

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

(As passed by the Assembly)

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BILL

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

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

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

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

(2) Save as otherwise provided in this Act,—

(a) all sections except sections 2, 7, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21 shall be deemed to have come into force on the 1st day of January, 2020;

(b) section 7 shall be deemed to have come into force on the 10th day of November, 2020;

(c) section 10 shall be deemed to have come into force on the 1st day of September, 2020;

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

(e) the remaining provisions of this Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint:

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

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

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

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

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

(2) in sub-section (2),—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanation 1.—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) in clause (a),—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. *Repeal and saving.*—(1) The Kerala State Goods and Services Tax (Amendment) Ordinance, 2021 (106 of 2021) is hereby repealed.

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