

[Translation in English of “2007-ലെ കേരള മത്സ്യത്തൊഴിലാളികളുടെയും അനുബന്ധ തൊഴിലാളികളുടെയും ക്ഷേമ സെസ്സ് ആക്ട് ” published under the authority of the Governor.]

ACT 9 OF 2007

THE KERALA FISHERMEN'S AND ALLIED WORKERS'

WELFARE CESS ACT, 2007*

An Act to provide for the levy and collection of cess on the sale proceeds of fish, fish products, allied objects and equipments within the State with a view to augmenting the resources of the Kerala Fishermen's Welfare Fund constituted under section 3 of the Kerala Fishermen's Welfare Fund Act, 1985 (30 of 1985).

Preamble.—WHEREAS, it is expedient to levy and collect cess on the sale proceeds of fish, fish products, allied objects and equipments within the State with a view to augmenting the resources of the Kerala Fishermen's Welfare Fund constituted under the Kerala Fishermen Welfare Fund Act, 1985 (30 of 1985) for the welfare of fishermen and allied workers of fishery industry in Kerala and to impose such cess on the dealers for the purpose of achieving the object to safeguard the interest of fishermen and allied workers in the State;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Fishermen's and Allied Workers' Welfare Cess Act, 2007.

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

(3) It shall be deemed to have come into force on 18th day of February, 2006.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

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(a) "allied worker" means any person who is engaged mainly in fishery related activities for his livelihood and who does not come under the definition of the term 'fishermen' in clause (e) of section 2 of the Kerala Fishermen's Welfare Societies Act, 1980 (7 of 1981) and includes beach workers, fish distributors, fish curers, peeling workers and processing plant workers who are not members or not eligible to get membership, in any other statutory welfare Scheme;

(b) "Assessing Officer" means an officer appointed by the Government under section 5;

(c) "Board" means the Kerala Fishermen's Welfare Fund Board constituted under section 7 of the Kerala Fishermen's Welfare Fund Act, 1985 (30 of 1985);

(d) "dealer" means any person who engages in the business of buying and selling of fish or processing fish or bringing into the State or sending outside the State -the fish (raw or processed) or fish product or allied objects or equipments, and includes,—

(i) a commission agent, a broker, auctioneer or any other mercantile agent by whatever name called, and

(ii) a non-resident dealer or an agent of a non-resident dealer or a branch of a firm or company or association situated outside the State:

Provided that, fishermen and allied worker as defined in the Kerala Fishermen's Welfare Fund Act, 1985 (30 of 1985) shall not be included in this.

(e) "fish" means shrimp, prawn, mussel, clam, cuttlefish, squids, crab including all varieties of fish or any other aquatic organisms and aquatic plants and ornamental fishes exploited commercially for edible or medicinal purposes or for manure or feed;

(f) "fisherman" means a fisherman as defined in clause (e) of section 2 of the Kerala Fishermen's Welfare Societies Act, 1980 (7 of 1981);

(g) "fishing vessel" means a ship or boat, whether or not fixed with mechanical means of propulsion, which is engaged in fishing for profit and includes,—

a catamaran, vanchi or vallom or by any craft known by local variations thereof;

(h) "fund" means the Kerala Fishermen's Welfare Fund established under section 3 of the Kerala Fishermen's Welfare Fund Act, 1985;

(i) "Government" means the Government of Kerala;

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

(k) "Sale proceeds" means the sale value of all transactions carried out in the State including buying or selling, bringing in or sending outside the State, fish or fish products or allied objects or equipments for use or for processing otherwise.

(2) Words and expressions used in this Act but not defined and defined in the Kerala Fishermen's Welfare Fund Act, 1985 shall have the same meaning respectively assigned to them in that Act.

3. *Levy and Collection of Cess.*—(1) There shall be levied and collected a cess for the purpose of the Kerala Fishermen Welfare Fund Act, 1985 and the scheme thereunder, at one per cent of the total sale proceeds of a dealer in a financial year.

(2) The cess levied under sub-section (1) shall be collected from every dealer in such manner and at such time, as may be prescribed.

(3) The cess levied under sub-section (1) shall be in addition to any cess, duty or tax leviable on fish under any law for the time being in force.

(4) The proceeds of the cess collected under sub-section (2) shall be credited initially to the Consolidated Fund of the State in the manner, as may be prescribed.

(5) The amount of cess collected shall be paid to the Fund of the Board by the Government after deducting the cost of collection of such cess not exceeding one per cent of the amount collected every year, before 30th June, in the manner as may be prescribed.

4. *Administration of the Act.*—The Director of Fisheries shall be the authority to administer, supervise and to enforce the Act.

5. *Appointment of Assessing Officer.*—The Government shall appoint, by notification in the Gazette, such officers of the Fisheries Department not below the rank of Fisheries Extension Officer/Matsyabhavan Officer as Assessing Officer for the purposes of the Act.

6. *Maintenance of Registers and Records.*—(1) Every dealer shall maintain such registers and records as may be prescribed.

(2) The registers and records shall be kept in the establishment of the dealer and shall be produced on demand by any officer or authority under this Act for verification.

7. Furnishing of Return by the dealer.—(1) Every dealer shall furnish to the Assessing Officer of the area a return showing the sale proceeds of the previous financial year in the manner as may be prescribed.

(2) If any dealer fails to furnish the return under sub-section (1), the Assessing Officer shall give notice requiring such dealer to furnish such return before such date as may be specified in the notice.

