

## CHAPTER - III

### INCIDENCE AND LEVY OF TAX

9. **Determination of total turnover:-** (1) The total turnover of a dealer for the purposes of these rules shall be the aggregate of-

- (a) the amount for which goods are sold by the dealer;
- (b) the amount for which goods, which is liable to tax under sub-section(2) of section 6 , are purchased by the dealer.
- (c) contract amount received or receivable, in the case of a works contract.,
- (d) all receipts from transfer of right to use.

Provided that where a dealer in petroleum products is having turnover in respect of the goods coming under Fourth Schedule, such turnover shall not be considered for the purpose of computing the eligibility for paying tax by such dealers under sub section (5) of section 6 of the Act.

(2) For the purpose of sub-rule (1), the amount for which goods are sold by a dealer shall, -

- (a) Omitted [SRO.385/2007]
- (b) Omitted [SRO.385/2007]
- (c) in relation to Annual Maintenance Contract where the goods transferred in the execution of such contract is ascertainable from the accounts of the dealer be the turnover of such goods (which shall not exceed the total amount of the contract) calculated by adding the gross profit as per accounts to the purchase value of the goods and where the goods are not so ascertainable be fifty percent of the amount of the contract.

(2A) Where, in a works contract, the awarder supplies a portion of the goods involved in the execution of the works contract and deducts the value of the material from the

payment made to the contractor, the turnover of the goods so supplied shall form part of the total turnover of the awardee as well as the contractor.

(3) Omitted [SRO.385/2007]

(4) The amount payable for a contract which does not involve any transfer of goods, whether as goods or in some other form, shall not be deemed to be turnover for the purpose of this rule.

(5) Amounts claimed by a dealer to be not includible in his total turnover, as representing discount allowed in accordance with the provisions of clause (ii) of Explanation III to clause (iii) of section 2 shall be that allowed in respect of sales effected during the period to which the return relates and is allowed in accordance with the regular practice in the trade. Where a dealer has claimed any amount as discount during a return period, he shall not revise the claim subsequently so as to enhance the amount of discount relating to such return period.

10. **Determination of taxable turnover.** – (1) In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer: -

(a) [Omitted]

(b) all amounts allowed to purchasers in respect of goods returned by them to the dealer within a period of ninety days from the date of delivery of the goods, where the goods are taxable on the amount for which they have been sold, provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser and the deduction is claimed during the year in which the sale was effected;

(c) all amounts received from the sellers in respect of goods returned to them by the dealer, where the goods are taxable

under sub-section (2) of section 6, provided that the goods are returned within a period of ninety days from the date of delivery of the goods by the seller and the accounts show the date on which the goods were returned, the date on which the refund was made and the amount of such refund and the deduction is claimed during the year in which the sale was effected;

(d) all amounts for which goods specified in the first Schedule to the Act are sold;

(e) all amounts falling under the following heads, when specified and charged for by the dealer separately, without including them in the price of goods sold:

- (i) freight
- (ii) charges for delivery
- (iii) cost of installation

(f) all amounts realised by a dealer by the sale of his business as a whole;

(g) all amounts for which goods are sold or purchased where such sale or purchase takes place in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of inter State trade or commerce;

(h) (i) the turnover of sales or purchases made by a dealer through his agent in respect of which tax has been paid by the agent.

(ii) the turnover of sales or purchases made by an agent for and on behalf of any principal in respect of which tax has been paid by the principal

Provided that no such deduction shall be allowed unless the principal or agent claiming the deduction furnishes a declaration in Form No. 25F issued by the agent or principal, as the case may be.

(i) Omitted [SRO.385/2007]

(j) all amounts collected by way of tax under the Act, if shown separately in the bills.



and sealed by the buyer and produces, on demand, for verification by any authority under the Act.

(m) the turnover of sales or purchases made by a dealer in respect of the goods coming under Fourth Schedule to the Act.

