

THE KERALA TAX ON LUXURIES ACTS, 1976

(Act 32 of 1976)

[INCORPORATING AMMENDMENTS UP TO THE FINANCE ACT 2008]

An Act to provide for the levy and collection of tax on Luxuries. –

Preamble: - Whereas it is expedient to provide for the levy and collection of on luxuries.

Be it enacted in the Twenty-seventh Year of the Republic of India as follows: -

1. Short title, extent and commencement: - (1) This Act may be called the Kerala Tax on Luxuries Act,1976.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 1st day of July 1976.

2. Definitions: - In this Act, unless the context otherwise requires: -

(a) "**appellate authority**" means an appellate authority appointed under sub-section (2) of Section 3.

(b) "**assessing authority**" means an assessing authority appointed under sub-section (1) of Section 3.

(bb) "**appellate tribunal**" means the Appellate Tribunal appointed under section 4 of the Kerala General Sales Tax Act,1963.(15of1963);

(c) "**Board of Revenue**" means the Board of Revenue constituted under the Kerala Board of Revenue Act, 1957;

(ca) "**cable operator**" means a person engaged in the business of receiving and distributing satellite television signals, communication network including production and transmission of programmes and packages for a monetary consideration”

(d) "**company**" means a company as defined in Section 3 of the Companies Act, 1956.

(dd) "**house boat**" means a floating vessel used for boating provided with amenities and services rendered by way of business for a monetary consideration.

(de) '**hospital**' includes a nursing home, therapy centre, rejuvenation or recuperation centre, nature care or cure centre, ayurvedic cure or care centre, sidha centre or any other treatment centre, personal care centre and beauty treatment centre, by whatever name called.";

(df) '**home stay**' means an accommodation provided in a residential building or house or apartments or part thereof, with three rooms or above, where any person can stay for comfort or pleasure for consideration.";

(e) "**hotel**" means a building or part of a building where residential accommodation is by way of business provided for a monetary consideration and includes a lodging house.

Explanation.- A guest house run by the Government or a company or a corporation established by or under any law or any other agency shall be deemed to be a hotel within the meaning of this clause.

(ee) "**luxury**" means a commodity or service that ministers comfort or Pleasure:

(f) "**luxury provided in a hotel, house boat, hall, auditorium, kalyanamandapam or place of like nature**" means accommodation for residence or use and other amenities and services provided in a hotel or a house boat or hall or auditorium or kalyanamandapam or place of like nature the rate of charges of accommodation for residence and other amenities and services provided excluding charges of food and liquor is one hundred and fifty rupees per day or more.;

(fa) "**Luxury provided by a cable operator**" means any service by means of transmission of television signals by

wire, where subscriber's television set is linked by metallic co-axial cable or optic fibre cable to a central system called the 'headend' and by using a video cassette or disc or both, recorder or player or similar such apparatus on which pre-recorded video cassettes or disc or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on Television receiving set at a residential or a non-residential place of a connection holder;

(fb) **'luxury provided in a hospital'** means accommodation for residence for use of amenities and services provided in a hospital the rate of charges of which, excluding charges of food, medicine and professional services, is one thousand rupees per day or more.”;

(fc) **'luxury provided in a home stay'** means residential accommodation for the use of amenities and services provided in a home stay and the daily rate of charges of which is rupees one thousand or more.”;

(g) **"prescribed"** means prescribed by rules made under this Act;

(h) **"proprietor"** in relation to a hotel house boat, hall, auditorium, home stay, hospitals, kalyanamandapam or place of like nature includes the person who for the time being is in charge of the management of such hotel, house boat, hall, auditorium, , home stay, hospitals kalyanamandapam or place of like nature means accommodation for residence or use and other amenities and services provided in a hotel or house boat or hall or auditorium , home stay, hospitals or kalyanamandapam or place of like nature as the case may be;

(i) **"Schedule"** means a Schedule appended to this Act;

(j) **"State"** means the State of Kerala;

(k) **"Stockist"** means a person who, for the purpose of business manufactures, produces, brings or causes to be brought in the State a commodity included in the Schedule or to whom such commodity is dispatched from

any place outside the State for supply within the State or who supplies such commodity within the State, whether by way of sale or otherwise.

3. Authorities: -(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be assessing authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(3) All authorities and officers employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

4. Levy and collection of luxury tax :- (1) Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called the 'luxury tax', in respect of any luxury provided,—

(i) in a hotel, house boat, hall, auditorium or kalyanamandapam or including those attached to hotels, clubs, kalyanamandapam and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition;

(ii) by cable operators;

(iii) in a hospital ; and

(iv) (iv) in a home stay:

Provided that the sub-section shall not apply to halls and auditorium located within the premises of 'places of worship' owned by such institutions.

