2A), additional security, for the proper payment of tax shall be substituted.

8. Amendment Of Section 17 :-

In section 17 of the principal Act, for subsections (4), (5) and (6), the following subsections shall be substituted, namely:

(4) Notwithstanding anything to the contrary contained in subsection (3), the assessing authority shall accept the return for any two years out of the three consecutive years beginning with

the year 1977-78 submitted by any dealer whose total turnover as assessed under this Act according to the latest completed assessment and the total turnover specified in the return submitted by the assessee for the year for which the assessment is to be made accepting the return, does not exceed one lakh rupees and assess the dealer on the basis of such return:

Provided that the provisions of this subsection shall not apply if the tax due as specified in the return is less than the tax assessed according to the latest completed assessment by more than

(a) twenty-five per cent, if the tax so assessed is not more than two hundred rupees;

(b) twenty per cent, if the tax so assessed is more than two hundred rupees but less than five hundred rupees;

(c) ten per cent, if the tax so assessed is not less than five hundred rupees:

Provided further that the provisions of this subsection shall not apply in the case of a dealer who has been punished or on whom a penalty has been imposed for evasion of tax for the year for which the return has been submitted.

(5) It shall be competent for the Board of Revenue to fix the two years for which the returns shall be accepted for the purposes of subsection (4), in respect of any dealer or class or group of dealers.

(6) If in respect of any year out of the three years mentioned in sub-section (4), the dealer is assessed in accordance with the provisions of sub-section (3), then for the next two years the assessing authority shall accept the return submitted by him and assess him on the basis of such return unless the total turnover as assessed under this Act for the said year or the total turnover specified in the return submitted by the dealer for the year for which assessment is to be made is above one lakh rupees.

(7) The provisions contained in the provisos to subsection (4) shall, so far as may be, apply in respect of any assessment under subsection (6).

(8) The system of completing the assessment in accordance with the provisions of subsection (3) for one year and then completing the assessment accepting the return for the next two years shall, subject to the conditions and limitations specified in this section, be continued for subsequent years.

(9) For the removal of doubts, it is hereby clarified that nothing contained in subsections (4), (6) and (8) shall be deemed to exclude the operation of section 19 or section 27 in the case of a dealer assessed under any of the said subsections.

9. Insertion Of New Section 19A :-

After section 19 of the principal Act, the following section shall be inserted, namely:

19A. Assessment in cases of price variation.-Notwithstanding anything contained in subsection (1) of section 19,

(a) if a dealer receives in any year any amount due to price variations which would have been included in his turnover for any previous year if it had been received by him in that year, he shall, within thirty days from the end of the year in which such amount is received, submit a return in the prescribed form to the assessing authority and thereupon the assessing authority shall proceed to assess the tax payable on such amount;

(b) if the assessing authority is satisfied that any return submitted under clause (a) is correct and complete, it shall assess the dealer on the basis thereof;

(c) if the return submitted by a dealer under clause (a) appears to the assessing authority to be incorrect or incomplete, the assessing authority shall after making such inquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:

Provided that before taking action under this clause the dealer shall be given a reasonable opportunity to prove the correctness and completeness of the return;

(d) if no return is submitted by the dealer under clause (a), the assessing authority may, within four years from the expiry of the period within which such return ought to have been submitted, proceed to assess the tax payable on the amount referred to in the said clause:

Provided that before making any assessment under this clause, the assessing authority shall give the dealer an opportunity of being heard and make such other inquiry as it considers necessary.

10. Amendment Of Section 23 :-

In section 23 of the principal Act, in subsection (3), after the words revising authority" the words or within the time specified therefore in this Act or in any rule made there under shall be inserted.

11. Amendment Of Section 25 :-

In section 25 of the principal Act,

(a) in sub-section (1), for the words require any officer of the

Government or any local authority, company, firm, society or association of persons from whom money is due or may become due to the dealer, or any officer of the Government or any local authority, company, firm society or association of persons, the words and brackets require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) from whom money is due or may become due to the dealer or any court or any such money is due or may become due to the dealer or any court or any such officer or any other person (other than an individual) shall be substituted;

(b) for subsection (3), the following sub-section shall be substituted, namely:

(3) Any court, officer or other person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer, and the receipt by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.;

(c) in sub section (4), for the words Any local authority, company, firm, society or association of persons, the words Any court or person other than an officer of the Government shall be substituted:

(d) for subsections (5) and (6) and the Explanation under subsection (6), the following sub section and Explanation shall be substituted, namely:

(5) Where any court or person other than an officer of the Government to which or to whom a notice under this section is sent objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the dealer or that such court or person does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay to the assessing authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as it were an arrear of public revenue due on land.

