

Fourteenth Kerala Legislative Assembly

Bill No. 277

**THE KERALA STATE GOODS AND SERVICES TAX
(AMENDMENT) BILL, 2021**

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(AMENDMENT) BILL, 2021

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further to amend the Kerala State Goods and Services Tax Act, 2017.

Preamble.—WHEREAS, it is expedient further to amend the Kerala State Goods and Services Tax Act, 2017 (20 of 2017) for the purposes hereinafter appearing;

BE it enacted in the Seventy first Year of Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala State Goods and Services Tax (Amendment) Act, 2021.

(2) Section 21 of the Bill shall be deemed to have come into force on the 31st day of March, 2020.

(3) The remaining sections of the Bill shall come into force on such date as the Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming in to force of that provision.

2. *Amendment of section 2.*—In section 2 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017) (hereinafter referred as the principal Act), in clause (4), after the words “the Appellate Authority for Advance Ruling,” the words “the National Appellate Authority for Advance Ruling,” shall be inserted.

3. Amendment of section 10.—In section 10 of the principal Act,—

(1) in sub-section (1), after the second proviso, the following *Explanation* shall be inserted, namely:—

“Explanation.—For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in the State.”;

(2) in sub-section (2),—

(i) in clause (d), the word “and” occurring at the end shall be omitted;

(ii) in clause (e), for the word “Council:”, the words “Council; and” shall be substituted;

(iii) after clause (e), the following clause shall be inserted, namely:—

“(f) he is neither a casual taxable person nor a non-resident taxable person.”;

(3) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State, if he is not,—

(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b) engaged in making any inter-State outward supplies of goods or services;

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income tax Act, 1961 (Central Act 43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.”;

(4) in sub-section (3), after the words, brackets and figure “under sub-section (1)” at both the places where they occur, the words, brackets, figure and letter “or sub-section (2A), as the case may be,” shall be inserted.

(5) in sub-section (4), after the words, brackets and figure “of sub-section (1)”, the words, brackets, figure and letter “or, as the case may be, sub-section (2A)” shall be inserted.

(6) in sub-section (5), after the words, brackets and figure “under sub-section (1)”, the words, brackets, figure and letter “or sub-section (2A), as the case may be,” shall be inserted.

(7) after sub-section (5), the following *Explanations* shall be inserted, namely:—

“*Explanation 1.*—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for

registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression “turnover in State” shall not include the value of following supplies, namely:—

(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

4. *Amendment of section 22.*—In section 22 of the principal Act, in sub-section (1), after the second proviso, the following shall be inserted, namely:—

“Provided also that the Government may, on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

5. *Amendment of section 25.*—In section 25 of the principal Act, after sub-section (6), the following sub-sections shall be inserted, namely:—

“(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union Territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.—For the purposes of this section, the expression “number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (Central Act 18 of 2016).”.

6. Insertion of new section 31A.—After section 31 of the principal Act, the following section shall be inserted, namely:—

“31A. *Facility of digital payment to recipient.*—The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.”.

7. Amendment of section 39.—In section 39 of the principal Act,—

(1) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.”;

(2) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.”

8. *Amendment of section 44.*—In section 44 of the principal Act, in sub-section (1), the following provisos shall be inserted, namely:—

“Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.”

9. *Amendment of section 49.*—In section 49 of the principal Act, after sub-section (9), the following sub-sections shall be inserted, namely:—

“(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).”

10. *Amendment of section 50.*—In section 50 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

11. *Amendment of section 52.*—In section 52 of the principal Act,—

(a) in sub-section (4), the following provisos shall be inserted, namely:—

“Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.”;

(b) in sub-section (5), the following provisos shall be inserted, namely:—

“Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.”.

12. Insertion of new section 53A.—After section 53 of the principal Act, the following section shall be inserted, namely:—

“53A. *Transfer of certain amounts.*—Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the Central Goods and Services Tax Act or under the Integrated Goods and Services Tax Act or under the Goods and Services Tax (Compensation to States) Act, the Government shall, transfer to the Central tax account or integrated tax account, or cess account an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.”.

13. Amendment of section 54.—In section 54 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

“(8A) Where the Central Government has disbursed the refund of State tax, the Government shall transfer an amount equal to the amount so refunded, to the Central Government.”.

