

Office of the Commissioner of Commercial Taxes in Karnataka

KSA.CR.76/2008-09

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COMMISSIONER OF COMMERCIAL TAXES CIRCULAR No.7/2008-09

Sub: Salient features of the modifications and changes under different tax enactments effective from 1.8.2008 – reg.

In the Budget 2008-09, certain changes and modifications in the rates of tax and the provisions in the laws administered by the Department have been announced. To give effect to the same and also other rationalization measures, the Karnataka Sales Tax Act, 1957, the Karnataka Entertainments Tax Act, 1958, the Karnataka Tax on Luxuries Act, 1979, the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 and the Karnataka Value added Tax Act, 2003 have been amended by the Karnataka Taxation Laws (Amendment) Act, 2008 (Karnataka Act 6 of 2008) and the Karnataka Value Added Tax (Amendment) Act, 2008 (Karnataka Act 5 of 2008). Notifications have also been issued under the KST Act, KTEG Act and KVAT Act. The copies of the amendment Acts and the notifications issued have already been forwarded through intranet to the departmental officers who should carefully peruse the same and note the various changes and modifications effective from 1.8.2008 (except for a few changes made retrospectively). However, the more important ones are explained here for ready reference.

A. KARNATAKA SALES TAX ACT, 1957:

I. By amendments to the Act:

Amendment to Section 20(5) : By amendment to the proviso to sub-section (5) of Section 20 retrospectively from 1.4.2002 to 31.7.2004, the assessing authorities have now been empowered to make fresh assessments in cases remanded by the first appellate authorities even after a period of three months from the date of receipt of records. Prior to this amendment fresh assessments had to be made within a period of three months from the date of receipt of records, though in many cases fresh assessments may have been made even after the three months' period which however, may not have been disputed by the assessee concerned. Such assessments already made beyond the three months' period before this amendment have also been validated. All the officers concerned shall note this important amendment and take up suitable remedial action if any appeal questioning the legality or correctness of any assessment made beyond the three months' period has been allowed by the appellate authorities.

II. Tax concession extended by notification:

Exemption of sales tax on Diesel sold to fishermen: By Notification-I No.FD 182 CSL 2008, dated 31.7.2008, the earlier notification No.FD 507 CSL 2007, dated: 20th March, 2008 has been amended to increase the quantity of diesel sold by oil companies with the benefit of tax exemption for supply to fishermen for use in fishing activities as per the indents issued on a monthly basis by the Director of Fisheries, Government of Karnataka for the year 2008-09, from 70,000 kilo litres to 75,000 kilo litres. Further, tax exemption has been extended to diesel sold in the entire month of August, 2008 and the monthly quantities fixed for the months of August, 2008 to March, 2009 have been revised.

B. Karnataka Value Added Tax Act, 2003

I. By amendments to the Act:

1. Amendment of Section 2: By amendment to item (b) of Explanation (4) to clause (12) of Section 2, companies selling arecanut have been deemed to be dealers liable to pay tax under the Act on such sales. All the concerned shall note this amendment and to take action to get such companies registered if they are not already registered and ensure payment of tax on any sale of arecanut made by them.

2. Amendment of Section 11: (i) By retrospective amendment to clause (1) of sub-section (a) of Section 11, it is specified that no input tax deduction is available not only on inputs used in the sale of exempted goods but also on inputs used in manufacture, processing, packing or storage of exempted goods, as a clarificatory measure.

(ii) By retrospective insertion of a new sub-section (c) to section 11 from 1.4.2006, it is specified that a dealer executing works contracts claiming deduction on amounts paid to his sub-contractor in computing his taxable turnover under Rule 3(2)(i-1) is not eligible to claim input tax rebate in respect of such amounts, as a clarificatory measure.

3. Amendment of Section 15: (i) By amendment of sub-section (4) retrospectively from 1.4.2006, it is specified that the restriction of input tax deduction is applicable to dealers opting for composition scheme under any of the sub-sections of section 15 and not sub-section (1) alone, as a clarificatory measure. It may be noted that dealers can opt for composition scheme under sub-section (1), (2) or (5).

(ii) Sub-section (5) has been amended retrospectively from 1.4.2006, to make this sub-section subject to sub-section (4) which imposes input tax restriction on dealers opting for composition scheme, as a clarificatory measure. It may be noted that even those dealers executing works contract and procuring goods from outside the State or the country, who opt for the composition tax payment scheme would be ineligible for input tax deduction.

