

Fourteenth Kerala Legislative Assembly

Bill No. 171

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**THE KERALA STATE GOODS AND SERVICES TAX  
(AMENDMENT) BILL, 2018**

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A

*BILL*

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

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

BE it enacted in the Sixty-ninth Year of the 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, 2018.

(2) Save as otherwise provided, the provisions of this Act 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 into 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 to as the principal Act),—

(a) in clause (4), for the words “the Appellate Authority and the Appellate Tribunal”, the words, brackets and figures “the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171” shall be substituted;

(b) in clause (16), for the words “Central Board of Excise and Customs”, the words “Central Board of Indirect Taxes and Customs” shall be substituted;

(c) in clause (17), for sub-clause (h), the following sub-clause shall be substituted, namely:—

“(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and”;

(d) clause (18) shall be omitted;

(e) in clause (35), for the word, brackets and letter “clause (c)”, the word, brackets and letter “clause (b)” shall be substituted;

(f) in clause (69), in sub-clause (f), after the word and figures “article 371”, the words, figures and letter “and article 371J” shall be inserted;

(g) in clause (102), the following Explanation shall be inserted, namely:—

“*Explanation.*—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;”.

3. *Amendment of section 7.*—In section 7 of the principal Act, with effect from the 1st day of July, 2017,—

(a) in sub-section (1),—

(i) in clause (b), after the words “or furtherance of business;”, the word “and” shall be inserted and shall always be deemed to have been inserted;

(ii) in clause (c), after the words “a consideration;”, the word “and” shall be omitted and shall always be deemed to have been omitted;

(iii) clause (d) shall be omitted and shall always be deemed to have been omitted;

(b) after sub-section (1), the following sub-section shall be inserted and shall always be deemed to have been inserted, namely:—

“(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”;

(c) in sub-section (3), for the words, brackets and figures “sub-sections (1) and (2)”, the words, brackets, figures and letter “sub-sections (1), (1A) and (2)” shall be substituted.

4. *Amendment of section 9.*—In section 9 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”.

5. *Amendment of section 10.*—In section 10 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “in lieu of the tax payable by him, an amount calculated at such rate”, the words, brackets and figures “in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate” shall be substituted;

(ii) in the proviso, for the words “one crore rupees”, the words “one crore and fifty lakh rupees” shall be substituted;

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

“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.”;

(b) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

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

6. *Amendment of section 12.*— In section 12 of the principal Act, in sub-section (2), in clause (a), the words, brackets and figure “sub-section (1) of” shall be omitted.

7. *Amendment of section 13.*—In section 13 of the principal Act, in sub-section (2), the words, brackets and figure “sub-section (2) of” occurring at both the places, shall be omitted.

8. *Amendment of section 16.*—In section 16 of the principal Act, in sub-section (2),—

(a) in clause (b), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

“*Explanation.*—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services,—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.”;

(b) in clause (c), for the word and figures “section 41”, the words, figures and letter “section 41 or section 43A” shall be substituted.

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

(a) in sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.”;

(b) in sub-section (5), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used,—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available,—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged,—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both,—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”

10. *Amendment of section 20.*—In section 20 of the principal Act, in the *Explanation*, in clause (c), for the words and figures “under entry 84,” the words, figures and letter “under entries 84 and 92A” shall be substituted.

11. *Amendment of section 22.*— In section 22 of the principal Act,—

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

“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.”;

(b) in the *Explanation*, in clause (iii), after the word “Constitution”, the words “except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand” shall be inserted.

12. *Amendment of section 24.*—In section 24 of the principal Act, in clause (x), after the words “commerce operator”, the words and figures “who is required to collect tax at source under section 52” shall be inserted.

13. *Amendment of section 25.*— In section 25 of the principal Act,—

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

“Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005 (Central Act 28 of 2005), in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State.”;

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

“Provided that a person having multiple places of business in the State may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.”.

14. *Amendment of section 29.*— In section 29 of the principal Act,—

(a) in the marginal heading after the word “Cancellation”, the words “or suspension” shall be inserted;

(b) in sub-section (1), after clause (c), the following proviso shall be inserted, namely:—

“Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.”;

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

“Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.”.

