

**THE KERALA GENERAL SALES TAX (AMENDMENT)
ACT, 1976**

(Act 11 of 1976)

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**THE KERALA GENERAL SALES TAX (AMENDMENT)
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**An Act further to amend the Kerala General Sales Tax
Act, 1963**

Preamble.—WHEREAS it is expedient further to amend the Kerala General Sales Tax Act, 1963, for the purposes hereinafter appearing;

BE it enacted in the Twenty-seventh Year of the Republic of India as follows:—

*Received the assent of the Governor on the 22nd day of March, 1976 and published in the Kerala Gazette Extraordinary No. 178, dated 22nd March 1976

1 **Short title.**—This Act may be called the Kerala General Sales Tax (Amendment) Act, 1976

2. **Amendment of section 4.**—In section 4 of the Kerala General Sales Tax Act, 1963 (15 of 1963) (hereinafter referred to as the principal Act),—

(a) in sub-section (1),—

(i) for the words "two other members", the words "as many other members as they think fit" shall be substituted,

(ii) for the words "other two members", the words "other members" shall be substituted,

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

"(3) (a) Subject to the provisions of clause (b), the functions of the Appellate Tribunal may be performed—

(i) by a Bench consisting of the Chairman and any other member, or

(ii) by a Bench consisting of the Chairman and two other members, or

(iii) by a Bench consisting of two or more members other than the Chairman.

(b) The Chairman or any other member of the Appellate Tribunal nominated by him may, sitting singly, dispose of any case which pertains to an assessee whose total tax as assessed by the assessing authority in the case does not exceed five hundred rupees.

(3A) If any case which comes up before a Bench consisting of a single member other than the Chairman, or a Bench consisting of more than one member, of which the Chairman is not a member, involves a question of law, the Bench may, in its discretion, reserve such case for decision by the Chairman or by a Bench to be constituted under sub-section (3B), of which the Chairman shall be a member

(3B) The Bench or Benches of the Appellate Tribunal shall be constituted by the Chairman in accordance with the provisions of this Act and the rules made thereunder

(3C) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and such point or points shall be heard—

(i) when the Chairman is not a member of that Bench, either by the Chairman or by the Chairman and any other member or members as the Chairman may direct, and

(ii) when the Chairman is a member of that Bench, by any other member or members to whom the case is referred by the Chairman,

and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it

(3D) Any member who has previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal shall be disqualified to hear that case.

(3E) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or members of the Tribunal are disqualified under sub-section (3D) to hear the case the Government may appoint a person qualified to be appointed as a member of the Appellate Tribunal as an additional member of the Tribunal, and the point shall be decided in accordance with the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(3F) The additional member appointed under sub-section (3E) shall cease to hold office on the disposal of the case for which he was appointed".

3. **Substitution of new section for section 22** —For section 22 of the principal Act, the following section shall be substituted, namely —

"22 **Collection of tax by dealers** —(1) A registered dealer may, subject to the provisions of sub-section (2), collect

the tax payable by him on the sale of any goods from the person to whom he sells the goods

(2) No registered dealer shall collect any sum purporting to be by way of tax—

(a) on the sale of any goods—

(i) in respect of which he is not liable to pay tax, or

(ii) at a rate exceeding the rate at which he is liable to pay tax, or

(b) in respect of the purchase of any goods, whether or not he is liable to pay tax on such purchase.

(3) No person other than a registered dealer shall collect any sum by way of, or purporting to be by way of, tax under this Act

Provided that the Central Government, the Government of Kerala, the Government of any other State in India and a local authority shall, in respect of any sale of goods effected by them, be entitled to collect, by way of tax, the amount which a registered dealer effecting such sale would have been entitled to collect by way of tax."

4. **Substitution of new section for section 28.**—For section 28 of the principal Act, the following section shall be substituted, namely—

"28. **Power to order production of accounts and powers of entry, inspection, etc**—(1) An officer not below the rank of an assessing authority may, for the purposes of this Act, by notice, require any dealer—

(a) to produce or cause to be produced before him any accounts, registers, records or other documents, or

(b) to furnish or cause to be furnished any other information, relating to his business, and such dealer shall comply with such requisition.

