



The Kerala Tax on Paper Lotteries Act, 2005

Act 20 of 2005

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THE KERALA TAX ON PAPER LOTTERIES ACT 2005^[1]

(ACT 20 OF 2005)

An Act to provide for the levy and collection of tax in the State of Kerala on the conduct of paper lotteries and for matters connected there with or incidents thereto;

Preamble.-WHEREAS it is expedient to provide for the levy and collection of tax on the conduct of paper lotteries in the State of Kerala.

BE it enacted in the Fifty sixth year of the Republic of India as follow:-

CHAPTER I

PRELIMINARY

1.*Short title, extent and commencement.*-(1) This Act may be called the Kerala Tax on Paper Lotteries Act, 2005.

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

(3)It shall come into force at once.

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

(a)“Agent” means an individual partnership or body corporate with a legal identity under any Act of the State or Central Government and who has entered an Agency agreement with the State or Central Government or any Union Territory or any Country who had entered into bi-lateral agreement or treaty with Government of India for the sale of lottery tickets in the State and includes Registered Agents Bulk agents, Stockists, Sole Selling Agents appointed to sell Lottery tickets in the State;

(b)“Assistant Commissioner” means an Assistant Commissioner of Commercial Taxes appointed under Section 3 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963)

(c)“Bumber draw” means special draw of paper lottery conducted in festival seasons special occasions or other circumstances promising more amount as prize than that is promised in usual draw of lotteries.

(d)“Commissioner” means the Commissioner of Commercial Taxes appointed under Section 3 of the Kerala General Sales Tax Act 1963 (Act 15 of 1963);

(e)“Deputy Commissioner” means the Deputy Commissioner of Commercial Taxes appointed under Section 3 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963);

(f)“Deputy Commissioner (Appeal)” means the Deputy Commissioner (Appeal) of Commercial Taxes appointed under Section 3 of the Kerala General Sales Tax Act, 1963;

(g)“Draw” means any method by which the prize winning number of numbers are drawn for each lottery, by operation of the draw machine or any other manual mechanical method which selects numbers on a methodology and where the operation is visibly transparent to the viewers;

(h)“Joint Commissioner” means the Joint Commissioner of Commercial Taxes appointed under Section 3 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963);

(i)“Lottery” means a scheme, in whatever form and by whatever name called for distribution of prizes by lot of chance to those persons participating in the chances of a prize by purchasing tickets organized by the Government of India or the Government of a State or any Union Territory or any country having bilateral agreement or treaty with the Government of India:-

(j)“Paper Lottery” means any lottery other than on-line lottery, conducted in accordance with the provision contained in section 4 of the Lotteries (Regulation) Act, 1998;

(k)“Month” means the Calendar month;

(l) “Promoter” means the Government of India or Government of a State or a Union Territory or any country who had entered into a bi-lateral agreement or a treaty with the Government of India for organizing, conducting or promoting a lottery and includes, any person appointed for selling lottery tickets by the Government in the State of Kerala on its behalf, where such Government is not directly selling lottery tickets in the State;

(m)“State Government” means the Government of Kerala;

(n)“Tax” means the tax under this Act;

(o)“Year” means financial year.

CHAPTER II

AUTHORITIES

3.Instruction to subordinate authorities.-(1) The State Government may, from time to time issue such orders, instructions and directions to all officers and persons employed

in the execution of this Act as the Government may deem fit, for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government:

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

(2) All officers and persons employed in the execution of this Act, shall observe and follow such administrative instructions as may be issued to them for their guidance by the Commissioner.

4. Jurisdiction of officers.—(1) The Deputy Commissioner shall perform their functions in respect of such areas or of such promoters or classes of promoters or of such cases or classes of cases as the Commissioner may direct.

(2) The Assistant Commissioner shall perform their functions in respect of such areas or of such promoters or classes of promoters or such cases or classes of cases as the Commissioner may direct.

5. Change of incumbent of an office.—Whenever, during the pendency of any proceedings under this Act, an officer ceases to exercise jurisdiction and is succeeded by another; the officer so succeeding may continue the proceedings from the stage at which the proceedings was left by his predecessor;

Provided that before the proceedings against the promoter is so continued the previous proceedings or any part thereof be re-opened or that he may be heard before any order of assessment is passed against him.