14. Amendment of section 95.—In section 95 of the principal Act,—

(i) in clause (a),—

(a) after the words “Appellate Authority”, the words “or the National Appellate Authority” shall be inserted;

(b) after the words and figures "of section 100", the words, figures and letter "or of section 101C of the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017)" shall be inserted;

(ii) after clause (e), the following clause shall be inserted, namely:—

"(f) "National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A."

15. *Insertion of new section 101A.*—After section 101 of the principal Act, the following section shall be inserted, namely:—

"101A. *Constitution of National Appellate Authority for Advance Ruling.*— Subject to the provisions of this Chapter, for the purposes of this Act, the National Appellate Authority for Advance Ruling constituted under section 101A of the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) shall be deemed to be the National Appellate Authority for Advance Ruling under this Act."

16. *Amendment of section 102.*—In section 102 of the principal Act, in the opening portion,—

(a) after the words "Appellate Authority", at both the places where they occur, the words "or the National Appellate Authority" shall be inserted;

(b) after the words and figures "or section 101", the words, figures and letter "or section 101C of the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) respectively," shall be inserted;

(c) for the words "or the appellant", the words ",appellant, the Authority or the Appellate Authority" shall be substituted.

17. *Amendment of section 103.*—In section 103 of the principal Act,—

(1) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B of the Central Goods and Services Tax Act and all registered persons having the same Permanent Account Number issued under the Income tax Act, 1961 (Central Act 43 of 1961);

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income tax Act, 1961 (Central Act 43 of 1961).”;

(2) in sub-section (2), after the words, brackets and figure “in sub-section (1)”, the words, brackets, figure and letter “and sub-section (1A)” shall be inserted.

18. Amendment of section 104.—In section 104 of the principal Act, in sub-section (1),—

(a) after the words “Authority or the Appellate Authority”, the words “or the National Appellate Authority” shall be inserted;

(b) after the words and figures “of section 101”, the words, figures and letter “or under section 101C of the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017)” shall be inserted.

19. Amendment of section 105.—In section 105 of the principal Act,—

(1) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Powers of Authority, Appellate Authority and National Appellate Authority.”;

(2) in sub-section (1), after the words “Appellate Authority”, the words “or the National Appellate Authority” shall be inserted;

(3) in sub-section (2), after the words “Appellate Authority”, wherever they occur, the words “or the National Appellate Authority” shall be inserted.

20. *Amendment of section 106.*—In section 106 of the principal Act,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Procedure of Authority, Appellate Authority and National Appellate Authority.”;

(b) after the words “Appellate Authority”, the words “or the National Appellate Authority” shall be inserted.

21. *Insertion of new section 168A.*—After section 168 of the principal Act, the following section shall be inserted, namely:—

“168A. *Power of Government to extend time limit in special circumstances.*— (1) Notwithstanding anything contained in this Act, Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.—For the purposes of this section, the expression “*force majeure*” means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.”.

22. *Amendment of section 171.*—In section 171 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation.—For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.’

22. *Repeal and saving.*—(1) The Kerala State Goods and Services Tax (Amendment) Ordinance, 2020 (46 of 2020) and the Kerala State Goods and Services Tax (Second Amendment) Ordinance, 2020 (49 of 2020) are 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 principal Act as amended by the said Ordinances shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala State Goods and Services Tax Act, 2017 (20 of 2017) was enacted with a view to make a provision for levy and collection of tax on *intra-State* supply of goods or services or both by the State of Kerala.

2. The GST Council in its 35th meeting held on 21st June, 2019, had recommended various amendments in the provisions of the Central Goods and Services Tax Act, 2017. The same were incorporated in the Finance (No. 2) Bill, 2019 and received the assent of the President on the 1st day of August, 2019. Corresponding amendments are also required to be carried out under the respective Goods and Service Tax Acts of the States.

3. The proposed Kerala State Goods and Services Tax (Amendment) Bill, 2020, *inter alia*, provides for the following, namely:—

(i) to amend section 22 of the Act that the Government may, on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

(ii) to amend section 25 of the Act by incorporating a new section that every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed;

(iii) to incorporate a new section 31A after section 31 describing the facility of digital payment to recipient;

(iv) to amend section 39 of the Act specifying that every registered person other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed;

(v) to amend section 44 of the Act specifying that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein;

(vi) to amend section 49 of the Act specifying that a registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax or cess, in such form and

manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act;

(vii) to amend section 50 of the Act by inserting a proviso to sub-section (1) specifying that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger;

(viii) to amend section 52 of the Act by inserting the provisos that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein and further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner;