4. Amendment of Section 18-A: By amendment to sub-section (4), a dealer deducting tax at source on his purchase of certain specified goods is now permitted to adjust the amounts deducted towards any tax payable by him or any excess input tax credit refundable to him. It should be noted that if such dealer is claiming input tax credit on account of the amount deducted as tax at source and there is no excess input tax credit on account of purchases relating to other than the specified goods or any excess input tax credit carried from the previous month or deduction and remittance of tax on his sales by the purchasing dealer, then the amount deducted would not be available for adjustment or refund. All the concerned shall carefully verify any adjustments or refunds claimed under this amended provision and take suitable action to reject any wrong claims.

5. Amendment of Section 29: By amendment to sub-section (1), provision has been made for prescribing under the rules, a minimum sale amount for issue of sale bills by dealers permitted to pay tax under the Special Accounting Scheme available under section 16, on par with dealers selling non-taxable goods and dealers opting for composition tax scheme. It may be noted that such amount is Rs.100 as already prescribed under Rule 30(1) and that the other conditions prescribed in the provisos to Rule 30(1) would also apply to these dealers.

6. Amendment of Section 31: By omission of sub-section (5), dealers are no longer are required to file annual statements (in Form VAT 115).

7. Amendment of Section 45: By insertion of a new sub-section (7), provision has been made for recovery of tax and other amounts due under the Act from even persons who are not registered dealers from third parties on par with registered dealers.

8. Amendment of Section 46: By insertion of a new sub-section (2-a) provision has been made for transfer of excess input tax credit on transfer of any business from one registered dealer to another. It may be noted that currently in such cases the transferor is eligible to claim refund of any excess input tax credit and that the transferor may now opt to transfer the excess input tax credit to the transferee only when such excess input tax credit have not already been adjusted by him or claimed as refund. It may also be noted that the KVAT Rules have to be amended suitably to lay down the procedure to implement this amendment.

9. Insertion of new Section 47-A: By insertion of this new section, provision has been made for rounding off of tax and other amounts payable or refundable under the Act to nearest rupee.

10. Amendment of Section 52: By amendment to sub-section (1) retrospectively from 23.12.2004, it is specified that Commissioner may authorize departmental officers specifically in certain cases or generally in all cases to exercise all or any of the powers provided under the

various provisos of this sub-section, as a clarificatory measure. All actions and proceedings already taken by the departmental officers in line with the amended provision have also been validated. All the concerned shall note this important amendment and bring through suitable application to the notice of the authorities and Courts, before whom any such actions have been questioned, the retrospective amendment and validation of past acts and proceedings.

11. Amendment of Section 63: By amendment to sub-section (1), revision orders of the Joint Commissioners under Section 63-A are now made appealable before the Karnataka Appellate Tribunal.

12. Amendment of Section 72: (i) By substitution of clause (a) of sub-section (1) retrospectively from 1.4.2007, it is clarified that the penalty of Rs.50 payable for each day of default exceeding five days in furnishing of return in the case of a dealer with tax liability of less than Rs.250, should be restricted to Rs.250 (and if the delay is less than five days in such cases, then the penalty payable will be as calculated at Rs.50 per day). In the case of a dealer with default exceeding five days and whose tax liability is more than Rs.250, if the daily penalty calculated is less than such tax liability, then such lesser amount shall be the penalty payable by such dealer and where the daily penalty calculated is more than such tax liability, then the penalty payable by the dealer shall be equal to his tax liability.

(ii) By substitution of clause (b) of sub-section (1) prospectively, the additional penalty for delay in filing of returns is reduced from the current 10% to 5%, if the delay does not exceed ten days. It may be noted that the additional penalty for delay beyond ten days continues to be at 10%.

(iii) By amendment of sub-section (2), provision has been now made for levy of penalty for any over-statement of tax credit in excess of 5% of his actual tax credit by any dealer. Hitherto, the un-amended provision provided for levy of penalty for over-statement of tax credit in excess of 5% of output tax liability (whether actually payable or not after considering input tax deduction). It may be noted that in such cases, penalty at 10% of the excess amount claimed should be imposed.