CHAPTER III

LEVY OF TAX ON LOTTERIES

6. Levy of Tax.—(1) There shall be levied and collected a tax on paper lotteries at the following rates, namely:—

(a) Ten lakh rupees for every bumper draw and

(b) Two lakh fifty thousand rupees in respect of any other draw;

(2) Tax levied under sub-section (1) shall be paid by each promoter.

(3) Where the Government of India or a Government of a State or Union Territory or a Country appoints more than one promoters in the State, one such promoter duly

authorized by the respective Government or Country shall pay tax levied under sub section (1);

CHAPTER IV

REGISTRATION

7.Registration of Promoters.-(1) Every promoter selling lottery tickets shall get himself registered under this Act in such manner and on payment of such fees and security within such period as may be prescribed:

Provided that a person ordinarily selling lottery tickets in retail shall not be liable to get himself registered.

(2)The registration may be renewed from year to year on payment of the prescribed fees and security, until it is cancelled;

(3)Unless the registration is cancelled or renewed at the expiry of the period of registration, the security may be refunded or released to the promoter after adjusting any or all amount due from him, under this Act;

CHAPTER V

RETURN, ASSESSMENT, PAYMENT, RECOVERY AND COLLECTION OF TAX

8>Returns and Assessment.-(1) Notwithstanding anything contained in section 10, every promoter liable to get himself registered under this Act shall submit a return to the Assistant Commissioner for such period, within such period and in such manner containing such particular as may be prescribed.

(2)Before any promoter submits any return under sub-section (1), he shall in the prescribed manner, pay in advance as provided under section 10, the full amount of Tax payable by him under section 6 and shall furnish along with the return satisfactory proof of the payment of such tax, and after the final assessment is made the amount of tax so paid shall be deemed to have been paid towards the tax finally assessed.

(3)If the Assistant Commissioner is satisfied that any return submitted under sub-section (1) is correct and complete he shall assess the promoter on the basis thereof.

(4)if no return is submitted by the promoter under sub-section (1) before the period prescribed or if the Assistant Commissioner is satisfied that the return submitted to him is

incorrect or incomplete, he shall assess the promoter to the best of his judgment recording the reasons for such assessment:

Provided that before taking action under this sub-section the promoter shall be given reasonable opportunity of being heard.

(5) While making any assessment under sub-section (4), the Assistant Commissioner may also direct the promoter to pay in addition to the tax assessed a penalty equal to two times of the amount of tax due that was not disclosed by the promoter in his return or in the case of failure to submit a return two times of the tax assessed.

9. Assessment of draw escaping assessment.-(1) If the Assistant Commissioner has reasons to believe that any draw has escaped assessment to tax or has been assessed at a rate lower than the rate at which it is assessable under this Act, the Assistant Commissioner may, notwithstanding the fact that assessment in respect of such draw was already before him at the time of assessment or reassessment, but subject to the provisions of sub-section (3), at any time within a period of four years from the expiry of the period to which the tax relates, proceed to assess or reassess to the best of his judgment the tax payable by the promoter in respect of such draw after issuing a notice to the promoter and after making such enquiry as he may consider necessary.

(2) In making an assessment under sub-section (1) the Assistant Commissioner may, if he is satisfied that the escapement from assessment is due to willful non-disclosure of the draw by the promoter, direct him to pay in addition to the tax assessed under sub-section (1) a penalty equal to two times of the tax so assessed:

Provided that no penalty under this sub-section shall be directed to be paid unless the promoter has been given a reasonable opportunity of being heard.

(3) In computing the period of limitation for assessment under this section the time during which assessment has been deferred on account of any stay order granted by any Court or other authority or by reason of the fact that an appeal or other proceeding is pending shall be excluded.

Provided that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to an assessment or reassessment made on the promoter in consequence of or to give effect to, any finding direction or order made under Sections 14, 15, 16 and 18 or any judgment or order made by the Supreme Court, the High Court or any other Court.