(2) Luxury tax shall be levied and collected,—

(a) in respect of a hotel, for charges of accommodation for residence and other amenities and services provided in

the hotel, excluding food and liquor,—

(i) at the rate of ten per cent per room for hotels, in respect of rooms where the gross charges of accommodation for residence and other amenities and services provided above rupees two hundred and upto five hundred per day ;

(ii) at the rate of fifteen per cent for hotels in respect of rooms where the gross charges of accommodation for residence and other amenities and services provided above rupees five hundred or more per day ;

Provided that no luxury tax shall be payable, for such charges received in respect of service rendered outside the hotel premises, such as vehicle hire, boat hire and trekking:

Provided further that the hire charges received in respect of house boats owned or possessed with right to use it by the hotels shall be liable to tax under the Act.

(b) in respect of a house boat, for charges of accommodation for residence and other amenities and services provided, excluding food and liquor, at the rate fifteen per cent ;

(c) in respect of a convention centre, hall, Kalyanamandapam, auditorium including those attached to hotels, clubs or places of the like nature, for the charges for accommodation, amenities and services provided excluding food and beverage :

(i) at the rate of ten per cent where the gross charges of accommodation and other amenities and services provided is above rupees three thousand and up to rupees ten thousand per day;

(ii) at the rate of fifteen per cent where the gross charges of accommodation and other amenities and services provided is above rupees ten thousand and up to rupees twenty thousand per day;

(iii) at the rate of twenty per cent where the gross charges of accommodation and other amenities and services provided is above rupees twenty thousand per

day.

(d) in respect of a cable TV operator at the rate of rupees five per connection per month, and shall be collectable from the person enjoying the luxury :

Provided that no luxury tax shall be payable in respect of a connection provided by a cable operator engaged in the distribution of programmes of Doordharshan channels only:

Provided further that luxury tax, if any, collected shall be paid over to the Government:

Provided also that no luxury tax shall be payable, if such charges per day is below three thousand rupees in respect of halls, Kalyanamandapam, auditorium other than those attached to star hotels:

Provided also that a proprietor of a hotel who had claimed exemption under sub-clause (1) of clause 4 of the Kerala Finance Bill, 2006 (Bill No. 355 of the XI Kerala Legislative Assembly) from the 1st day of April 2006 being the charges of accommodation below rupees two hundred per room per day, shall be permitted to avail such exemption till 30th June, 2006.

(e) in respect of a hospital, for charges of accommodation for residence for use of amenities and services, at the rate of ten per cent per room where the gross charges, excluding charges of food, medicine and professional services, is one thousand rupees per day or more.

(f) in respect of a home stay, for charges of accommodation including use of amenities and services provided at the rate of half per cent where the daily rate of gross charges is rupees one thousand or more.

(2A) Notwithstanding anything contained in sub-section (2), there shall be levied a luxury tax at the rate of rupees one hundred per year per member and the same shall be collected by the person responsible for the management of the club, by whatever name called.

Explanation: For the purpose of this section, 'club' means a club which provides more than two facilities like card room, bar, billiard rooms, snooker room, tennis court, swimming pool, Sauna Jacuzzi and the like, gymnasium, golf course,

internet facility, video, video compact disk, digital video disk and computer games and having a membership strength of at least twenty five.

(2B) Omitted.

(3) The luxury tax shall be collected by the proprietor and paid within such period and in such manner as may be prescribed, into a Government treasury or a Nationalised bank notified by Government in this behalf.

(4) In computing the luxury tax, a fraction of a rupee, which is not a multiple of five paise, shall be rounded off to the next higher multiple of five paise.

(5) any amount recoverable under this Act and remaining unpaid shall be a charge on the properties of the defaulter and may be recovered as an arrear of public revenue due on land.

4A.Omitted.

4B. Registration of hotels. - (I) Every proprietor of a hotel having not less than five rooms to be rented for accommodation for residence or otherwise and of every house boat, hall, auditorium, kalyanamandapam and place of the like nature shall get his hotel, house boat, hall, auditorium, kalyanamandapam or place of the like nature registered under the Act and the registration renewed annually.

(2) An application for registration or renewal shall be made to such authority in such manner and within such period as may be prescribed and shall be accompanied by a fee as specified below, namely:-

(a)	Star hotels	Six thousand two hundred and fifty rupees
(b)	Hotels other than star hotels	
	(i) Within the local area of a Municipal Corporation	One Thousand two hundred and fifty rupees
	(ii) Within the local area of a Municipal Council or Township	One Thousand rupees

	by whatever name called	
	(iii) Within the local area of a Panchayat	Seven hundred and fifty rupees
	Halls, auditorium, kalyanamandapam, etc, -	
	(i) Within the local area of a Municipal Corporation	One Thousand rupees
	(ii) Within the local area of a Municipal Council or Township by whatever name called	Seven hundred and fifty rupees
	(iii) Within the local area of a Panchayat	Five Hundred rupees

4C. **Registration of Houseboat.** - (1) Every proprietor of a houseboat rented for accommodation for residence or leisurely cruising shall get his houseboat registered and renewed annually.