13. Amendment of Section 74: By amendment to the heading of the section 74 and by insertion of a new sub-section (4), failure to submit copy of the audited statement of accounts within the prescribed time, is now made liable for levy of a penalty of Rs.5000 and an additional penalty of Rs.50 per day till the failure continues, by the LVO or VSO after giving the dealer concerned an opportunity of showing cause against imposition of these penalties. All the concerned shall note that the penalties under this new sub-section is leviable irrespective of the reason for non-submission of audited statement of accounts within the time prescribed and the opportunity is given to the dealer only to prove that he has filed the statement within the time prescribed, if he has done so and it has not come to the notice of the LVO or VSO.

14. Amendment of Third Schedule: (i) Entry Sl.No.23 relating to Chemical fertilizers, insecticides, pesticides, etc., has been amended to exclude phenyl, liquid toilet cleaners, floor cleaners, mosquito coils, mosquito repellants and the like used for non-agricultural or non-horticultural purposes from the scope of this entry. Consequently, these goods would be liable to tax at 12.5% from 1.8.2008. It may be noted that all kinds of domestic or commercial pest repellants or killers used in respect of insects or pests like mosquitoes, cockroaches, flies, etc. whether in the form of coils, mats, vaporizers, sprays, etc. would be now liable to tax at 12.5%.

(ii) Entry Sl.No.47 relating to plastic footwear in the Third Schedule as it existed prior to 7.6.2005 has been amended retrospectively to include 'plastic boxes, cases and crates for conveyance or packing of goods' during the period from 1.5.2005 to 6.6.2005. By such inclusion these goods would be taxable at 4% during this period. All the concerned shall note that if any dealer has collected and paid tax on these goods at a higher rate, then suitable action should be taken under section 47 in such a case.

(iii) Entry Sl.No.63 relating to mixed PVC stabilizer has been amended retrospectively to include 'plastic boxes, cases and crates for conveyance or packing of goods' with effect from 7.6.2005. Consequently, these goods are liable to tax at 4% from 7.6.2005 onwards. All the concerned shall note that if any dealer has collected and paid tax on these goods at a higher rate, then suitable action should be taken under section 47 in such a case.

15. Amendment of Sixth Schedule: By amendment to entry Sl.No.6, works contracts of powder coating are now made liable to tax at 4%.

II. Tax concessions extended by notifications:

1. Tax exemption on imported textiles and fabrics, etc.: By Notification-III No.FD182 CSL 2008, dated 31.07.2008 tax exemption has been extended on the following goods:

- (1) All varieties of textiles and fabrics imported from outside the territory of India other than those specified in Third Schedule to the said Act;
- (2) Branded brooms manufactured out of grass, natural fibres and natural sticks;
- (3) Ice when sold to fishermen who are members of any Fishermen Co-operative Society or owners of registered fishing boats and whose full name and membership or registration number are mentioned in the corresponding bills of sale issued.

In respect of tax exemption on imported textiles and fabrics, it shall be noted that made-up textile articles like clothing accessories, bed linen, etc. even if imported would continue to be liable to tax under entry Sl.No.78 of Third Schedule. In respect of tax exemption on ice, it shall be noted that such exemption is available only to ice sold for use in preserving fish and ice sold for other purposes continues to be taxable at 4%. All the officers concerned shall ensure that there is no misuse of this conditional tax exemption, by taking up periodical verification of sale bills issued by the dealers concerned and the genuineness of the purchasers.

2. Tax reduction on vermicelli: By notification-IV No.FD 182 CSL 2008, dated 31.7.2008, tax on sale of vermicelli has been reduced from 12.5% to 4%.

3. Tax reduction on sale of all kinds of used motor vehicles including used motor cycles: By notification-V No.FD 182 CSL 2008(5), dated 31.7.2008, tax on sale of all kinds of used motor vehicles by dealers engaged in the purchase and sale of used motor vehicles has been reduced from 12.5% to 4% on the difference between the taxable turnover in respect of such sale and the amount paid towards purchase of such motor vehicles. While doing so, the earlier notification No.FD 300 CSL 2005, dated 24.10.2005 which had extended similar tax concession only to used motor cars sold by dealers engaged in purchase and sale of used motor car has been cancelled. This tax reduction is subject to the condition that no input tax deduction is claimed by the dealer towards tax paid on purchase of any goods used in the motor vehicles sold. There is a further condition that the used motor vehicle being sold should have been registered in the State prior to its sale under the Motor Vehicles Act, 1988. It may be noted that this notification is not applicable to dealers who purchase motor vehicles for their business use and sell them later. Tax concession to such dealers is available under notification No.FD 115 CSL 2007 (4), dated 30.3.2007.