(2)(a) In relation to a works contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting the following amount from the total amount received or receivable by the dealer for the execution of the works contract such as;

(i) labour charges for the execution of work,

(ii) charges for planning and designing and the architect's fee;

(iii) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract, or where the machinery is owned by the contractor, the interest paid on any loan taken for the purchase of the machinery;

(iv) cost of consumables used;

(v) cost of establishment and overhead charges of the dealer to the extent it is relatable to the supply of labour and service;

(vi) profit earned by the dealer to the extent it is relatable to supply of labour and services:

Provided that notwithstanding anything contained in clause (a) when the turnover arrived at after deducting the amounts mentioned in clause (a) falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of the goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract.

Explanation.- For the purpose of the proviso, cost of goods means the price of goods together with all expenses incurred by the contractor in bringing the goods to the work site.

(b) Where the actual turnover in relation to a works contract, in which the transfer of goods takes place not in the form of goods but in some other form, is not ascertainable from the books of accounts of the dealer or where the dealer has not maintained any accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given in the Table below from the total amount of contract.

TABLE

| Sl. No. | Type of works contract  | Labour or other charges as a Percentage of the value of the works contract |
|---------|---|--|
| (1)     | (2)   | (3)  |
| 1       | Electrical Contracts  | 20   |
| 2       | All structural contracts  | 30   |
| 3       | Sanitary contracts  | 20   |
| 4       | Tyre re-treading contract   | 50   |
| 5       | Dyeing and Textile Printing contracts   | 50   |
| 6       | Sculptural contracts or contracts relating to Arts  | 70   |
| 7       | Refrigeration, air conditioning or other machinery, rolling shutters, cranes installation contracts | 15   |
| 8       | Installation of plant and machinery   | 15   |
| 9       | Laying of pipes   | 20   |
| 10      | Installation of elevators (lifts) and escalators  | 15   |
| 11      | Installation of air conditioners and air coolers  | 10   |
| 12      | Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles).                | 25   |
| 13      | Annual maintenance contract   | 50   |
| 14      | All other contracts   | 25   |

Explanation.- No deduction as per the above Table shall be allowed out of the total contract amount for the supply and installation of any machinery, equipment or any other system, where the goods involved are transferred in the "knocked down" condition (unassembled form) and assembled and installed, and the skill and labour employed for installation is only incidental to the supply of such goods.

10A. **Filing of option for collection and payment of tax:** - Every dealer opting to pay tax in accordance with the provisions of sub-section (1A) of section 6 shall file application in Form 1F before the assessing authority. The option shall be deemed to have been accepted by the assessing authority as and when the assessing authority acknowledges the receipt of such application.

11. **Filing of option by dealers for payment of compounded tax.** (1) Every application for exercising option for payment of compounded tax under section 8 shall be in the case of a dealer other than a works contractor in Form No. 1D and in the case of a works contractor in Form No. 1DA and shall be filed before the assessing authority on or before the 30<sup>th</sup> day of April every year:

Provided that in case of dealers who become liable to registration under the Act during the course of the year, such option shall be filed along with the application for registration.

Provided further that, -

(a) in the case of a contractor, the option shall be filed within thirty days from the date on which the contract, in respect of which such option is filed, is concluded. One such option may cover one or more works contract;

(aa) in the case of a builder or whatever name called who engaged in the construction and sale of flats or villas shall file option 'project wise' and such dealer shall not be entitled for payment of tax in a different stream for individual flats or villas covered under such projects.

(b) in the case of a dealer of medicines and drugs filing option under clause (e) of section 8, the option shall cover all categories of medicines and drugs sold by him.;

(c) Where a dealer becomes eligible for payment of tax under any of the clauses of section 8 for the year 2005-2006 in the light of the Kerala Value Added Tax (Amendment) Act, 2005 (39 of 2005) option shall be filed within one month from the date on which the Kerala Value Added Tax (amendment) Rules, 2005 is published. A contractor covered by item (iii) of clause (a) of section 8 shall also file option within this time. Item (iii) of clause (a) of section 8 shall apply to cases where the contractor had made the option either by filing an application before the assessing authority or by making an express provision in the contract.

