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**Kerala Handloom Workers Welfare Cess Act, 2007****10 of 2007**

An Act to provide for the levy and collection of cess on the sale proceeds of yarn, textile or textile products with a view to augmenting the resources of the Kerala Handloom Workers' Welfare Fund Board constituted under the Kerala Handloom Welfare Fund Act, 1989. WHEREAS it is expedient to levy and collection of cess on the sale proceeds of yarn, textile or textile products with a view to augmenting the resources of the Kerala Handloom Workers' Welfare Fund Board constituted under the Kerala Handloom Workers' Welfare Fund Act, 1989. BE it enacted in the Fifty-eighth Year of the Republic of India as follows:-

**1. Short Title, Extent And Commencement :-**

(1) This Act may be called the Kerala Handloom Workers Welfare Cess Act, 2007.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

## **2. Definitions :-**

(1) In this Act, unless the context otherwise requires,--

(a) Assessing Officer means an officer appointed by the Government under section 4;

(b) Board means the Kerala Handloom Workers Welfare Fund Board constituted under section 6 of the Kerala Handloom Workers' Welfare Fund Act, 1989;

(c) dealer means any person who carries on the business of manufacturing, selling, processing, supplying, purchasing, or storing for sale of yarn, textile or textile products and includes,--

(i) a commission agent, a broker (by whatever name called) who carries on the business of manufacturing, processing, purchasing or storing of yarn, textile or textile products within the State of Kerala and sells or transfers (in the same form or processed form) to outside from the State of Kerala;

(ii) a non-resident dealer, or an agent of non-resident dealer or local branch office of a firm or company or association of persons whether incorporated or not situated outside the State of Kerala;

(d) Fund means, Kerala Handloom Workers Welfare Fund established under section 3 of the Kerala Handloom Workers Welfare Fund Act, 1989. (2 of 1989);

(e) Government means the Government of Kerala;

(f) prescribed means prescribed by rules made under this Act;

(g) sale proceeds means the value of buying and selling of yarn, textile or textile products in the State of Kerala, for sale or to process otherwise;

(h) textile means any cloth-woven in handloom or powerloom (including textile mills) or any other looms out of cotton yarn, polyester yarn, silk yarn or any other yarn (blended or otherwise), but does not include khadi products;

(i) textile products means any garment or other articles manufactured by using cloth as basic component;

(j) yarn means cotton yarn, polyester fiber, silk yarn or any other blended fiber which can be used for weaving cloth;

(2) Words and expressions used herein but not defined and defined in the Kerala Handloom Workers Welfare Fund Act, 1989, shall have

the meanings respectively assigned to them in that Act.

### **3. Levy And Collection Of Cess :-**

(1) There shall be levied and collected a cess for the purpose of the Kerala Handloom Workers Welfare Fund Act, 1989 at a rate of quarter percent of the total sale proceeds of a dealer:

Provided that no cess shall be levied under sub-section (1) from a dealer whose sale proceeds for a year is less than five lakhs rupees.

(2) The cess levied under sub-section (1) shall be collected from every dealer, in such manner and such time as may be prescribed.

(3) The cess levied under sub-section (1) shall be in addition to any cess, duty or tax leviable on yarn, textile or textile products under any other law for the time being in force.

(4) The proceeds of cess collected under sub-section (2) shall be credited initially to the Consolidated Fund of the State of Kerala, in the manner as may be prescribed.

(5) The amount of cess collected shall be paid to the Fund of the Board by the Government after deducting the cost of collection of such cess not exceeding one percent of the amount collected every year, before 30th June, in such manner as may be prescribed.

### **4. Appointments Of Assessing Officer :-**

The Government may by notification in the Gazette, appoint such officers of the Labour Department, not below the rank of Assistant Labour Officers Grade I or Officers of equal status as the Assessing Officers, for the purposes of this Act and shall fix the local limits of their jurisdiction.

### **5. Maintenance Of Registers And Records :-**

(1) Every dealer shall maintain such registers and records in their commercial establishment in the manner as may be prescribed.

(2) The registers and records shall be produced for verification, on demand by any officer or authority authorised by this Act.

### **6. Furnishing Of Returns By The Dealer :-**

(1) Every dealer shall furnish return showing the sale proceeds of the previous financial year to the Assessing Officer in such manner and at such time as may be prescribed.

(2) If any dealer liable to pay the cess under section 3 fails to furnish the return under sub -section (1), the Assessing Officer

shall give a notice requiring such dealer to furnish such return before such date as may be specified in the notice.

## **7. Assessment Of Cess :-**

(1) The Assessing Officer to whom the return has been furnished under section 6 shall, after making or causing to be made such enquiry as he thinks fit and after satisfying himself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the dealer.

(2) If the return has not been furnished to the Assessing Officer under sub-section (2) of Section 6, he shall, after making or causing to be made such enquiry as he thinks fit, by order, assess the amount of cess payable by the dealer.