4. Notification of corn cobs, powder and grits as industrial inputs: By notification-VI No.FD 182 CSL 2008, dated 31.7.2008, corn cobs, powder and grits have been notified as industrial inputs liable to tax at 4% from 1.4.2008.

5. Tax reduction on certain capital goods: By notification –VII No.FD182 CSL 2008, dated 31.7.2008, certain machinery, parts and accessories used by textile industry have been notified as capital goods under entry 20 of Third schedule to the Act so as to be taxable at 4% VAT.

C. Karnataka Entertainments Tax Act, 1958:

1. Substitution of Section 3-C: By substitution of section 3-C, all Kannada, Kodava, Konkani, Tulu and Banjara films including remakes of other language films but excluding films which are dubbed versions of other language films have been exempted from the tax payable under Sections 3 and 3-A. This exemption is subject to production by the proprietor of a prescribed certificate. Rules are being amended to prescribe such certificate to be the one issued by the Director of Information, Government of Karnataka.

2. Amendment of Section 4-A: By substitution of the provisos to Section 4-A(1), all Kannada, Kodava, Konkani and Tulu films including remakes of other language films but excluding films which are dubbed versions of other language films have been exempted from the composition tax payable under Section 4-A(1). This exemption is subject to production by

the proprietor of a prescribed certificate. Rules are being amended to prescribe such certificate to be the one issued by the Director of Information, Government of Karnataka.

3. Amendment of Section 8-B: By amendment of sub-clause (a) of sub-section (3), any first appeal filed before the departmental appellate authority (JCCT (Appeals)) against assessment or any other order passed under the Act are now required to be accompanied by proof of payment of half the tax or other amount disputed in the appeal. Further, by substitution of the existing proviso and insertion of three new provisos to sub-section (3), (i) the first appellate authorities' powers to stay recovery of tax or other amount disputed in appeals are restricted to the balance half of tax or other amount disputed, (ii) in a case where recovery of half of the amount disputed is stayed by the first appellate authority, he is required to dispose of the appeal within 120 days, failing which the stay order get automatically vacated and (iii) the first appellate authority cannot issue any further stay order in the case. The newly inserted second proviso also provides for deemed disposal of applications made for stay of recovery of the balance half of amounts disputed, if such applications are not disposed of within a month by the appellate authority. By insertion of a new explanation to sub-section (3), the conditions now imposed in respect of first appeals have been made applicable to all appeals filed on or after 1.8.2008 irrespective of the date of the orders disputed in appeals. All the concerned shall note this important amendment.

4. Amendment of Section 8-E: By amendment to sub-section (4), any appeal filed before the Karnataka Appellate Tribunal against assessment or any other order passed under the Act is now required to be accompanied by proof of payment of half of the tax or other amount disputed in the appeal. Further, by substitution of sub-section (3) and the first proviso, (i) the Appellate Tribunal's powers to stay recovery of tax or other amount disputed in appeals are restricted to the balance half of tax or other amount disputed, (ii) in cases where recovery of half of the amount disputed is stayed by the Appellate Tribunal, it is required to dispose of the appeal within 180 days, failing which the stay order gets automatically vacated and (iii) the Appellate Tribunal cannot issue any further stay order in the case. By insertion of a new explanation to the section 8-E, the conditions now imposed in respect of appeals filed with the Appellate Tribunal have been made applicable to all appeals filed on or after 1.8.2008 irrespective of the date of the orders disputed in appeals. All the concerned shall note this important amendment.

D. KARNATAKA TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACT, 1976:

Amendments to the Schedule:

(i) By amendment to entry Sl.No.1, salary or wage earners with monthly salary or wage of Rs.3,000 and above but less than Rs.5,000 are exempted from Professions Tax with effect from 1.8.2008.