Provided also that in the case of a dealer in ornaments or wares or articles of gold, silver or platinum group metals eligible for payment of tax under clause (f) of section (8) shall file option for the year 2006-07 on or before 15<sup>th</sup> March, 2007. (1A). Along with the application the dealer shall furnish the following documents, namely:

(a) in the case of a works contractor other than those covered by item (iii) of clause (a) of section 8-

- i) a copy each of the agreement executed by the contractor with the awarder and the work schedule; and
- ii) copies of the agreement executed with sub-contractor and certificates in Form No.20H obtained from each sub-contractor (applicable in cases where deduction is claimed in respect of sub-contracts);

(b) in the case of a works contractor covered by item (iii) of clause (a) of section 8-

- (i) copies of the permission, if any, granted under sub-section (9) of section 7 of the Kerala General Sales Tax Act, 1963 (15 of 1963)

- (ii) a certificate from the awarder showing the date of awarding, total amount and payments already made in respect of each contract; and
- (iii) a copy each of the agreement executed by the contractor with the awarder and the work schedule;
- (c) in the case of a metal crushing unit, a statement in the following format

| Size of machine | whether used as Primary machine or not | No. of machines in use |
|-----------------|--|------------------------|
| (1)             | (2)                                    | (3)                    |
|                 |  |                        |

- (d) in the case of a dealer lending video cassettes/ CD, a statement in the following format:

| Total No. of Shops | No. of Shops situated within the area of a Municipal corporation/ municipality | No. of shops situated in other places |
|--------------------|--|---------------------------------------|
| (1)                | (2)  | (3)                                   |
|                    |  |                                       |

- (2)(i) If the assessing authority is satisfied that the application filed is in order, it shall grant permission:

- (a) under clause (a) of section 8 in Form No 4D,
- (b) Under clause (b) of section 8 in Form No 4DA,
- (c) under clause (c(i)) of section 8 in Form No 4DB,
- (d) under clause (c(ii)) of section 8 in Form No 4DC,
- (e) under clause (d) of section 8 in Form No 4DD,
- (f) under clause (e) of section 8 in Form No 4DE and
- (g) under clause (f) of section 8 in Form No 4DF."

- (ii) If the application filed is not in order, the assessing authority shall reject the application, for reasons to be recorded in writing, after giving the dealer an opportunity of being heard.

- (3) Where a works contractor who has opted for payment of compounded tax under item (i) of clause (a) of section 8 becomes ineligible for payment of tax under that item in respect of a contract he shall inform the assessing authority

and the awarders within ten days of his becoming so ineligible. The assessing authority shall, if the contractor is eligible for payment of tax under item (ii) of clause (a) of section 8, revise the order issued in form No. 4D accordingly. If the contractor is not so eligible, the assessing authority shall cancel the certificate issued in form no. 4D in respect of that contract and thereupon he shall be liable for payment of tax in accordance with the provisions of sub-section (1) and (2) of section 6 in respect of such contract. In either case the assessing authority shall forward a copy of the revised permission issued in Form No. 4D or the order canceling the permission, as the case may be, to the awarder.

(4) The certificate referred to in the Explanation II to clause (a) of section 8 shall be in Form No.20H.

(5) (a) Where a dealer in cooked food who became eligible for payment of tax under section 8 by the amendment made by the Kerala Value Added Tax (amendment) Act, 2005 (39 of 2005) had collected tax on the sales prior to the date of submission of the application, the tax collected in excess of the compounded tax payable for the period shall be paid over to Government

(b) Where the actual turnover of a bar attached hotel falling under any of the categories to which the provisions of item (ii) of clause (c) of section 8 applies, in respect of cooked food and beverages prepared by it is more than fifteen percent of its turnover of foreign liquor as estimated under section 7 of the KGST Act, 1963 (15 of 1963), it shall be liable to pay tax on the actual turnover conceded by it.

(6) where any dealer paying tax under section 8 who is also liable to pay tax under sub-section (2) of section 6, fails to pay the tax under sub-section (2) of section 6, the assessing authority shall cancel the permission granted under sub-rule (2) after affording the dealer a reasonable opportunity of being heard.

(7) Where any additional machinery or machineries are installed by a dealer producing granite metals with the aid of mechanized crushing machine who had opted for payment of compounded tax under clause (b) of section 8, the details thereof shall be furnished to the assessing authority within fifteen days of such installation and the assessing authority shall thereupon revise the permission granted under sub rule (2).