Explanation.-For the purposes of this section, the amount due to a dealer or money held for or on account of a dealer by any court,

officer or other person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be lawfully subsisting.

12. Amendment Of Section 28 :-

In section 28 of the principal Act, in the proviso to sub section (6), for the words forty-five days, the words sixty days shall be substituted.

13. Insertion Of New Section 33A :-

After section 33 of the principal Act, the following section shall be inserted, namely:

33A. Warehousemen to submit returns.- Every warehouseman shall, if so required by an officer not below the rank of an assessing authority, furnish such particulars as he may require in respect of the goods deposited in his warehouse by any dealer, for the purpose of verifying the correctness of the returns submitted and the accounts maintained by such dealer.

14. Amendment Of Section 34 :-

In subsection (1) of section 34 of the principal Act.

(a) after the word and figures section 19,, the word, figures and letter section 19A, shall be inserted;

(b) for the words, figures and brackets section 30 or subsection (2) of section 47, the words and figures or section 30 shall be substituted.

15. Amendment Of Section 35 :-

In section 35 of the principal Act,

(a) in subsection (1), for the words the Inspecting Assistant Commissioner or any officer or authority of rank below that of an Inspecting Assistant Commissioner, the words any officer or authority subordinate to him other than an Appellate Assistant Commissioner shall be substituted;

(b) after sub section (2), the following sub section shall be inserted, namely:

(2A) Notwithstanding anything contained in subsection (2), the Deputy Commissioner may pass an order under subsection (1) on any point which has not been decided in an appeal or revision

referred to in clause (b) of subsection (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in clause (c) of that sub section, whichever is later.

16. Amendment Of Section 37 :-

In section 37 of the principal Act,

(a) in subsection (1), for the words the Deputy Commissioner, Inspecting Assistant Commissioner or any officer or authority of rank below that of an Inspecting Assistant Commissioner, the words any officer or authority subordinate to it other than an Appellate Assistant Commissioner shall be substituted;

(b) after subsection (2), the following subsection shall be inserted, namely:

(2A) Notwithstanding anything contained in subsection (2), the Board of Revenue may pass an order under subsection (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of subsection (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred in clause (c) of that subsection, whichever is later.

17. Omission Of Section 45 :-

Section 45 of the principal Act shall be omitted.

18. Amendment Of Section 45A :-

In section 45 A of the principal Act ³/₄.

(a) in subsection (1), for the words an amount of fifty rupees or twice the amount of sales tax or other amount evaded or sought to be evaded whichever is higher, the words an amount not exceeding twice the amount or sales tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding five thousand rupees in any other case shall be substituted;

(b) for subsection (3), the following subsection shall be substituted namely:³/₄

(3) The Deputy Commissioner may, on application by any person on whom a penalty is imposed under subsection (1) within thirty days from the date of receipt by him of the order imposing such penalty, for reason to be recorded in writing, confirm, reduce or

waive such penalty or remand the case to the assessing authority or Appellate Assistant Commissioner, as the case may be, for reconsideration:

Provided that the Deputy Commissioner may admit an application made after the expiry of the said period of thirty days if he is satisfied that the applicant had sufficient cause for not making the application within the said period.;

(c) in subsectio (5),^{3/4}

(i) in the proviso, for the words Provided that, the words provided further that shall be substituted;

(ii) before the proviso, the following proviso shall be insertednamely:^{3/4}

Provided that Board of Revenue shall not admit an application made after the expiry of thirty days from the date of receipt by the applicant of the order under subsection (1) or subsection (3), as the case may be, unless it is satisfied that the applicant had sufficient cause for not making the application within the said period.

19. Amendment Of Section 47 :-

In section 47 of the principal Act, in clause (b), for the words one thousand rupees, the words five thousand rupees shall be substituted.

20. Amendment Of Section 54 :-

In subsection (2) of section 54 of the principal Act, in clause (ix), for the words Department of the Government, the words Department of the Central Government or the Government of Kerala shall be substituted.