(2) An application for registration or renewal thereof shall be made to such authority, in such manner and within such period, as may be prescribed, along with a registration fee of rupees one thousand for a renewal fee of rupees five hundred as the case may be per boat per annum.

4D. Registration of cable operators.-Every cable operator shall get himself registered with such authority and in such manner, as may be prescribed and the application for registration shall be accompanied by a registration fee of Rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.

4E. Registration of Hospitals.—Every hospital having not less than five rooms to be rented for accommodation of patients for treatment or otherwise for which gross charges excluding charges for food, medicine and professional services is one thousand rupees or more per room, shall get itself registered with such authority and in such manner as may be prescribed, and the application for registration shall be accompanied by a registration fee of rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.

4F. Registration of home stays.—Every proprietor of a home stay where the daily charges of accommodation including other amenities provided is rupees one thousand or more, shall get his home stay registered with such authority and in such manner as may be prescribed and the application for registration shall be accompanied by a registration fee of rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.

5. Returns: - Every proprietor liable to pay luxury tax under this Act shall submit such return in such manner and within such period as may be prescribed.

5A. Compounding of tax :-(1) Notwithstanding anything contained in section 4 or section 5 any proprietor of a house boat may apply to the assessing authority for permission to compound the tax at the following rates per annum, namely:-

(i)	non air-conditioned house-boat with one bed room	Ten thousand rupees
(ii)	non air-conditioned house-boat with two bed rooms or more	Fifteen thousand rupees
(iii)	air-conditioned house-boat with one bed room	Seventeen thousand and five hundred rupees
(iv)	air-conditioned house-boat with two bed rooms or more	Twenty five thousand rupees

(2) The tax payable in accordance with the above sub-section shall be payable in equal monthly installments rounded to the nearest ten rupees or multiples of rupees ten.

(3) For the purpose of sub-section (1) any person who is liable to pay the tax shall file an application and return to the assessing authority within ninety days of the commencement of this Act on or before the 1st day of May every year.

(4) On receipt of the application and return, and after satisfying that the particulars furnished therein are true and

complete the assessing authority may determine the tax payable and the monthly instalments payable by the person.

(5) The monthly installment of tax determined by the assessing authority shall be paid in accordance with the provisions of the Act on or before the 10th of the succeeding month, but the installment due for March every year shall be paid during that month itself.

(6) If the tax determined is not paid as specified in the above sub-section it shall be recovered along with penalty in accordance with the provisions of the Act.

(7) Whenever any revision of the rate of charge is made or when there is any addition to the houseboats, a revised return shall be filed within thirty days of such revision or addition and the assessing authority shall accordingly re-fix the tax and monthly installments.

(8) If any person fails to file a revised return in accordance with the provisions of sub-section (7) he shall be liable to pay penalty not exceeding twice the amount of tax leviable on such revision of rate or addition to the house-boats subject to a minimum of rupees one thousand and the tax shall be assessed and collected in accordance with the provisions of this Act.

6. Assessment and collection of tax: -

(1) On receipt of a return under section 5, if the assessing authority is satisfied that the return is correct and complete, it shall assess the proprietor on the basis thereof.

(2) If the proprietor fails to submit the return under Section 5 in due time or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the proprietor to the best of its judgment:

Provided that before taking action under this sub-section, the proprietor shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove

the correctness or completeness of such return.

(3) If the luxury tax is not paid within the prescribed period, the assessing authority may levy a penalty equal to a sum not exceeding the amount of the luxury tax payable under this Act:

Provided that no penalty shall be levied under this sub-section unless the proprietor has been given a reasonable opportunity of being heard.

(4) Any final assessment under this section shall be completed within a period of four years from the expiry of the year to which the assessment relates.

Provided that all assessments relating to the years, upto and including the year 2001-2002, pending as on 31st day of March, 2006, shall be completed on or before the 31st day of March, 2007.

(5) Where for any reason, the whole or any part of the business of a hotel/houseboat has escaped assessment to tax in any year or has been under-assessed at a lower rate than the rate at which it is assessable or any deduction has been wrongly made there from, the assessing authority may at any time within a period of five years from the expiry of the year to which the tax relates, proceed to determine to the best of its judgment, the turnover which has escaped assessment to tax or has been under-assessed or has been assessed at a lower rate than the rate at which it is assessable and assess the tax payable on such turnover, after issuing a notice to the proprietor and after making such enquiry as it may deem fit:

Provided that before making such assessment under this sub-section the proprietor shall be given a reasonable opportunity of being heard.