15. *Amendment of section 34.*—In section 34 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Where a tax invoice has”, the words “Where one or more tax invoices have” shall be substituted;

(ii) for the words “a credit note”, the words “one or more credit notes for supplies made in a financial year” shall be substituted;

(b) in sub-section (3),—

(i) for the words “Where a tax invoice has”, the words “Where one or more tax invoices have” shall be substituted;

(ii) for the words “a debit note”, the words “one or more debit notes for supplies made in a financial year” shall be substituted.

16. *Amendment of section 35.*—In section 35 of the principal Act, in sub-section (5), the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”

17. *Amendment of section 39.*—In section 39 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “in such form and manner as may be prescribed”, the words “in such form, manner and within such time as may be prescribed” shall be substituted;

(ii) the words “on or before the twentieth day of the month succeeding such calendar month or part thereof ” shall be omitted;

(iii) the following proviso shall be inserted, namely:—

“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.”;

(b) in sub-section (7), the following proviso shall be inserted, namely:—

“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.”;

(c) in sub-section (9),—

(i) for the words "in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed", the words "in such form and manner as may be prescribed" shall be substituted;

(ii) in the proviso, for the words “the end of the financial year”, the words “the end of the financial year to which such details pertain” shall be substituted.

18. *Insertion of new section 43A.*—After section 43 of the principal Act, the following section shall be inserted, namely:—

“43A. *Procedure for furnishing return and availing input tax credit.*—(1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.

(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.

(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.

(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.

(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—

(i) within six months of taking registration;

(ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such as may be prescribed.”.

19. *Amendment of section 48.*— In section 48 of the principal Act, in sub-section (2), after the word and figures “section 45”, the words “and to perform such other functions” shall be inserted.

20. *Amendment of section 49.*— In section 49 of the principal Act,—

(a) in sub-section (2), for the word and figures “section 41”, the words, figures and letter “section 41 or section 43A” shall be substituted;

(b) in sub-section (5),—

(i) in clause (c), the following proviso shall be inserted, namely:—

“Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of Central tax is not available for payment of Integrated tax;”;

(ii) in clause (d), the following proviso shall be inserted, namely:—

“Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of Integrated tax only where the balance of the input tax credit on account of Central tax is not available for payment of Integrated tax;”.

21. *Insertion of new sections 49A and 49B.*—After section 49 of the principal Act, the following sections shall be inserted, namely:—

“49A. *Utilisation of input tax credit subject to certain conditions.*—Notwithstanding anything contained in section 49, the input tax credit on account of State tax shall be utilised towards payment of Integrated tax, or State tax, as the case may be, only after the input tax credit available on account of Integrated tax has first been utilised fully towards such payment.

49B. *Order of utilisation of input tax credit.*—Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of Integrated tax, Central tax or State tax, as the case may be, towards payment of any such tax.”.

22. *Amendment of section 52.*—In section 52 of the principal Act, in sub-section (9), for the word and figures “section 37”, the words and figures “section 37 or section 39” shall be substituted.

23. *Amendment of section 54.*— In section 54 of the principal Act,—

(a) in sub-section (8), in clause (a), for the words “zero-rated supplies”, the words "export" and "exports" shall respectively be substituted;

(b) in the *Explanation*, in clause (2),—

(i) in sub-clause (c), in item (i), after the words “foreign exchange”, the words “or in Indian rupees wherever permitted by the Reserve Bank of India” shall be inserted;

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

“(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;”.

24. *Amendment of section 79.*—In section 79 of the principal Act, after sub-section (4), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of this section, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.”.

25. *Amendment of section 107.*—In section 107 of the principal Act, in sub-section (6), in clause (b), after the words “arising from the said order,”, the words “subject to a maximum of twenty-five crore rupees,” shall be inserted.

26. *Amendment of section 112.*— In section 112 of the principal Act, in sub-section (8), in clause (b), after the words “arising from the said order,” the words “subject to a maximum of fifty crore rupees,” shall be inserted.

27. *Amendment of section 129.*—In section 129 of the principal Act, in sub-section (6), for the words “seven days”, the words “fourteen days” shall be substituted.

28. *Amendment of section 143.*— In section 143 of the principal Act, in sub-section (1), in clause (b), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.”.

29. In SCHEDULE I of the principal Act, in paragraph 4, for the words “taxable person”, the word “person” shall be substituted.

30. In SCHEDULE II of the principal Act, in the heading, after the word “ACTIVITIES”, the words “OR TRANSACTIONS” shall be inserted and shall always be deemed to have been inserted with effect from the 1<sup>st</sup> day of July, 2017.