21. Insertion Of New Section 59 A :-

After section 59 of the principal Act, the following section shall be inserted, namely:

59 A. Power of Government to determine rate of tax.-If any question arises as to the rate of tax leviable under this Act on the sale or purchase of any goods, such question shall be referred to the Government for decision, and the decision of the Government thereon shall, notwithstanding any other provision in this Act, be final.

22. Amendment Of First Schedule :-

In the First Schedule to the principal Act,

(i) for Serial Number 1 and the entries relating thereto and the Explanation thereunder, the following shall be substituted, namely:

1. Foreign Liquor At the point of first sale in the State by a dealer who is liable to tax under section 5 50

2 . Liquor other than foreign liquor

arrack and toddy do. 40

Explanation1.- Liquor means and includes toddy, wine, brandy, champagne, sherry, rum, gin, whisky, beer, cider, coco-brandy, arrack and all other distilled or spirituous or fermented beverages brought into or produced or manufactured in the State.

Explanation 2.- Foreign liquor means any liquor manufactured in any country other than India and brought to India.;

(ii) for Serial Number 5 and the entries relating thereto, the following shall be substituted, namely:

5. Rubber products other than those specially mentioned in this Schedule, but not including cycle tyres, and tubes and rubber accessories of cycles. At the point of first sale in the State by a dealer who is liable to tax under section 5 10

5A Synthetic rubber and its products and mixture of rubber and synthetic rubber do. 12;

(iii) in column (4) against Serial Number 6, for the figures 12, the figures 15 shall be substituted;

(iv) for Serial Numbers 7 and 8 and the entries relating thereto, the following shall be substituted, namely:

7 All varieties of tractors, power tillers and bull dozers and spare parts, component parts and tyres and tubes thereof. At the point of first sale in the State by a dealer who is liable to tax under section 5. 10

8. Motor vehicles, motor vessels, motor engines, chassis of motor vehicles, trailers, motor bodies built on the chassis of motor vehicles, bodies built for motor vessels or engines, motor tyres, tubes and other spare parts and accessories of motor vehicles or motor vessels; motor cycles and cycle combinations, motor scooters, motorettes and tyres, tubes and other spare parts and accessories of motor cycles, motor scooters and motorettes. do. 15

8A Rolling bearing, that is to say, ball or roller bearing (all kinds) do. 8;

(v) for the entry in column (2) against Serial Number 9, the following shall be substituted, namely:

Refrigerators, water coolers and air conditioning plants and

machines and component parts thereof;

(vi) in column (4) against Serial Number 18, for the figures 15, the figures 20 shall be substituted;

(vii) in the entry in column (2) against Serial Number 21, for the words parts thereof, the words parts and accessories thereof shall be substituted;

(viii) in column (4) against Serial Number 25, for the figure 7, the figure 8 shall be substituted;

(ix) in column (4) against Serial Number 25 A, for the figure 9, the figure 10 shall be substituted;

(x) in the entry in column (2) against Serial Number 25B, for the words Mosaic tiles, the words Glazed tiles, mosaic tiles shall be substituted;

(xi) in the entries relating to Serial Number 25H, in column (4), for the figure 9, the figures 10 shall be substituted;

(xii) after Serial Number 25H and the entries relating thereto, Number 25H, the following shall be inserted, namely:

25HH Fruits, vegetables, roots At the point of first 10;

and tubers, preserved or pre- sale in the State by a pared and canned, tinned or dealer who is liable to bottled tax under section 5.

(xiii) in column (4) against Serial Number 25NN, for the figure 5 the figure 3 shall be substituted;

(xiv) in column (4) against Serial Number 25O, for the figure 5, the figure 6 shall be substituted;

(xv) after Serial Number 25O and the entries relating thereto, the following shall be inserted, namely:

25OO Cotton sewing thread At the point of first 3;

sale in the State by a dealer who is liable to tax under section 5

(xvi) for Serial Number 25P and the entries relating thereto, the following shall be substituted, namely:

25P. Non-alcoholic drinks and beve-

At the point of first 10 rages bottled or canned and sale in the State by a sold under brand name dealer who is liable to tax under section 5.

25PP. Aerated waters, non-alcoholic drinks and beverages bottled or canned and not falling under do. 5;

item 25P.