8. Assessment of Cess.—(1) On receipt of the return under section 7, the Assessing Officer shall, after making or causing to be made, such enquiry as he thinks fit and after satisfying himself that the particulars furnished in the return are correct, by order, assess the amount of cess payable by the dealer.

(2) If the dealer has not furnished the return to the Assessing Officer or the particulars furnished in the return are found incorrect, the Assessing Officer shall, after making or causing to be made such enquiry, as he thinks fit, by order, assess the amount of cess payable by the dealer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the amount of cess and the date within which the cess shall be paid by the dealer.

(4) The officer conducting the enquiry under sub-section (1) or sub-section (2), for the purpose of such enquiry, shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath or affirmation;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits; and

(d) issuing commissions for the examination of witnesses.

(5) Any enquiry under this section shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and for the purpose of section 196 of the said Code.

9. *Provisional Collection of Cess.*—(1) Every dealer who is liable to pay cess under section 3 shall pay before fifteenth day of the succeeding month, until assessing the amount payable by him under section 8 an amount equal to one-fourth of the cess payable by him annually in accordance with the assessment under section 8.

(2) Where the amount is not paid under sub-section (1), the Assessing Officer shall issue notice to the defaulter showing the amount in arrears directing to pay the said amount within such period as may be shown in the notice.

(3) The amount paid under sub-section (1) by the dealer for a year shall be adjusted against the amount assessed under section 8 for that year.

10. *Interest payable on delayed payment of Cess.*—If any dealer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such dealer shall be liable to pay interest on the amount to be paid at the rate of two per cent per month for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

11. *Penalty for non-payment of cess within the specified time.*—(1) If any amount of cess payable by any dealer under section 3 is not paid within the date specified in the order of assessment under section 8, it shall be deemed to be in arrears and the Assessing Officer may, after making such enquiry and after giving him a reasonable opportunity of being heard, impose on such dealer an amount as penalty not exceeding the amount of cess.

12. *Recovery of amount due under this Act.*—Any amount due under this Act, including any interest or penalty, from a dealer may be recovered in the same manner as an arrear of public revenue due on land.

13. *Appeal.*—(1) A dealer aggrieved by an order of assessment made under section 8 or by an order imposing penalty under section 11, may, within sixty days of receipt of order, prefer an appeal to the Director of Fisheries in such form and in such manner as may be prescribed:

Provided that the Director of Fisheries may condone the delay in filing the appeal, if it is satisfied that the delay was on reasonable ground.

(2) On receipt of the appeal under sub-section (1), the Director of Fisheries shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal within one month.

(3) Every order passed under sub-section (2) shall be final and shall not be called in question in any court of law.

14. *Revision.*—The Government may, either *suo motu* or on an application of the aggrieved person, call for the records of any proceedings taken by the Appellate Authority under sub-section (2) of section 13 and make such enquiry and pass such orders, as they deem fit:

Provided that an application for revision under this section shall be made within thirty days from the date on which the order was communicated to the applicant and no order shall be passed under this section without giving the aggrieved person an opportunity of being heard.

15. *Power to entry.*—Any Assessing Officer or any other officer specially empowered in this behalf by the Government, may,—

(a) with such assistance, as he thinks fit, enter at any reasonable time, any establishment or place where he considers it necessary to enter for carrying out the purpose of this Act; including verification of the correctness of the particulars furnished by any dealer under section 7;

(b) require the production of any register and any other document relating to the sale of fish, fish products, allied objects or equipments; and

(c) exercise such other powers as may be prescribed.

16. *Return of collection of Cess.*—(1) Every Assessing Officer shall furnish to the Director of Fisheries every month a return showing the amount collected by him as cess, fine or interest during the previous month, in such form and within such period as may be prescribed.

(2) The Director of Fisheries shall furnish to the Government every year a return showing the total amount collected in the State as cess, fine or interest during the previous financial year, within such period and in such form as may be prescribed.

17. *Penalty.*—(1) Any dealer, who fails to furnish a return under this Act, or has furnished incorrect particulars shall be punishable with imprisonment which may

extend to six months or with fine which may extend to one thousand rupees or with both.

(2) Whoever, willfully or intentionally evades or attempts to evade the payment of such cess, shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) Whoever, contravenes any of the provisions of this Act or the rules made thereunder shall, if no other penalty is elsewhere provided under this Act for such contravention, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Director of Fisheries.

18. *Offence by Companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time of commission of offence, 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 if he proves that the offence was committed without his knowledge or that he had 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 with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other office bearer of the company, such director, manager, secretary or other office bearer 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.

19. *Bar of jurisdiction of Civil Courts.*—No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the rules made thereunder required to be settled, decided or dealt with or to be determined by the Government or any authority or officer appointed under this Act.

20. *Power to make rules.*—(1) The Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the time within which the cess shall be levied and collected under sub-section (2) of section 3;

(b) the manner in which the transfer of money to the Board shall be made under sub-section (5) of section 3;

(c) the form and manner of maintaining the registers and records to be maintained by the dealer under section 6;

(d) particulars of the return to be furnished by the dealer under section 7 and the manner and time of furnishing such return;

(e) the manner in which an appeal may be filed under section 13;

(f) the powers which may be exercised by the officers under clause (c) of section 15;

(g) the form and period within which the return of collection of cess is to be furnished under section 16;

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

(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.

21. *Repeal and Savings.*—(1) The Kerala Fishermen's and Allied Workers' Welfare Cess Ordinance, 2007 (19 of 2007) 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 said Ordinance shall be deemed to have been done or taken under this Act.