(6) (a) An assessing authority or an appellate or revising authority may on application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of records:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the person affected thereby and has allowed him a reasonable opportunity of being heard.

(b) Where such rectification has the effect of reducing an assessment or penalty; the assessing authority shall make refund to the person entitled thereto.

(c) Where any such rectification has the effect of enhancing assessment or penalty the assessing authority shall give the proprietor or other person a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made there under shall apply as if such notice had been given in the first instance,

Explanation:- The liability to pay tax or other amount shall arise only from the date specified in the revised notice.

7. Appeal: - (1) Any person aggrieved by an order of assessment made or a penalty levied under section 6, Sub-section (7) and (8) of Sections 12A, sub-section (8) of Section 13 or Section 17A may, within thirty days from the date of receipt of the order, apply to the appellate authority for the annulment or modification of the assessment or penalty; and on such application, the appellate authority may, subject to such rules of procedure as may be prescribed, confirm, annul or modify the assessment or penalty.

(2) The appeal under sub-section (1) shall be in such manner and in such form, as may be prescribed, and shall be accompanied by a fee of three hundred rupees.

7A. Appeal to the Appellate Tribunal. - (1) any person aggrieved by an order referred in sub-section (1) of Section 7 or any officer empowered by the government in this behalf or any other person objecting to an order passed by the Appellate Authority under sub-section (1) of Section 7 may, within sixty days from the date on which the order was served on him appeal against such order to the Appellate Tribunal in such manner as may be prescribed:

Provided that the Appellate Tribunal may admit an appeal presented after the expiry of the said period if it is satisfied that the appellant has sufficient cause for not presenting the appeal within the said period.

(2) Every appeal shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a fee of rupees seven hundred.

(3) In disposing an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard, either in person or by a representative in the case of an order or assessment or penalty,-

- (i) confirm, reduce, enhance or annul the assessment or penalty or both; or
- ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or
- (iii) pass such other orders as it may think fit:

Provided that if the appeal involves a question of law for which the Appellate Tribunal has previously given its decision in another appeal and the matter is pending decision before the High Court or the Supreme Court as the case may be, the Appellate Tribunal may defer the hearing of the appeal before it, till the matter is finally disposed of by the High Court or the Supreme Court, as the case may be.

(4) Every order passed by the Appellate Tribunal under sub-section(3) shall be communicated in the manner prescribed to the appellant, the respondent , the authority from whose order the appeal was preferred, the Deputy Commissioner concerned and to the Commissioner of Commercial Taxes.

8. Revision: - (1) The Board of Revenue may, either suo-motu or on application, call for and examine the record and proceedings of any order made by the assessing authority and pass such order thereon as it thinks just and proper.

Provided that no application under this sub-section shall be entertained if it is not made within a period of ninety days from the date on which the applicant received the order in question:

Provided further that before rejecting any application under this sub-section the Board of Revenue shall record

reasons for such rejection.

(2) No order shall be passed under sub-section (1) which is likely to affect any person adversely, unless such person has been given a reasonable opportunity of being heard.

(3) Where a person could have appealed under Section 7 and no appeal has been filed by him, no proceedings under this section shall be entertained upon the application of such person.

(4) An application for revision under sub-section (1) shall be in such manner and in such form, as may be prescribed, and shall be accompanied by a fee of seven hundred rupees which shall, in no case be refunded.

9. Persons entitled to appear before authorities: -

(1) A person entitled or required to appear before any authority in connection with any processing 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 Chartered Accountant or Cost Accountant duly authorized by him in writing in this behalf; or
- (d) by a Sales tax practitioner duly authorized by him in writing in this behalf.

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

10. Interest on Default: - If the tax or any other amount assessed or due under this Act is not paid by any proprietor or any dealer or any other person within the time prescribed therefore, in this Act or in any rule made thereunder and in other cases within the time specified therefore in the notice of demand, the proprietor or any other person shall pay simple interest at the rate of twelve percent per annum on the tax or

other amount defaulted.

10A. Further mode of recovery.—(1) The assessing authority may, at any time, or from time to time, by notice in writing, a copy of which shall be forwarded to the proprietor at his last address known to the assessing authority, require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) who holds or may subsequently hold money for or on account of the proprietor, to pay to the assessing authority, either forthwith, if the money has become due or is so held, or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by the proprietor in respect of arrears of tax, fee or penalty, or the whole of the money when it is equal to or less than the arrears of tax, fee or penalty.

(2) The assessing authority may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) Any court, officer or other person making any payment in compliance with a notice under this section, shall be deemed to have made the payment under the authority of the proprietor, and the receipt by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.

(4) Any court or person, other than an officer of the Government, making any payment to the proprietor after receipt of the notice referred to in this section, shall be liable to the assessing authority to the extent of the payment made, or to the extent of the liability of the proprietor, for the amount due under this Act, whichever is less.