(3) An Order of Assessment made under sub-section (1) or sub-section (2) shall specify the amount of cess and the date within the cess shall be paid by the dealer.

(4) The Officer conducting the enquiry under sub-section (1) or sub-section (2) shall, for the purposes of such enquiry, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath or affirmation;

(b) requiring the disclosure and production of documents;

(c) receiving evidence on affidavits; and

(d) issuing commissions for the examination of witnesses.

(5) Any enquiry under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (Central Act 45 of 1869) and for the purpose of section 196 of the said Code.

## **8. Provisional Collection Of Cess :-**

(1) Every dealer liable to pay cess under section 3 shall, pay by way of advance cess on or before the 10th of every month an amount equivalent to one-twelfth of the amount payable annually by him according to the latest assessment under section 7.

(2) Where the amount is not paid under sub section (1) on or before the due date, the Assessing Officer may issue notice to the defaulter showing the amount in arrears and directing to pay the said amount within such period not exceeding seven days of the receipt of the notice.

(3) The amount paid under sub-section (1) by the dealer for a year shall be adjusted against the amount assessed under section 7 for that year.

### **9. Interest Payable On Delay In Payment Of Cess :-**

If any dealer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such dealer shall be liable to pay interest on the amount to be paid at the rate of one and a half percent per month for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

### **10. Fine For Non-Payment Of Cess Within The Specified Time :-**

If any amount of cess payable by any dealer under section 3 is not paid within the date specified in the order of assessment under section 7 it shall be deemed to be in arrears and the Assessing Officer may, after making such enquiry as he deems fit, impose on such dealer a fine not exceeding the amount of cess;

Provided that before imposing any such fine, such dealer shall be given a reasonable opportunity of being heard and if after such hearing the Assessing Officer is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

### **11. Recovery Of Amount Due Under This Act :-**

Any amount due under this Act (including any interest or penalty) from the dealer may be recovered in the same manner as an arrear of land revenue.

### **12. Appeal :-**

(1) Any dealer aggrieved by an order of assessment made under section 7 or by an order imposing fine under section 10 may, within such time as may be prescribed prefer an appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) On receipt of the appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as

possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

### **13. Power Of Entry :-**

Any Assessing Officer or any other officer specially empowered in this behalf by the Government, may--

(a) with such assistance, if any, as he thinks fit, enter at any reasonable time, any establishment or place where he considers it necessary to, enter for carrying out the purposes of this Act, including verification of the correctness of the particulars furnished by any dealer under section 6;

(b) require the production of any register and any other document relating to the sale of yarn, textile or textile products; and

(c) exercise such other powers as may be prescribed.

### **14. Return Of Collection Of Cess :-**

(1) Every Assessing Officer shall furnish to the Board and such other authority as may be directed, every month a return showing the amount of cess collected by him during the previous month, in such form and within such period as may be prescribed.

(2) The Chief Executive Officer of the Board or the authority specified in sub-section (1) shall furnish to the Government every year a return showing the total amount of cess collected during the previous financial year, within such period and in such form as may be prescribed.

### **15. Penalty :-**

(1) Any dealer, under an obligation to furnish a return under this Act, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

(2) Whoever, being liable to pay cess under this Act, willfully or intentionally evades or attempts to evade the payment of such cess, shall be punishable with imprisonment which may extend to six months, or fine which may extend to five thousand rupees or with both.

(3) Whoever, contravenes any of the provisions of this Act or the rules made there under shall, if no other penalty is elsewhere

provided by this Act for such contravention, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand five hundred rupees or with both.

(4) No court shall take cognizance of an offence punishable under this section, save on a complaint made by or under the authority of the Government.

#### **16. Offence By Companies :-**

(1) Where an offence under this Act has been committed by a company, every person who, at the time of offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly-

Explanation.-- For the purposes of this section--

(a) company means any body corporate and include a firm or other association of individuals; and

(b) director in relation to a firm, means a partner in the firm.

#### **17. Bar Of Jurisdiction Of Civil Courts :-**

No Civil Courts shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the rules required to be settled, decided or dealt with or to be determined by the Government or any authority or Officer appointed under this Act.

#### **18. Power To Make Rules :-**

(1) The Government may by notification in the Gazette, make rules

for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner in which and the time within which cess shall be levied and collected under section 3;

(b) particulars of the registers and records to be maintained by a dealer under section 5;

(c) the manner and time within which a return showing the sale proceeds of the previous financial year shall be furnished by a dealer to the Assessing Officer under section 6;

(d) the manner in which an appeal may be filed and the fees to be paid under section 12;

(e) the power which may be exercised by an assessing officer or any other officer under clause (c) of section 13;

(f) the form and the period within which return of collection of cess is to be furnished under section 14;

(g) 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.

## **19. Repeal And Savings :-**

(1) The Kerala Handloom Workers Welfare Cess Ordinance, 2007 (7 of 2006) is hereby repealed.

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