10. Payment of tax in advance.-(1) Subject to such rules as may be prescribed, every promoter shall submit on the 1st day of every month, if the first day being a holiday, on the immediate next working day, to the Assistant Commissioner a statement containing such particulars, as may be prescribed relating to the draws to be conducted during the month commencing from the next succeeding month and shall pay in advance the full

amount of tax payable by him under this Act, in respect of the draws shown in the Statement and the amount so payable shall for the purpose of section 12, be deemed to be an amount due under this Act from such promoter.

(2) If default is committed in the payment of tax for any month, whether a statement as required under sub-section (1) is filed or not, or if the amount of tax paid is less than the amount of tax payable for any month, the promoter defaulting payment of tax or making short payment of tax shall, in addition to the tax, pay interest calculated at the rate of two per cent per month from the date of such default or short payment to the date of payment of such tax.

(3) If no such statement is submitted by a promoter under sub-section (1) before the date specify or if the statement submitted by him appears to the Assistant Commissioner to be incorrect or in complete, the Assistant Commissioner may assess the promoter provisionally for that month to the best of his judgment, recording the reasons for such assessment, and proceed to demand and collect the tax forthwith on the basis of such assessment, the above said tax shall immediately be adjusted towards the security amount paid under sub-section (1) of section 7.

(4) Without prejudice to the actions contemplated under sub-sections (2) and (3) above, the Assistant Commissioner shall cancel the registration of the promoter granted under this Act and on such cancellation of registration, the promoter shall not be entitled to sell lottery tickets within the State:

Provided that before taking action under this sub-sections (3) and (4), the promoter shall be given a reasonable opportunity of being heard.

Provided further that if the promoter makes payment of the defaulted tax with interest the Assistant Commissioner, on application, may register the promoter or such person on payment of registration/renewal fees and security at the prescribed rate.

11. *Payment and recovery of tax.*—(1) The tax or any other amount due under this Act shall be paid in specified manner and within the fixed time, as may be prescribed.

(2) If default is made in making payment in accordance with sub section (1),--

(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the property of the promoter including any person appointed for selling lottery tickets jointly and severally liable to pay tax under this Act;

(ii) the promoter liable to pay the tax or any other amount due under this Act shall pay an interest equal to two per cent of the amount of tax or any other amount due remaining unpaid for each month after the expiry of the time specified under sub-section (1).

Explanation.-For the purposes of clause (ii), the interest payable for a part of a month shall be proportionately determined.

(3)Any amount, which remains unpaid under this Act after the due date of payment, shall be recoverable from a promoter including any person appointed for selling lottery tickets jointly and severally in the manner specified under this Act.

(4)Any tax due or assessed or any other amount due under this Act from a promoter or any other person, may without prejudice to any other mode of collection be recovered, as if it were any arrear of land revenue.

12.Recovery of Tax, penalty or any other amount, from, certain other persons.-(1) The Assistant Commissioner may at any time or from time to time by notice in writing, a copy of which shall be forwarded to the promoter, at his last address known to the Assistant commissioner, require any person from whom money is due or may before due to the promoter or other person who holds or any subsequently hold money for or on account of the promoter or other person to pay to the Assistant Commissioner, either forthwith upon the money become due or being held at 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 promoter or other person in respect or arrears of tax or penalty or the whole of the money when it is equal to or less than that amount.

(2)Any person making any payment in compliance with a notice under sub-section (1) shall be deemed to have made the payment under the authority of the promoter or other person and the receipt of the Assistant Commissioner shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(3)Any person discharging any liability to the promoter or other person after receipt of the notice referred to in this section shall be personally liable to the Assistant Commissioner to the extent of the liability discharged or to the extent of the liability of the promoter for the amount due under this Act, whichever is less.

(4)Where any person to whom a notice under this section is sent, proves to the satisfaction of the Assistant Commissioner issuing such notice, that the sum demanded or any part thereof is not due and payable by him to the promoter or other person or that he does not hold any money for or on account of the promoter, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, to the Assistant Commissioner.