(5) Where any court or person, other than an officer of the Government, to which or to whom a notice under this section is sent, objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the proprietor, or that such court or person does not hold any money for or on account of the proprietor, then nothing contained in this section shall be deemed to require

such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay the assessing authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as if it were an arrear of public revenue due on land.

Explanation: For the purposes of this section, the amount due to a proprietor or money held for or on account of a proprietor by any court, officer or other person shall be computed after taking into account such claims if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be, lawfully subsisting.

10B. Reduction of arrears in certain cases.—(1)

Notwithstanding anything contained in this Act, or in any judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under the Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:

(a) in the case of demands relating to the periods up to and including 31st March, 1991, a reduction of twenty-five per cent for the principal tax amount, and complete reduction of the interest on the tax amount and for the amount of penalty and interest thereon;

(b) in the case of demands relating to the period from 1st April, 1991 to 31st March, 1996, a complete reduction of the interest on the tax amount, and for the amount of penalty and interest thereon;

(c) in the case of demands relating to the period from 1st April, 1996 to 31st March, 2000, a reduction of ninety-five per cent of the interest on the tax amount, and for the amount of penalty and interest thereon;

(d) in the case of demands relating to the period from 1st

April, 2000 to 31st March, 2005, a reduction of ninety per cent of the interest on the tax amount, and for the amount of penalty and interest thereon.

(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assesseees which will then be binding on the revenue authorities and such assesseees shall not be liable for payment of any collection charges.

(3) An assessee who wishes to opt for payment of arrears under this section shall make an application to the assessing authority in the prescribed form before 30th September, 2008, or on such date as may be notified by Government.

(4) On receipt of an application under sub-section (3) the assessing authority shall workout the actual amount of tax and other amounts due from the assessee under sub-section (1) and shall intimate the amount to the assessee, and thereupon the assessee shall remit twenty-five per cent of the amount within 15 days of receipt of the intimation, and the balance amount in three equal monthly instalments from the subsequent month.

5) If the assessee commits any default in payment of the instalments the reduction granted under sub-section (1) is liable to be revoked.

(6) No action under sub-section (5) shall be taken without giving notice to the assessee.

(7) If the arrears settled under this provision is already a subject matter of appeal or revision, such appeal and revision may be continued and if the final orders of such appeal or revision results in the reduction of tax payable under this Act, the amount so reduced shall be refunded. But if, as the result of such appeal or revision, the tax payable under this Act is enhanced, the dealer shall pay such enhanced amount, with interest thereon, in accordance with the provisions of this Act.

11. Service of notice: - A notice under the provisions of this Act may be served by post or by delivering or tendering it to the person to whom it is addressed or to his agent or in such other manner as may be prescribed.

12. Power to inspect and take copies of records and accounts: -

(1) The assessing authority shall have access at all reasonable time to a hotel or a house boat or place of business of any person liable to collect or pay the luxury tax under this Act.

(2) The assessing authority may, at any time, with or without notice to any person referred to in sub-section (1), examine his working records and accounts and take copies of, or extracts from, any of the said records or accounts for purposes of testing the accuracy of any return or for informing itself as to the particulars regarding which information is required for the purposes of this Act or any rule made thereunder.

12A. Power to stop vehicles etc: - (1) No person shall transport within the State a commodity included in the Schedule exceeding such quantity or value as may be prescribed, by any vehicle, vessel or other conveyance or by animal load unless he is in possession of a bill of sale or a delivery note containing such particulars as may be prescribed.

(2) The driver or any other person in charge of any vehicle, vessel or other conveyance, or the person in charge of an animal which is believed to carry a commodity included in the Schedule shall, when so required by an assessing authority or any officer authorized by the Government in this behalf, stop the vehicle, vessel, other conveyance or the animal, as long as may be reasonably necessary, and allow the assessing authority or such other officer to examine the contents of the vehicle, vessel, other conveyance or the animal load and to inspect all records relating to the commodity included in the Schedule carried therein and shall also give his name and address as also the name and address of the owner of the vehicle, vessel or other conveyance or animal and the person to whom the commodity belongs and also the person to whom it is conveyed and such other information in his possession for

the enforcement of the provisions of this Act or the rules made there under.

(3) If the officer referred to in sub-section (2) has reason to suspect that the commodity under transport are not covered by proper and genuine documents or that any person transporting such commodity is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing detain the commodity, and shall allow the same to be transported only on, the owner of the commodity, or his representative or the driver or other person in charge of the vehicle, vessel or other conveyance or animal on behalf of the owner of the commodity, furnishing security for double the amount of tax likely to be evaded, as may be estimated by such officer.

(4) Where the owner, driver or person in charge of the vehicle, vessel, other conveyance or animal carrying the commodity detained under sub-section (3) is found in collusion for such carrying of the commodity the vehicle, vessel, other conveyance or animals shall be released only on, the owner, driver or person in charge of it, furnishing the security determined under sub-section (2).