12. **Determination of Input tax credit in respect of opening stock**-- (1) Goods held as opening stock on the date of coming into force of the Act, in respect of which input tax credit is claimed by a dealer under sub-section (13) of section 11 shall be –

(a) those which were taxable under the Kerala General Sales Tax Act, 1963 (15 of 1963);

(b) those purchased within one year preceding such date;

(c) in the case of goods, other than those taxable at the point of first or last purchase as applicable under section 5 and those taxable under section 5A of the Kerala General Sales Tax Act, 1963 and those in respect of which tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) is paid supported by bills issued by dealers registered under the Kerala General Sales Tax Act, 1963 (15 of 1963);

(d) in the case of goods taxable under the said Act either under section 5A or at the point of purchase, supported by sale bill issued by the seller or purchase bill or bought note, as the case may be, issued by the dealer claiming such input tax credit;

(dd) in the case of goods in respect of which tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) has been paid, supported by receipt issued by the appropriate authority for the payment of tax;

(e) those which were taxable under the Kerala General Sales Tax Act, 1963 (15 of 1963) and are also taxable under the Act; and

(f) physically available with the dealer on such date.

Explanation: - For the purpose of sub-section (13) of section 11, -

(a) goods in respect of which bill/invoice was issued by the selling dealer prior to 01.04.2004 shall not be deemed to have been purchased within one year preceding the date of coming into force of the Act even if the goods actually reached the buyer on or after such date; and

(b) goods in respect of which bill/invoice was issued by the selling dealer prior to 01.04.2005 shall be deemed to have been physically available with the buyer on the day preceding the date of commencement of the Act, even though the goods actually reached the buyer on or after 01.04.2005.

(c) Where the goods are supported by bills issued by a dealer registered under the Kerala General Sales Tax Act, 1963 (15 of 1963), the amount of tax computed under sub-rule (3) shall be deemed to have been shown separately in such bills for the purposes of sub-section (13) of section 11

(2) Any dealer claiming input tax credit in respect of such goods shall submit to the Assessing Authority, an application in Form 25A on or before the 31<sup>st</sup> day of January 2006 along with the opening stock inventory as on the date of coming into force of the Act, separately for goods falling under different Schedules to the Kerala General Sales Tax Act, 1963 (15 of 1963) –

(i) purchased within the State from dealers registered under the said Act-(a) where tax collection is shown separately (b) where such tax collection is not shown separately;

(ii) purchased from outside the State and those in respect of which tax under the Kerala General Sales Tax Act, 1963(15 of 1963) has not been suffered.

Where a particular purchase bill is lost the dealer shall obtain from the seller a duplicate bill showing the particulars included in the original bill, with a certificate of the seller to the effect that the duplicate bill is issued in the context of the loss of the original bill and furnish details there of in the statement furnished in Form 25A;

- (iii) in respect of which tax under section 5A of the said Act had been paid; and
- (iv) in respect of which tax under the Kerala Tax on Entry of goods into Local Areas Act, 1994 (15 of 1994) had been paid.

Along with the application in form 25A the dealer shall also submit a statement showing separately the opening stock value of goods as on 01.04.2004 and 01.04.2003 in respect of goods taxable at the hands of the dealer and those exempted at his hands. The stock inventory and the statement of purchase bills referred to in this sub-rule shall be certified by a Chartered Accountant or a Cost Accountant, where the dealer submitting the statement was covered by the provisions of section 27A of the Kerala General Sales Tax Act 1963 (15 of 1963) during the year 2004-05. The time limit may be extended by the assessing authority by fifteen days in deserving cases.

Provided that in the case of dealers who became eligible for input tax credit under sub-section (13) of section 11 in the light of the Kerala Value Added Tax (Amendment) Act, 2005 (39 of 2005) and submission of an application in Form No. 25A or revisions of the application in Form No. 25A already submitted under this rule has become necessary, such application in Form No. 25A or such revised application in Form No. 25A shall be filed within thirty days from the date of publication of the Kerala Value Added Tax (Amendment) Rules, 2005.