(5)Any amount which a person is required to pay to the Assistant Commissioner or for which he is personally liable to the Assistant Commissioner under this section shall, if it remains unpaid, be charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

(6)For the purpose of this section, the amount due to a promoter or money held for or on account of a promoter or other person by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such promoter or other person to such person and as may be lawfully subsisting.

13.*Tax payable on transfer of business assessment of legal representatives, etc.*-(1) When the ownership of the business of a promoter other than a Government is transferred, the transfer or and the transferee shall jointly and severally be liable to pay any tax or penalty or any other amount remaining unpaid at the time of transfer or that may become payable in respect of such business after the date of transfer but relating to the periods up to the date of transfer and for the purpose of recovery from the transferee, such transferee shall be deemed to be the promoter liable to pay the tax or penalty or other amount due under this Act.

(2)Where any firm is liable to pay any tax or penalty or any other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(3)When a firm liable to pay the tax or penalty is dissolved the assessment of the tax and imposition of penalty shall be made as if no dissolution of the firm has taken place and the legal representative of any such partner who is deceased shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(4)where a partner of firm liable to pay any tax or penalty or any other amount under this Act retires, he shall, notwithstanding any contract to the contrary be liable to pay any tax or penalty or any other amount remaining unpaid at the time of his retirement, and any tax or penalty; or any other amount due up to the date of retirement, though un-assessed.

(5)Where a promoter dies, the executors, administrators or other legal representatives or legal heirs shall be deemed to be the promoter for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased promoter.

CHAPTER VI

APPEAL AND REVISION

14.*Appeals.*-(1) Any person objecting to an order affecting him passed under the provisions of this Act by the Assistant Commissioner may appeal to the Deputy Commissioner (Appeal) (hereinafter called the Appellate Authority) of the concerned jurisdiction.

(2)The appeal shall be preferred within thirty days from the date of communication of the order appealed against

(3)No appeal against the order shall be entertained by the Appellate Authority unless it is accompanied by satisfactory proof of payment of tax and penalty not disputed in appeal.

(4)The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(5)In disposing of an appeal, the appellate Authority may; after giving the appellent a reasonable opportunity of being heard:-

(i)set aside the order, or reduce or enhance the amount stated therein or annual;

(ii) pass such orders as it may think fit, for reasons to be recorded in writing.

(6)Every order passed on appeal under this section shall, subject to the provisions of section 18 be final.

15. Revisional power of Deputy commissioner.-(1) The Deputy Commissioner may on his own motion call for and examine the record of any order passed or proceedings recorded under the provisions of this Act by the Assistant Commissioner and against which no appeal has been preferred under section 14 for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings insofar as it is prejudicial to the interest of revenue and pass such order with respect thereto as he thinks fit.

Provided, where an appeal is pending under section 14 the Deputy Commissioner shall not exercise the power:

Provided further that, within a period of two years from the date of issue of Tax assessment order under this Act or within a period of one year from the date of order issued under section 14, whichever comes later, within that time the power under sub-section (1) shall be exercised.

(2)No order enhancing any assessment shall be passed under sub-section (1) unless the promoter has been given a reasonable opportunity of being heard.

(3)Every order passed in revision under this section shall subject to the provisions of sections 16 and 18 be final..

16. Revision by the Commissioner.-(1) The commissioner may on his own motion call for and examine the record of any order passed or proceedings issued under this Act, if he considers that any order passed or proceedings issued therein by any officer subordinate

to him is erroneous insofar as it is prejudicial to the interests of revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the promoter an opportunity of being heard and after making or causing to be given the promoter an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary pass such order thereon as the circumstances of the case justify:

Provided that the power under sub-section (1) shall be exercised only within a period of four years from the date on which the order sought to be revised was passed.

(2) Every order passed in revision under this section shall, subject to the provisions of section 18, be final.

17. Tax to be collected under this Act.-No tax on paper lotteries shall be levied or recovered under the Kerala General Sales Tax Act, 1963 or under the Kerala Value Added Tax Act, 2003 in addition to the Tax recovered under this Act.

