

CHAPTER - IX
MISCELLANEOUS

76. Courts not to set aside or modify assessments except as provided in this Act. - No suit or other proceeding shall except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act or any proceedings under this Act for the recovery of any tax or other amount due under this Act or to stay any such proceedings or recovery.

77. Bar against attachment in certain cases: - Notwithstanding anything contained in any other law in force or in any judgment, decree or order of any court, no court or any other authority shall pass any order attaching any amount due to Government from any person under the provisions of this Act.

78. Assessment etc., not to be questioned in prosecution. - (1) Any order of assessment made under this Act shall be conclusive evidence in any prosecution or other proceeding.

(2) The validity of the assessment of any tax, or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied, shall not be questioned in any criminal court in any prosecution or other proceeding, whether under this Act or otherwise.

79. Bar of certain proceedings. - (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

79A: Bar against attachment in certain cases: - Notwithstanding any thing contained in any other law in force or in any judgment, decree or order of any court, no court or

any other authority shall pass any order attaching any amount from any person, out of the tax collected by such person under the Act and kept with him before it became due to Government.

80. Limitation for certain suits and prosecutions. - No suit shall be instituted against the Government and no suit, prosecutions or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of:

Provided that, in computing the period of limitation under this section, the time taken for obtaining sanction under the sub-section (1) of section 79 shall be excluded.

81. Power to summon witnesses and cause production of documents. - An assessing authority or an appellate or revisional authority (including the Appellate Tribunal) shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely, -

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and
- (b) compelling the production of any document.

82. Notice to obtain information - (1) Any officer, not below the rank of an assessing authority, by notice in writing, require any person, whether or not liable to pay tax under the Act. (a) to furnish any information that may be required by the notice, or (b) to attend at the time and place designated in the notice, for the purpose of being examined on oath by such officer, concerning the tax affairs of that person or any other person and for that purpose such officer may require the person examined to produce any book, record or information stored in computer in the control of that person.

83. Admissibility of micro films, facsimile copies of documents and computer print out as documents and as evidence: (1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall also be deemed to be a document for the purposes of this Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely: -

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made there under, where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the

relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and, whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being, stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation - For the purposes of this section, -

(a) "Computer" means any device that receives, stores and processes data, applying stipulated processes to -the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being, derived there from by calculation, comparison or any other process.

84. Presumption as to documents in certain cases: - Where any document-

(1) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place within or outside the state India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

85. Prohibition of disclosure of particulars produced before commercial tax authorities. -

(1) All particulars contained in any statement made, return furnished or accounts, registers or documents produced under the provisions of this Act or in the evidence given or affidavit or deposition made in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and shall not be disclosed.

(2) Nothing contained in sub-section (1) shall apply to the disclosure of any such particulars,-

(i) to any officer of the Commercial Tax Department of the State;

(ii) for the purpose of prosecution under the Indian Penal Code (Central Act 45 of 1860), or under this Act in respect of

any such statement, return, accounts, registers, documents, evidence affidavit or deposition;

(iii) to any person enforcing the provisions of this Act where it is necessary to disclose the same to him for the purposes of this Act;

(iv) occasioned by the lawful employment under this Act of any process for the recovery of any demand;

(v) to a civil court in any suit to which the Government are party and which relates to any matter arising out of any proceeding under this Act;

(vi) occasioned by the lawful exercise by a public servant of his powers under the Kerala Stamp Act, 1959 (Act 17 of 1959), or the Indian Stamp Act, 1899, (Central Act 2 of 1899), to impound an insufficiently stamped document;

(vii) to an officer of the Government of India, or the Government of any State or Union Territory in India, if an agreement for disclosure on a reciprocal basis has been entered into between the Government and the Government of India or the Government of the State or Union Territory, as the case may be:

(viii) to the Director of Statistics or any officer serving under him and authorized by him in this behalf, as may be necessary for conducting statistical survey;

(ix) to the Director of the Centre for Taxation Studies or any person authorized by him in this behalf, as may be necessary for conducting any research or other studies;

(x) to an officer of any Department of the Central Government or the Government of Kerala after obtaining –

(a) the permission of the Deputy Commissioner of the district, where such particulars are to be furnished by an officer subordinate to the Deputy Commissioner; and

(b) the permission of the Commissioner, where such particulars are to be furnished by an Assistant Commissioner or by a Deputy Commissioner (Appeals) or by a Deputy Commissioner:

Provided that such particulars shall be furnished under clause (x) only in exceptional cases and that any officer obtaining such particulars shall keep them as confidential and use them only in the lawful exercise of the powers conferred by or under any enactment.

(xi) to an officer of Government of India or the Government of any State or Union Territory of India, where such disclosure is on the basis of the decision of the Empowered Committee.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may display the details of tax paid and the tax defaulted by the dealers on the official website of the Department.

