

Twelfth Kerala Legislative Assembly
Bill No. 138

**THE KERALA COIR WORKERS WELFARE
CESS BILL , 2007**

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2007

KERALA NIYAMASABHA PRINTING PRESS.

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1044/2007.

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[Translation in English of “2007-ലെ കേരള കയർ തൊഴിലാളി ക്ഷേമസെസ്സ് ബിൽ” published under the authority of the Governor]

THE KERALA COIR WORKERS WELFARE CESS BILL, 2007

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BILL

to provide for the levy and collection of cess on the sale proceeds of coir and coir products with a view to augmenting the resources of the Kerala Coir Workers Welfare Fund Board constituted under section 6 of the Kerala Coir Workers Welfare Fund Act, 1987.

Preamble.—WHEREAS, it is expedient to provide for the levy and collection of cess on the sale proceeds of coir and coir products with a view to augmenting the resources of the Kerala Coir Workers Welfare Fund Board constituted under the Kerala Coir Workers Welfare Fund Act, 1987;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Coir 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.*—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 Coir Workers Welfare Fund Board constituted under section 6 of the Kerala Coir Workers Welfare Fund Act, 1987 (34 of 1987) ;

(c) “coir products” means mats and mattings, rugs and carpets, fibre, other rubberized coir products manufactured by using fibre coir or pith wholly or partly and includes other products manufactured in traditional looms and mechanised looms, P.V.C, rubber or any similar backing materials or other allied products;

(d) “dealer” means any person engaged in the business of buying, selling or storing for sale any coir products within the State of Kerala but does not include a cultivator who collects his own husk for sale and a person selling the husk by storing it for sale;

(e) “Fund” means Kerala Coir Workers Welfare Fund established under section 3 of the Kerala Coir Workers Welfare Fund Act, 1987 ;

(f) “Government” means the Government of Kerala ;

(g) “prescribed” means prescribed by rules made under this Act ;

(h) “sale proceeds” means the value of buying and selling of coir or coir products made in the State of Kerala for sale or to process otherwise ;

(i) “yarn” means the fibre extracted from the coir yarn obtained by the spinning of coconut husk ;

(2) Words and expressions used herein but not defined in the Kerala Coir Workers Welfare Fund Act, 1987 shall have the meaning 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 Coir Workers’ Welfare Fund Act, 1987, at such rate not exceeding one percent of the total sale proceeds of a dealer:

Provided that no cess under sub-section (1) shall be levied from the dealers of husk, fibre used for making coir etc:

Provided further that no cess under sub-section (1) shall be levied on the dealers whose sale proceeds for a year is less than three 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 coir or coir 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. *Appointment of Assessing Officer.*—The Government may by notification in the Gazette, appoint such officers of Coir Development Department, not below the rank of Deputy Registrar/Project Officer (Coir) or any Officer in the equivalent rank as the Assessing Officers, for the purpose 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) They shall be produced for verification on demand by any officer or any authority authorised by this Act.

6. *Furnishing of Return by the dealer.*—(1) Every dealer shall furnish to the Assessing Officer returns showing the sale proceeds of the previous financial year 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 who received a return 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, 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 which 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 purpose 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 ;
- (d) issuing commissions for the examination of witnesses.

(5) Any enquiry under this section shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) 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 delayed 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 two percent 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. *Penalty 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 penalty not exceeding the amount of cess :

Provided that before imposing any such penalty, 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 penalty under section 10, may, within sixty days of receipt of order, prefer an appeal to the Director of Coir Development in such form and in such manner as may be prescribed:

Provided that the Director of Coir Development may condone the delay in filing the appeal, if he is satisfied that the delay was on reasonable ground.

(2) Every appeal filed 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 Director Coir Development 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 an appeal under this section shall be final and shall not be called in question in any court of law.

13. *Revision.*—The Government may, either *suo motu* or on an application of the aggrieved person, call for the records of any proceedings taken by the Appellate Authority under section 12 and make such enquiry and pass such orders, as they deem fit:

Provided that an application for revision under this section shall be made within thirty days from the date on which the order was communicated to the applicant and no order shall be passed under this section without giving the aggrieved person an opportunity of being heard.

14. *Power to 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 purpose 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 coir or coir products; and

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

15. *Return of collection of Cess.*—(1) Every Assessing Officer shall furnish to the Board and such other authority specified 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 in the State during the previous financial year, within such period and in such form as may be prescribed.

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

(2) Whoever, 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 with 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 thereunder 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.

17. *Offence by Companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time of commission of offence, 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 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 negligence 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 includes a firm or other association of individuals.