(xvii) after Serial Number 25Q and the entries relating thereto, the following shall be inserted, namely:

25R.Titanium Dioxide At the point of first 10;

sale in the State by a dealer who is liable to tax under section 5

(xviii) in column (4) against Serial Number 26, for the figure 9, the figure 10 shall be substituted:

(xix) for Serial Number 26A, and the entries relating thereto, the following shall be substituted, namely:

26A. Water supply and sanitary At the point of first equipments and fittings sale in the State by a dealer who is liable to tax under section 5. 8

26B P.V.C.pipes do. 8;

(xx) after Serial Number 32 and the entries relating thereto, the following shall be inserted namely:

32A. All kinds of suit cases, brief cases At the point of first and vanity bags, when sold at a sale in the State by a dealer price of Rs.50 or above who is liable to tax under section 5 10;

(xxi) for Serial Number 33, and the entries relating thereto, the following shall be substituted, namely:

33 Plywood, veneer plywood and At the point of first hard boards sale in the State by a dealer who is liable totax under section 5. 7

33A. All kinds of laminated sheets do. 15:

and thermocol

(xxii) in column (4) against Serial Number 49, for the figure 5, the figure 6 shall be substituted;

(xxiii) for Serial Number 54 and 55 and the entries relating thereto, the following shall be substituted, namely:

54 (i) Ammonium Sulphate,

(ii) Ammonium Sulphate Nitrate,

(iii) Urea,

(iv) Ammonium Chloride,

(v) Sodium Nitrate,

(vi) Calcium Ammonium Nitrate,

(vii) Super Phosphate Single,

(viii) Super Phosphate Triple,

(ix) Kotka Phosphate,

(x) Dicalcium Phosphate,

(xi) Pottassium Chloride (Muriate of Potash),

(xii) Sulphate of Potash,

(xiii) Mono Ammonium Phosphate,

(xiv) Di Ammonium Phosphate,

(xv) Ammonium Phosphate Sulphate of any description,

(xvi) Nitro Phosphate of any description,

(xvii) N.P.K.Complex of various grades,

(xviii) Bone meal,

(xix) Urea Ammonium Phosphate,

(x) Fused Calcium Magnesium Phosphate,
 (xxi) Rock Phosphate,
 (xxii) Any mixture of two or more of the articles mentioned in sub-items (i) to
 (xxi) above with or without the addition of other articles (on the turnover relating to components thereof which have not already suffered tax), and
 (xxiii) Any other chemical fertilizers At the point of first sale in the State by a dealer who is liable to tax under section 5 2

55. Pesticides and plant protection chemicals do. 4;
 (xxiv) for Serial Number 58 and the entries relating thereto, the following shall be substituted, namely:
 58. (i) Garbled Pepper At the point of last purchase in the State by a dealer who is liable
 (ii) Ungarbled Pepper, to tax under section 5 6;
 (xxv) for Serial Numbers 65A and 66, and the entries relating thereto, the following shall be substituted, namely:
 65A (i) Prawns, lobsters, frogs, At the point of last purchase of froglegs, cuttle fish and crab purchase in the State not falling under
 (ii) below or by a dealer who is
 25H (viii) liable to tax under section 5 5
 (ii) Prawns, lobsters, frog, frog- legs, cuttle fish and crab canned or tinned or frozen or otherwise processed not falling under item 25H (viii) do. 5
 66. Cashewnut with shell do. 5
 66A. Cashewnut kernel At the point of first sale in the State by a dealer who is liable to tax under section 5 5.

23. Amendment Of Third Schedule :-

In the Third Schedule to the principal Act,
 (i) serial Number 8 and the entry relating thereto shall be omitted;
 (ii) before Serial Number 12 and the entry relating thereto, the following shall be inserted, namely:
 11A. Arrack.

24. Validation :-

Notwithstanding anything contained in the principal Act or in any other law for the time being in force, or in any judgment, decree or order of any court or other authority, any order purported to have been passed or any other action purported to have been taken, before the commencement of this Act, by a Deputy Commissioner

in revision against the orders of any Assistant Commissioner of Salestax who has been invested with the powers of an assessing authority in the purported exercise of the powers conferred by section 35 of the principal Act shall be, and shall be deemed always to have been, valid and in accordance with law as if such order was passed or such other action was taken in exercise of the powers conferred by section 35 of the principal Act as amended by this Act.

25. Repeal And Saving :-

(1) The Kerala General Sales Tax (Amendment) Ordinance, 1978 (10 of 1978), is hereby repealed.

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