(2) Any officer not below the rank of an assessing authority may, at any reasonable time,—

- (a) enter any place of business or any vessel or vehicle of any dealer; and
- (b) inspect any accounts, registers, records or other documents relating to his business and the goods in his possession.

(3) If any officer not below the rank of an assessing authority has reason to believe that a dealer is trying to evade any tax under this Act, he may, for reasons to be recorded, enter and search—

- (a) the place of business of the dealer; or
- (b) any other place where the dealer is keeping or is reasonably believed to be keeping any goods, accounts, registers, records or other documents relating to his business

Provided that no residential accommodation (not being a shop-cum-residence) shall be entered into or searched except on the authority of a search warrant issued by a Magistrate of the first class having jurisdiction over the area in which the residential accommodation is situate.

Explanation.—For the purposes of clause (b), 'place' includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspection or search may seize such accounts, registers, records or other documents as he considers necessary and on such seizure shall grant the dealer a receipt of the things seized

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the officer seizing them beyond a period of thirty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act.

Provided that the next higher authority shall not give permission to retain such accounts, registers, records or other documents beyond a period of forty-five days from the date of the seizure

(7) The power conferred by sub-sections (3) and (5) shall include—

- (a) the power to break open any box or receptacle or place or the door of any premises, in which any goods or any accounts, registers, records or other documents of the dealer are, or are reasonably believed to be, kept

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so;

- (b) the power to seal any box or receptacle, godown or building, where any goods or any accounts, registers, records or other documents are, or are reasonably believed to be, kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building, or is not available, and then to break open such box, receptacle, godown or building on the authority of a warrant issued by a Magistrate of the first class having jurisdiction over the area in which the box or receptacle or godown or building is kept or situate.

(8) If any officer, while inspecting any place of business under sub-section (2) or searching any place under sub-section (3) finds therein any goods not accounted for by the dealer in his accounts and other records required under section 27 to be kept and maintained by him, such officer may, after giving the dealer a reasonable opportunity of being heard, by order, direct the payment of a penalty, not exceeding fifty per cent of the value of the goods not accounted for, as may be fixed by such officer

(9) A Magistrate of the first class may, on application from an officer referred to in sub-section (3), and on being

satisfied that any residential accommodation within his jurisdiction has to be entered into and searched under that sub-section, issue a search warrant authorising such officer to enter and search such residential accommodation or, on being satisfied that any box, receptacle, godown or building within his jurisdiction has to be broken open under clause (b) of sub-section (7), issue a warrant authorising such officer to break open such box, receptacle, godown or building.”.

5. **Amendment of section 46.**—In section 46 of the principal Act, in sub-section (1), clause (b) shall be omitted

6. **Insertion of new section 46A.**—After section 46 of the principal Act, the following section shall be inserted, namely.—

“46A. **Penalty for illegal collection of tax, etc.**—(1) Any person who collects any sum by way of tax or purporting to be by way of tax in contravention of sub-section (2) or sub-section (3) of section 22 shall, on conviction before a Magistrate not below the rank of a Magistrate of the first class, be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, and with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees

(2) Where a person is prosecuted for an offence under sub-section (1), the burden of proving that the act constituting the offence was done under a mistake of fact shall be on him.

7. **Amendment of First Schedule.**—In the First Schedule to the principal Act,—

(a) after serial number 25N and the entries relating thereto, the following shall be inserted, namely—

“25NN Hosiery goods do. 5”,

(b) before serial number 58 and the entries relating thereto, the following shall be inserted, namely —

“57H Liquified petroleum gas At the point of 15
first sale in the
State by a dealer
who is liable to
tax under section 5

8 **Amendment of Second Schedule.**—In the Second Schedule to the principal Act, in column (4), for the figures "2" and "3", wherever they occur, the figure "4" shall be substituted

9 **Repeal and saving.**—(1) The Kerala General Sales Tax (Amendment) Ordinance, 1975 (6 of 1975), 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 as if this Act had come into force on the 30th August, 1975.