(3) Where in respect of goods taxable at the point of sale the selling dealer has not shown tax collection separately in the bills or, in respect of goods taxable at the point of first purchase in the state, where the dealer claiming input tax credit is not the first purchaser in the state, the amount of tax paid by the dealer to the sellers in respect of which input tax credit is allowable shall, subject to the provisions of sub-rule (6), be determined by applying the following formula:

a)  $\frac{9 PR}{10(100+R)}$  In the case of goods to be of special importance in inter-state trade or commerce (Declared Goods) under section 14 of the Central Sales Tax Act 1956.

b)  $\frac{85 PR}{100(100+R)}$  In the case of other goods.

where P is the opening stock value of the goods and R is the rate of tax applicable to the goods, including additional sales tax, if any, under the Kerala General Sales Tax Act 1963, (15 of 1963 ) (in the case of goods falling under the Fifth Schedule to the Kerala General Sales Tax Act, 1963, (15 of 1963 ), R shall be the rate of tax, including additional sales tax, if any, applicable on the first sale of the goods in the state)

(4) In In the case of goods which suffered tax at the point of first purchase or last purchase under the Kerala General Sales Tax Act, 1963 (15 of 1963) at the hands of the dealer claiming input tax credit, the tax so suffered on such goods held as opening stock on the date of coming into force of the Act, for the purpose of calculation of the input tax credit shall, subject to the provisions of sub-rule (5), be determined by applying the rate of tax, including Additional Sales Tax, if any, on the purchase value of the goods calculated at the average price of such goods in the month preceding the date of coming into force of the Act.

(4A) In the case of goods in respect of which tax under section 5A of the Kerala General Sales Tax Act, 1963 (15 of

1963) has been paid on its purchase and such goods had been used in the manufacture of other goods and are held as opening stock on the date of commencement of the Act, whether as finished goods or as work in process, the tax paid under section 5A of the said Act in respect of such goods shall be calculated by applying the rate of tax on the purchase value of the goods calculated with reference to the purchase bill or bought note relating to the goods.

(4B) In the case of goods in respect of which tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) had been paid, the amount of input tax credit shall be the actual tax paid on the goods as supported by the receipts issued by the appropriate authority.

(5) (a) In the case of goods in respect of which tax had been paid by the dealer claiming input tax credit, at the point of first purchase or at the point of last purchase under the Kerala General Sales Tax Act, the input tax credit in respect of such goods under sub-section (13) of section 11 be claimed by the dealer in the return for the month of April 2005.

(b) In the case of goods in respect of which tax was paid by him under section (5A) of the Kerala General Sales Tax Act, 1963, the input tax credit in relation to such tax shall be claimed in the return for the month subsequent to the month in which the application or as the case may be, the revised application is submitted under sub-rule (2).

(6) Where the dealer claiming input tax credit has submitted the statements as required by sub-rule (2), the dealer shall claim input tax credit in three equal monthly instalments commencing from the return for the month of May 2005 onwards or in the return for any subsequent three months. In the case of a dealer who had filed the application in Form No. 25A on any date subsequent to 31st day of May 2005, in accordance with the provisions of sub-rule (2), input tax credit under this sub-rule may be claimed in three equal monthly installments commencing from the month

subsequent to the month in which the application in Form No. 25A is submitted or from the month subsequent to the month in which the assessing authority communicates his approval of the statements made in Form No.25A

Provided that the prior approval of the assessing authority shall not be required in the case of the dealers who submit the application in Form No. 25A or revised application in Form No. 25A under the proviso to sub-rule (2)

(7) Where a dealer who had opted for payment of tax under sub-section (5) of section 6 or under section 8 changes over to the payment of tax under sub-section (1) of section 6, he shall submit an application in Form No.25A along with a stock inventory on the date of change over, duly certified by a Chartered Accountant or a Cost Accountant, where the dealer is covered by the provisions of section 42, and a statement of the purchase bills issued by registered dealers paying tax under sub-section (1) of section 6, within fifteen days from the date of change over.

(7A) Where a dealer becomes liable to tax during the course of an year by reason of his total turnover reaching the limit specified under sub-section (1) of section 6, he shall submit an application in Form No.25A along with a stock inventory as on the date on which his total turnover reaches such limit in the manner specified in sub-rule (7) above and a statement of purchase bills issued by registered dealers paying tax under sub-section (1) of section 6, within fifteen days from the date on which the total turnover reaches the said limit.