18. Rectification of mistakes.-(1) With a view to rectifying any mistake apparent on the face of the record, the Assistant Commissioner or the Appellate Authority or the Revisional Authority, may at any time within two years from the date of an order passed by it, rectify the mistake in such order:

Provided that any rectification which has the effect of enhancing an assessment or otherwise increasing the liability of the promoter of any person shall not be made unless the Assistant Commissioner or the Appellate Authority or the Revisional Authority as the case may be, has given notice to the promoter or any person of his intention, to do so and has allowed the promoter or any person a reasonable opportunity of being heard.

(2) Where an order has been considered and decided in any proceedings by way of appeal or revision relating to an order referred to in sub-section (1), the Authority passing such order may, notwithstanding anything contained in any law for the time being in force amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) An order passed under sub-section (1), shall be deemed to be an order passed under the same provision of law under which the original order, the mistake in which was rectified, has been passed.

CHAPTER VII

MISCELLANEOUS

19. Accounts and records to be maintained by promoters and other persons.-(1) Promoter or other person registered or liable to be registered under this Act, shall keep

and maintain true and correct accounts and such other records as may be prescribed, relating to his business, showing such particulars as may be prescribed.

(2) All such accounts and records shall be retained by the promoter or other person in his safe custody until the expiry of four years after the end of the year to which they relate or until the assessment reaches finality, whichever is later.

(3) Where such promoter or other person is a party to an appeal or revision under this Act, he shall retain, until the appeal or revision is finally disposed of every record and accounting document that pertains to the subject matter of the appeal or revision.

20. Production and inspection of documents and powers of entry search and seizure.-

(1) Any officer authorized by the State Government or Commissioner in this behalf, may for the purpose of this Act shall have the power.-

(a) to enter and inspect the place of business of any promoter or other person carrying on business in lottery or any other place, where it is believed by such Officer that business is being carried on or accounts including documents are being kept by such promoter or person;

(b) to direct such promoter or person to produce at such time and at such place accounts, registers and documents relating to his business activities for examination;

(c) to enter and inspect the lottery tickets in the possession of the promoter or in the possession of any other person on behalf of such promoter wherever such lottery tickets are kept;

(d) to enter and search such places, including the search of the promoter or person acting on behalf of the promoter found there, where concealment of facts relating to the business are suspected;

(e) to seize any accounts, registers or documents from the promoter or other person, where he has reason to suspect that a promoter or other person is attempting to avoid or evade tax or is concealing his tax liability in any manner, after recording such reasons in writing, and give the promoter or any other person from whose custody such accounts, records or documents are seized, a receipt for and if requested copies of the same and may retain them in his custody for examination, inquiry, prosecution or other legal proceedings for such period as he considers necessary;

(f) to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or lottery tickets are suspected to be kept or stored, where the owner or the person in-charge of the business or any other person in-charge of the business or any other person in occupation either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so;

(g)to break open the receptacle, godown or building or part of the godown or building where the owner or the person in-charge of the business or the person in occupation leaves the premises or, after an opportunity having been given to him to do so, fails to open the receptacle, godown or building or part of the godown or building; and to prepare a list of the goods and documents found therein;

(h)to record the statement of any promoter or his manager, agent of servant, to take extracts from the records found in any premises and to put identification marks on accounts, registers, documents or goods;

(i)to seize any stock of lottery tickets, which are found in possession of a promoter or in the possession of any person on behalf of a promoter and which are not accounted for in his accounts, records or documents maintained in the course of his business, and a list of lottery tickets including any device or contrivance used to issue lottery tickets so seized shall be prepared by such officer and a copy thereof shall be given to the promoter or any other person from whose custody such lottery tickets, device or contrivance are seized;

(j)in circumstances where it is not possible to seize the accounts, records or documents under clause (e) or the lottery tickets under clause (i) to serve on the owner or the person who is in immediate possession or control there from an order that he shall not remove, part with or otherwise deal with them except with the prior consent of such Officer, and after serving such order to take such steps as are deemed necessary to secure the items referred to in the order.

(2)Where the records and accounts are maintained by electronic means, the promoter shall provide such access to such accounts and records as may be required by the officer authorized under sub-section (1).