(ix) to amend section 53 of the Act by inserting a new section 53A specifying transfer of certain amounts in the electronic cash ledger under this Act that the Government shall, transfer to the Central tax account or integrated tax account, or cess account an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed;

(x) to amend section 54 of the Act by inserting a new sub-section (8A) specifying that where the Central Government has disbursed the refund of State tax, the Government shall transfer an amount equal to the amount so refunded, to the Central Government;

(xi) to amend section 101 of the Act by inserting a new section 101A specifying the constitution of National Appellate Authority for Advance Ruling;

(xii) to amend section 103 of the Act specifying the persons being binded by Advance Ruling pronounced by the National Appellate Authority;

(xiii) to amend section 171 of the Act by inserting a new sub-section (3A) that where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profiteered and that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

4. As the Legislative Assembly of the State of Kerala was not in session and the above proposal had to be given effect to immediately, the Kerala State Goods and Services Tax (Amendment) Ordinance, 2019 was promulgated by the Governor of Kerala on the 29th day of December, 2019 and the same was published as Ordinance No. 42 of 2019 in the Kerala Gazette Extraordinary No. 3250 dated 30th December, 2019.

5. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which was convened on the 31st day of December, 2019.

6. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala promulgated the Kerala State Goods and Services Tax (Amendment) Ordinance, 2020 on the 13th day of January, 2020 and the same was published as Ordinance No. 3 of 2020 in the Kerala Gazette Extraordinary No. 93 dated 14th January, 2020.

7. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 29th day of January, 2020 and ended on the 12th day of February 2020.

8. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala promulgated the Kerala State Goods and Services Tax (Amendment)

Ordinance, 2020 on the 17th day of February, 2020 and the same was published as Ordinance No. 15 of 2020 in the Kerala Gazette Extraordinary No. 561 dated 18th February, 2020.

9. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 256 of the Fourteenth Kerala Legislative Assembly the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 2020 and ended on the 13th day of March, 2020.

10. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala promulgated the Kerala State Goods and Services Tax (Amendment) Ordinance, 2020 on the 31st day of March, 2020 and the same was published as Ordinance No. 21 of 2020 in the Kerala Gazette Extraordinary No. 1010 dated 31st March, 2020.

11. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 267 of the Fourteenth Kerala Legislative Assembly the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 24th day of August, 2020 and ended on the same day.

12. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala promulgated the Kerala State Goods and Services Tax (Amendment) Ordinance, 2020 on the 26th day of September, 2020 and the same was published as Ordinance No. 46 of 2020 in the Kerala Gazette Extraordinary No. 2211 dated 29th day of September, 2020.

13. The outbreak of Novel Corona Virus (COVID-19) pandemic across many countries of the world, including India, has caused immense loss to lives of people and given rise to unprecedented humanitarian and economic crisis in the country.

Due to vagaries of pandemic, a national lockdown was imposed which had to be further extended. Due to very rapid spread of pandemic, social distancing had to be ensured immediately to prevent society at large from its disastrous consequences. This necessitated ease of compliance under certain tax and other laws.

14. As the Legislative Assembly of the State of Kerala was not in session and the above proposal had to be given effect to immediately, the Kerala State Goods and Services Tax (Second Amendment) Ordinance, 2020 was promulgated by the Governor of Kerala on the 15th day of July, 2020 and the same was published as Ordinance No. 39 of 2020 in the Kerala Gazette Extraordinary No. 1696 dated 15th day of July, 2020.

15. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 24th day of August, 2020 and ended on the same day.

16. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala promulgated the Kerala State Goods and Services Tax (Second Amendment) Ordinance, 2020 on the 26th day of September, 2020 and the same was published as Ordinance No. 49 of 2020 in the Kerala Gazette Extraordinary No. 2225 dated 29th day of September, 2020.

14. The Bill seeks to replace Ordinance No. 46 and Ordinance No. 49 of 2020 by an Act of the State legislature.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (2A) proposed to be inserted in section 10 of the principal Act by clause 3 of the Bill seeks to empower the Government on the recommendations of the Council to prescribe the rate not exceeding three per cent of the turnover in State for the purpose of calculating the amount of tax under the said sub-section.

2. Third proviso proposed to be inserted in section 22 of the principal Act by clause 4 of the Bill, seeks to empower the Government on the recommendations of the Council to enhance the aggregate turnover from twenty lakh rupees to a higher amount not exceeding forty lakh rupees in case of a supplier who is engaged exclusively in the supply of goods and subject to certain conditions and limitations as may be specified in the notification.