(8) Where the dealer referred to in sub-rule (7) or in sub-rule (7A) has submitted the statements as required by the said sub-rule, the assessing authority shall verify the claim and, where it is satisfied that the claim is in order, permit the dealer to claim input tax credit in respect of such goods held as opening stock in three equal monthly installments commencing from the return period subsequent to the date of order allowing such input tax credit.

12A. **Determination of input tax credit or special rebate where inputs are used in relation to taxable and exempted goods.** - Where taxable goods are used during a return period partly in relation to taxable transaction and partly in relation to exempted or non-taxable transaction, the input tax paid or special rebate to which the dealer has become entitled to during such return period shall be apportioned between the taxable and exempted or non-taxable transactions on the basis of the ratio of taxable and exempted turnover during the period in which the input tax credit or special rebate or refund is claimed. The portion of the input tax credit or special rebate allocable to taxable sale including interstate sale shall be allowed in accordance with the provisions of section 11 or section 12, as the case may be, that allocable to stock transfer export shall be dealt with in accordance with the provisions of Rule 46 or 47 and that allocable to exempted sale or transaction shall be disallowed. Where input tax is paid on the purchase of Duty Entitlement pass book or any similar document for the import of any goods which are intended for sale, use in manufacture or use as containers or as packing materials of any taxable goods, it shall be treated as input tax paid on the goods imported and shall be dealt with accordingly.

12B. **Procedure for claiming input tax credit or special rebate or refund by agent.** - Where a dealer is making any purchase or sales, including an interstate sale or sale in the course of export, through an agent or through one of its branches or units in respect of which separate registration has been granted in accordance with the provisions of sub-section (3) of section 20, and the input tax credit, rebate or refund is to be claimed by the agent, the principal shall issue a declaration in form No. 25D to the agent and the agent, in turn, shall issue a certificate in Form No. 25E to the principal.

12C. **Procedure for claiming exemption or reduction in rates of tax.** - (1) Every dealer who makes any sale to the Administrator, Union Territory of Lakshadweep, Laccadive Co-operative marketing Federation, Kozhikode or the

Lakshadweep Harbour Works or any registered dealer certified by the Administrator, Union Territory of Lakshadweep under the proviso to sub-section (1) of section 6 shall obtain a declaration in Form No.42, duly signed and sealed by the buyer along with the copy of the shipping Bill, or similar document duly attested by the Port Authorities and file a copy each of the same along with the return filed under Rule 22. The originals shall be retained by the dealer and shall be provided on demand by any authority under the Act.

(2) Every dealer who makes any sale to an industrial unit in any Special Economic Zone under clause (b) of sub-section (7) of section 6 shall obtain a declaration in Form No. 43 duly signed and sealed by the buyer and produce, on demand, for verification by any authority under the Act.

(3) Every dealer who makes any sale of goods to any Military, Naval, Air Force or NCC Canteen or canteen stores department under the fifth proviso to sub-section (1) of section 6 shall obtain a declaration in Form No. 45 duly signed and sealed by the buyer and produce, on demand, for verification by any authority under the Act.

(4) Every dealer who makes any sale of fuel and lubricants to foreign-going vessels, other than fishing vessels under sixth proviso to sub-section (1) of section 6 shall obtain a declaration in Form No. 47 duly signed and sealed by the buyer and produce, on demand, for verification by any authority under the Act.

(5) Every dealer who makes any sale of goods, other than petroleum products to Railways under seventh proviso to sub-section (1) of section 6 shall obtain a declaration in Form No. 48 duly signed and sealed by the buyer and produce, on demand, for verification by any authority under the Act.

**13. Determination of input tax credit in respect of capital goods:** - (1) Capital goods in respect of which input tax credit is claimed under sub-section (2) of section 11 shall be of the

description given in clause (x) of section 2, whether the claim is made by a manufacturer or not.

(1A) Where the goods are of the description given in clause (x) of section 2, the value of which is less than rupees five lakhs, other than those falling under any of the categories notified under clause (x) of section 2, input tax credit shall be claimed in accordance with the provisions of sub-section (3) of section 11.