(5) In case of failure to furnish the security, the officer detaining and seizing the. Vehicle, vessel, other conveyance or animal shall have the power to order, the vehicle, vessel, other conveyance or animals being taken to the nearest Police station or to any Check Post or Office of the Agricultural Income Tax and Sales Tax Department for safe custody to the commodity or, the vehicle or vessel or other conveyance or animal or both.

Provided that where the owner, driver or person in charge of a vehicle, vessel, other Conveyance or animal carrying the commodity is found guilty of the offence under this sub-section for a second or a subsequent time, such vehicle, vessel, other conveyance or animals may be detained for a period not exceeding 30 days from the date of furnishing the security.

(6) The officer detaining the goods shall record the statements, if any, given by the owner to the commodity or his

representative or the driver or other person in charge of the vehicle, vessel, other conveyance or animal and shall submit the proceeding along With the connected records to such officer as may be authorized in that behalf by the Government, for conducting necessary enquiry in the matter.

(7) The officer authorized under sub-section (6) shall, before conducting the enquiry serve notice on the owner of the commodity and give him an opportunity of being heard and if after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall by order, impose on the commodity a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer.

(8) If the owner of the commodity or his representative or the driver or other person in charge of the vehicle, vessel, other conveyance or animal does not furnish security as required under sub-section (3) within fourteen days from the date of inspection of the Vehicle, vessel, other conveyance or animal, as the case may be, under sub-section (2), j the officer referred to in that sub-section may, by order, seize the commodity and in the event of the owner of the commodity not paying the penalty imposed under sub-section (7) within thirty days from the date of the order imposing the penalty, the commodity seized shall be liable to be sold for the realization of the penalty in the manner provided in sub-section (11).

(9) When any commodity is seized under sub-section (8), the officer seizing the commodity shall issue to the owner of the commodity if present or, if the owner of the Commodity is not present, to his representative or the driver or other person in charge of the Vehicle, vessel, other conveyance or animal, as the case may be a receipt specifying the description and quantity of the commodity so siezed and obtain an acknowledgment from such person or, if such person refuses to give an acknowledgment record the fact of refusal in the presence of two witnesses.

(10) The notice under sub-section (7) to be served on the owner of the commodity shall be given to the address as furnished in any of the documents referred to in sub- section (1) or to the address furnished by the driver or other person in

charge of the vehicle, vessel, other conveyance or animal, and if there are no such documents or if the address is not furnished, a notice giving the description of the commodity, the t approximate value thereof, the description of the vehicle, vessel, other conveyance, or animal by which the commodity was carried and the date and time of detention and also indicating the provisions of the Act and rules made there under which have been violated shall be

(a) displayed on the notice board of the officer authorised under sub-section (6); and

(b) published in not more than two daily newspapers having wide circulation in the area in which the commodity was which the commodity was detained, before conducting the enquiry under Sub-section (7).

(11) The commodity seized under the sub-section (8) shall be sold by the officer who imposed the penalty, by public auction, to the highest bidder and the sale proceeds shall be remitted in the Government Treasury.

(12) If the order of imposition of penalty under Sub-section (7) or, of seizure of the commodity under sub-section (8), is set aside or modified in appeal or other proceedings, the officer authorised under sub-section (6) shall pass consequential orders for giving effect to the order in such appeal or other proceedings, as the case may be.

(13) The owner of the commodity sold under this section shall be liable to pay expenses and other incidental charges for keeping the commodity seized in custody until the sale and also the charges for publication of the notice under Sub-section (10).

(14) If the sale proceeds of any commodity sold exceeds the penalty imposed in respect of such commodity, such excess amount after deducting the expenses, referred to in Sub-section (13) shall be returned by the officer who conducted the sale, to the owner of the commodity on his establishing the ownership thereof.

12B. Confiscation by authorised officers in certain cases.-

(1) Notwithstanding anything contained in this Act, where an assessing authority has reason to believe that vehicle or vessel or other conveyance or animal is used for smuggling of the commodity specified in the Schedule into or out of the State, he may seize such commodity together with the vehicle or vessel or other conveyance or animal used for committing the offence of such smuggling and produce it without any unreasonable delay ,before such officer authorised by the Government in this behalf.

(2) Where the officer authorised under sub-section (1) is satisfied that an offence under that sub-section had been committed in respect of the commodity produced before him he may order confiscation of the commodity so seized together with the vehicle, vessel other conveyance or animal used for committing such offence.

(3) No order under sub-section (2) shall be passed, unless the person from whom the same is seized.

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such commodity, vehicle, other conveyance or animal:

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscations, and

(c) is given reasonable opportunity of being heard in the matter.