31. In SCHEDULE III of the principal Act,—

(i) after paragraph 6, the following paragraphs shall be inserted, namely:—

“7. Supply of goods from a place outside India to another place outside India without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”;

(ii) the *Explanation* shall be numbered as *Explanation 1* and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*— For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962 (Central Act 52 of 1962).”.

32. *Repeal and saving.*—(1) The Kerala State Goods and Services Tax (Amendment) Ordinance, 2018 (52 of 2018) 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.

## 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 Government.

2. The Act provides for certain provisions for smooth transition of existing taxpayers to new goods and services tax regime. However, the new tax regime had faced certain difficulties. One of the major inconveniences caused to the taxpayers, especially small and medium enterprises, was the process of filing return and payment of tax under the Goods and Services Tax laws. In this regard, the proposed new return filing system envisages quarterly filing of return and tax payment for small taxpayers along with minimum paperwork. In order to implement the new return filing system, and also to overcome the above difficulties, it is proposed to amend the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).

3. The proposed Kerala State Goods and Services Tax (Amendment) Bill, 2018, *inter alia* provides for the following, namely:□

(i) to amend section 7 of the Act to clarify the scope of supply;

(ii) to amend section 9 of the Act empowering the State Government to notify classes of registered persons to pay the tax on reverse charge basis in respect of receipt of supplies of certain specified categories of goods or services or both from unregistered suppliers;

(iii) to amend section 10 of the Act so as to enhance the limit of composition levy from one crore rupees to one crore and fifty lakh rupees;

(iv) to amend section 17 of the Act to specify the scope of input tax credit;

(v) to amend section 22 of the Act to enhance the exemption limit for registration in the special category States from ten lakh rupees to twenty lakh rupees;

(vi) to amend section 25 of the Act so as to facilitate tax payer to have the option to obtain multiple registrations for multiple places of business located

within the same State and to provide for separate registration for Special Economic Zone unit or developer;

(vii) to amend section 29 of the Act so as to insert a provision for temporary suspension of registration while cancellation of registration is under process;

(viii) to insert a new section 43A so as to provide for the new system of filing return and availing input tax credit;

(ix) to amend sub-section (6) of section 107 of the Act relating to Appeals so as to provide that the amount of pre-deposit payable for filing of appeal shall be capped at twenty five crore rupees;

(x) to amend section 129 of the Act so as to increase the period relating to detention or seizure of goods and conveyances in transit from seven days to fourteen days.

4. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Goods and Services Tax (Amendment) Ordinance, 2018 (52 of 2018) was promulgated by the Governor on the 15th October, 2018 and the same was published in the Kerala Gazette Extraordinary No. 2568 dated 15th October, 2018.

5. The Bill seeks to replace Ordinance No. 52 of 2018 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 (4) of section 9 proposed to be substituted in the principal Act by clause 4 of the Bill seeks to empower the Government to specify a class of registered persons who shall pay tax on reverse charge basis in respect of supply of specified categories of goods or services or both received from an unregistered supplier.

2. Second proviso to sub-section (1) of section 22 proposed to be inserted in the principal Act by clause 11 of the Bill seeks to empower the Government to notify the conditions and limitations to enhance the aggregated turnover from ten lakh rupees to such amount not exceeding twenty lakh.

3. Proviso to sub-section (2) of section 25 proposed to be substituted in the principal Act by clause 13 of the Bill seeks to empower the Government to prescribe the conditions subject to which separate registration may be granted to a person having multiple places of business.

4. Proviso to clause (c) of sub-section (1) of section 29 proposed to be inserted in the principal Act by item (b) of clause 14 of the Bill seeks to empower the Government to prescribe the period for which and manner in which a suspension of registration while cancellation of registration is under process. The second proviso to sub-section (2) of section 29 proposed to be inserted in the said Act by item (c) of the said clause seeks to empower the Government to prescribe the period for which, and the manner in which, the registration may be suspended by the proper officer.

5. Proviso to sub-section (1) of section 9, proposed to be inserted in the principal Act, by sub-item (iii) of item (a) of clause 17 of the Bill, seeks to empower the Government to notify certain classes of registered persons who shall furnish return for every quarter subject to the conditions and safeguards as specified therein. Proviso to Sub-section (7) of the said section, proposed to be inserted in the said Act by item (b) of the said clause, seeks to empower the Government to 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 and sub-section (9) of the said section, proposed to be amended by sub-item (i) of item (c) of the said clause, seeks to empower the Government to prescribe the form and manner in which omissions and incorrect particulars may be corrected.