86. Persons entitled to appear before authority. - (1) Any person who is entitled or required to appear before any authority other than the High Court in connection with any proceedings under this Act may be represented before such authority, -

- (a) by his relative or a person employed by him, if such relative or person is duly authorized by him in writing in this behalf; or
- (b) by a legal practitioner; or
- (c) by a chartered accountant or Cost Accountant duly authorized by him in writing in this behalf; or
- (d) by a sales tax practitioner possessing the prescribed qualifications and duly authorized by him in writing in this behalf.

Explanation:- For the purpose of this sub-section the expression “a person employed by him” shall mean a person who is a full time employee under the person on whose behalf he is appearing.

(2)The authorization referred to in sub-section (1) shall be in such form and accompanied by such fee as may be prescribed.

87. Rounding off of turnover, tax etc.- (1) The amount of taxable turnover computed in accordance with the provisions

of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten, and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten, and the amount so rounded off shall be deemed to be the taxable turnover of the dealer for the purposes of this Act.

(2) The amount of tax or other amount due under this Act shall be rounded off to the nearest rupee and for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

88. Service of notice. - Any notice required to be served on, or given to, any person under this Act or the rules made there under shall be deemed to be duly served or given: -

- (a) if the notice is addressed to that person and is given or tendered to him; or
- (b) where that person cannot be found if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to some adult member of his family; or
- (c) if it is sent by registered post or by courier service to that person at his last known place of residence or business, or
- (d) by sending by FAX if the FAX Number is known; or
- (e) by sending it by e-mail if the e-mail address is given by the person; or
- (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence or by publication in a newspaper.

89. Refunds. - (1) When an assessing authority finds, on completion of annual assessment, that a dealer has paid tax in

excess of what is due from him, it shall refund the excess to the dealer.

(2) When an assessing authority receives an order from any appellate or revisional authority or any officer authorised under sub-section (5) of section 47, to make a refund of tax or penalty or cash security paid by a dealer or any other person, it shall effect the refund to such dealer or such other person, as the case may be.

(3) Notwithstanding anything contained in sub-section (1) and (2), the assessing authority shall have power to adjust the amount due to be refunded under sub-section (1) or subsection (2), or under the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963); towards the recovery of any amount due, on the date of adjustment, from the dealer.

(4) In case refund under sub-section (1) or sub-section (2) or adjustment under sub-section (3) is not made within ninety days of the date of completion of assessment or, as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten percent per annum on the amount due to him from the date of expiry of the said period up to the date of payment or adjustment.

90. Power to withhold refund in certain cases: - (1) Where an order giving rise to refund is the subject matter of appeal or any other proceedings under the Act and the assessing authority is of the opinion that the grant of refund is likely to prejudice the public revenue, it may, for good and sufficient reason to be recorded in writing withhold the refund until such time as it deem proper.

(2) Where a refund is withheld and the matter is finally settled in favour of a dealer, a simple interest of six percent per annum shall be paid for the period commencing from the first day of the order determined in favour of the dealer ending the date on which the refund is made., where the assessing authority fails to make the refund within ninety days from the date of receipt of such order by it.

91. Appropriation of payment. - Where any tax or any other amount due or demanded under the Act is paid by any dealer or other person, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under sub-section (5) of section 31 on such date of payment and the balance available shall be appropriated towards principal outstanding.

92. Power to make rules. - (1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for, -

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) determining the total turnover, taxable turnover or turnover of a dealer for the purposes of this Act;
- (c) the assessment to tax under this Act of business which is discontinued or the ownership of which has changed;
- (d) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the state;
- (e) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator General, the Official Trustee, or any Receiver or Manager appointed by or under any order of a court;
- (f) the administration of the notified areas and the barriers erected and the check posts set up under this Act and the regulation of the work therein;
- (g) the disposal of goods confiscated under this Act and the procedure for dealing with the proceeds thereof;
- (h) requiring the submission of returns;
- (i) the form in which and the particulars to be contained in any declaration to be given under this Act, the authority from whom, the conditions subject to which and the fees

subject to payment of which such form of declaration may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

- (j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this act;
 - (k) the term of office, and conditions of service of the members of the Appellate Tribunal and the Settlement Commission ;
 - (l) the manner in which and the extent to which, tax paid may be refunded;
 - (m) the issue of bills or cash memoranda, the class or classes of dealers who should maintain counterfoils for the same and the particulars to be shown in and the manner of maintenance of such counterfoils and the time for which they should be preserved;
 - (n) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;
 - (o) the issue of delivery notes or way-bills in respect of goods delivered or transferred to retail dealers in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;
 - (p) the extent of liability of commission agent, broker, *del credere* agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;
 - (q) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;
 - (r) any other matter for which there is no provision or on sufficient provision in this Act and for which provision is, in the opinion of the Government are necessary for giving effect to the purposes of this Act.
- (3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it

is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that this rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may, be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

93. Power to amend Schedules. - (1) The Government may, by notification in the Gazette add, omit or amend any entry in any of the Schedule to this Act, but not so as to enhance the rate of tax in any case.