(1B) Any dealer claiming input tax credit under sub-section (2) of section 11 or refund of input tax under section 13 in respect of capital goods shall apply to the assessing authority in Form 25 within thirty days from the date specified in the said sub-section along with copies of the tax invoice issued by registered dealers.

(2) Where the assessing authority, on receipt of such application, is satisfied that the application is in order and the claim of input tax credit is admissible, it shall inform the dealer in Form 25 B accordingly, within thirty days from the date of receipt of such application.

(3) Where the assessing authority, is not satisfied that the particulars contained in the application are correct and complete or that the claim of input tax credit is otherwise inadmissible, it shall reject the application, for reasons to be recorded in writing, after affording the dealer an opportunity of being heard.

(4) Deduction of input tax under sub-section (2) of section 11 or refund of input tax under section 13 shall be subject to the following conditions: -

(a) The deduction or as the case may be, refund, shall be allowed in thirty-six equal monthly installments over a period of three years from the date specified in sub-section (2) of section 11;

(aa) in the case of industrial units including those which have undertaken expansion, diversification or modernization the deduction or refund, as the case may be, shall be allowed in twelve monthly instalments from the date specified in the proviso to sub section (2) of section 11.

(b) No deduction of input tax shall be allowed where the use of capital goods relates wholly to the manufacture of exempted goods and/or goods falling under the fourth Schedule:

Provided that where the capital goods are used in relation to any goods, other than those included in the fourth schedule, sold in the course of export, refund of input tax shall be allowed, subject to the provisions of rule 47, irrespective of whether the goods so exported is exempted from tax or not;

(c) Where the capital goods are used from the commencement of commercial production in relation to taxable and exempted or non taxable goods simultaneously, the monthly installments fixed under clause (a) shall be apportioned between the taxable and exempted or non taxable goods on the basis of the ratio of taxable and exempted turnover during the period in which the input tax credit is claimed. The portion of the input tax allocable to taxable goods shall be allowed and that allocable to exempted goods disallowed and deducted from the input tax credit eligibility of the dealer;

(d) where the capital goods used in relation to exempted or non-taxable goods, is subsequently used in relation to taxable goods wholly or partly, the input tax credit allowable for the capital goods shall be calculated as follows;-

(i) where the capital goods are used subsequently in relation to taxable goods only, the input tax credit for the months in which the capital goods are used in relation to exempted goods shall be disallowed and the input tax

credit for the months during which the capital goods are used in relation to taxable goods shall be allowed;

(ii) where the capital goods are used subsequently for manufacturing exempted or non taxable goods and taxable goods simultaneously, the input tax credit for the period during which such capital goods are used for the manufacture of exempted or non taxable goods shall be disallowed and the input tax credit for the months during which the capital goods are used for the manufacture of taxable goods and exempted or non taxable goods shall be determined in the manner prescribed under clause (c);

(e) Where the capital goods are used partly in relation to goods falling under the first Schedule and/or the fourth Schedule and partly in relation to taxable goods, the input tax credit calculated under clause (a) above shall be apportioned among the goods falling under the first Schedule, fourth Schedule and other goods on the basis of the ratio of the turnover of goods coming under the first schedule and fourth Schedule and that of other goods, and the input tax credit allowed or as the case may be, disallowed in the manner specified in clause (c) above;

(f) The dealer shall claim the deduction in the monthly return.

(g) where refund of input tax is available in respect of capital goods under rule 46 or rule 47 in respect of which input tax credit is also available under section 11, the amount for which refund or input tax credit, as, the case may be is to be allowed, shall be arrived at in the manner specified in clause ( c) with suitable modification.

(5) (a) Where there is a change in use of the capital goods, on or after the claim for input tax credit has been allowed, and the dealer is no longer eligible for such input tax credit, the dealer shall inform the assessing authority within ten days of such change in use.

(b) The assessing authority shall inform the dealer that he is no longer eligible for the input tax credit for the capital goods with effect from the end of the month preceding the month in which such change of use has occurred.

(6) Where the capital goods are transferred to an industrial units manufacturing taxable goods in the state by way of sale of business as a whole, input tax credit to the extent of that remaining un-availed by the transferor shall, subject to the other provisions of this rule, be allowed to the transferee with effect from the date from which the capital goods are put to use by the transferee or the date of sale of goods manufactured using such capital goods, which ever is later.