(4) No order confiscating any vehicle or vessel or other conveyance or animal shall be made under sub-section (2) if the owner or the person in charge of the vehicle or vessel or other conveyance or animal proves to the satisfaction of the officer authorised under sub-section (1) that it was used for carrying such commodity without the knowledge or conveyance of the owner himself, his agent, if any, or the person in charge of such vehicle or vessel or other conveyance or animal and that each of them had taken all reasonable necessary precautions against such use.

(5) Any person aggrieved by an order of confiscation under sub-section (2) may, within 30 days from the date of

communication to him of such order, file an appeal, in such manner and such forms as may be prescribed, accompanied by a fee of three hundred rupees before the appellate authority specifically authorised by the Government in this behalf.

Provided that the appellate authority may admit an appeal preferred after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not filing the appeal with the said period;

Provided further that no order prejudicial to a person shall be passed without giving him an opportunity of being heard.

(6) Any person aggrieved by an order under sub-section (5) may within 30 days from the date of communication to him of such order, file an application for revision accompanied by a fee of seven hundred rupees before the Board of Revenue and the decision of the Board of Revenue thereon shall be final;

Provided that the Board of Revenue may admit an application for revision filed after the expiry of the said period if it is satisfied that the applicant had sufficient cause for not filing the application with in the said period.

(7) Notwithstanding anything contained in sub-section (6), the Board of Revenue may, of its own motion, call for and examine the records relating to any order passed or proceeding recorded under this Act, by the appellate authority which in its opinion is prejudicial to revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit:

Provided that no order under this sub-section shall be passed unless the person affected is given a reasonable opportunity of being heard.

(8) Where an order of confiscation, under this section has become final in respect of any commodity, vehicle, vessel, other conveyance or animal, such commodity, vehicle, other conveyance or animal, as the case may be, shall vest in the Government free from all encumbrances.

(9) The award of confiscation under this section shall not

prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

Explanation:- For the purpose of this section transport of any commodity out of or into the premises of a railway station, steamer station or the premises of any parcel office without any records referred to in sub-section (1) of section 12A shall be deemed to be smuggling of the commodity into or out of the State.

13. Power to order production of accounts and powers of entry, inspection, etc.- (1) The assessing authority may for the purposes of this Act, by notice, require any proprietor-

- (a) to produce or cause to be produced before it any accounts, registers, records or other documents; or
- (b) to furnish to cause to be furnished any other information relating to the hotel or house boat or business and such proprietor shall comply with such requisition.

(2) The assessing authority may, at any reasonable time,-

- (a) enter any hotel or place of business or any vehicle or vessel of the proprietor, and
- (b) inspect any accounts, registers, records or other documents relating to his hotel or house boat or business.

(3) if the assessing authority has reasons to believe that a proprietor is trying to evade the collection or payment of the luxury tax, it may, for reasons to be recorded, enter and search collection or payment of the luxury tax, it may, for reasons to be recorded, enter and search-

- (a) any hotel or house boat or place of business of the proprietor; or
- (b) any other place where the proprietor is keeping or is reasonably believed to be keeping any accounts, registers, records or other documents relating to his hotel or house boat or business.

Provided that no residential accommodation (not being a hotel / shop- cum- residence) shall be entered into or searched, unless the assessing authority is specially authorised in writing by the Board of Revenue to search that accommodation.

Explanation:- For the purposes of clause (b) 'place' includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this Section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The assessing authority making the inspection or search may seize such accounts, registers, records or other documents as it considers necessary and on such seizure shall grant the proprietor a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under Sub-section (5) shall not be retained by the assessing authority beyond a period of thirty days from the date of seizure except with the permission of such authority as may be specified by the Government in this behalf, unless they are required for any prosecution under this Act;

Provided that the authority specified by the Government under this Sub-section shall not give permission to retain such accounts, registers, records or other documents beyond a period of forty five days from the date of the seizure.

(7) The power conferred by sub-sections (3) and (5) shall include-

(a) the power to break open any box or receptacle or place or the door of any premises in which any accounts, registers, records or other documents of the proprietor are reasonably believed to be kept;

Provided that the power to break open the door of any premises shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so;

(b) the power to seal any box or receptacle, godown or

building, where any accounts, registers, records or other documents are or are reasonably believed to be kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building, or is not available, and then to break open such box, receptacle, godown or building, on the authority of an authorization in writing by the Board of Revenue:

(c) the power to search any person who has got out of, or is about to get into, or is in, any place referred to in Clause (a) or Clause (b) of Sub-section (3) or any vessel or vehicle of any proprietor, if the assessing authority has reasons to suspect that such person has secreted about his person any accounts, registers, records or other documents.