(b) “Director” in relation to a firm, means a partner in the firm.

18. *Bar of Jurisdiction of Civil Courts.*—No Civil Court 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.

19. *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 14 ;

(f) the form and the period within which return of collection of cess is to be furnished under section 15 ;

(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.

STATEMENT OF OBJECTS AND REASONS

The Hon'ble High Court of Kerala in its Judgment in O.P. No. 8725/95 dated the 3rd July, 2003 has declared invalid section 4 (2) of the Kerala Coir Workers Welfare Fund Act, 1987 as amended by the Kerala Coir Workers' Welfare Fund (Amendment) Act, 1998 which provides for the collection of contribution by the coir products dealers. This has led to a considerable decrease in the income of the Kerala Coir Workers' Welfare Fund, as the major source of the Fund was the contribution of coir products dealers under section 4 (2) of the said Act.

2. Therefore in order to augment the resource of the Fund for attending various welfare activities to the beneficiaries, the Government have decided to enact a legislation by levying a cess on the dealers of coir products.

3. This Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

Sub-clause (4) and (5) of clause 3 of the Bill provide that the proceeds of cess collected under sub-section (2) shall be credited initially to the Consolidated Fund of the State in such manner as may be prescribed and 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.

2. As per clause 4 of the Bill, the Government may appoint Assessing Officer for the purpose of determination and collection of cess. For the purpose of clause 12 of the Bill, an appellate authority shall also be appointed. The Assessing Officer intended are the existing officers of the Coir Development Department. So also the Director of Coir Development Department is the appellate authority. Therefore the duties assigned to the said officers are in addition to their existing duties and there will not be any additional expenditure towards salary and allowances and hence there will not be any liability to the Government.

3. Under sub-clause (5) of clause 3 of the Bill, one percent of the cess amount collected may be utilised towards collection expenses. The rate of cess fixed in the Bill is one percent. The existing coir dealers in Kerala is estimated as upto thousand. The sale turnover of the said dealers in a year is estimated at 325 crore rupees. Its one percent is rupees 3.25 crore. This amount is expected to be collected in the item of cess in a year. So the annual return to the Consolidated Fund of the State is expected to be approximately 3.25 crore rupees. Therefore the annual recurring expenditure from the Consolidated Fund of the State will be by deducting the amount not exceeding one percent in the item of State expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Sub-clause (2) of clause 1 of the Bill seeks to empower the Government to prescribe the date on which the Act will come into force.

2. Sub-clause (1) of clause 3 of the Bill seeks to empower the Government to levy and collect cess at the rate not exceeding one percent of the total turnover in a year of a dealer.

3. Sub-clause (2) of clause 3 of the Bill seeks to empower the Government to prescribe the manner and the time for the collection of cess from the dealers.

4. Sub-clause (4) of clause 3 of the Bill seeks to empower the Government to credit the cess amount to the State Consolidated Fund in the prescribed manner.

5. Sub-clause (5) of clause 3 of the Bill seeks to empower the Government to prescribe the manner in which the amount of cess credited to the Consolidated Fund of the State.

6. Clause 4 of the Bill seeks to empower the Government to prescribe the local jurisdiction of Assessing Officer appointed for the purpose of assessment and collection of cess.

7. Clause 5 of the Bill seeks to empower the Government to prescribe the Registers and Records to be maintained by a dealer.

8. Clause 6 of the Bill seeks to empower the Government to prescribe the manner and time by which the return to be submitted by a dealer showing the annual sale proceeds.

9. Sub-clause (1) of clause 12 of the Bill seeks to empower the Government to prescribe the appellate authority, the manner of filing appeal and its period.

10. Sub-clause (2) of clause 12 of the Bill seeks to empower the Government to fix fees for filing appeal under sub-clause (1) of clause 12.

11. Clause 14 (c) of the Bill seeks to empower the Government to prescribe the powers exercisable by the Assessing Officer or such other empowered Officers in addition to the powers specified in this clause.

12. Sub-clause (1) of clause 15 of the Bill seeks to empower the Government to prescribe the authority in addition to the Board for filing return, the form of return to be submitted by the Assessing Officer and the period.

13. Sub-clause (2) of clause 15 of the Bill seeks to empower the Government to prescribe the period and the form of return to be submitted to the Government showing the amount of cess collected every year.

14. Clause 19 of the Bill seeks to empower the Government to make rules to carry out the purposes of the Act.

15. Matters in respect of which rules may be made or notifications may be issued are of routine or administrative in nature. Further the rules made are subject to scrutiny by the Legislative Assembly. Therefore the delegation of the Legislative power is thus, of a normal character.

G. SUDHAKARAN