3. Sub-section (6A) proposed to be inserted in section 25 of the principal Act by clause 5 of the Bill seeks to empower the Government to make rules on the recommendations of the Council to provide for the form and manner and the time within which a registered person shall undergo authentication or furnish proof of possession of Aadhaar number and in case such person is not assigned Aadhaar number, then the manner in which an alternate and viable means of identification may be offered to such person.

4. Section 31A proposed to be inserted after section 31 of the principal Act by clause 6 of the Bill seeks to empower the Government on the recommendations of the Council to prescribe a class of registered person who shall provide prescribed modes of electronic payment to the recipient of the supply of goods or services or both and give option to the recipient to make payment in such mode, in the manner and subject to the conditions and restrictions as may be provided in such rules.

5. Sub-sections (1), (2) and (7) proposed to be substituted in section 39 of the principal Act by clause 7 of the Bill to provide for a new return system seeks to empower the Government to make rules regarding the particulars to be furnished in the return, the form, manner and time within which the return may be filed.

6. Sub-sections (10) and (11) proposed to be inserted after sub-section (9) of section 49 of the principal Act by clause 9 of the Bill seeks to empower the Government to make rules to provide for the form, manner, conditions and restrictions for a registered person to transfer on the common portal any amount of tax, interest, penalty, fee or any amount available in the electronic cash ledger under the said Act to the electronic cash ledger for integrated tax, Central tax, State tax or cess and such transfer shall be deemed to be a refund.

7. Section 53A proposed to be inserted after section 53 of the principal Act by clause 12 of the Bill seeks to empower the Government to transfer to the State tax account an amount equal to the amount transferred from the electronic cash ledger in the manner and within the time provided by rules.

8. Sub-section (8A) proposed to be inserted after sub-section (8) of section 54 of the principal Act by clause 9 of the Bill seeks to empower the Government to disburse the refund of the State tax in the manner provided by the rules.

9. Section 168A proposed to be inserted after section 168 of the principal Act by clause 21 of the Bill seeks to empower the Government by notification, to extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

10. The matters in respect of which rules may be made or notification may be issued are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative powers is, thus, of a normal character.

DR. T. M. THOMAS ISAAC.

NOTES ON CLAUSES

Clause 2 of the Bill seeks to amend clause (4) of section 2 of the principal Act to insert the words "the National Appellate Authority for Advanced Ruling" in the definition of adjudicating authority so as to exclude that authority from the definition of adjudicating authority.

Clause 3 of the Bill seeks to amend section 10 of the principal Act so as to provide alternative composition scheme for supplier of services or mixed suppliers (not eligible for earlier composition scheme) having an annual turnover in preceding financial year upto rupees fifty lakh.

Clause 4 of the Bill seeks to amend section 22 of the principal Act so as to provide for higher threshold exemption limit from rupees twenty lakh to such amount not exceeding rupees forty lakh in case of supplier who is engaged exclusively in the supply of goods.

Clause 5 of the Bill seeks to amend section 25 of the principal Act so as to provide for mandatory Aadhaar submission or authentication for persons who intend to take or have taken registration under the said Act in such manner as may be notified by the Government on the recommendations of the Council.

Clause 6 of the Bill seeks to insert a new section 31A in the principal Act to provide that supplier shall mandatorily offer facility for digital payment to his recipient.

Clause 7 of the Bill seeks to amend section 39 of the principal Act so as to provide for furnishing of annual returns and for quarterly payment of tax by tax payer who opts for composition levy and to provide for certain other category of tax payers, an option for quarterly and monthly payments under the proposed new return filing system.

Clause 8 of the Bill seeks to amend section 44 of the principal Act so as to empower the Commissioner to extend the due date for furnishing annual return and reconciliation statement.

Clause 9 of the Bill seeks to amend section 49 of the principal Act so as to provide facility to the tax payer to transfer an amount from one head to another in the electronic cash ledger.

Clause 10 of the Bill seeks to amend section 50 of the principal Act so as to provide for charging interest only on the net cash tax liability, except in those cases where tax is paid subsequent to initiation of any proceeding under section 73 or 74 of the Act.

Clause 11 of the Bill seeks to amend section 52 of the principal Act so as to empower the Commissioner to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.