6. Sub-section (2) of section 43A proposed to be inserted in the principal Act by clause 18 of the Bill, seeks to empower the Government to prescribe the procedure for availing of input tax credit by the recipient and verification thereof. Sub-section (3) of the said section proposed to be inserted in the said Act by the

said clause, seeks to empower the Government to prescribe the procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purpose of availing input tax credit. Sub-section (4) of the said section proposed to be inserted by the said clause, seeks to empower the Government to prescribe the procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3). Sub-section (7) of the said section, proposed to be inserted in the said Act, seeks to empower the Government to prescribe the manner in which the recovery shall be made. Item (ii) of Sub-section (8) of the said section, proposed to be inserted in the said Act, by the said clause, seeks to empower the Government to prescribe the procedure , safeguards and threshold of the tax amount in relation to outward supplies, by a registered person who has defaulted in payment of tax.

7. Section 49B, proposed to be inserted in the said Act, by clause 21 of the Bill seeks to empower the Government to prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, Central tax or State tax as the case may be.

8. The matters in respect of which rules may be made or notifications 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 1* of the Bill provides for the Short title and Commencement.

*Clause 2* of the Bill seeks to amend certain expressions used in the Bill.

*Clause 3* of the Bill seeks to amend section 7 of the principal Act relating to "Scope of Supply" in order to clarify the scope of supply.

*Clause 4* of the Bill seeks to amend section 9 of the principal Act relating to "Levy and Collection" so as to restrict the levy of tax on reverse charge basis to receipt of supplies of certain specified categories of goods or services or both by notified classes of registered persons from unregistered suppliers on the recommendations of the Council.

*Clause 5* of the Bill seeks to amend section 10 of the principal Act relating to "Composition Levy", so as to raise the statutory threshold of turnover for a taxpayer to be eligible for the composition scheme from one crore rupees to one crore and fifty lakh rupees, and to allow the composition taxpayers to supply services (other than restaurant services), for up to a value not exceeding ten per cent of turnover in the preceding financial year, or five lakh rupees, whichever is higher.

*Clause 6* of the Bill seeks to amend section 12 of the principal Act relating to "Time of supply of goods".

*Clause 7* of the Bill seeks to amend section 13 of the principal Act relating to "Time of supply of services".

*Clause 8* of the Bill seeks to amend section 16 of the principal Act relating to "Eligibility and conditions for taking input tax credit", in order to provide for input tax credit in the cases of supply of services. The said clause further seeks to include the provisions relating to the new return format as specified in the proposed new section 43A, for availment of input tax credit.

*Clause 9* of the Bill seeks to amend section 17 of the principal Act relating to "Apportionment of credit and blocked credits", in order to further expand the scope of eligibility of input tax credit.

*Clause 10* of the Bill seeks to amend section 20 of the principal Act relating to "Manner of distribution of credit by Input Service Distributor", in order to exclude the amount of tax levied under Entry 92A of List I of the Seventh Schedule of the Constitution from the value of turnover for the purposes of distribution of credit.

*Clause 11* of the Bill seeks to amend section 22 of the principal Act relating to "Persons liable for registration", so as to increase the threshold turnover for registration in special category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand from ten lakh rupees to twenty lakh rupees.

*Clause 12* of the Bill seeks to amend section 24 of the principal Act relating to "Compulsory registration in certain cases", so as to provide for mandatory registration for only those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act.

*Clause 13* of the Bill seeks to amend section 25 of the principal Act relating to "Procedure for registration", so as to allow persons having multiple places of business in a State to obtain separate registration for each such place of business, and to insert the provisions for separate registration for a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer, distinct from his other units located outside the Special Economic Zone.

*Clause 14* of the Bill seeks to amend section 29 of the principal Act relating to "Cancellation of registration", so as to provide for temporary suspension of registration while cancellation of registration is under process.

*Clause 15* of the Bill seeks to amend section 34 of the principal Act relating to "Credit and debit notes", so as to allow registered persons to issue consolidated credit or debit notes in respect of multiple invoices issued in a Financial Year.

*Clause 16* of the Bill seeks to amend section 35 of the principal Act relating to "Accounts and other records", so as to provide that any Department of the Central or State Government or local authority which is subject to audit by the Comptroller and Auditor-General of India need not get their books of account audited by any Chartered Accountant or Cost Accountant.