(7) Where the capital goods are disposed of otherwise than by way of sale within a period of three years as specified in sub-section (2) of section 11, the dealer shall not be eligible for input tax credit in relation to such capital goods subsequent to such disposal.

14. **Procedure for claiming special rebate.** -- (1) Any dealer who pays tax under sub-section (2) of section 6 of the Act or entry tax under section 3 of the Kerala Tax on Entry of Good into Local Areas Act, 1994(15 of 1994) in respect of any goods intended for sale or for use in manufacture of taxable goods in the State shall claim it in the return for the month in which the tax specified under clause (a) or (b), as the case may be, of the said section is paid.

(2) Where the special rebate allowed under sub-rule (1) is not fully set off during the month in which it is allowed, the rebate so remaining unadjusted shall be dealt with in accordance with the provisions of sub-section (3) of section 12.

(3) The procedure prescribed under rule 13 for claiming input tax credit in respect of capital goods shall, with necessary changes, apply to special rebate in respect of capital goods.

15. **Determination of reverse tax.** – (1) In the case of purchase of goods for which input tax credit has been availed of and such goods remain unsold at the closure of business or are used for any purpose, which attracts reverse tax under sub-section (7) of section 11, the entire input tax for such purchase shall be the reverse tax, if separately ascertainable.

(2) Where any portion of goods in respect of which input tax credit has been availed of and such goods remain unsold at the closure of business or are used for any purpose for which reverse tax is leviable and the quantum of reverse tax is not ascertainable then the quantum of reverse tax in relation to such portion of goods shall be calculated by applying the rate of tax applicable to such goods on the purchase value of the goods as disclosed from the immediate previous purchase bill in respect of such goods.

(3) Where a dealer who has availed of input tax credit in respect of any goods which remain unsold at the closure of his business and the business is transferred as a whole to any dealer other than a dealer paying tax under sub-section (1) of section 6, the entire input tax credit availed of in respect of the goods so transferred shall be the reverse tax.

(3A) If the goods in respect of which input tax credit has been claimed are sent as such or after being partially processed, for further processing, testing, repair, re-conditioning, or any other similar purpose and are not received back within a period of ninety days, the input tax credit attributable to such goods shall be reverse tax for the month in which the period of ninety days expires except where goods so sent are sold in the course of interstate trade and tax is paid on such interstate sale in Kerala or are exported out of the territory of India, after such processing, if any.

(3B). If the goods in respect of which input tax credit has been availed of are subsequently used, fully or partially, for purposes in relation to which no input tax credit is allowable

under section 11, the input tax credit availed of in respect of such goods shall be reverse tax for the return period.

(4) Where a dealer is liable for the reverse tax under sub rules (1) or sub-rule (2) or sub-rule (3) or sub-rule (3A) for any return period, the sum of the reverse tax calculated under the said sub-rules shall be the reverse tax for that return period.

16. **Net tax payable.** - (1) The net tax payable by a registered dealer for a return period shall be (a) the amount arrived at after deducting the input tax under section 11 and special rebate under section 12 from the sum of the output tax, tax on the purchases under sub-section (2) of section 6 and reverse tax under sub-section (7) of section 11 for that return period:

Net tax payable = (Output tax + Tax on purchase + Reverse Tax) - (input tax credit + special rebate)

OR (b) Presumptive tax under sub-section (5) of section 6 and tax under sub-section (2) of section 6 OR (c) Compounded Tax under section 8 and where the compounded tax is paid under sub-clause(i) of clause(a) of section 8, tax under sub-section (2) of section 6, wherever applicable.

(2) Where for any return period the input tax and special rebate is more than the output tax, the difference shall be carried forward to the succeeding return period after making adjustments as provided under sub-section (6) of section 11.

(3) For the purpose of this rule, input tax for a return period shall be the sum of input tax for that return period and the input tax carried forward from the previous return period or periods.

(4) A dealer paying presumptive tax under sub-section (5) of section 6 or compounded tax under section 8 shall pay tax as provided under rule 24.