(8) If any assessing authority while inspecting any place of business under Sub-section (2) or searching any place under Sub-section (3) finds therein any commodity not accounted for by the stockist in his accounts and other records required to be maintained under this Act or the rules made thereunder, such authority may, after giving the stockist a reasonable opportunity of being heard by order, direct the payment of a penalty, not exceeding fifty percent of the value of the commodity not accounted for as may be fixed by such authority.

(9) If any assessing authority during the course of any inspection or search of any business, place, building, godown or any other place finds that any commodity not accounted for by any stockist in his accounts or other records required to be maintained under this Act or the rules made there under and not claimed by any stockist or any person, are stored in any business place, building, godown or other place, such authority may seize the same by giving the owner of such business place, building, godown, or other place a receipt of the commodity seized and after giving him a reasonable opportunity of being heard sell the same in public auction in such manner as may be prescribed.

14. Power to take evidence on oath, etc- The assessing authority, the appellate authority and the Board of Revenue

shall, for the purpose of this Act, have the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), where trying a suit, in respect of following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses.

15. Refunds- (1) If any proprietor satisfies the assessing authority that the amount of the Luxury Tax paid by him exceeds the amount of such tax payable by him under this act, he shall be entitled to a refund of such excess.

(2) appellant authority in the exercise of its appellate power or the Board of Revenue in the Exercise of its revisional power, if satisfied to the like effect, shall cause a refund to be maid by the assessing authority of any amount found to have been wrongly paid in excess.

16. Limitation of claims for refund: -No claim to any refund of the luxury tax under section 15 shall be admitted, unless it is made within three years from the date of the order of assessment or, where an appeal has been preferred or where there has been a revision, within three years from the date of the order in appeal or revision, as the case may be.

17. Penalties: - (1) Any person who-

- (a) knowing submits an untrue return or fails to submit a return as required by this Act or the rule made thereunder; or
- (b) willfully act in contravention of any of the provisions of this Act or the rule made thereunder for

the contravention of which no express provision for punishment is made by this Act,

shall be punishable with fine which may extend to one thousand rupees.

(2) Any person who-

(a) prevents or obstructs inspection, entry, search or seizure by the assessing authority; or

(b) fraudulently evades the payment of Luxury Tax or other amount due from him under this Act.

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) A person shall not be proceeded against under this Section except at the instance of the assessing authority.

17A. Imposition of penalties by assessing authority: -If an assessing authority is satisfied that any person-

(a) liable to pay tax under this Act,-

(i) has failed to keep true and complete accounts; or

(ii) has failed to submit any return as required by provisions of this act or the rules made thereunder or has submitted an untrue or incorrect return; or

(b) has failed to comply with all or any of the terms of any notice issued to him by or under the provisions of this act or the rule made thereunder or

(c) has prevented or obstructed inspection, entry, search or seizure by any officer; or

(d) has acted in contravention of the provisions of this act or any rule made thereunder, for the contravention of

which no express provision or payment of penalty or punishment is made by this act;

such authority may direct that such person shall pay, by way of penalty an amount not exceeding twice the amount of luxury tax or other amount sought to be evaded where it is practicable to qualify such evasion, or, an amount not exceeding five thousand rupees in any other case.

Explanation - The burden of proving that any person is not liable to the penalty under the section shall be on such person.

17B. Composition of offence - (1) The assessing authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this act, by way of composition of such offence,-

(a) where the offence consist of the evasion of any tax payable under the Act, in addition to the tax so payable, a sum of money not exceeding twice the amount of tax so payable; and

(b) in other cases a sum of money not exceeding five thousand rupees.

18. Offence by companies:- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible, to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in Sub-section shall render any such person liable to an punishment, if he proves that the offence was committed with out his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding any thing contained in Sub-section (1), where any offence under this act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of the section,-

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

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

19. Bar of Jurisdiction- No suit shall lie in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other legal proceeding shall lie against the Government or any authority or officer for any thing in good faith done or intended to be done in this Act.

20. Power to make rules- (1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively for carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be provided for all or any of the following matters namely:-

(a) the form in which returns shall be submitted under Section 5, further information to be furnished with the returns and the manner in which the returns shall be verified;

(b) the form of notice to be served under Section 6 and the procedure to be followed for assessment and collection of assessed dues;

(c) the procedure to be followed by the appellate authorities;

(d) the value of the court fee stamp on an appeal or application for revision;

(e) the other manner in which a notice may be served;

(f) the procedure for the inspection and taking copies of records and accounts;

(g) the fee to be paid for any of the matter provided in this Act; and

(h) any other matter which has to be, or may be, prescribed.

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

21. Power to remove difficulties: -If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order do anything not inconsistent with the provisions of this Act, which appears to them necessary for the purpose of removing the difficulty.

22. Repeal and saving: -(1) The Kerala Tax on Luxuries in Hotels and Lodging Houses Ordinance, 1976 (5 of 1976), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

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