(2) Where a notification has been issued under sub-section (1), there shall, unless the notification is in the meantime rescinded, be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Assembly following the date of the issue of the notification a Bill on behalf of the Government, to give effect to the addition, omission or amendment of the entries in the Schedules specified in the notification, and the notification, shall cease to have effect when such Bill is passed into a law, whether with or without modifications, but, without prejudice to the validity of anything previously done there under:

Provided that, if a notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Legislative Assembly during that session itself:

Provided further that where for any reason a Bill as aforesaid could not be passed into a law within six months from the date of its introduction in the Legislative Assembly, the notification shall, without prejudice to anything previously done there under cease to have effect on the expiration of the said period of six months.

(3) All references made in this Act to any Schedule shall be construed as references to that Schedule as for the time being amended in exercise of the powers conferred by this Section.

94. Power of Commissioner to issue clarification. - (1) If any dispute arises, otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal, as to whether, for the purpose of this Act, -

any person is a dealer; or

(a) any transaction is a sale; or

(b) any particular dealer is required to be registered; or

(c) any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof; or

(d) any activity carried out in any goods amounts to or results in the manufacture of goods;

such dispute shall be decided by the Commissioner on application by a dealer or any other person.

(2) The Commissioner shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence and after considering such evidence and hearing the parties.

(3) Every application by a dealer or any other person other than an officer acting on behalf of the Government under sub-section (1) shall be in such form as may be prescribed and shall be accompanied by a fee of five hundred rupees.

(4) Where any question arises from any order already passed or any proceedings recorded under this Act, or any earlier law no such question shall be entertained for determination under sub-section (1).

(5) Every order issued by the Commissioner under sub-section (1) shall, subject to the provisions of section 62, be final and binding on the applicant and all authorities subordinate to the Commissioner including Deputy Commissioner (Appeals).

Provided that the decision of the Commissioner shall not affect the liabilities of any person under this Act as respects any sale or purchase effected prior to such determination.

95. Change of an incumbent of an office: - Whenever in respect of any proceedings under this Act, any prescribed authority ceases to exercise jurisdiction and is succeeded by another who has and exercised jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor

Provided that before proceeding under this section the authority shall give the person affected thereby an opportunity of being heard.

96. Time limit for disposal of appeal or revision: - Every appeal or revision filed under the provisions of this Act, shall be disposed of within one year from the date of filing of such appeal or revision as the case may be.

Provided that the period during which the proceedings are stayed by any competent authority shall be excluded for the purpose of computing the period of one year.

97. Power to remove difficulties. - (1) If any difficulties arise in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything, which appears to them necessary for the purpose of removing the difficulty.

(2) All orders made under sub-section (1) shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than fourteen days and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

98. Kerala General Sales Tax Act, 1963(15 of 1963) to have limited application: - (1) From the date of commencement of this Act, the Kerala General Sales Tax Act, 1963(15 of 1963) shall apply only in respect of goods included in the Fourth Schedule to this Act.

(2) Goods taxable under the said Act at the point of last purchase in the State, which are held as closing stock on the date preceding the date of coming into force of this Act, shall be deemed to have acquired the quality of last purchase under the provisions of the Kerala General Sales Tax Act, 1963 on such date and tax shall be levied accordingly.

(3) Notwithstanding anything in sub-section (1), Government may permit the use of the registration certificates issued under the provisions of the said Act and also of such forms prescribed by the rules made there under by any dealer to whom the provisions of this Act applies, till the thirtieth day of June, 2005

(4) Notwithstanding anything contained in sub-section (1), but subject to the provisions of section 32, in relation to any goods covered by this Act—

(i) any authority appointed under the provisions of Kerala General Sales Tax Act, 1963 (15 of 1963) shall have power to initiate and complete any proceedings under the said Act for the assessment, levy, collection and recovery of tax, penalty or other amount chargeable under the said Act including that of escaped turnover or to continue any such proceedings pending at the commencement of this Act for any period prior to the date of commencement of this Act and the provisions relating to appeal, revision or review under this Act shall apply to such proceedings as if it were a proceeding completed under this Act;

(ii) any right, title, obligation or liability already acquired, accrued or incurred under the Kerala General Sales Tax Act, 1963 (15 of 1963) for any such previous period shall remain unaffected;

(iii) any application, appeal, revision or other proceedings made or preferred or initiated by any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it

had been in force on the date on which such application, appeal, revision or other proceedings was made or preferred.

(5) Notwithstanding anything contained in sub-section (1) nothing shall affect the power of the Government to issue a notification under section 10 of the Kerala General Sale Tax Act, 1963 for a period prior to the commencement of the Kerala Value Added Tax Act, 2003.

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