(ii) After entry Sl.No.18 relating to 'banking companies' in the Schedule as it existed prior to 1.4.2003, by insertion of an explanation retrospectively from 1.4.1976, banks whose operations are governed by one or more provisions of the Banking Regulation Act, 1949 have been brought under the scope of this entry apart from banking companies as defined under the Banking Regulation Act, 1949. Thus, banks like State Bank of India, Vijaya Bank, etc. would be liable to pay tax under this entry. Action already taken to recover tax from these banks prior to the insertion of the explanation has also been validated.

Similarly, after entry 24 relating to 'banking companies' in the Schedule as substituted from 1.4.2003 by insertion of an explanation retrospectively from 1.4.2003, banks whose operations are governed by one or more provisions of the Banking Regulation Act, 1949 have been brought under the scope of this entry apart from banking companies as defined under the Banking Regulation Act, 1949. Thus, banks like State Bank of India, Vijaya Bank, etc. would be liable to pay tax under this entry. Action already taken to recover tax from these banks prior to the insertion of the explanation has also been validated. Further, these banks would also be liable to pay Professions Tax in respect of their branches as per explanation to clause (h) of Section 2. All the concerned shall note these important amendments.

E. KARNATAKA TAX ON LUXURIES ACT, 1979:

1. Amendment of Section 3-C: By amendment of Section 3-C, the rate of luxury tax payable by proprietors of marriage halls has been increased from 15% to 20% with effect from 1.8.2008.

2. Amendment of Section 4: By substitution of sub-section (3), proprietors of hotels are now required to pay tax on the declared tariff or rack rates, instead of charges actually collected. All the concerned shall note this important amendment which is effective from 1.8.2008.

3. Substitution of Section 9: By substitution of Section 9, any first appeal filed before the departmental appellate authority (JCCT (Appeals)) against assessment or any other order passed under the Act is now required to be accompanied by proof of payment of half of the tax or other amount disputed in the appeal. Further, (i) the first appellate authorities' powers to stay recovery of tax or other amount disputed in appeals are restricted to the balance half of tax or other amount disputed, (ii) in a case where recovery of half of the amount disputed is stayed by the first appellate authority, he is required to dispose of the appeal within 120 days, failing which the stay order gets automatically vacated and (iii) the first appellate authority cannot issue any further stay order in the case. The second proviso of sub-section (3) also provides for deemed disposal of applications made for stay of the balance half of amounts disputed, if such applications are not disposed of within a month by the appellate authority. As per the explanation to Section 9, the conditions now imposed in respect of first appeals have been made applicable to all appeals filed on or after 1.8.2008 irrespective of the date of the orders disputed in appeals. All the concerned shall note this important amendment.

4. Amendment of Section 11: By amendment to sub-section (3), any appeal filed before the Karnataka Appellate Tribunal against assessment or any other order passed under the Act are now required to be accompanied by proof of payment of half of the tax or other amount disputed in the appeal. Further, by substitution of sub-section (6) and the first proviso, (i) the Appellate Tribunal's powers to stay recovery of tax or other amount disputed in appeals are restricted to the balance half of tax or other amount disputed, (ii) in cases where recovery of half of the amount disputed is stayed by the Appellate Tribunal, it is required to dispose of the appeals within 180 days, failing which the stay order gets automatically vacated and (iii) the Appellate Tribunal cannot issue any further stay order in such cases. By insertion of a new explanation to sub-section (6), the conditions now imposed in respect of appeals filed with the Appellate Tribunal have been made applicable to all appeals filed on or after 1.8.2008 irrespective of the date of the orders disputed in appeals. All the concerned shall note this important amendment.

F. MYSORE BETTING TAX ACT:

Revision of Composition amount: By substitution of Section 3-A relating to payment of totalisator tax by way of composition, the amount payable by Mysore Race Club has been increased to 4% of their total totalisator receipts. It may be noted that this increase is effective from 1.8.2008 and for the period from 1.4.2008 to 31.7.2008 Mysore Race Club is liable to pay composition amount at 2% of their totalisator receipts.

G. KARNATAKA TAX ON ENTRY OF GOODS ACT, 1979:

Tax exemption on ready garments: By notification-II No.FD 182 CSL 2008, dated 31.7.2008, which cancels the earlier notification No.FD 199 CET 02 (2), dated 1.10.2002, ready garments have been exempted from entry tax from 1.8.2008.

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