*Clause 17* of the Bill seeks to amend section 39 of the principal Act relating to "Furnishing of returns", so as to provide for prescribing the procedure for quarterly filing of returns with monthly payment of taxes.

*Clause 18* of the Bill seeks to insert a new section 43A to provide for prescribing the procedure for furnishing return and availing input tax credit.

*Clause 19* of the Bill seeks to amend section 48 of the principal Act relating to "Goods and Services Tax Practitioners", so as to allow Goods and Services Tax Practitioners to perform other functions such as filing refund claim, filing application for cancellation of registration, etc.

*Clause 20* of the Bill seeks to amend section 49 of the principal Act relating to "Payment of tax, interest, penalty and other amounts" in order to provide that the credit of State tax can be utilised for payment of integrated tax only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

*Clause 21* of the Bill seeks to insert two new sections, namely, section 49A and section 49B. Section 49A seeks to specify that a taxpayer would be able to utilise the input tax credit on account of State tax only after exhausting all the credit on account of integrated tax available to him towards payment of integrated tax or State tax. Section 49B seeks to empower the Government to prescribe any specific order of utilisation of input tax credit of any of the taxes for payment of any tax.

*Clause 22* of the Bill seeks to amend section 52 of the principal Act relating to "Collection of tax at source", in order to give the reference of section 39.

*Clause 23* of the Bill seeks to amend section 54 of the principal Act relating to "Refund of tax", in order to provide that the principle of unjust enrichment will apply in case of a refund claim arising out of supplies of goods or services or both made to a Special Economic Zone developer or unit, and to allow receipt of payment in Indian rupees, where permitted, by the Reserve Bank of India in case of export of services.

*Clause 24* of the Bill seeks to amend section 79 of the principal Act relating to "Recovery of tax", to enable recovery to be made from distinct persons registered in different States in order to ensure speedy recovery from other establishments of the registered person.

*Clause 25* of the Bill seeks to amend section 107 of the principal Act relating to "Appeals to Appellate Authority", in order to specify twenty-five crore rupees as the upper limit of the amount of pre-deposit payable for filing of appeal before the Appellate Authority.

*Clause 26* of the Bill seeks to amend section 112 of the principal Act relating to "Appeals to Appellate Tribunal", in order to specify fifty crore rupees as the upper limit of the amount of pre-deposit payable for filing of appeal before the Appellate Tribunal.

*Clause 27* of the Bill seeks to amend section 129 of the principal Act relating to "Detention, seizure and release of goods and conveyances in transit", in order to increase the time limit before which proceedings under section 130 can be initiated from seven to fourteen days.

*Clause 28* of the Bill seeks to amend section 143 of the principal Act relating to "Jobwork procedure" in order to empower the Commissioner to extend the time limit for return of inputs and capital goods sent on job work, upto a period of one year and two years, respectively.

*Clause 29* of the Bill seeks to amend Schedule I of the principal Act relating to "Activities to be treated as supply even if made without consideration".

*Clause 30* of the Bill seeks to amend the title of Schedule II of the principal Act from "Activities to be treated as supply of goods or supply of services" to "Activities or transactions to be treated as supply of goods or supply of services".

*Clause 31* of the Bill seeks to amend Schedule III of the principal Act relating to "Activities or transactions which shall be treated neither as a supply of goods nor a supply of services".

*Clause 32* of the Bill seeks to provide for the repeal and saving

EXTRACT FROM THE KERALA STATE GOODS AND  
 SERVICES TAX ACT, 2017  
 (20 OF 2017)

\* \* \* \*

2. *Definitions.*— In this Act, unless the context otherwise requires,—

\* \* \* \*

(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Commissioner, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;

\* \* \* \*

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (Central Act 54 of 1963);

(17) "business" includes—

\* \* \* \*

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

\* \* \* \*

(18) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

*Explanation.*—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include.—

(a) the nature of the goods or services;

(b) the nature of the production processes;

(c) the type or class of customers for the goods or services;

(d) the methods used to distribute the goods or supply of services; and

(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

\* \* \* \*

(35) "cost accountant" means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959);

\* \* \* \*

(69) "local authority" means—

\* \* \* \*

(f) a Development Board constituted under article 371 of the Constitution; or

\* \* \* \*

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

\* \* \* \*

CHAPTER III

LEVY AND COLLECTION OF TAX

7. *Scope of supply.*—(1) For the purposes of this Act, the expression “supply” includes,—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