Clause 12 of the Bill seeks to insert a new section 53A in the principal Act so as to provide for transfer of amount in the electronic cash ledger between the Centre and States as a consequence of the new facility given to the tax payer.

Clause 13 of the Bill seeks to amend section 54 of the principal Act so as to empower the Central Government to disburse refund amount to the tax payers in respect of refund of State tax.

Clause 14 of the Bill seeks to amend section 95 of the principal Act so as to include "the National Appellate Authority for Advance Ruling" in the definition of "Advance Ruling" and also seeks to insert clause (f) in section 95 of the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) to define "National Appellate Authority".

Clause 15 of the Bill seeks to insert a new section 101A in the principal Act so as to provide for constitution of the National Appellate Authority for Advanced Ruling.

Clause 16 of the Bill seeks to amend section 102 of the principal Act so as to bring the National Appellate Authority within the ambit of that section to empower it to rectify its advance ruling.

Clause 17 of the Bill seeks to amend section 103 of the principal Act so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding on the applicants, being distinct persons and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number. It also provides that the ruling shall be binding unless there is a change in law or facts.

Clause 18 of the Bill seeks to amend section 104 of the principal Act to provide that advance ruling pronounced by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts.

Clause 19 of the Bill seeks to amend section 105 of the principal Act to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.

Clause 20 of the Bill seeks to amend section 106 of the principal Act to provide that the National Appellate Authority shall have power to regulate its own procedure.

Clause 21 of the Bill seeks to insert a new section 168 A of the principal Act which inter alia, provides for extension of various time limits for completion or compliance of actions under the specified Acts and reduction in interest, waiver of penalty and prosecution for delay in payment of certain taxes or levies during the specified period.

Clause 22 of the Bill seeks to amend section 171 of the principal Act to insert a new sub-section (3A) therein as to empower the authority specified under sub-section (2) thereof to impose penalty equivalent to ten per cent of the profiteered amount.

Clause 23 of the Bill seeks to provide for the repeal and saving.

"Provided further that a person who opts to pay tax under clause(a) or clause (b) or clause (c) may supply services [other than those referred to in clause (b) of paragraph 6 of Schedule II], of value not exceeding ten per cent of turnover in the State in the preceding financial year or five lakh rupees, whichever is higher.";

(2) The registered person shall be eligible to opt under sub-section (1), if,—

"(a) save as provided in sub-section (1), he is not engaged in the supply of services;"

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(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961 (Central Act 43 of 1961) the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

(3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section(1).

(4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

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22. *Persons liable for registration.*—(1) Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

“Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.”;

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25. *Procedure for registration.*—(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

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(6) Every person shall have a Permanent Account Number issued under the Income-Tax Act, 1961 (Central Act 43 of 1961) in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

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31. *Tax invoice.*—(1) A registered person supplying taxable goods shall, before or at the time of,—

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

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(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation:—For the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

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39. *Furnishing of returns.*—(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, and manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed on or before the twentieth day of the month succeeding such calendar month or part thereof.

Provided that the government may on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.”;

(2) A registered person paying tax under the provisions of Section 10 shall for, each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

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(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;

“Provided that the Government may, on the recommendations of the council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.”;

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44. *Annual return.*—(1) Every registered person, other than an Input Service Distributor, a person paying tax under Section 51 or Section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

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49. *payment of tax, interest, penalty and other amounts.*—(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

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(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation:—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

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50. *interest on delayed payment of tax.*—(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council.

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52. *Collection of tax at source*.—(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

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(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it and the amount collected under the said sub-section during the financial year in such form and manner as may be prescribed before the 31st day of December following the end of such financial year.

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53. *Transfer of input tax credit*.—On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act, 2017 (Central Act 13 of 2017) in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under

sub-section (1) of section 39, the amount collected as State tax shall stand reduced by an amount equal to such credit so utilised and the State Government shall transfer an amount equal to the amount so reduced from the State tax account to the integrated tax account in such manner and within such time as may be prescribed.

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54. *Refund of tax.*—(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

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(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to,—

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person, or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

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95. *Definitions.*—In this Chapter, unless the context otherwise requires.—

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

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(e) "Authority" means the Authority for Advance Ruling, constituted under section 96.

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101. *Orders of Appellate Authority.*—(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit confirming or modifying the ruling appealed against or referred to.

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(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

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102. *Rectification of advance ruling.*—The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as

to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, or the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

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103. *Applicability of advance ruling.*—(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only,—

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

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104. *Advance ruling to be void in certain circumstances.*—(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