(3)The powers conferred on the officer under clauses (c) to (d) and (i) of sub-section (i) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) as far as may be possible, and the power to enter a promoter's or other person's place of residence shall be authorized by an officer not below the rank of Deputy Commissioner.

(4)The accounts, registers, records, including computer hardware and software, and other documents seized under sub-section (1) shall not be retained by such officer for a period not exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him, in writing and the approval in any case shall not be for more than sixty days at a time.

(5)There shall be a presumption in respect of devices, contrivances, accounts, registers or documents found at any place of business that they relate to that business, unless the contrary is proved by the promoter or person whose business occupies that place.

(6)The promoter or person from whom lottery tickets have been seized under sub-section (1) may appeal within a period of fifteen days against seizure of the lottery tickets.

21.*Burden of proof.*—For the purposes of payment or assessment of tax, the burden of proving that any claim to payment of tax on the draw relating to any lottery tickets is correct, shall lie on the promoter or other person selling lottery tickets as a distributor or selling agent or any other capacity.

CHAPTER VIII

PENALTIES, OFFENCES AND POWER TO MAKE RULES

22.*Penalty relating to registration.*—(1) A promoter who, without reasonable cause, fails to apply for registration within the time prescribed shall be liable to a penalty of one lakh rupees.

(2)Any other person who, without reasonable cause, fails to apply for registration within the time prescribed shall be liable to a penalty of one lakh rupees.

(3)The power to levy the penalties shall be vested with the Assistant Commissioner.

23.*Penalties relating to statement or returns.*—(1) A promoter or other person who fails to furnish a statement or return or who fails to pay the tax due on any statement furnished as required under this Act shall be liable to a penalty of one thousand rupees for each day of default in addition to a further penalty of a sum not less than ten per cent but not exceeding fifty per cent of the amount of tax due, together with any tax or interest.

(2)The powers to levy the penalty under this section shall be vested with the Assistant Commissioner.

24.*Penalties relating to the keeping of records.*—(1) any promoter or other person who fails to keep and maintain proper records, in accordance with sub-section (1) of section 19 shall be liable to a penalty of ten thousand rupees and, in addition, two thousand rupees per day for the failure so long as it continues:

Provided that no penalty shall be imposed unless an opportunity to show cause against such imposition of penalty is given.

(2)Any promoter or other person who fails to retain records and accounts in accordance with sub-section (2) and (3) of section 19 shall be liable to a penalty of twenty thousand rupees:

Provided that no penalty shall be imposed unless an opportunity to show cause against such penalty is given.

(3)The power to levy the penalties under this section shall be vested with the Assistant Commissioner.

25. Penalties relating to production of records and furnishing of information.-(1) Any promoter or other person who on demand by the authorized officer fails to produce any records or furnish any information in accordance with the requirements of this Act, shall be liable to a penalty of ten thousand rupees and in addition two thousand rupees per day for the failure so as long as the failure continues:

Provided that no penalty shall be imposed unless an opportunity to show cause against such penalty is given.

26. Penalties relating to seals and to unaccounted lottery tickets.-(1) Any person who removes, or in any way tampers with, a seal of the lottery ticket or is in possession of forged or fabricated lottery tickets shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than ten thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

(2)Any person or promoter who is found to be in possession of unaccounted lottery tickets shall be liable to a penalty of One Lakh Rupees in addition to and in excess of the tax payable under this Act:

Provided that no penalty shall be imposed unless an opportunity to show cause against such penalty is given.

(3)The power to levy the penalty under sub-section (2) shall be vested with the Assistant Commissioner.

27. Penalty for furnishing or producing false declarations etc.-(1) Where a promoter or other person knowingly issues or produces a false declaration, certificate or other document with a view to support or make any claim that tax has been paid on the draw relating to the lottery tickets sold or held by him or with a view to claim that he is a registered promoter under the Act, the Assistant Commissioner, on detecting such issue or production shall impose, on the promoter or person issuing or producing such document to pay an amount, three times the tax due in respect of such claim in addition to tax as penalty.