\* \* \* \*

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

\* \* \* \*

9. *Levy and collection.*—(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Kerala goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

\* \* \* \*

(4) The State tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

\* \* \* \*

10. *Composition levy.*—(1) 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, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees, may opt to pay, in lieu of the tax

payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

(a) one per cent. of the turnover in State in case of a manufacturer,

(b) two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of seventy five lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

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

(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;

\* \* \* \*

#### CHAPTER IV

#### TIME AND VALUE OF SUPPLY

12. *Time of supply of goods.*—(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

\* \* \* \*

13. *Time of supply of services.*—(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

*Explanation.*—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

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## CHAPTER V

### INPUT TAX CREDIT

16. *Eligibility and conditions for taking input tax credit.*—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used

or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

\* \* \* \*

(b) he has received the goods or services or both.

*Explanation.*—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

\* \* \* \*

17. *Apportionment of credit and blocked credits.*—(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

\* \* \* \*

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

\* \* \* \*

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

\*

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\*

\*

20. *Manner of distribution of credit by Input Service Distributor.*—(1) The Input Service Distributor shall distribute the credit of State tax as State tax or integrated tax and integrated tax as integrated tax or State tax, by way of issue of

document containing the amount of input tax credit being distributed in such manner as may be prescribed.

\* \* \* \*

*Explanation.*—For the purposes of this section,—

\* \* \* \*

(c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

\* \* \* \*

## CHAPTER VI REGISTRATION

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.

\* \* \* \*

*Explanation.*—For the purposes of this section,—

\* \* \* \*

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

24. *Compulsory registration in certain cases.*—Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

\* \* \* \*

(x) every electronic commerce operator;

\* \* \* \*

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.

*Explanation.*—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration:

Provided that a person having multiple business verticals in a State may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

\* \* \* \*

29. *Cancellation of registration.*—(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

\* \* \* \*

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

\* \* \* \*

34. *Credit and debit notes.*—(1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods

or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

\* \* \* \*

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

\* \* \* \*

## CHAPTER VIII

### ACCOUNTS AND RECORDS

35. *Accounts and other records.*—(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of,—

\* \* \* \*

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

\* \* \* \*

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 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.

\* \* \* \*

(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.

\* \* \* \*

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

\* \* \* \*

43. *Matching, reversal and reclaim of reduction in output tax liability.*—(1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the “supplier”) for a tax period shall, in such manner and within such time as may be prescribed, be matched,—

(a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the “recipient”) in his valid return for the same tax period or any subsequent tax period; and

(b) for duplication of claims for reduction in output tax liability.

\* \* \* \*

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

\* \* \* \*

48. *Goods and services tax practitioners.*—(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.

\* \* \* \*

## CHAPTER X

### PAYMENT OF TAX

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.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

\* \* \* \*

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

\* \* \* \*

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

\* \* \* \*

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.

\* \* \* \*

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

\* \* \* \*

## CHAPTER XI

### REFUNDS

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:

\* \* \* \*

(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 zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

\* \* \* \*

*Explanation.*—For the purposes of this section,—

\* \* \* \*

(2) “relevant date” means,—

\* \* \* \*

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of,—

(i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or

\* \* \* \*

(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

\* \* \* \*

79. *Recovery of tax.*—(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

\* \* \* \*

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

\* \* \* \*



129. *Detention, seizure and release of goods and conveyances in transit.*—

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

\* \* \* \*

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

\* \* \* \*

## CHAPTER XXI

### MISCELLANEOUS

143. *Jobwork procedure.*— (1) A registered person (hereafter in this section referred to as the “principal”) may, under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a jobworker for jobwork and from there subsequently send to another jobworker and likewise, and shall,—

\* \* \* \*

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a jobworker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a jobworker in accordance with the provisions of this clause unless the said principal declares the place of business of the jobworker as his additional place of business except in a case—

(i) where the jobworker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

\* \* \* \*

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE  
WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

\* \* \* \*

4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS  
OR SUPPLY OF SERVICES

\* \* \* \*

\* \* \* \*

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE  
NEITHER AS A SUPPLY OF GOODS  
NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.

\* \* \* \*

6. Actionable claims, other than lottery, betting and gambling.

*Explanation.*—For the purposes of paragraph 2, the term “court” includes District Court, High Court and Supreme Court.

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