(2)Before issuing any direction or the payment of the penalty under this section, the Assistant commissioner shall give to the promoter or to the person an opportunity to show cause in writing against the imposition of such penalty.

28. Obstruction of Officers and Public servants in the discharge of duties.-Any person who obstructs, hinders, molests or assaults an authorized officer or any other public servant assisting him in the performance of his duties under this Act, or does anything which is likely to prevent or obstruct any search or production of evidence, shall on

conviction be liable to a fine of not less than ten thousand rupees but not exceeding, fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

29.*Fraudulent evasion of tax.*-Without prejudice to the provisions of section 21 to 28, if any person is knowingly concerned in, or in the taking of steps with a view to the fraudulent evasion of tax by him or any other person, he shall be liable to a fine of one lakh rupees or double the amount of the tax evaded, whichever is the higher or to imprisonment for a period of not less than six months but not exceeding five years, or to both.

30.*Fraudulent transport of lottery tickets.*-(1) The transporting of lottery tickets without the authority of the Certificate of Registration and proof of payment of tax provided under this act is subject to detention by the officer authorized in this behalf and the transporter is liable to pay a penalty of Five Lakh rupees or double the amount of the tax sought to be evaded, fraudulently from payment, whichever is higher:

Provided that if the aforesaid amount is not paid, without prejudice to the recovery of the aforesaid fine, the vehicle through which the lottery tickets were transported shall be liable to be confiscated, and the Assistant Commissioner shall sell them in public auction and the proceeds thereof equivalent to five lakhs rupees or double the amount of the tax sought to be evaded whichever is higher shall be remitted to Government and the balance if any due after deducting the incidental expenses shall be refunded to the person from whom the Lottery tickets and vehicle are confiscated:

Provided further that penalty under this sub-section shall not be imposed or no action shall be taken without giving an opportunity to show cause and without giving a reasonable opportunity of being heard to the transporter person in charge, or the registered owner of the vehicle.

(2)The Officer authorized to detain the lottery tickets shall seize the lottery tickets along with the vehicle in which they were transported and cause to be produced it before the Assistant Commissioner to competent jurisdiction within forty eight hours of such detention and seizure.

31.*Cognizance of offences.*- No Court shall take cognizance of any offence punishable under section 29 except on an application by the Deputy commissioner having the jurisdiction.

32.*Compounding of offences.*-(1) Where any promoter or other person has committed an offence under sub-section (1) of Section 26 or section 29, the Assistant Commissioner may on admission by such promoter or the person in writing and upon his option to compound at any time prior to the commencement of the Court proceedings relating thereto compound such offence by accepting money from such promoter or such person such sum of money equal to the amount of fine prescribed for the offence in addition to any tax and interest due thereon.

(2)Furnishing of a demand draft towards payment of a sum by any such promoter or person shall be deemed to be an application for compounding the offence.

(3)Where the Assistant Commissioner compounds an offence under this section, the order referred to in sub-section (1)-

(a)shall be in writing and specify the offence committed, the sum of money paid and the date of payment;

(b)shall be served on the promoter or person who committed the offence;

(c)shall be final and not subject to any appeal or revision.

(4)When the Assistant Commissioner compounds an offence under this section, the promoter or other person concerned shall not be liable to prosecution in respect of such offence under this section.

33.Offences 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 this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-section (1), where an 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 also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this 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.

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

Provided that no order shall be made after the expiry of two years from the commencement of this Act.

35.*Bar and limitation to certain proceedings.*-(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the State Government for any act done or purported to be done under this Act without the previous sanctions of the State Government.

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

(3) No suit shall be instituted against the State Government and no suit prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

36.*Bar of jurisdiction of Court.*-Notwithstanding anything contained in any law for the time being in force, no suit or other proceedings shall be entertained by any court, except as expressly provided for under this Act, to set aside or modify any assessment or other proceedings commenced by virtue of the provisions of this act, and no such court shall question the validity of any assessment, levy of penalty or interest or grant any stay of proceedings or recovery of amount due under this Act.

37.*Appearance before any Authority in proceedings.*-Any person who is entitled to appear before any Authority in connection with any proceeding under this Act, may be represented before such authority by his relative duly authorized by him in writing or any person regularly employed by him or by a legal practitioner.

38.*Power to summon person to give evidence.*-The Authorities under this Act shall have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of securing attendance of persons or the production of documents in any enquiry under this Act.

39.*Power to make rules.*- (1) Government may by notification in the Gazette make rules 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 provide for all or any of the following matters, namely:-

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) determination of liability of any person for purposes of registration;

(c)the assessment to tax under this Act of business which are discontinued or the ownership of which has changed;

(d)compelling the submission of statements or returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation:

(e)securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any prescribed authority or any appeal or evasion from any decision of such authority are kept confidential;

(f)the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;

(g)the procedure to be followed by the appellate Authority;

(h)the value of Court fee Stamp to be affixed on appeals, applications or revisions.

(i) the procedure for inspection and taking copies of records, receipts, accounts.

(j)the fees payable for the grant of duplicate certificates of registration or copies of such certificate or of any other document;

(k)the maintenance of document or accounts of receipts or purchases and sales of lottery tickets by promoters or persons and the time for which they should be preserved;

(l)generally regulating the procedure to be followed and the forms to be adopted in proceeding under this Act;

(m)any other matter for the purposes of this Act.

(3)Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly makes any modification in the 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.

GOVERNMENT OF KERALA
Law (Legislation-A) Department

NOTIFICATION

No. 17207/Leg. A2/2010/Law. Dated, Thiruvananthapuram, 12th July, 2011
21st Ashadha, 1933.

In pursuance of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to authorise the publication in the Gazette of the following translation in the English Language of the Kerala Tax on Paper Lotteries (Amendment) Act, 2011 (12 of 2011).

By order of the Governor,

C. K. PADMAKARAN,
Special Secretary, (Law).

[Translation in English of “2011-ലെ പേപ്പർ ലോട്ടറികളിന്മേലുള്ള കേരള നികുതി (ഭേദഗതി) ആക്ട്” published under the authority of the Governor.]

ACT 12 OF 2011

THE KERALA TAX ON PAPER LOTTERIES (AMENDMENT) ACT, 2011

An Act further to amend the Kerala Tax on Paper Lotteries Act, 2005.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Tax on Paper Lotteries Act, 2005, for the purposes hereinafter appearing ;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Tax on Paper Lotteries (Amendment) Act, 2011.

(2) It shall be deemed to have come into force on the 13th day of September, 2010.

2. *Amendment of section 6.*—In section 6 of the Kerala Tax on Paper Lotteries Act, 2005 (20 of 2005) (hereinafter referred to as the principal Act), in sub-section (1),—

(i) in clause (a), for the words “Seventeen lakh rupees”, the words “Fifty lakh rupees” shall be substituted ;

(ii) in clause (b), for the words “Seven lakh rupees”, the words “Twenty five lakh rupees” shall be substituted.

3. *Amendment of section 10.*—In section 10 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything contained in sub-sections (1) to (3), in the case of a lottery organised, conducted or promoted on behalf of other State or Union Territory or any Country which had entered into a bilateral agreement or a treaty with the Government of India, the advance tax shall be received from the promoters submitting the applications or on their behalf only on being satisfied on verification of the applications submitted along with a certificate issued by the respective State Government or Union Territory or Country to the

effect that the provisions of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998) and the rules made thereunder have been complied with and also the details stated below furnished by the respective Governments:—

- (i) Name of the lottery;
- (ii) Price of the lottery tickets;
- (iii) Number of tickets printed;
- (iv) Details of the printing press;
- (v) Gross value of the tickets printed;
- (vi) The address of the selling agents, distributors and promoters of the State Government;
- (vii) Prize structure;
- (viii) Amount offered as prize money;
- (ix) Interval between the draws;
- (x) Place where the draw is being conducted;
- (xi) Manner in which draw is conducted.”

4. *Repeal and saving.*—(1) The Kerala Tax on Paper Lotteries (Amendment) Ordinance, 2011 (29 of 2011) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action 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.
